THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAY 07 2021
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-001223
Case No. 2019-CP-10-04807

Erik Kramer and Kevin N. Hedges, on behalf of themselves and others similarly situated, Respondents,

v.

Lennar Carolinas, LLC, Alpha Prime, LLC, Alpha Prime Construction, LLC, Sagehorn and Company, Inc., and Royal Palms Holding, LLC, Defendants,

of which Lennar Carolinas, LLC is the Appellant.

APPELLANT LENNAR CAROLINAS, LLC'S FINAL BRIEF

James Lynn Werner (S.C. Bar No. 6029)
Taylor H. Stair (S.C. Bar No. 78430)
Katon E. Dawson, Jr. (S.C. Bar No. 101167)
Robert C. Osborne III (S.C. Bar No. 101827)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000

Attorneys for Appellant Lennar Carolinas, LLC

TABLE OF CONTENTS

Page

STATEMENT OF ISSUE ON APPEAL 1

I. WHETHER THE CIRCUIT COURT ERRED IN DENYING LENNAR'S MOTION TO COMPEL ARBITRATION AND FAILING TO COMPEL THE OWNERS TO ARBITRATE THEIR CLAIMS AGAINST LENNAR PURSUANT TO THE PURCHASE AND SALE AGREEMENT'S ARBITRATION PROVISION. 1

STATEMENT OF THE CASE 2

FACTUAL BACKGROUND 3

STANDARD OF REVIEW 6

ARGUMENT 7

I. The court's holding in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 199, 844 S.E.2d 66, 72 (Ct. App. 2020), *reh'g denied* (July 1, 2020), requires that the Court compel Owners to arbitrate their claims against Lennar. 7

II. The Purchase and Sale Agreement's arbitration provision is valid and enforceable and requires that the Owners' claims against Lennar be compelled to arbitration 12

A. The FAA applies to the Purchase and Sale Agreement, and it is not necessary that the notice provision of the South Carolina Uniform Arbitration Act be satisfied. 12

1. The FAA applies to the Purchase and Sale Agreement because the Parties agreed and stipulated that the contract involved interstate commerce and that the FAA applies. 13

2. The FAA applies to the Purchase and Sale Agreement because it is a contract for the construction of a residence which involves interstate commerce. 14

3. Owners' argument that the Purchase and Sale Agreement is ambiguous on the issue of arbitration fails as a matter of law. 17

B. The Purchase and Sale Agreement's arbitration provision must be analyzed in accordance with the *Prima Paint* doctrine and be construed on its own terms without reference to other, separate provisions of the Purchase and Sale Agreement or other documents associated with the relationship between Owners and Lennar. 18

C. Owners' claims are within the scope of the Purchase and Sale Agreement's arbitration provision 20

D. Owners' argument that the outrageous tort exception justified the circuit court in denying Lennar's Motion to Compel Arbitration is unavailing. 21

E. Owners' argument that enforcing the Purchase and Sale Agreement's arbitration provision violates the Owners' rights under the United States Constitution is not a valid grounds for the circuit court to have denied Lennar's Motion to Compel Arbitration. 23

CONCLUSION 24

PPAB 6278278v1

TABLE OF AUTHORITIES

Page(s)

Cases

Aetna Cas. & Sur. Co. v. Holsten,
100 F.3d 950 (4th Cir. 1996) 19

Blanton v. Stathos,
351 S.C. 534, 570 S.E.2d 565 (Ct. App. 2002)....................14, 15, 16

Bradley v. Brentwood Homes, Inc.,
398 S.C. 447, 730 S.E.2d 312 (2012) 9, 17

Cape Romain Contractors, Inc. v. Wando E., LLC,
405 S.C. 115, 747 S.E.2d 461 (2013) 10, 15

Chassereau v. Global Sun Pools, Inc.,
373 S.C. 168, 644 S.E.2d 718 (2007) 25

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

Doe v. TCSC, LLC,
430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020)....................22, 24, 25

Episcopal Hous. Corp. v. Federal Ins. Co.,
269 S.C. 631, 239 S.E.2d 647 (1977) 15, 16

