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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Order (S.C. Ct. App. Filed Feb. 5, 2020)

The Clubs at Cherokee Valley Property Owners' Association.....Petitioner,

v.

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

NOTICE OF APPEAL

The Clubs at Cherokee Valley Property Owners' Association hereby appeals the order of the Honorable Robin B. Stilwell entered August 30, 2019, and the denial of Appellant's Motion for Reconsideration/to Alter or Amend Judgment entered on September 17, 2019.

[signature block on following page]

Respectfully submitted this the 9th day of September, 2019,

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

PROOF OF SERVICE

The undersigned employee of the law offices of Fox Rothschild LLP, attorneys for Appellant, does hereby certify that service of the Notice of Appeal was made on all counsel of record, specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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This the 19th day of September, 2019.

Jennifer K. Kracum

Active\102364297.v1-9/19/19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
The Clubs at Cherokee Valley Property Owners' Association,	)	C.A. NO. 2018-CP-23-05074
Plaintiff,	)	**ORDER STAYING C.A. NO. 2018-CP-23-05074 AND COMPELLING BINDING ARBITRATION**
v.	)	
SK Builders, Inc, Devoro Homes, LLC; Westchester Jordan's Pass, LLC: Westchester Ochlockonee, LLC; and RMDC, Inc.	)	
Defendants.	)	

This matter came before the Court on April 25, 2019 upon Defendants', Devoro Homes, LLC ("Devoro"), Westchester Jordan's Pass, LLC ("Jordan's Pass"), Westchester Ochlockonee, LLC ("Ochlocknee"), and RMDC, Inc. ("RMDC") (collectively "Defendants"), motion to compel arbitration and stay C.A. No. 2018-CP-23-05074 pending resolution of arbitration (the "Motion"). Appearing at the hearing on the Motion was Mark A. Bible, Jr., on behalf of Defendants, Greg Morton, on behalf of Defendant, SK Builders, Inc. ("SK"), and Joseph W. Rohe, on behalf of Plaintiff, The Clubs at Cherokee Valley Property Owners' Association (the "Plaintiff"). Defendant, SK, did not object to the Motion and Plaintiff contested the Motion.

On or about October 3, 2018, the Plaintiff filed a complaint in the Greenville County Court of Common Pleas, Case No. 2018-CP-23-05074 (the "Litigation") asserting three causes of action: (i) Breach of Contract, seeking recovery of money damages; (ii) Breach of Contract, seeking specific performance by Defendants; and (iii) Injunction, seeking to enjoin Defendants from alleged violations of the Covenants and the Subdivision Design Guidelines (the "Plaintiff's Claims"). In lieu of filing responsive pleadings, on or about February 22, 2019, Defendants moved to stay the Litigation and compel arbitration.

Pursuant to the Motion, Defendants sought an order from this Court staying the adjudication the Litigation in the Court of Common Pleas for Greenville County, South Carolina and compelling the same to be adjudicated in binding arbitration. The Defendants' Motion was based upon the Declaration of Covenants, Conditions, and Restrictions for The Clubs at Cherokee Valley, as duly recorded in the Office of the Register of Deeds for Greenville County, South Carolina, along with any duly executed and recorded amendments thereto (the "Covenants") and the South Carolina Uniform Arbitration Act, §15-48-10, S.C. Code of Laws Annotated (1976).

During the April 25, 2019 hearing, Defendants argued that the Covenants requires all bound parties to resolve all non-exempt claims involving the Covenants, the development which the Covenants apply, or all or any combination thereof, first through negotiation. Further, in the event the parties are unable to resolve their claims through negotiations, the Covenants required unresolved non-exempt claims to be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the substantive and procedural laws of the State of South Carolina.

Defendants averred that the Plaintiff's Claims, and the defenses or counterclaims which could be asserted by the Defendants, are not exempt from mandatory arbitration and were not resolved through negotiation at the time the Plaintiff initiated the Litigation. Defendants further asserted that the Plaintiff's Claims and the Defendants' defenses and counterclaims arise out of and are solely related to the Covenants and the development which the Covenants apply. Conversely, the Plaintiff argued that the Plaintiff's Claims, as plead in the Litigation, are not subject to mandatory and binding arbitration and that the Defendants' interpretation of the Covenants' dispute and claims resolution provisions were misplaced or overly broad.

The Court finds the Plaintiff's Claims arise out of the Covenants and involve the real property comprising the development which is governed by the Covenants. The Court further finds

that the Plaintiff's Claims are subject to mandatory and binding arbitration as set forth in the Covenants. This Court recognizes that Section 13.2(a) contemplates certain exemptions, including the collection of assessments and suits "to obtain a Temporary Restraining Order." Because of the nature of the Complaint, the multiple Causes of Action, and the inter-connected relationship of the same, it would be difficult to segregate the dispute into component parts in different forums. As a matter of economy, it simply makes sense to vet these issues in one proceeding. However, as specifically allowed under the Covenants, the Plaintiff may move the Court for Temporary Injunctive Relief to maintain the status quo during the pendency of Arbitration.

NOW, THEREFORE, IT IS ORDERED that the Defendants' Motion to Stay and Compel Arbitration is hereby **GRANTED**.

IT IS FURTHER ORDERED that the parties shall resolve all claims that have been or could be asserted in the Litigation which arise from or out of the Covenants or which pertain to the construction and development of real property by the Defendants and SK, through binding arbitration pursuant to the Covenants and the South Carolina Arbitration Act, §15-48-10. Arbitration of this matter shall be construed as broadly as possible so as to encompass all claims and issues between and amongst the parties, excluding any motion for a temporary restraining order.

IT IS FURTHER ORDERED that the parties shall mutually select a third-party neutral to preside as arbitrator and the sole and exclusive decision maker as it pertains to the full adjudication of this matter. If the parties are unable to reach an agreement and select a third-party neutral to serve as arbitrator within thirty (30) days of this Order, either party may petition the Greenville County Court of Common Pleas, to select a sole arbitrator to carry out the arbitration pursuant to this Order. All fees and expenses incurred and charged by the arbitrator shall be borne

equally between the parties, with the Plaintiff bearing one-half and Defendants, including SK, bearing the other half. The arbitrator may assess, in whole or in part, his fees and expenses incurred in connection with the arbitration as a part of his award.

IT IS FURTHER ORDERED that the arbitrator shall be empowered to resolve all claims and disputes between and among the parties related to or arising out of: the Covenants, development rules, regulations, and design guidelines, the application and/or enforceability of the Covenants; development rules, regulations, and design guidelines that are in dispute, the construction and/or development commissioned and or performed by Defendants and SK, any arbitration agreement entered into by the parties, and/or the arbitration itself.

IT IS FURTHER ORDERED the laws of the State of South Carolina shall govern all claims and disputes. The final award of the arbitration shall be entered as a judgment and enforceable by a court of competent jurisdiction.

IT IS SO ORDERED, this the 30th day of July 2019.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW ON NEXT PAGE]

Greenville Common Pleas

Case Caption: Clubs At Cherokee Valley Property Owners Association vs. Sk Builders Inc , defendant, et al

Case Number: 2018CP2305074

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
THE CLUBS AT CHEROKEE VALLEY PROPERTY OWNERS' ASSOCIATION,	)	CASE NO.: 2018-CP-23-05074
PLAINTIFF,	)	PLAINTIFF'S MOTION FOR RECONSIDERATION/TO ALTER OR AMEND JUDGMENT (Rule 59(e))
vs.	)	
SK BUILDERS, INC.; *et al.*	)	
DEFENDANTS.	)	

COMES NOW the Plaintiff THE CLUBS AT CHEROKEE VALLEY PROPERTY OWNERS' ASSOCIATION ("Plaintiff" or the "Association"), by and through its undersigned counsel, and respectfully moves the Court to reconsider the Order Staying C.A. No. 2018-CP-23-0574 and Compelling Binding Arbitration entered August 30, 2019 (the "Order") on the basis that: 1) the Order constitutes a modification of unambiguous contract language contained in the Declaration of Covenants, Conditions and Restrictions for Cherokee Valley recorded with the Greenville County Register of Deeds in Deed Book 2210 at Page 287 (the "Covenants"); 2) the Order deprives the Association of significant rights that the Court may not have considered; and 3) the Order creates legal uncertainties/impossibilities by assigning a lien action that an arbitrator is not empowered to foreclosure.

I. NATURE OF CLAIMS ASSERTED IN PLAINTIFF'S COMPLAINT.

As a preliminary matter, Plaintiff craves reference to its Complaint in order that the various causes of action set forth therein are clearly identified: *First*, Plaintiff's Complaint states breach of contract and nuisance claims deriving from Defendants' violations of Design Guidelines (the "Construction Claims"). *Second*, Plaintiff's Complaint states a breach of contract

claim for other violations of the Covenants including, without limitation, failure to pay assessments, late fees, interest and collection costs (the "Assessment Claims"). Collectively, Defendants own 37 lots in the Cherokee Valley subdivision (the "Subdivision"), and Defendants' regular assessment debt exceeds $15,000.[1] *Third*, Plaintiff's Complaint seeks injunctive relief (the "Injunction Claims") to preserve the status quo and to prevent damages from Covenant violations from escalating during the pendency of litigation. It is critical that the Court recognize the Assessment Claims are lien claims (see Covenants Section 11.2), and Plaintiff's remedy is to foreclosure the lien of assessments in the same fashion as mortgage foreclosure (see Covenants Section 11.10). Just as foreclosure actions are not subject to mandatory ADR, so too the Plaintiff's Assessment Claims should not be tendered to arbitration—for a host of good reasons. Likewise, the Injunction Claims do not submit themselves to arbitration.

