THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Jun 25 2020
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-2339
Case No. 2014-CP-08-2424

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Beutow, Edward and Sylvia Dengg, Jonathan and Theresa Douglass, Anthony and Stacey Ray, Danny and Ellen Davis Morrow, Czara and Chad England, Bryan and Cynthia Camara, and Matthew Collins, Respondents,

v.

Lennar Carolinas, LLC, Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, Paragon Site Constructors, Inc., Civil Site Environmental and Rick Bryant, Individually, Defendants,

Of which Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, and Civil Site Environmental are Respondents.

And

Lennar Carolinas, LLC, Appellant,

v.

The Earthworks Group, Inc., Volkmar Consulting Services, LLC, Geometries Consulting, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C.&A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource Southeast Group, LLC, and Low Country Renovations and Siding, LLP, Third-Party Defendants,

Of which Volkmar Consulting Services, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C.&A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource Southeast Group, LLC, are also Respondents.

And

Decor Corporation, Fourth Party Plaintiff,

v.

Baranov Flooring, LLC, DJ Construction Services, LLC, Creative Wood Floors, LLC, Geraldo Cunha, Ebenezer Flooring, LLC, Emmanuel Flooring and Siding, LLC, Eusi Flooring and Covering, LLC, Nicolas Flores, Alexander Martinez, Isidini Mejia, Juan Perez, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Ricardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sebastio Luiz de Araujo, and John Does 1-4, Fourth Party Defendants.

RESPONDENTS PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW'S PETITION FOR REHEARING

Respondents, above-named, hereby petition this Honorable Court for a rehearing pursuant to Rule 221(a), SCACR, in connection with its decision entered herein on June 10, 2020 reversing the Circuit Court's finding that the arbitration provisions contained in the subject Purchase and Sale Agreement, Limited Warranty, Covenants, and Deeds must be read as a whole to comprise the "Arbitration Agreement" due to the "cross-references to one another" and "intertwining paragraphs". (R. p. 8). Respondents respectfully submit that the following points

have been overlooked or misapprehended by the Court:

STANDARD OF REVIEW

On appeal from the Circuit Court, this Court reviews arbitrability determinations *de novo*. Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). However, a Circuit Court's factual findings will not be reversed on appeal if **any** evidence reasonably supports the findings. [Emphasis added] Id. at 453, 730 S.E.2d at 315. See also, Smith v. D.R. Horton, Inc., 417 S.C. 42, 47 790 S.E.2d 1, 3 (2016).

In the present case, evidence considered by the Circuit Court reasonably supports its finding that the arbitration provisions set forth in the Purchase and Sale Agreement, Limited Warranty, Covenants, and Deed "must be read as whole to comprise the arbitration 'agreement' due to the 'cross-references to one another' and 'intertwining paragraphs'". (R. p. 8). In rendering its decision, however, this Court has failed to consider all the evidence examined by the Circuit Court, instead, finding "there is no need for us to consider the similar arbitration clauses found in the Lennar Warranty, the Deed, and the Covenants." This limited analysis falls short of the standard of review set forth in Bradley and comparable cases. Respondents respectfully submit that a review of the evidence relied upon by the Circuit Court will reasonably support its finding that the arbitration provisions should be read together to constitute the entire Arbitration Agreement.

I. Cross-Referenced and Intertwining Paragraphs Constitute the Entire Arbitration Agreement.

In Smith v. D.R. Horton, Inc., the South Carolina Supreme Court held that, in applying the *Prima Paint* doctrine, separate subparagraphs must be read together to constitute the entire arbitration provision due to "numerous cross-references to one-another, intertwining the subparagraphs so as to constitute a single provision." 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016).

Similarly, in the present case, the evidence reasonably supports that the arbitration paragraphs contained in the Purchase and Sale Agreement, Limited Warranty, Covenants, and Deeds must be read together to constitute a single provision due to the cross-references to each other. For example, the arbitration provision contained in the Deeds—which includes unsegregated arbitration language and warranty disclaimers—expressly incorporates by reference **all** the terms of the Purchase and Sale Agreement and cross-references the Lennar Warranty. (R. Vol. 5, p. 2252, and p. 2264):

> ALL DISPUTES IN CONNECTION WITH THIS DEED, THE UNDERLYING PURCHASE AGREEMENT AND DISPUTES CONCERNING THE SALE AND CONSTRUTCION OF THE HOME ARE **SUBJECT TO FINAL AND BINDING ARBITRATION**.
>
> **ALL OF THE TERMS AND CONDITIONS OF THE PURCHASE AGREEMENT FOR THE SALE AND PURCHASE OF THE HOUSE AND LOT ARE HEREBY INCORPORATED BY REFERENCE AS IF SET FORTH IN FULL** AND SHALL NOT BE MERGED WITH THIS DEED **AND REMAIN VALID AND SHALL SURVIVE THE CLOSING AND THE EXECUTION AND FILING OF THE DEED**. ALSO THE PURCHASER HEREBY ACKNOWLEDGES AND ACCEPTS THAT **THE LIMITED WARRANTIES PROVIDED IN THE BUILDER'S WRITTEN WARRANTY DOCUMENTS PROVIDE IT WITH ITS SOLE REMEDY AT LAW OR IN EQUITY IN LIEU OF ALL OTHER WARRANTES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION AND THE IMPLIED WARRANTY OF HABITABILITY.** PURCHASER HEREBY AGREES TO WAIVE SUCH OTHER WARRANTIES AS THEY ARE FULLY AND COMPLETELY DISCHARGED HEREIN. [Emphasis Added in Bold]

As noted above, the arbitration provision and warranty disclaimers contained in the Deeds are (1) unsegregated by distinct headings, (2) expressly incorporate by reference **all** the terms and conditions of the Purchase and Sale Agreement, (3) make express reference to builder's written

warranty documents (i.e. Lennar's Warranty), noting that said documents provide homeowners with their "sole remedy at law or in equity", (4) and expressly disclaim the Implied Warranty of Workmanlike Construction and the Implied Warranty of Habitability. In other words, the arbitration language contained in the Deeds—with its cross-references to other documents—reasonably supports the Circuit Court's finding that the arbitration provisions "must be read as a whole" so as to constitute a single provision. (R. p. 8), citing Smith v. D.R. Horton, Inc., 417 S.C. at 48, 790 S.E.2d at 4.