Hall v. Green Tree Servicing, LLC,
413 S.C. 267, 776 S.E.2d 91 (Ct. App. 2015)....................6

Henry Schein, Inc. v. Archer & White Sales, Inc.,
139 S. Ct. 524, 202 L. Ed. 2d 480 (2019)....................7, 13, 22

John Wiley & Sons, Inc. v. Livingston,
376 U.S. 543 (1964)....................6

Landers v. Fed. Deposit Ins. Co.,
402 S.C. 100, 739 S.E.2d 209 (2013) 6

Mr. T v. Ms. T,
378 S.C. 127, 662 S.E.2d 413 (Ct. App. 2008)....................7, 8

Munoz v. Green Tree Fin. Corp.,
343 S.C. 531, 542 S.E.2d 360 (2001) 14

PPAB 6278278v1

New Hope Missionary Baptist Church v. Paragon Builders,
379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008) 6

Osborne v. Marina Inn at Grande Dunes, LLC,
No. CIV.A. 4:08-CV-0490, 2009 WL 3152044 (D.S.C. Sept. 23, 2009) 25

Prima Paint Corp. v. Flood & Conklin Mfg. Co.,
388 U.S. 395 (1967) .... *passim*

Rent-A-Center, W., Inc. v. Jackson,
561 U.S. 63 (2010) 22

S.C. Pub. Serv. Auth. v. Great W. Cole (Ky.), Inc.,
312 S.C. 559, 437 S.C. 2nd 22, 24 (1993) 20

Schulmeyer v. State Farm Fire & Cas: Co.,
353 S.C. 491, 579 S.E.2d 132 (2003) 15

Smith v. DR Horton, Inc.,
417 S.C. 42, 790 S.E.2d 1 (2016) 11, 20

Snowden v. Checkpoint Check Cashing,
290 F.3d 631 (4th Cir. 2002) 26

State v. Hoyle,
397 S.C. 622, 725 S.E.2d 720 (Ct. App. 2012) 7

Statutes

9 U.S.C. § 1 .... *passim*

S.C. CODE ANN. § 15-48-10 .... 14, 19

STATEMENT OF ISSUE ON APPEAL

I. WHETHER THE CIRCUIT COURT ERRED IN DENYING LENNAR'S MOTION TO COMPEL ARBITRATION AND FAILING TO COMPEL THE OWNERS TO ARBITRATE THEIR CLAIMS AGAINST LENNAR PURSUANT TO THE PURCHASE AND SALE AGREEMENT'S ARBITRATION PROVISION.

STATEMENT OF THE CASE

This action is about whether a builder—Lennar Carolinas, LLC ("Lennar")—may compel arbitration of the construction defect claims by those individuals with whom it contracted for the construction and sale (purchase) of townhomes.

On September 19, 2019, Susan Rhoden filed a complaint, on behalf of herself and an alleged putative class, asserting construction defect claims against Lennar arising out of the construction of townhomes in a development in Charleston County known as "Royal Palms." (R. 21). On October 29, 2019, Susan Rhoden filed an Amended Complaint adding Erik Kramer and Kevin Hedges as additional plaintiffs. (R. 43). Subsequently, Susan Rhoden was voluntarily dismissed as a named plaintiff and potential class representative. (R. 8).

In response to the Amended Complaint, Lennar filed a Motion to Compel Arbitration on December 18, 2019. (R. 111). Lennar's Motion to Compel Arbitration sought to have the circuit court enforce the arbitration provision in the Lennar Purchase and Sale Agreements that were executed by Erik Kramer and Kevin Hedges (collectively, "Owners"). (R. 111 - 113). Specifically, Section 16 of the Purchase and Sale Agreement requires the Owners to arbitrate any and all controversies, disputes or claims arising under, or related to the Purchase and Sale Agreement, the property, Royal Palms, or any dealings between Owners and Lennar. (R. 111-112; 119-120). Furthermore, Section 16 contains an express agreement and stipulation between Lennar and Owners that the arbitration provision is governed by the Federal Arbitration Act and the Purchase and Sale Agreement involves interstate commerce. (R. 119-120).