II. THE ORDER INVADES PRIVATE RIGHTS OF CONTRACT.

While Plaintiff appreciates the Court's stated desire to serve economy and to avoid the perceived difficulty of claims segregation, Plaintiff submits that the Order goes too far by modifying private contract rights. *See Kinard v. Richardson*, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct. App. 2014) ("covenants...are contractual in nature and bind the parties thereto in the same manner as would any other contract."); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) ("A restrictive covenant *will be enforced* if the covenant expresses the party's intent or purpose.... Courts *shall enforce* such covenants unless they are indefinite or contravene public policy." [emphasis added]); *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 33, S.E.2d 501 (1945) ("It is not the province of the court to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, and, in the absence of any ground for denying

[1] This amount reflects a balance in default since January of 2019.

enforcement, to enforcing or giving effect to the contract as made."). Indeed, the Order acknowledges that the Assessment Claims are exempt and not subject to arbitration (citing Article 13 of the Covenants; Order p. 3), and yet, the Order compels arbitration in spite of such plain and unambiguous contract language. Plaintiff takes exception to the Court's views on economy and begs to know whose economy is served by arbitration, as it is certainly not the Plaintiff's. Section 11.10 of the Covenants taxes a non-paying lot owner to pay all costs of an action for collection of assessments. By contrast, the Order calls for the parties to split dispute costs. The shifting of cost burdens does not serve Plaintiff's economic interests. Likewise, the Assessment Claims are not difficult to segregate from the Construction Claims. Assessments are noticed annually based on a time-tested budget for Common Area maintenance and Association administration expenses, and the obligation to pay assessments is independent of all other Covenant compliance obligations.[2] Simply put, the asserted inter-connected relationship of Assessment Claims and Construction Claims does not exist. Accordingly, Plaintiff seeks amendment of the Order so as to accord with the clear and express contract language of the Covenants.

III. THE ORDER IMPOSES UNDUE DETRIMENT UPON THE PLAINTIFF.

Section 13.2(a) of the Covenants provides that "any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder" is expressly and unequivocally exempt from arbitration. The delay and dilution of the Assessment Claims—by forcing the Association to engage in a non-contractual, involuntary arbitration—does not impact just one person. Rather, demoting Plaintiff's Assessment Claims to arbitration causes an entire community to suffer the Defendants' recalcitrance. There is a reason that subdivision covenants

[2] See Section 11.10 of the Covenants: "No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of Common Areas or abandonment of his Lot..."

and restrictions uniformly elevate assessment claims by assigning to them lien security. Assessment claims are special; they are essential to the fiscal viability of a home owners association (generically, an "HOA").

Deferring the Assessment Claims deprives Plaintiff of a measure of lien priority. Specifically, while Plaintiff would be arbitrating, Defendant would be conducting a business that is characterized by habitual and purposeful disregard for creditor's rights. As a consequence, other secured and unsecured creditors[3] enlarge their liens which take priority over the Assessment Claims. In other words, legal ascertainment of the Assessment Claims through the statutory foreclosure process is essential to protection of Plaintiff's lien priority. Likewise, realization on Plaintiff's Assessment Claims through foreclosure sale requires access to the Master in Equity, not an arbitrator. Rule 71(a) SCRCP.

There are various other detriments to the Association that result from compelling arbitration as prerequisite to foreclosure, but one prominent consequence is the adverse precedent it sets. HOA claims are commonplace, as is proved by the volume of reported decisions involving HOAs. Nominal exposure to such decisions discloses that HOA claims are often met by estoppel and waiver defenses. Essentially, the covenant defalcator will urge that an HOA's prior failure to protect its rights entitles all subsequent owners a similar reprieve. Thus, does the Order condemn the Plaintiff to forever yield to the arbitration demands when the economic interests of a defendant are brought to bear?

IV. THE ORDER PRESENTS LEGAL UNCERTAINTIES AND PROCESS QUESTIONS.

Section 13.2(b) of the Covenants expressly provides that "any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and **any other**

[3] See Section 11.2 of the Covenants which provides that the Assessment Claims are subordinate to the lien of unpaid taxes and Institutional Mortgage holders. The Plaintiff loathes to ponder the priority dispute that would be confronted were an intervening judgment creditor appear.

relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 13.3 below" is expressly and unequivocally exempted from arbitration. Notwithstanding the foregoing contract language, the Order exempts from arbitration only motions for "temporary restraining order." *See* Order, p. 3. The Court offers the following explanation in its transmittal email of August 30, "I have read you respective orders. I agree that those claims that are exempt under 13.2 are exempted from arbitration. For instance, suits to obtain a 'Temporary Restraining Order' are specifically exempted; suits on *Injunction Relief* are not. There is a very practical distinction." Plaintiffs submit that a TRO is but a brand of Injunction, one that endures for a short period, following which the moving party must generally proceed to obtain a temporary or permanent injunction. While distinctions there may be, those distinctions are small potatoes in comparison to the legal uncertainties Plaintiff would confront on account of the Order.