In addition, Paragraph 16.1 of the Purchase and Sale Agreement, titled "Mediation/Arbitration of Disputes" defines disputes to include "contract, *warranty*, tort, or otherwise" and, again, makes reference to claims arising out of "warranties." (R. Vol. 1, p. 300). The paragraph is also a nearly verbatim regurgitation of the same-titled section located in Lennar's Limited Warranty. (R. Vol. 6, p. 2525). Accordingly, based on each of the foregoing, there was evidence to reasonably support the Circuit Court's finding that the arbitration provisions must be read as a whole. Respondent Homeowners, therefore, respectfully request that this Court grant a rehearing and affirm the lower court's finding that the arbitration provisions, "must be read as a whole" so as to constitute a single provision.

It is also worth noting that Lennar—a sophisticated developer of residential homes throughout the country—drafted the problematic language, which incorporates by reference other documents **in their entirety**, expressly disclaims warranties, and sets limitations on liability. Ambiguous language in a contract should be construed liberally and interpreted strongly in favor of the non-drafting party. Myrtle Beach Lumber Co., Inc. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981). "After all, the drafting party has the greater opportunity to prevent mistakes in meaning. It is responsible for any ambiguity and should be the one to suffer from its

shortcomings." Bazzle v. Green Tree Financial Corp., 351 S.C. 244, 262, 569 S.E.2d 349, 358 (2002), vacated on other grounds, 123 S.Ct. 2402, 156 L.Ed.2d 414 (2003). As the architect if its own problem, Lennar should not be permitted avoid review of all the evidence considered by the Circuit Court and cherry-pick which one of its documents this Court reviews.

II. The Arbitration Agreement is Unconscionable, and thus Unenforceable.

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Smith v. D.R. Horton, Inc., 417 S.C. at 49, 790 S.E.2d at 4, citing Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007).

A. Lack of Meaningful Choice

In the present case, Respondent Homeowners lacked meaningful choice. Whether one party lacks a meaningful choice in entering the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process. Gladden v. Boykin , 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013) (quoting Simpson , 373 S.C. at 25, 644 S.E.2d at 669). Thus, parties frequently allege they lacked a meaningful choice when the dispute involves an adhesion contract. See Munoz v. Green Tree Fin. Corp. , 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (defining adhesion contracts as "standard form contract[s] offered on a take-it or leave-it basis with terms that are not negotiable"). While adhesion contracts are not unconscionable per se, courts tend to look upon them with "considerable skepticism" because they give rise to "considerable doubt that any true agreement ever existed to submit disputes to arbitration." Id. at 26–27, 644 S.E.2d at 669–70 (quotation marks omitted). In determining whether a party lacked a meaningful choice to arbitrate, courts should consider, inter alia, the relative disparity in the parties' bargaining power,

the parties' relative sophistication, whether the parties were represented by independent counsel, and whether " 'the plaintiff is a substantial business concern.' " Id. (quoting Simpson , 373 S.C. at 25, 644 S.E.2d at 669).

In Smith v. D.R. Horton, Inc., the South Carolina Supreme Court took "judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller." 417 S.C. at 50, 790 S.E.2d at 4., quoting Kennedy v. Columbia Lumber & Mfg. Co. , 299 S.C. 335, 343, 384 S.E.2d 730, 735–36 (1989) ; cf. Sapp v. Ford Motor Co. , 386 S.C. 143, 147–48, 687 S.E.2d 47, 49–50 (2009) (stating that South Carolina's "courts have shifted from following the doctrine of caveat emptor ('let the buyer beware') to the doctrine of caveat venditor ('let the seller beware')").

The bargaining power held by Respondent Homeowners in the present case is identical to the bargaining power held by the homeowners in Smith v. D.R. Horton, Inc. As in that case, (1) there is no indication in the Record that any of the Respondent Homeowners "enjoyed a substantially stronger bargaining position" against Lennar, or (2) that they were each represented by independent counsel in negotiating the agreement. 417 S.C. at 50, 790 S.E.2d at 4-5. Further, like the homeowners in Smith v. D.R. Horton, Respondent Homeowners were each "single clients" to a corporation that develops and sells houses throughout South Carolina and other states. Accordingly, in applying the South Carolina Supreme Court's analysis in Smith v. D.R. Horton to the present case, this Court should affirm the Circuit Court's finding that **Respondent Homeowners lacked a meaningful choice in their ability to negotiate the arbitration agreement**. *Id.*

B. Oppressive Terms

By reading the cross-referenced terms as a whole, like the South Carolina Supreme Court

did in Smith v. D.R. Horton, Inc., it is clear that they are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." Id., 417 S.C. at 49, 790 S.E.2d at 4, citing Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007). Specifically, as noted above, the **unsegregated arbitration language** contained in the Deeds, expressly incorporate by reference **all** the terms and conditions of the Purchase and Sale Agreement, make express reference to builder's written warranty documents (i.e. Lennar's Warranty), noting that said documents provide homeowners with their "sole remedy at law or in equity", and expressly disclaim the Implied Warranty of Workmanlike Construction and the Implied Warranty of Habitability. The language also expressly waives "such other warranties as the are fully and completely discharged herein." (R. Vol. 5, p. 2252, and p. 2264). Here, as in Smith v. D.R. Horton, Inc., Lennar's "attempts to disclaim implied warranty claims and prohibit any monetary damages are clearly one-sided and oppressive." Smith v. D.R. Horton, Inc., 417 S.C. 42, 50, 790 S.E.2d 1, 5 (S.C. 2016)