On July 14, 2020, the circuit court conducted a hearing on Lennar's Motion to Compel Arbitration. (R. 64). On July 16, 2020, the circuit court issued a Form 4 Order denying Lennar's Motion to Compel Arbitration. (R. 5). The Form 4 Order contained no analysis or explanation as to the circuit court's basis for denying the Motion to Compel Arbitration. (R. 5).

On July 27, 2020, Lennar filed a Motion to Reconsider. (R. 656). In its Motion to Reconsider, Lennar argued that the circuit court erred in denying its Motion to Compel Arbitration because the court's opinion in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), *reh'g denied* (July 1, 2020), is directly on point, analyzed and applied the same arbitration provision as the one at issue in this case, addressed the same arguments in opposition to arbitration raised by the Owners in this case, is binding law in this State, and required that the circuit court compel Owners to arbitrate their claims against Lennar. (R. 657).

The circuit court decided the Motion to Reconsider on the briefs, and on August 5, 2020, issued a Form 4 Order denying Lennar's Motion to Reconsider. (R. 2). Again, the circuit court did not provide any basis or explanation for denying Lennar's Motion to Compel Arbitration.

On September 4, 2020, Lennar filed a Notice of Appeal.

FACTUAL BACKGROUND

Royal Palms is a residential development located in Charleston County, South Carolina. It is comprised of seventy-two (72) townhomes located in fifteen (15) buildings. On or about May 2, 2015, Erik Kramer (Kramer) entered into a Purchase and Sale Agreement with Lennar for the construction and sale of a townhome in Royal Palms. (R. 126). Kramer's Purchase and Sale Agreement estimated that construction would begin on June 5, 2015, with an estimated completion date of March 17, 2016. (R. 197). According to the construction records, the construction lasted until February 22, 2016, and included the use of out-of-state subcontractors as well as products manufactured and supplied from outside of South Carolina. (R. 184-185; 319- 327).

Similar to Kramer, Kevin Hedges (Hedges) entered into a Purchase and Sale Agreement with Lennar on or about March 9, 2015, for the construction and sale of a townhome in Royal Palms. (R. 137). Hedges's Purchase and Sale Agreement estimated that construction would begin on April 17, 2015, with an estimated completion date of October 1, 2015. (R. 314). The

construction records for Hedges's property show that construction lasted until at least November 12, 2015, and included the use of out-of-state subcontractors as well as products manufactured and supplied from outside of South Carolina. (R. 184-185; 329-336).

In addition to the Purchase and Sale Agreements, each of the Owners executed Option Summaries with respect to their townhomes to be built. In Kramer's Option Summary, he selected a floor area plan, chose to add a fireplace on an interior side wall, and made selections related to the color of his walls, cabinets, countertops, hardwood floors, carpets, shower tile, and kitchen backsplash. (R. 234-236). Similarly, in Hedges's Option Summary, he selected a floor area plan and made the selections related to the color of his walls, cabinets, countertops, hardwood floors, carpets, shower tile, and kitchen backsplash. (R. 298-309). Hedges chose not to include the additional and optional interior fireplace.

Each Purchase and Sale Agreement executed by the Owners and Lennar contains the following arbitration provision in a separately numbered Section 16.1, which bears a distinct and separate heading entitled "Mediation/Arbitration of Disputes":

> 16.1 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. "Disputes" (whether contract, warranty, tort, statutory or otherwise), shall include, but are not limited to, any and all controversies, disputes or claims (1) arising under, or related to, this Agreement, the Property, the Community or any dealings between Buyer and Seller; (2) arising by virtue of any representations, promises or warranties alleged to have been made by Seller or Seller's representative; and (3) relating to personal injury or property damage alleged to have been sustained by Buyer, Buyer's children or other occupants of the Property, or in the Community.

(R. 191-192; 255-256).