Rule 65 SCRCP allows that a TRO granted without notice is followed by a hearing for temporary injunction not less than 10 days after the TRO issues. Is the TRO hearing before the Court, while the Temporary Injunction hearing goes to arbitration? Or perhaps the Court intends that references to temporary restraint include temporary injunction, leaving only final orders for permanent injunctive relief to arbitration? Assuming that is true, the uncertainties still persist. In the case of any injunction relief as might be awarded by an arbitrator, Plaintiff would be required to enter the arbitrator's award as a judgment before contempt or other due process or enforcement powers are available. Plaintiff appeals to the Court for reconsideration of the delayed equity its Order imposes.

Further, Rule 65(c) SCRCP allocates injunction bond setting to the discretion of the Court. There is no provision in Rule 65 for delegation of the Court's bond setting authority to an arbitrator. Thus, is bond-setting reserved to proceedings before the Court? If yes, then the parties are forced to present evidence and arguments in duplicate on the singular issue of bond amounts. The interests of economy and efficiency are not served by removing to arbitration any aspect of Rule 65 SCRCP.

In presenting the Assessment Claims to an arbitrator, the Plaintiff is likewise stymied. While the Assessment Claims are rather beyond debate or evidentiary contest,[4] Plaintiff must apparently wait for the entirety or arbitration to resolve before seeking judgment on its Assessment Claims and then to proceed with foreclosure. In the midst of this delay, Plaintiff will confront the uncertainties of lien status. More generally, what elements of Rule 71 SCRCP may be undertaken in spite of arbitration? Given the exclusive province of the Court to administer foreclosure, what aspects of the arbitration will be binding on the Court or the Master-in-Equity? The foregoing uncertainties are imposed by an Order that displaces a purposeful and unambiguous arbitration exemption.

V. CONCLUSION

For the reasons and upon the authorities set forth hereinabove, Plaintiff begs for the Court to reconsider its Order and to alter and amend such Order, restoring the contract rights of the parties in accord with the Covenants.

[signature block on following page]

[4] The assessment rate of $363.00 per year, per Lot, is the regular assessment amount. This amount is based on the Association budget presented and approved at the Association annual meeting, without objection or even meaningful discussion. Not only is this amount small and in line with market rates, it is subject to the business judgment of the Association Board of Directors.

Respectfully submitted this 9th day of September, 2019.

FOX ROTHSCHILD, LLP

By: /s/ Joseph W. Rohe

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
The Clubs at Cherokee Valley Property Owners' Association, Plaintiff, vs. SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.; Defendants.	)	**ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER AND TO ALTER OR AMEND JUDGMENT** C. A. No.: 2018-CP-23-05074

This matter comes before the Court pursuant to the September 9, 2019, Rule 59(e) Motion of the Plaintiff to Reconsider, Alter or Amend the Court's Order entered on or about August 30, 2019. After having had the opportunity to carefully review the same, this Court elects to respectfully deny the Motion.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

September 10, 2019
Greenville, South Carolina

Greenville Common Pleas

Case Caption: Clubs At Cherokee Valley Property Owners Association vs. Sk Builders Inc , defendant, et al

Case Number: 2018CP2305074

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

The South Carolina Court of Appeals

The Clubs at Cherokee Valley Property Owners' Association, Appellant,

v.

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc., Respondents.

Appellate Case No. 2019-001622

ORDER

This appeal arises out of an order of the circuit court compelling the parties to arbitration. Section 15-48-200 (2005) of the South Carolina Code sets forth the types of arbitration orders that are appealable to this court. Because an order compelling arbitration is not set forth in section 15-48-200(a), this appeal is dismissed. The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

_____, J.
FOR THE COURT

Columbia, South Carolina

cc:
William B. Swent, Esquire
Joseph William Rohe, Esquire
Gregory Alan Morton, Esquire
John T. Crawford, Jr., Esquire
Mark Anthony Bible, Jr., Esquire

FILED
October 16, 2019

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

v.

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

Appellate Case No. 2019-001622

PETITION FOR REHEARING

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TABLE OF CASES AND AUTHORITIES:

1. S.C. Code Ann. §15-48-10(b) (2005);
2. S.C. Code Ann. §15-48-200 (2005);
3. *Ex Parte* Messer, 333 S.C. 391, 509 S.E.2d 486 (Ct. App. 1998);
4. Heffner v. Destiny, Inc., 321 SC 536, 537, 471 S.E.2d 135, 136 (1995);
5. Stonhard, Inc. v. Carolina Flooring Spec., Inc., 366 S.C. 156, 621 S.E.2d 352 (2005).

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

v.

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

Appellate Case No. 2019-001622

PETITION FOR REHEARING

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

Appellant, the Clubs of Cherokee Valley Property Owners Association (the "Association") respectfully petitions the Court to rehear this appeal, pursuant to Rule 221 SCACR. Specifically, the Association requests that the Court reconsider its decision, which was filed on October 16, 2019, dismissing this appeal on grounds that it raises claims not appealable under S.C. Code Ann. §15-48-200 (2005), and the Association further requests that its appeal be determined on the merits. Appellant submits that the Court has overlooked or misapprehended the following primary points:

1) The appealed claims are not within the ambit of the South Carolina Uniform Arbitration Act (the "Act"); therefore, the Association's right to appeal cannot be precluded by Section 15-48-200 of the Act. Specifically, S.C. Code Ann. § 15-48-10(b) provides that the Act does not apply to "(1) Any agreement or provision to arbitrate in which it is stipulated that this Chapter shall not apply...." The matters Appellant seeks to exclude from arbitration are expressly exempted from arbitration by the plain language contained in that certain Declaration of Covenants, Conditions and Restrictions for Cherokee Valley Phase IV the Summit Section 1 and 2 dated June 5, 2006 and recorded in the Office of the Register of Deeds for Greenville County in Deed Book 2210 at Page 287 (the "Covenants"). An excerpt from the Covenants is attached hereto as **Appendix A**, to emphasize the stark and unequivocal exemption of suits to enforce collection of Association common expenses assessments under the Covenants. Appellant seeks to exempt its assessment lien foreclosure action from arbitration. Indeed, the lower Court, in communicating its conclusion to the parties, concedes the clarity of this exemption. See email of The Honorable Judge Robin Stilwell attached as **Appendix B** hereto stating,

"Counsel:

I have read your respective orders. I agree that those claims that are exempt under 13.2 are exempted from arbitration...."

Yet, the lower court decreed that the exempt claims be subject to binding arbitration on its own views of economy, essentially writing a contract for the parties unsupported by consideration and contradicting the will and interests of Appellant and its constituent members. Matters falling outside the Act are not subject to appellate prohibitions of the Act. *See Ex Parte* Messer, 333 S.C. 391, 509 S.E.2d 486 (Ct. App. 1998).

2) Appellant's assessment collections and foreclosure actions are plainly exempt from arbitration, and there is no other or independent basis for the Court to compel arbitration. Appellant accepts the general wisdom of alternative dispute resolution: that such processes generally present efficiencies and guard the economic interests of the public by avoiding waste of precious judicial resources. Heffner v. Destiny, Inc., 321 SC 536, 537, 471 S.E.2d 135, 136 (1995). For the same reasons that the Supreme Court's standing Order on mandatory alternative dispute resolution contains exceptions, the Cherokee Valley Covenants have likewise excluded from arbitration actions for collection of assessments. Such actions on assessments are lien actions and require the specialized support and process, ultimately to manage public sale of private assets. Foreclosure is exempt from mandatory alternative dispute resolution, and unsurprisingly, assessment lien foreclosure is exempt from arbitration under the Covenants and thus the Act. It does not aid efficiency or economy to submit to arbitration matters that are beyond the power of an arbitrator to administer. Moreover, the lower Court's Order would detrimentally shift dispute cost allocations. In assessment actions, the cost of recovery is taxed to the assessment obligor; but here, the lower court has ordered that arbitration costs be split. In sum, the lower court's basis for transferring a foreclosure action to arbitration fails to serve efficiency and economy and is entirely without any legal basis. *See e.g.* Stonhard, Inc. v. Carolina Flooring Spec., Inc., 366 S.C. 156, 621 S.E.2d 352 (2005) (holding that it is beyond the authority of the court to craft contract terms inconsistent with original intentions of the parties).

CONCLUSION: Appellant does not resist the bulk of the lower Court's directive to the Parties that claims for Covenant compliance and adherence to construction standards be transferred to arbitration, but as for Appellant's action for foreclosure of its assessment lien and

injunctive relief claims which are contractually exempt from Arbitration and thus from the appeal constraints of the South Carolina Uniform Arbitration Act, Appellant requests this Court reconsider its decision.

FOX ROTHSCHILD, LLP

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APPENDIX A

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June 12, 2006 11:10:29 AM
Rec:$74.00 Cnty Tax:$0.00 State Tax:$0.00
FILED IN GREENVILLE COUNTY,SC

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, § 15-48-10, S.C. CODE OF LAWS OF 1976, AS AMENDED.

