STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
James Panicara and Sylvia Panicara, Plaintiffs, vs. BB CAROLINA HOLDINGS f/k/a BONTERRA BUILDERS, LLC; and QUALITY BUILDERS WARRANTY CORPORATION; Defendants.	Case No. 2019-CP-29-564 ORDER GRANTING IN PART and DENYING IN PART QBW RULE 59(e) MOTION TO ALTER OR AMEND
BONTERRA BUILDERS, LLC Third Party Defendant. -vs- ONE GRADE, INC.; Summit Engineering, Laboratory, and Surveying; Summit Land Services, P.C. n/k/a Veritas Land; Summit Engineering, Laboratory, and Testing, P.C.; Sanchez Concrete Co., Inc.; and Nash Company, Inc., Third Party Defendants	

This matter came before the court on Defendant Quality Builders Warranty Corporation's ("QBW") Rule 59(e) motion to alter or amend the court's March 26, 2020 Order. In that Order, the court denied QBW's motion to stay or compel Binding Arbitration as to the claims asserted against QBW by Plaintiffs James Panicara and Sylvia Panicara ("Plaintiffs"). Present and appearing for QBW was attorney Jim Werner of the Richland County Bar. J. Cameron Halford of

the York County bar appeared for Plaintiffs. Based upon the arguments, memorandums, and authorities cited, the court makes the following findings of fact and conclusions of law.

Plaintiffs argue that the agreements of record in this case violated S.C. Code Ann. §15-48-10(a) (2005) ("SCUAA") which provides, "Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underline capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to binding arbitration." QBW acknowledges the contract did not comply with the requirements of the SCUAA, but argues that the contract between Plaintiffs and QBW is subject to the Federal Arbitration Act ("FAA") as a transaction involving interstate 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 revocation of any contract." 9 U.S.C.A. §2. Therefore, in order to activate the application of the FAA, the commerce involved in the contract must be interstate, or foreign. ("Interstate commerce is a necessary basis for application of the federal act, and a contract or agreement not so predicated must be governed by state law.") 2 S.C. Jur. Arbitration, §6 (Supp. 2012).

QBW argues that binding arbitration should be compelled pursuant to the authority of *Patricia Damico, et al. vs. Lennar Carolinas, LLC, et al.*, 430 S.C. 188, 844 S.E.2d 66 (2020). The court disagrees. *Damico* involved an affidavit of record alleging the use of interstate materials, and this case lacks such an affidavit. Further, unlike *Damico*, this case involves a contract for purchase of a newly constructed residence, rather than for construction. The contract was for a dwelling home with occupancy and a move in date of March 2012, one month after the agreement

was entered into. The contract evidences that Plaintiffs agreed to purchase a *completed residential* dwelling. Therefore, the court finds *Damico* does not apply to the instant case.

QBW also cites *Fred Bradley v. Brentwood Homes, Inc., et al,* 398 S.C. 447, 730 S.E.2d 312 (2012) for the proposition that Binding Arbitration should be compelled where Plaintiffs named the warranty company, an out of state corporation. Here, QBW is a Pennsylvania corporation. Although the *Bradley* court did note "Significantly, Bradley did not name the national warranty company as a defendant in his lawsuit," this is not dispositive as the *Bradley* case already involved an existing out-of-state defendant. Here, there also exists an out-of-state defendant, Bonterra Builders, LLC. Pursuant to *Bradley*, "To ascertain whether a transaction involves commerce within the meaning of the Federal Arbitration Act (FAA), the court must examine the agreement, the complaint, and the surrounding facts." 9 U.S.C.A. §1.

QBW further argues that any provisions of the contract which are deemed unconscionable can and should be severed by the court. In support of its proposition, QBW cites *Doe v. TCSC, LLC*, 2020 WL 351780 (Ct. App. July 1, 2020). The court holds that any unconscionable provisions in the contract are severable pursuant to that authority. However, because the court finds that the essential character of the agreement was strictly for the purchase of a completed residential dwelling and not construction, the FAA does not apply. The court denies the motion to stay and/or compel Binding Arbitration and the court's ruling of March 26, 2020 shall remain unchanged because of the inherent *intra-state* nature of the contract in this case.

THEREFORE, the court GRANTS IN PART the relief sought by QBW and the court DENIES compelling arbitration for the reasons set forth above.

IT IS SO ORDERED.

_____, 2020
Lancaster, SC

_____
Hon. William A. McKinnon
Presiding Judge

Lancaster Common Pleas

Case Caption: James Panicara , plaintiff, et al VS Bonterra Builders Llc , defendant, et al

Case Number: 2019CP2900564

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge