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March 2, 2021

## VIA E-FILING

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

**RECEIVED**

**Mar 02 2021**

**SC Court of Appeals**

**Re: Jonathan Mart, on behalf of himself and others similarly situated v.  
Great Southern Homes, Inc.  
Case No. 2018-001598, Our File No. 9-3007.1**

Dear Madam Clerk:

It has come to our attention that relevant new case law authority has arisen since the filing of the initial briefs in this case. We therefore wish to bring the following cases to the Court's attention, pursuant to Rule 208(b)(7), SCACR.

The following case was cited by the lower court in its order and by both parties in their briefs:

- *Willis v. Tower Loan of Mississippi, LLC (In re Willis)*, 579 B.R. 381 (Bankr. S.D. Miss. 2017).

However, the order of the bankruptcy court was reversed on appeal to the Fifth Circuit in 2019:

- *Matter of Willis*, 944 F.3d 577 (5th Cir. 2019), *cert. denied sub nom.*, 140 S. Ct. 2828 (2020).<sup>1</sup>

Additionally, new appellate orders on civil litigation arbitration, which is the subject-matter of this appeal, have been entered by South Carolina courts, as follows:

- *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), *reh'g denied* (July 1, 2020) (compelling arbitration).

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<sup>1</sup> In this opinion, the Fifth Circuit discussed *Ragab v. Howard*, 841 F.3d 1134 (10th Cir. 2016), which was also cited by the lower court and parties in this appeal. Rather than agreeing with the Tenth Circuit, the Fifth Circuit cited with approval now-Justice Gorsuch's dissent in the *Ragab* case. See *Matter of Willis*, 944 F.3d at 582.

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- *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020) (compelling arbitration)
- *Masters v. KOL, Inc.*, 431 S.C. 28, 846 S.E.2d 893 (Ct. App. 2020) (compelling arbitration).
- *Berry v. Spang*, S.C. Ct. App. Order dated Jan. 13, 2021 (Shearouse Adv. Sheet No. 1, p. 55), *petition for rehearing* filed Jan. 28, 2021 (not compelling arbitration due to failure of material term or valid agreement).

We have not included citations to recent appellate arbitration opinions where there is limited applicability to the circumstances of this case (*e.g.*, non-signatory arbitration, lack of authority to enter arbitration agreement, family court arbitration, agreement to arbitrate assigned away, or arbitration involving a defendant in default).

Please also note that Appellant's Brief included citations to *Wilson v. Willis*, 416 S.C. 395, 786 S.E.2d 571 (Ct. App. 2016) for the standard of review in arbitration cases. The case was reversed by the Supreme Court, *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), but we do not believe the standard of review was affected by the decision.

Please let me know if you have any questions or concerns.

With my kindest regards, I am,

Sincerely,



Chelsea J. Clark

CJC/hos

cc: Charles H. McDonald (all by email only)  
Terry E. Richardson, Jr.  
Matthew A. Nickles  
Brady R. Thomas  
Beth B. Richardson