COPY

THE SUMMIT
AT CHEROKEE VALLEY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CHEROKEE VALLEY
PHASE IV
THE SUMMIT
SECTION I
SECTION II

the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Association.

10.5 Personal Property and Real Property for Common Use. The Board of Directors may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting there from the costs incurred by the Association in acquiring or selling the same, will be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot and Dwelling.

10.6 Rules and Regulations. As provided in ARTICLE 12 hereof, the Board of Directors, may make, amend, revoke and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Areas, which rules and regulations will be consistent with the rights and duties established by this Declaration.

10.7 Reduction in Services. During the calendar years of 2006 and 2007, and during the first two years when any additional property may be added to this Declaration, the Board of Directors will define and list a minimum level of services that will be furnished by the Association. So long as the Declarant is engaged in the development of properties, which are subject to the terms of this Declaration, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Association to maintain the Common Areas and pay the costs and expenses set forth in any lease or use agreement therefore.

10.8 Obligation of the Association. The Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 10.7 above. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board of Directors taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 10.7 above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of the Declarant during the Declarant Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

ARTICLE 11

ASSESSMENTS

11.1 Purpose of Assessments. The Assessments for Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

11.2 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, such Assessments to be established and

collected as provided in Section 11.3, (b) Special Assessments, such Assessments to be established and collected as provided in Section 11.5, (c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 11.6 and (d) Individual or Specific Assessments pursuant to Section 11.8. Any such Assessments payable, together with late charges, simple interest at a rate established from time to time by the Board of Directors, and court costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing lien upon the property of the Owner thereof who is responsible for payment. Each Owner will be personally liable for Assessments coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments will be subordinate to the lien of any unpaid taxes and any Institutional Mortgage or Mortgage held by Declarant. Sale or transfer of any Lot or Dwelling will not affect the lien of the Assessments; however, the sale or transfer of any Lot or Dwelling, which is subject to any Institutional Mortgage or Mortgage of Declarant, pursuant to a decree of foreclosure, will extinguish the lien of the Assessments as to payment thereof which became due prior to such sale or transfer. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments. Assessments will be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 11.3(d), provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage or Mortgage of Declarant, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

11.3 Establishment of Annual Assessment. The Declarant has prepared the initial budget of the Association and copy is available to any owner upon written request. It will be the duty of the Board of Directors at least sixty (60) days prior to the first day of the Association's first full fiscal year, and each fiscal year thereafter, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a reserve account, if necessary, for the capital needs of the Association. The Board will cause the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. Each Lot and Dwelling shall be equally responsible for its proportionate share of the total Annual Assessments.

(a) Disapproval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Directors, as hereinabove provided, will become effective unless disapproved (a) solely by the Declarant in writing during the Declarant Control Period, and (b) thereafter by seventy-five percent (75%) or more of the votes of the entire Association at a special meeting of Members called therefore and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Directors fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments calculated in accordance with Section 11.4.

(b) Special Board Action to Increase. If the Board of Directors determines that the important and essential functions of the Association will not be properly funded in any year by the Annual Assessment herein provided, it may increase such Assessment, provided, however, an increase in Annual Assessments in any year pursuant to special Board action as aforesaid will in no way affect Annual Assessments for subsequent years.

opposing the Special Assessment (Directors being under no obligation to provide such statements). Neither statement, either supporting or opposing the Special Assessment, will exceed five pages in length.

(b) Apportionment. Special Assessments will be apportioned equally among the Lots and Dwellings, in the same manner as Annual Assessments.

11.7 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 11.3 and the Special Assessment authorized by Section 11.5 hereof, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Declarant during the Declarant Control Period, and/or by the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned equally among the Lots and Dwellings, in the same manner as Annual Assessments unless it is determined by the Declarant and/or Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

11.8 Declarant's Properties. Anything contained herein to the contrary notwithstanding, Declarant will be exempt from the payment of Annual Assessments, Special Assessments and Emergency Special Assessments with respect to unimproved Lots and unoccupied Dwellings owned by the Declarant and subject to this Declaration. The Declarant hereby covenants and agrees, however, that during the Declarant Control Period it will annually elect either to pay an amount equal to the Annual Assessment for each such Lot and Dwelling owned by it or to pay the difference between the amount of Assessments collected on all other Lots and Dwellings not owned by Declarant and the amount of actual expenditures by the Association during the fiscal year, but not in a sum greater than the Annual Assessments Declarant would pay if not exempt therefrom. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant will be deemed to have elected to continue paying on the same basis as existed during the immediately preceding year. Furthermore, so long as the Declarant owns any Lot or Dwelling for sale, the Declarant may, but will not be obligated to, reduce the Annual Assessment for any year to be paid by Owners. The Declarant will fund any such reduction in the amount assessed against the Owner as a subsidy. Any such subsidy will, in the Declarant's sole discretion, be (a) a contribution to the Association, (b) an advance against future Annual Assessments due from said Declarant, or (c) a loan to the Association. The amount and character (contribution, advance or loan) of such payment by the Declarant will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. Any such subsidy payment by Declarant may be made in-kind.