A review of the cross-referenced and incorporated provisions further serves to amplify the extreme nature of the oppressive terms:

1. The "Lennar Warranty" disclaims all "other warranties, express or implied, including but not limited warranty of habitability, are hereby expressly disclaimed and waived". (R. p. 2529, ¶ 2). In addition, it states "Lennar's total financial obligations under the Lennar Limited Warranty are limited to the original sales price of your Home". (R. p. 2529, ¶ 3). Further, the Lennar Warranty states "Consequential Damages Not Covered. Lennar shall not be liable for, and you expressly waive recovery of, any consequential damages..., including but not limited to: any diminution in value…; lost profits; damages to personal property; any personal injury of any kind..., any medical or hospital expenses; costs of food, moving and storage, relocation expenses,

or rental value of the Home or any other costs due to loss of use..." (R. p. 2529, ¶ 4). Both the Sales Contract and the Warranty (discussed below) are standard, nonnegotiable, Lennar form contracts. (R. p. 2438; p. 218, line 16 to line 24; p. 219, line 11 to line 17).

2. Ostensibly, the Lennar Warranty purports to provide relief to aggrieved homeowners. However, a detailed reading of the Warranty shows that its true purpose is to provide temporal limits on Lennar's responsibility for shoddy construction. After one to two years, the Warranty only provides a remedy for rare, load bearing, structural defects. (R. p. 2529, ¶ 9). All other remedies of any kind for any other defect - no matter how egregious - are excluded. Even the "structural warranty" is a misnomer - the only structural components covered are those that Lennar deems are structured components. (R. p. 2523) Stated differently, the Lennar Warranty, as written, prohibits any remedy of any kind for the defective, leaking, water damaged, termite-infested homes at The Abbey.

3. If there was any uncertainty left as to the lack of remedy of any kind available to the homeowners under the terms of the Arbitration Agreement, one only has to go to pages 6 through 9 of the cross-referenced Warranty, which prohibits any coverage or remedy for:

> **1.** Damage to land, landscaping (including sodding, seeding, shrubs, trees, and planting), sprinkler systems, outbuildings, carports, or any other appurtenant structure or attachment to the dwelling, or other additions or improvement not a part of your Home;
> **2.** Loss of use of all or a portion of your Home;
> **3.** Any loss or damage that is caused or made worse by any of the following causes: microorganisms, fungus, decay, wet rot, dry rot, soft rot, rotting of any kind, and mold;
> **4.** Any and all exclusions set forth in the Workmanship Systems and Structural Standards;
> **5.** Except as prohibited by law of the state in which the Home is located, all other warranties express or implied, including but not limited to any implied warrant of habitability, are hereby expressly disclaimed and waived;
> **6.** Lennar shall not be liable for, and you expressly waive recovery of any consequential damages that may result from the

> condition of any component of the Home, including but not limited to: any diminution in value of the Home before or after repairs are performed; lost profits; damages to personal property; any hospital expenses; cost of food, moving and storage relocation expenses, or rental value of the Home or any other costs due to loss of use, inconvenience or annoyance during repair. (R. pp. 2527-2528).

Accordingly, based on the foregoing, there was sufficient evidence to reasonably support the Circuit Court's finding that the terms Lennar's arbitration agreement was unconscionable, and thus unenforceable. See Smith v. D.R. Horton, Inc., wherein the South Carolina Supreme Court affirmed the Circuit Court and Court of Appeal's holdings that when read together as a singe provision, "**the arbitration provision is unconscionable and thus unenforceable**." 417 S.C. 42, 50, 790 S.E.2d 1, 5 (2016).

III. Even When Read in Isolation, the Terms of the Purchase and Sale Agreement are Unconscionable, and thus Unenforceable.

Even if this Court were to disregard Smith v. D.R. Horton and read Section 16 of the Purchase and Sale Agreement in isolation, as it did in rendering its decision, disregarding all of the above cross-referenced and intertwining paragraphs, the arbitration provision would still be unconscionable because it purports that Homeowners have bound their children and other third party occupants to binding arbitration. (R. Vol 1, P. 301). Specifically, Section 16.1 states:

> Disputes (whether contract, **warranty**, tort, statutory or otherwise, shall include, but are not limited to, any and all controversies, disputes, or claims […] (3) **relating to personal injury or property damage alleged to have been sustained by Buyer, Buyer's children or other occupants to the Property, or in the Community. Buyer has executed this Agreement on behalf of his or her children and other occupants of the Property with the intent that all such parties be bound hereby.**

This provision provides (1) no meaningful choice to Homeowners, their children, or third party occupants and is, on (2) its face, so oppressive that no reasonable person would accept being bound as such.

Further, Section 16.4 of the Purchase and Sale Agreement is unconscionable because it gives Lennar unilateral power to include contractors, subcontractors, and suppliers, as well as any warranty company and insurer as part of the Mediation and Arbitration (R. Vol. 1, P. 301]. Specifically, Section 16.4 states:

> Buyer and Seller further agree […] that Seller may, at its sole election, include Seller's contractors, subcontractors and suppliers, as well as any warranty company and insurer as parties in the mediation and arbitration; and (3) that the mediation and arbitration will be limited to the parties specified herein.

Again, said provision is one-sided and provides Homeowners with (1) no meaningful choice as to what parties should be involved in arbitration, and (2) is on its face "so oppressive that no reasonable person would make them and no fair and honest person would accept them." Simpson, 373 S.C. at 24–25, 644 S.E.2d at 668.

Accordingly, this Court should affirm the Circuit Court's finding that the terms of the arbitration are unconscionable, and thus unenforceable. Smith v. D.R. Horton, Inc., 417 S.C. 42, 50, 790 S.E.2d 1, 5 (2016).