Section 16.3 of the Purchase and Sale Agreement further states:

> If the Dispute is not fully resolved by mediation, the Dispute shall be submitted to binding arbitration and administered by the AAA in accordance with the AAA's Home Construction Arbitration Rules currently in effect on the date of the request. If there are no Home Construction Arbitration Rules currently in effect, then the AAA's Construction Industry Arbitration Rules in effect on the date of such request shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in an enforced by any court having jurisdiction over such Dispute. If the claimed amount exceeds $250,000.00 or includes a demand for punitive damages, the Dispute shall be heard and determined by three arbitrators; however, if mutually agreed to by the parties, then the Dispute shall be heard and determined by one arbitrator. Arbitrators shall have expertise in area(s) of Dispute, which may include legal expertise if legal issues are involved. All decisions respecting the arbitrability of any Dispute shall be decided by the arbitrator(s). . . .

(R. 192; 256).

On October 29, 2019, Owners were added to this litigation by means of the Amended Complaint filed by original Plaintiff Susan Rhoden. (R. 43). In the Amended Complaint, Owners assert claims against Lennar for negligence, gross negligence, breach of warranty of habitability, breach of warranty of workmanlike service, breach of the implied warranty of fitness for a particular purpose, breach of warranty of merchantability, breach of express warranty, violation of the South Carolina Unfair Trade Practices Act, breach of fiduciary duty, and declaratory judgment—each claim arising out of the construction and sale (purchase) of the Owners' townhomes. (R. 43-63).

In response to the Amended Complaint, Lennar filed a Motion to Compel Arbitration asserting that Owners must individually arbitrate their claims against Lennar pursuant to the arbitration provision in their respective Purchase and Sale Agreements. (R. 111). The circuit court—without any explanation—denied Lennar's Motion to Compel Arbitration and Lennar's Motion to Reconsider the denial of its Motion to Compel Arbitration. (R. 2-5).

STANDARD OF REVIEW

"It is the policy of this state and federal law to favor arbitration[,] and 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.'" *Landers v. Fed. Deposit Ins. Co.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir. 1996)). "[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 271, 776 S.E.2d 91, 94 (Ct. App. 2015) (alteration in original) (quoting *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014)). The Court's function is to determine the two "gateway matters" based on the allegations of the Complaint, (1) whether an applicable arbitration agreement exists, and (2) whether the specific dispute falls within the scope of the arbitration agreement. *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 629, 667 S.E.2d 1, 5 (Ct. App. 2008). Upon determining a valid arbitration agreement exists and applies to the controversy before the Court, the Court's duty is to compel the matter to arbitration wherein the arbitrator has the authority to decide questions which grow out of the dispute and bear on its final disposition. *See John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964).

In reviewing and deciding the issues in this case, the Court is bound by its prior published precedent and may not ignore an opinion of another panel of the Court absent *en banc* review or an intervening opinion issued by our Supreme Court. *See State v. Hoyle*, 397 S.C. 622, 629, 725 S.E.2d 720, 724 (Ct. App. 2012); *Mr. T v. Ms. T*, 378 S.C. 127, 131 n.3, 662 S.E.2d 413, 415 n.3 (Ct. App. 2008). In this case, the Court is obligated to adhere to the Court's holding in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), which analyzed the application and enforceability of the same arbitration provision that is presently before the Court.

Furthermore, the Court may not review questions of arbitrability when the parties delegate the issue of arbitrability to the arbitrator. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530, 202 L. Ed. 2d 480 (2019).

ARGUMENT

In this case, the circuit court erred in refusing to grant Lennar's Motion to Compel Arbitration of the Owners' claims. Tellingly, the circuit court provided no analysis or justification for its decision. Even when confronted with this Court's decision in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), which analyzed and decided the enforceability of the same arbitration provision in the same Purchase and Sale Agreement as is in issue in the present case, the circuit court was silent—save for its baseless and unfounded decision to deny the Motion to Compel Arbitration and Motion to Reconsider in Form 4 Orders.

I. The court's holding in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), *reh'g denied* (July 1, 2020), requires that the Court compel Owners to arbitrate their claims against Lennar.