11.9 Individual Specific Assessments. Any expenses incurred by the Association or the Declarant because of the actions of one or more Owners or Occupants, or because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration, and any fines as may be imposed against an Owner in accordance with ARTICLE 12 hereof will be specially assessed as a specific Assessment against each such Owner and the Owner's Lot or Dwelling.

11.10 Effect of Nonpayment; Remedies of the Association. An Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefore by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire

unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment will include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law, subordinate only to liens for unpaid taxes, any Institutional Mortgage and any Mortgage held by Declarant as provided in Section 11.2 above. In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute suits to collect such amounts and to foreclose its lien. The assessable charge and lien provided for in this Section will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in like manner as a mortgage of real property. The Association will have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

11.11 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association will, within ten (10) days of a written request and upon payment of a fee set from time to time by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate will be conclusive evidence against all but such Owner of payment of any Assessments stated therein to have been paid.

11.12 Date of Commencement of Assessments. The Assessments provided for herein will commence on the date on which a Lot is conveyed to a person other than Declarant and will be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual Assessments, Special Assessments and Emergency Special Assessments will be adjusted for such property according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such property is first conveyed.

(a) Working Capital Collected At Initial Closing. Notwithstanding anything to the contrary in this Declaration, a working capital fund will be established for the Association by collecting from each Owner who acquires title to his Lot from the Declarant a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of each Lot by the Declarant to any other Owner. Such sum is and will remain distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Declaration and the Bylaws.

ARTICLE 12

RULE MAKING

12.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Areas, and facilities located thereon. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations, which will govern activities that may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. The Association will furnish copies of such rules and regulations and amendments thereto to all Owners prior to the effective date

(iv) The proposed sanction to be imposed.

(c) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if the officer, director, or other individual who delivered such notice enters a copy of the notice together with a statement of the date and manner of delivery. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE 13

ALTERNATIVE DISPUTE RESOLUTION & LITIGATION

13.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, and any Persons not otherwise subject to the Declaration who agrees to submit to this ARTICLE 13 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Declaration or the Development including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 13.2, are subject to the procedures set forth in Section 13.3.

13.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 13.3:

(a) any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 13.3 below; or

(c) any suit between Owners which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration and the Development; or

(d) any suit in which an indispensable party is not a Bound Party; or

(e) any suit which otherwise would be barred by any applicable statute of limitation; or

(f) any suit involving a matter that is not an Exempt Claim under (a) through (e) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 13.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.3 below, but there is no obligation to do so.

13.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving this Declaration or the Development, or all or any combination of them ("Respondent"), other than an Exempt Claim under Section 13.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit "C" to this Declaration, and then only to enforce the results hereof.

13.4 Litigation. No judicial or administrative proceeding, including any mandatory procedure under Section 13.3 above, with an amount in controversy exceeding $25,000.00, will be commenced or prosecuted by the Association unless approved by 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this ARTICLE 13 and the procedures therefore set forth in Exhibit "C" to this Declaration, if applicable.

13.5 Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this ARTICLE 13 and the procedures set forth in Exhibit "C" and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit "C" will control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this ARTICLE 13 will be strictly adhered to. TIME BEING OF THE ESSENCE hereof.

ARTICLE 14

MORTGAGEE PROTECTION

14.1 Introduction. This ARTICLE 14 establishes certain standards and covenants that are for the benefit of the holders, insurers and guarantors of certain mortgages. This ARTICLE 14 is supplemental to, and not in substitution for, any other provisions of the Declaration, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict, this Article shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Article from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgagee approval requirements.

14.2 Eligible Mortgagees. Wherever in the Constituent Documents the approval or consent of a specified percentage of "Eligible Mortgagees" is required, it shall mean the approval or consent of the Institutional Mortgagees holding first lien Mortgages on Lots which have provided to the Association written requests, stating their names and addresses and the street addresses of the Lots to which their Mortgages relate, to receive written notice of the matters for which they are entitled to vote, and which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Lots then subject to first Mortgages held by Eligible Mortgagees.

APPENDIX B

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Counsel:

I have read you respective orders. I agree that those claims that are exempt under 13.2 are exempted from arbitration. For instance, suits to obtain a Temporary Restraining Order are specifically exempted; suits on *Injunction Relief* are not. There is a very practical distinction. Ill revise the order accordingly.