IV. Because the Arbitration Agreement is Unconscionable, and thus Unenforceable, the FAA does not apply.

In rendering its decision the present case, this Court held that the FAA applies because "the parties 'specifically agree that this transaction involves interstate commerce'" and "We must enforce this agreement like an other contract term," citing Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001). However, Respondent Homeowners

respectfully submit that the Court's analysis was incomplete. Specifically, in Bradley v. Brentwood Homes, Inc., the South Carolina Supreme Court set forth the standard for enforcing contractual agreements, which purport to evidence an agreement by the parties that a transaction involves commerce:

> The FAA provides: "A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, **save upon such grounds as exist at law or in equity for the revocation of any contract.**" 9 U.S.C.A. § 2.
>
> [Emphasis added]

Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 730 S.E.2d 312 (2012)

As noted by the above-cited language, a provision in a contract purporting to evidence interstate commerce is not enforceable where grounds exist, at law or in equity, for its revocation. As set forth under Arguments II and III, *supra*, equitable and legal grounds exist for revoking the arbitration agreement drafted by Lennar. Specifically, applying the South Carolina Supreme Court's analysis in Smith v. D.R. Horton, Inc. and Simpson v. MSA of Myrtle Beach, Inc., the terms of the arbitration agreement are unconscionable (i.e. the Respondent Homeowners lacked any meaningful choice and the terms are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." Smith v. D.R. Horton, Inc., 417 S.C. at 49, 790 S.E.2d at 4, citing Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007). Accordingly, "**[T]he arbitration provisions is unconscionable and thus unenforceable**." Smith v. D.R. Horton, Inc., 417 S.C. 42, 50, 790 S.E.2d 1, 5 (2016).

Said differently, this Court should affirm the Circuit Court's finding that the FAA does not apply because sufficient grounds exist for revoking the arbitration agreement. Where a Court

finds any clause of a contract unconscionable, including an arbitration clause, as is the case here, the Court may refuse to enforce the clause or otherwise limit its application so as to avoid an unconscionable result. See S.C. Code§ 36-3-302(1) 2003.[1] Accordingly, this Court should affirm the Circuit Court's finding that the arbitration agreement is unconscionable and thus unenforceable.

V. Because the Development of Real Estate is an Inherently Intrastate Activity, the FAA does not apply.

"To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts." Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 455, 730 S.E.2d 312, 316 (2012), quoting Zabinski v. Bright Acres Assocs., 346 S.C. 580, 594, 553 S.E.2d 110, 117 (2001). In rendering its decision the present case, this Court held that the present case implicates the FAA because "the transaction also involved the construction of residential homes." Respondent Homeowners respectfully submit, that the present transaction did not involve the construction of residential homes. Rather, like the Homeowners in Bradley v. Brentwood, Homes, Inc., the contracts at issue in this case are a "Purchase and Sale Agreement" and a "Warranty", **not** construction contracts. (R. pp. 2454–2521 and pp. 2522–2530. respectively). Id. 398 S.C. 447, 458 730 S.E.2d 312, 318 (2012).

---

[1] As aptly noted by Justices Breyer, Ginsburg, Sotomayor and Kagan in their dissenting opinion to AT&T Mobility, LLC v. Concepcion: "even though contract defenses, e.g., duress and unconscionability, slow down the dispute resolution process, federal arbitration law normally leaves such matters to the States." 131 S.Ct. 1740, 1760 (2011) (emphasis added); Rent-A-Center, 130 S.Ct. at 2775 (2010) (arbitration agreements "may be invalidated by 'generally applicable contract defenses'"); Munoz v. Green Tree Financial Corp., 343 S.C. 531,539, 542 S.E.2d 360,363-64 (200 I) ("General contract principles of state law apply to arbitration clauses governed by the FAA").

In South Carolina, our Supreme Court adheres to the view that real estate purchase contracts only implicate intrastate commerce because “the development of land within South Carolina's borders is the quintessential example of a purely intrastate activity.” Id., 398 S.C. 447, 456, 730 S.E.2d 312, 317 (2012) quoting Zabinski, 346 S.C. at 595, 553 S.E.2d at 117-18. The Court further confirmed its prior rulings that the sale of a residence is inherently intrastate. Id. Accordingly, it was error for this Court to find that the transaction involved the “construction of residential homes” involving interstate commerce.

Further, this Court’s reliance on an affidavit by Lennar’s controller that the transaction involved interstate commerce, because it allegedly uses out-of-state contractors and materials and equipment manufactured outside of South Carolina is not dispositive. See Bradley v. Brentwood Homes, wherein the South Carolina Supreme Court found, “[Developer’s] affidavit is inapposite as his attestation that out-of-state materials, suppliers, and subcontractors were used for the construction of the residence has no bearing **on the purchase of the completed dwelling**.” 398 S.C. at 458, 730 S.E.2d at 318. [Emphasis added] Lennar’s attestation that the transaction involved interstate commerce does not make it so, particularly when the transaction involves a Purchase and Sale Agreement like we have here and not a Construction Contract. Accordingly, Respondent Homeowners respectfully request that this Honorable Court grant a rehearing and affirm the Circuit Court’s finding that the transaction was purely intrastate in nature and did not implicate interstate commerce.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court grant a rehearing and affirm the Circuit Court’s Order Denying Defendant Lennar’s Motion to Compel Arbitration.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/ Jesse Sanchez
98 ½ Broad Street, Suite B
Charleston, SC 29401
(843) 814-8181
jesse@jessesanchezlaw.com

THE HAYES LAW FIRM, LLC

John C. Hayes, IV
180 Meeting Street, Suite 330
Charleston, SC 29401
(843) 805-7003
jhayes@hayeslaw.org

ATTORNEYS FOR RESPONDENTS
PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW

June 25, 2020
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Buetow, Edward and Sylvia Dengg, Jonathan and Theresa Douglass, Anthony and Stacey Ray, Danny and Ellen Davis Morrow, Czara and Chad England, Bryan and Cynthia Camara, and Matthew Collins, Respondents,

v.

Lennar Carolinas, LLC, Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, Paragon Site Constructors, Inc., Civil Site Environmental and Rick Bryant, Individually, Defendants,

Of which Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, and Civil Site Environmental are Respondents.

And

Lennar Carolinas, LLC, Appellant,

v.

The Earthworks Group, Inc., Volkmar Consulting Services, LLC, Geometrics Consulting, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C. & A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC,

Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource-Southeast Group, LLC, and Low Country Renovations and Siding, LLP, Third-Party Defendants,

Of which Volkmar Consulting Services, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C. & A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource-Southeast Group, LLC, are also Respondents.

And

Decor Corporation, Fourth Party Plaintiff,

v.

Baranov Flooring, LLC, DJ Construction Services, LLC, Creative Wood Floors, LLC, Geraldo Cunha, Ebenezer Flooring, LLC, Emmanuel Flooring and Siding, LLC, Eusi Flooring and Covering, LLC, Nicolas Flores, Alexander Martinez, Isidru Mejia, Juan Perez, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Ricardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sebastio Luiz de Araujo, and John Does 1-4, Fourth-Party Defendants.

Appellate Case No. 2016-002339

Appeal From Berkeley County

J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5730
Heard February 19, 2020 – Filed June 10, 2020

REVERSED AND REMANDED

James Lynn Werner and Katon Edwards Dawson, Jr., both of Parker Poe Adams & Bernstein, LLP, of Columbia, and Jenna Brooke Kiziah McGee, of Parker Poe Adams & Bernstein, LLP, of Charleston, all for Appellant.

Thomas Frank Dougall, William Ansel Collins, Jr., and Michal Kalwajtys, all of Dougall & Collins, of Elgin, for Respondent Ozzy Construction, LLC.

Stephen P. Hughes, of Howell Gibson & Hughes, PA, of Beaufort, for Respondent Builders Firstsource-Southeast Group, LLC.

Steven L. Smith, Zachary James Closser, and Samuel Melvil Wheeler, all of Smith Closser, PA, of Charleston; and Rogers Edward Harrell, III, of Murphy & Grantland, PA, of Columbia, all for Respondents Knight's Concrete Products, Inc. and Knight's Redi-Mix, Inc.

Ronald G. Tate, Jr., and Robert Batten Farrar, both of Gallivan, White & Boyd, PA, of Greenville, for Respondent Volkmar Consulting Services, LLC.

Sidney Markey Stubbs, of Baker Ravenel & Bender, LLP, of Columbia, for Respondent DVS, Inc.

David Cooper Cleveland and Trey Matthew Nicolette, both of Clawson & Staubes, LLC, of Charleston, for Respondent Myers Landscaping, Inc.

John Calvin Hayes, IV, of Hayes Law Firm, LLC, Jesse Sanchez, of The Law Office of Jesse Sanchez, both of Charleston; Michael J. Jordan, of The Steinberg Law Firm, LLP, of Goose Creek; and Catherine Dunn Meehan, of The Steinberg Law Firm, LLP, of Charleston, all for Respondents Patricia Damico, Joshua Buetow, Brettany Buetow, Bryan Camara, Cynthia Camara, Matthew Collins, Ellen Davis Morrow, Jonathan Douglass, Theresa Douglass, Czara England, Chad England, Lenna Lucas, and Danny Morrow.

Brent Morris Boyd, Timothy J. Newton, and Rogers Edward Harrell, III, all of Murphy & Grantland, PA, of Columbia, for Respondents Coastal Concrete Southeast, LLC, and Coastal Concrete Southeast II, LLC.

David Shuler Black, of Howell Gibson & Hughes, PA, of Beaufort, for Respondent TJB Trucking/Leasing, LLC.

Erin DuBose Dean, of Tupper, Grimsley, Dean & Canaday, P.A., of Beaufort, for Respondents LA New Enterprises, LLC, and Raul Martinez Masonry, LLC.

Christine Companion Varnado, of Seibels Law Firm, PA, of Charleston; and Alan Ross Belcher, Jr., and Derek Michael Newberry, both of Hall Booth Smith, PC, of Mt. Pleasant, all for Respondent Guaranteed Framing, LLC.

Stephen Lynwood Brown and Catherine Holland Chase, both of Young Clement Rivers, of Charleston; and Preston Bruce Dawkins, Jr., of Aiken Bridges Elliott Tyler & Saleeby, P.A., of Florence, all for Respondent Alpha Omega Construction Group, Inc.

David Starr Cobb, of Turner Padget Graham & Laney, PA, of Charleston, and Everett Augustus Kendall, II, and Brian Lincoln Craven, both of Murphy & Grantland, PA, of Columbia, all for Respondent Construction Applicators Charleston, LLC.

Shanna Milcetich Stephens and Wade Coleman Lawrimore, both of Anderson Reynolds & Stephens, LLC, of Charleston, for Respondent A.C.& A. Concrete, Inc.

Robert Trippett Boineau, III, Heath McAlvin Stewart, III, and John Adam Ribock, all of McAngus Goudelock & Courie, LLC, of Columbia, for Respondent Spring Grove Plantation Development, Inc.

Bachman S. Smith, IV, of Haynsworth Sinkler Boyd, PA, of Charleston, for Respondent Southern Green, Inc.

John Elliott Rogers, II, of The Ward Law Firm, PA, of Spartanburg, for Respondent Land/Site Services, Inc.

Carmen Vaughn Ganjehsani, of Richardson Plowden & Robinson, PA, of Columbia, and Samia Hanafi Nettles, of Richardson Plowden & Robinson, PA, of Mt. Pleasant for Respondent Decor Corporation.