Robin B. Stilwell
Circuit Judge, State of South Carolina
305 East North Street, Suite 315
Greenville, SC 29601
(864) 467-8408

From: Mark Bible <bible@conlaw.com>
Sent: Wednesday, August 21, 2019 10:24 AM
To: Stilwell, Robin B. Law Clerk (Kamairi Fayall) <rstilwellIc@sccourts.org>; Rohe, Joseph < JRohe@foxrothschild.com>; gmorton@dmdslaw.com; Swent, William B. < WSwent@foxrothschild.com>
Cc: Stilwell, Robin B. Secretary (Carole Ring) <rstilwellsc@sccourts.org>; Stilwell, Robin B. < rstilwellj@sccourts.org>; John Crawford <crawford@conlaw.com>
Subject: RE: 2018CP2305047 Clubs at Cherokee Valley Property Owners Association vs SK Builder

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
Mr. Touma,
We apologize for the delay in providing the Court with a proposed order on this matter. The parties are unable to agree on certain terms and are hereby providing two versions of the proposed order for the Courts consideration and decision. The Defendants proposed order (attached) is the original version that I prepared and request be approved by the Court. The Plaintiffs proposed order (attached in word and red-line PDF) is the version the Plaintiffs counsel would like to be approved by the Court. Please provide these documents to Judge Stilwell for review and decision. Should Judge Stilwell like to hold a teleconference or a hearing for the parties to voice their respective position(s) as to the differences of each order, the parties are happy to accommodate. Opposing counsel and I have discussed this matter and I have included counsel of record in this e-mail. Please let us know if the Court needs anything further. Thank you.

Sincerely,
Mark A. Bible Jr.
Attorney
bible@conlaw.com
cid:image001.jpg@01D55DA6.4072B030
704 E. McBee Avenue / Greenville , SC 29601
Ph: 864.242.4899 / Fax: 864.242.4844

From: Stilwell, Robin B. Law Clerk (Adam Touma) < rstilwellIc@sccourts.org>
Sent: Tuesday, July 30, 2019 3:31 PM
To: Stilwell, Robin B. < rstilwellj@sccourts.org>; Mark Bible < bible@conlaw.com>; Rohe, Joseph < JRohe@foxrothschild.com>; gmorton@dmdslaw.com; John Crawford < crawford@conlaw.com>
Cc: Stilwell, Robin B. Secretary (Carole Ring) < rstilwellsc@sccourts.org>
Subject: 2018CP2305047 Clubs at Cherokee Valley Property Owners Association vs SK Builder

Good Afternoon All,

I have spoken with Judge Stilwell regarding this case. Mr. Bible, would you please compose an Order granting Arbitration and email it to us in word format? Thank you.

Sincerely,

Adam G. Touma
Law Clerk to the Honorable Robin B. Stilwell
13th Judicial Circuit
Greenville: (864)-467-8407
RstilwellIc@scourts.org

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

PROOF OF SERVICE

The undersigned employee of the law offices of Fox Rothschild LLP, attorneys for Appellant, does hereby certify that service of Appellant's *Petition for Rehearing* was made on all counsel of record, specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Gregory A. Morton, Esq.
Donnan & Morton, P.A.
4 Arborland Way
Greenville, South Carolina 29615

John T. Crawford Jr., Esq.
Mark A. Bible Jr., Esq.
Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601

[signature block on following page]

This the 24th day of October, 2019.

Jennifer K. Kracum

Jennifer K. Kracum

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

PROOF OF SERVICE

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Greenville, South Carolina 29615

John T. Crawford Jr., Esq.
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Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601

[signature block on following page]

This the 24th day of October, 2019.

Jennifer K. Kracum

The South Carolina Court of Appeals

The Clubs at Cherokee Valley Property Owners' Association, Appellant,

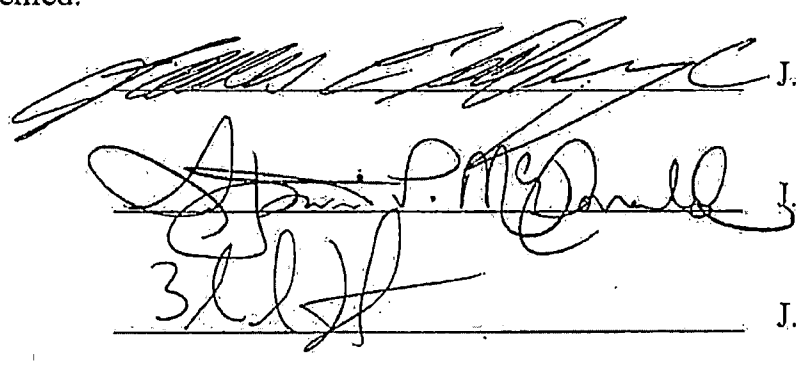
v.

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc., Respondents.

Appellate Case No. 2019-001622

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.

J.

J.

Columbia, South Carolina

FILED

February 5, 2020

cc:
William B. Swent, Esquire
Joseph William Rohe, Esquire