Jenny Costa Honeycutt, of Best Honeycutt, P.A., of Charleston, for Respondent South Carolina Exteriors, LLC.

Michael Edward Wright, of Robertson Hollingsworth Manos & Rahn, LLC, and Michael Wade Allen, Jr., and R. Patrick Flynn, both of Pope Flynn, LLC, all of Charleston, all for Respondent Super Concrete of SC.

Francis Heyward Grimball and James H. Elliott, Jr., both of Richardson Plowden & Robinson, PA, of Mt. Pleasant, for Respondent Manale Landscaping, LLC.

Kathy Aboe Carlsten, of Copeland, Stair, Kingma & Lovell, LLP, and Keith Emge, Jr., of Resnick & Louis, P.C., both of Charleston, for Respondent Civil Site Environmental, Inc.

HILL, J.: Certain homeowners in a Berkeley County development sued the general contractor Lennar Carolinas, LLC (Lennar), the developer, and various subcontractors, alleging defective construction. Lennar impleaded other subcontractors as third party defendants and moved to compel arbitration of the entire dispute. The circuit court denied the motion, finding the arbitration agreement included not just the arbitration section of the parties' sales contract but also sections from a separate warranty agreement (as well as parts of the deeds and covenants), and that the arbitration agreement was unconscionable. The circuit court further found the South Carolina Uniform Arbitration Act (SCUAA) applied, not the Federal Arbitration Act (FAA), and there had not been compliance with the SCUAA's conspicuous notice requirements. Lennar now appeals. We conclude the FAA, rather than the SCUAA, applies, and the circuit court erred in not considering the arbitration section as an independent arbitration agreement. We further hold the arbitration section constituted a valid agreement to arbitrate, which the FAA requires us to enforce.

I.

All of the Respondent homeowners, except Lenna Lucas, purchased new homes to be constructed in the development. As part of the transaction, they signed a ten page Purchase and Sales Agreement (PA) containing an arbitration section. Lucas is the second owner of a home, but in her amended complaint, she alleges a breach of contract cause of action based upon the PA. Section 16 of the PA is entitled "Mediation/Arbitration," and begins as follows:

> The parties to this Agreement specifically agree that this transaction involves interstate commerce and that any Dispute (as hereinafter defined) shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) and not by or in a court of law or equity. . . .

Due to the strong South Carolina and federal policy favoring arbitration, arbitration agreements are presumed valid. *See Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013). We review circuit court determinations of arbitrability de novo but will not reverse a circuit court's factual findings reasonably supported by the evidence. *Parsons v. John Wieland Homes and Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 130 (2016).

A. Whether the FAA Applies

We first consider whether the FAA applies. We hold it does, for two reasons. First, the PA provides the parties "specifically agree that this transaction involves interstate commerce." We must enforce this agreement like any other contract term. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (finding FAA applied because parties had agreed contract involved interstate commerce). Second, the transaction involved commerce in fact. The FAA applies "to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." *Id.* at 538, 542 S.E.2d at 363. In deciding whether a transaction involves "commerce in fact" sufficient to trigger the FAA, we examine the agreement, the complaint, and the surrounding facts. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 36, 524 S.E.2d 839, 843 (Ct. App. 1999). The phrase "involving commerce" as used in the FAA is "the functional equivalent of the more familiar term 'affecting commerce'—words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power." *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003). The Commerce Clause grants Congress the power to regulate (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce or persons or things in interstate commerce, and (3) activities having a substantial relation to interstate commerce. *United States v. Morrison*, 529 U.S. 598, 609 (2000).

In general, the development and sale of residential real estate is an intrastate activity that does not implicate the FAA, *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 456, 730 S.E.2d 312, 317 (2012), but here the transaction also involved the construction of residential homes. As *Bradley* acknowledged, "our appellate courts have consistently recognized that contracts for construction are governed by the FAA." *Id.* at 458 n.8, 730 S.E.2d at 318 n.8; s*ee also Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977). The affidavit of Lennar's Controller states the construction involved interstate commerce, specifically the use of out-of-state contractors and materials and equipment manufactured outside South Carolina. *See Cape Romain Contractors*, 405 S.C. at 123, 747 S.E.2d at 465 (holding FAA applied where out of state materials used in dock construction were "instrumentalities of interstate commerce" and parties' contract specifically invoked FAA). We hold the transaction here involved interstate commerce, and the FAA therefore applies.

B. Whether the Arbitration Agreement is valid and enforceable

We next consider whether there was a valid arbitration agreement. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019) ("To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists."). Because an arbitration provision is often one of many provisions in a contract, the first task of a court is to separate the arbitration provision from the rest of the contract. This may seem odd, but it is the law, known as the *Prima Paint* doctrine. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04 (1967) (arbitrator rather than court must decide claim that underlying contract in which arbitration provision was contained was fraudulently induced, but if fraudulent inducement claim went to the arbitration provision specifically, claim would be for court because such a claim goes to the "making" of the arbitration agreement and § 4 of the FAA requires the court to "order arbitration to proceed once it is satisfied that 'the making of the agreement for arbitration . . . is not in issue'"). Building from *Prima Paint*, the United States Supreme Court has developed a body of federal substantive law interpreting the FAA that applies in State and federal courts. *Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984). Two of these substantive laws are central to our decision here, and they reaffirm *Prima Paint*:

> First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance.

Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445–46 (2006) (citation omitted); *see Munoz*, 343 S.C. at 540, 542 S.E.2d at 364 ("Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole.").

In deciding whether the parties have a valid agreement to arbitrate we must therefore isolate the arbitration clause from the rest of the contract. If the arbitration agreement is valid, any issues as to the validity of other parts of the contract go to the arbitrator, not the court. Accordingly, a party cannot duck arbitration unless it makes a specific, pinpoint (and successful) challenge to the validity of the arbitration provision itself; attacking the validity of the contract as a

whole is not enough. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010) ("Thus, a party's challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate."); *S.C. Pub. Serv. Auth. v. Great W. Coal (Ky.), Inc.*, 312 S.C. 559, 562–63, 437 S.E.2d 22, 24 (1993) ("We hold a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause."). We admit this is an artificial, abstract way to view the issue, but the lens has been fixed by federal substantive law and we are not free to adjust it.

The circuit court acknowledged this lens but sought to widen the scope, bringing the multiple arbitration and warranty provisions in other documents into the frame. It then found the provisions so comingled as to be inseparable and declared all of the comingled provisions to be "the" arbitration agreement. This was not in keeping with *Prima Paint*. Nor was it, as the circuit court stated, consistent with *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48–49, 790 S.E.2d 1, 4 (2016), where a 3-2 majority held an arbitration clause found in one subsection of a contract paragraph was so "intertwined" with other subsections of the same paragraph that the entire paragraph constituted the arbitration provision for purposes of the *Prima Paint* analysis. Unlike the contract in *D.R. Horton*, the arbitration agreement here was contained in a distinct, separate section of the PA. The circuit court's finding that the arbitration provision encompassed more than this section lacks adequate factual support. We therefore conclude the circuit court erred by considering the contract as a whole rather than, as *Prima Paint* demands, focusing only on the discrete arbitration provision. *One Belle Hall Prop. Owners Ass'n, Inc. v. Trammell Crow Residential Co.*, 418 S.C. 51, 64, 791 S.E.2d 286, 293 (Ct. App. 2016) (reversing circuit court's denial of motion to compel arbitration where circuit court violated *Prima Paint* by considering separate warranty provision as part of arbitration agreement). Because the parties' arbitration provision is valid, § 2 of the FAA requires that we enforce it.

That ends our inquiry into Lennar's motion to compel the homeowners to arbitrate. There is no need for us to consider the similar arbitration clauses found in the Lennar Warranty, the Deed and the Covenants. The PA's arbitration provision states, "All decisions respecting the arbitrability of any Dispute shall be decided by the arbitrator(s)." Whether the disputes alleged in this lawsuit are covered by the PA's arbitration provision is therefore a question the parties clearly and unmistakably delegated to the arbitrator. *Schein*, 139 S. Ct. at 530 ("Just as a court may not decide a merits question that the parties have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an

arbitrator."); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (holding delegation of questions of arbitrability to arbitrator must be "clear and unmistakable").

Accordingly, we reverse the order of the circuit court denying the motion to compel arbitration. We express no view as to the validity or enforceability of other sections of the PA or any other documents at issue as those questions are for the arbitrator. Because it appears the circuit court did not specifically rule on Lennar's motions to compel the subcontractors and the developer, Spring Grove Plantation, Inc., to arbitration, we remand those motions to the circuit court for a ruling.

REVERSED AND REMANDED.

LOCKEMY, C.J., and HUFF, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Jun 25 2020
SC Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-2339
Case No. 2014-CP-08-2424

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Beutow, Edward and Sylvia Dengg, Jonathan and Theresa Douglass, Anthony and Stacey Ray, Danny and Ellen Davis Morrow, Czara and Chad England, Bryan and Cynthia Camara, and Matthew Collins, Respondents,

v.

Lennar Carolinas, LLC, Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, Paragon Site Constructors, Inc., Civil Site Environmental and Rick Bryant, Individually, Defendants,

Of which Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, and Civil Site Environmental are Respondents.

And

Lennar Carolinas, LLC, Appellant,

v.

The Earthworks Group, Inc., Volkmar Consulting Services, LLC, Geometries Consulting, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C.&A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource Southeast Group, LLC, and Low Country Renovations and Siding, LLP, Third-Party Defendants,

Of which Volkmar Consulting Services, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C.&A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource Southeast Group, LLC, are also Respondents.

And

Decor Corporation, Fourth Party Plaintiff,

v.

Baranov Flooring, LLC, DJ Construction Services, LLC, Creative Wood Floors, LLC, Geraldo Cunha, Ebenezer Flooring, LLC, Emmanuel Flooring and Siding, LLC, Eusi Flooring and Covering, LLC, Nicolas Flores, Alexander Martinez, Isidini Mejia, Juan Perez, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Ricardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sebastio Luiz de Araujo, and John Does 1-4, Fourth Party Defendants.

RESPONDENTS PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW'S PROOF OF SERVICE

I, the undersigned, certify that I have served *Respondents Patricia Damico, Joshua and Brettany Beutow, Bryan and Cynthia Camara, Matthew Collins, Jonathan and Teresa Douglass, Czarra and Chad England, Lenna Lucas, and Danny and Ellen Davis Morrow's Petition for Rehearing* on all counsel of record for the above-caption appeal by emailing a copy on June 25, 2020.

Pursuant to the March 20, 2020 Order of the Supreme Court, a copy of the

aforementioned email correspondence is attached.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez
Jesse Sanchez (SC Bar No. 101906)
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, South Carolina 29401
(843) 814-8181 Telephone
(843) 284-3953 Fax
jesse@jessesanchezlaw.com

ATTORNEY FOR RESPONDENTS
PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW

June 25, 2020
Charleston, South Carolina

From: **Jesse Sanchez** jesse@jessesanchezlaw.com
Subject: Patricia Damico v. Lennar Carolinas // 2016-002339// Petition for Rehearing
Date: June 25, 2020 at 4:32 PM
To: Ritchie, Sierra siritchie@sccourts.org
Cc: sstephens@arslawsc.com, clawrimore@arslawsc.com, sbrown@ycrlaw.com, cchase@ycrlaw.com, pbd@aikenbridges.com, mjordan@steinberglawfirm.com, cmeehan@steinberglawfirm.com, jhayes@hayeslaw.org, sphughes@hghpa.com, kcarlsten@carlockcopeland.com, cemge@rlattorneys.com, bboyd@murphygrantland.com, tnewton@murphygrantland.com, rharrell@murphygrantland.com, dcobb@turnerpadget.com, rkendall@murphygrantland.com, bcraven@murphygrantland.com, snettles@richardsonplowden.com, cganjehsani@richardsonplowden.com, mstubbs@brblegal.com, dnewberry@hallboothsmith.com, cvarnado@seibelsfirm.com, alan.belcher@hallboothsmith.com, ssmith@scnlaw.com, zclosser@scnlaw.com, swheeler@scnlaw.com, Dean, Erin erindean@tgdcpa.com, jrogers@wardfirm.com, jennamcgee@parkerpoe.com, jimwerner@parkerpoe.com, katondawson@parkerpoe.com, jelliott@richardsonplowden.com, fhgrimball@richardsonplowden.com, dcleveland@clawsonandstaubes.com, tnicolette@clawsonandstaubes.com, tdougall@dougallfirm.com, wcollins@dougallfirm.com, mkalwajtys@dougallfirm.com, jenny@besthoneycutt.com, bsmithiv@hsblawfirm.com, trippett.boineau@mgclaw.com, heath.stewart@mgclaw.com, adam.ribock@mgclaw.com, pflynn@popeflynn.com, mallen@popeflynn.com, mew@roblaw.net, dblack@hghpa.com, rtate@gwblawfirm.com, bfarrar@gwblawfirm.com, receptionist1@arslawsc.com, klawrimore@arslawsc.com, pbell@ycrlaw.com, tbates@ycrlaw.com, ice@aikenbridges.com, khoward@steinberglawfirm.com, knissen@steinberglawfirm.com, jlingle@hayeslaw.org, jesse.sanchez@mac.com, bgiles@hghpa.com, ssimpson@carlockcopeland.com, hdemers@rlattorneys.com, bawilson@murphygrantland.com, shughes@murphygrantland.com, cmubarak@murphygrantland.com, mtinsley@murphygrantland.com, eshn@richardsonplowden.com, livory@richardsonplowden.com, jowens@brblegal.com, bellenberger@hallboothsmith.com, emagera@seibelsfirm.com, sfischer@hallboothsmith.com, prochay@scnlaw.com, xingram@tgdcpa.com, ssantana@wardfirm.com, celestemallett@parkerpoe.com, sherrieellison@parkerpoe.com, mreeves@richardsonplowden.com, wbrewer@clawsonandstaubes.com, shossin@clawsonandstaubes.com, michalkalwajtys@gmail.com, sgreen@besthoneycutt.com, efile_bsmithiv@hsblawfirm.com, elizabeth.davison@mgclaw.com, alisha.burns@mgclaw.com, mollie.roche@mgclaw.com, esallee@popeflynn.com, eb@roblaw.net, ltownsend@hghpa.com, kpedersoli@gwblawfirm.com

---

Dear Counsel,

Attached for service pursuant to the March 20, 2020 Order of the South Carolina Supreme Court, please find the attached Cover Letter and Petition for Rehearing that is being filed momentarily with the Court of Appeals via Electronic One Drive Submission.

Regards,

Jesse Sanchez

On Wed, Jun 10, 2020 at 2:41 PM Ritchie, Sierra <siritchie@sccourts.org> wrote:

> Dear Counsel,
>
> Please see the attached correspondence from the South Carolina Court of Appeals.
>
> Sincerely,
>
> *Sierra Ritchie*
>
> Appeals Specialist I
>
> South Carolina Court of Appeals
>
> 1220 Senate Street
>
> Columbia, SC 29201
>
> T: 803-734-1890
>
> F: 803-734-1839
>
> siritchie@sccourts.org
>
> ~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

RECEIVED
Jun 25 2020
SC Court of Appeals

--

Jesse Sanchez
The Law Office of Jesse Sanchez, LLC
98 1/2 Broad Street, Suite B
Charleston, SC 29401
P: (843) 814-8181
F: (843) 284-3953
jesse@jessesanchezlaw.com

CONFIDENTIALITY NOTICE

This electronic mail transmission and any accompanying documents constitute information belonging to the sender and may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, any disclosure, copying, distribution, or action taken in reliance on the contents of the information contained in this transmission is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at (843) 814-8181 and delete the message. Thank you.

Case No
2016-2...ing.pdf

Case No
2016-2...30.pdf

June 25, 2020

VIA ONE DRIVE ELECTRONIC SUBMISSION

RECEIVED
Jun 25 2020
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

Re: Patricia Damico, et. al. v. Lennar Carolinas, LLC, et al.
Case No. 2014-CP-08-2424; Appellate Case No. 2016-2339.

Dear Ms. Kitchings,

Enclosed herewith, please find the following documents for filing:

1. *Respondents Patricia Damico, Joshua and Brettany Beutow, Bryan and Cynthia Camara, Matthew Collins, Jonathan and Teresa Douglass, Czarra and Chad England, Lenna Lucas, and Danny and Ellen Davis Morrow's Petition for Rehearing.*

2. The corresponding *Proof of Service*, evidencing service on all counsel of record for the above-captioned appeal by electronic mail.

3. A copy of Opinion No. 5730, filed June 10, 2020, from which this *Petition for Rehearing* is made.

Thank you for your assistance with this matter. Should you have any questions regarding this submission, please do not hesitate to contact me directly at (843) 814-8181.

Sincerely,

s/Jesse Sanchez
Jesse Sanchez
SC Bar No. 101906

ATTORNEYS FOR RESPONDENTS PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW

Cc: All Counsel of Record (Via Email Only)

THE LAW OFFICE OF JESSE SANCHEZ, LLC
98½ Broad Street, Suite B, Charleston, SC 29401 P: 843.814.8181 F: 843.284.3953
jesse@jessesanchezlaw.com jessesanchezlaw.com