This appeal involves a single issue: whether the circuit court erred in failing to compel Owners to arbitrate their claims against Lennar pursuant to the arbitration provision executed by each of them in the Purchase and Sale Agreements with Lennar. The circuit court provided no basis for its rulings and, therefore, no other specific issues upon which to focus this appeal. While this singular issue may implicate various sub-issues relating to the interpretation and application of the Purchase and Sale Agreement to the Owners' claims, fortunately, the court in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), analyzed and applied the exact same arbitration provision in the virtually identical Purchase and Sale Agreements to claims asserted by individuals who entered into such agreements for the construction of residential properties in another Lennar community. In *Damico*, the owners raised virtually all of the same arguments and objections to the motion to compel arbitration as have been raised in this case by

these Owners. The court in *Damico*, addressed and dispensed with all of those same arguments in deciding that it was error for the circuit court in that case to have denied Lennar's Motion to Compel Arbitration. The *Damico* decision is controlling here. *See Mr. T*, 378 S.C. at 131 n.3, 662 S.E.2d at 415 n.3 (stating the Court of Appeals is obligated to follow prior opinions issued by other panels absent *en banc* review or an intervening opinion issued by our Supreme Court).

Review of the court's analysis, reasoning and holdings in *Damico*, 430 S.C. at 196-99, 844 S.E.2d at 70-72, translates directly to the necessary decision in this case to reverse the circuit court's orders. In *Damico*, 430 S.C. at 196-99, 844 S.E.2d at 70-72, the named plaintiffs were homeowners who filed a complaint against Lennar asserting claims arising out of the alleged defective construction of their homes in another Lennar community in Berkeley County. The court in *Damico* conducted a two-fold analysis (1) whether the Federal Arbitration Act ("FAA") applies to the Purchase and Sale Agreement's arbitration provision and (2) whether the Purchase and Sale Agreement's arbitration provision is valid and enforceable. *See id.*

The court in *Damico* held that the FAA applied for two reasons. First, the Purchase and Sale Agreement, just like the ones in issue here, contained an express agreement and stipulation between the parties that the "transaction involves interstate commerce." *Id.* at 196, 844 S.E.2d at 70 (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001)). The court concluded that this term is binding and must be given its full force and effect. As the Court stated that it "must enforce this agreement like any other contract term." *Id.*

Second, the Court found the transaction embodied in the Purchase and Sale Agreement involved interstate commerce in fact because the transaction involved the construction (and not merely sale) of residential properties. *See id.* at 196, 844 S.E.2d at 71. In making this finding, the court in *Damico* addressed the owner's arguments that *Bradley v. Brentwood Homes, Inc.*, 398

S.C. 447, 458, 730 S.E.2d 312, 318 (2012), supports the conclusion that residential real estate transactions do not involve interstate commerce. Applying a proper reading of the *Bradley* decision, in the context of other relevant decisions, the *Damico* court acknowledged that while *Bradley* recognized the general principle that "the development and sale of residential real estate is an intrastate activity that does not implicate the FAA," the decision also expressly recognizes that "contracts for construction are governed by the FAA." *Id.* (quoting *Bradley*, 398 S.C. at 458 n.8, 730 S.E.2d at 318 n.8). To support an analysis of whether a contract is for the purchase of real property or construction, the court in *Bradley*, 398 S.C. at 458, 730 S.E.2d at 318, expressly considered whether the purchaser selected "options" or made "color selections" as part of the contract, and noted that if the purchaser had engaged in such activities then their contract would not merely be for the sale of a completed dwelling but would involve the construction of residential property.

The court in *Damico* found the Purchase and Sale Agreements in that case were contracts for construction and, therefore, affect interstate commerce and were governed by the FAA. *Damico*, 430 S.C. at 196, 844 S.E.2d at 71. In support of this conclusion, the court reviewed the affidavit of Lennar's Controller in that case (just like the affidavit in the record in this case) which stated that the construction of the owners' properties involved interstate commerce due to the "use of out-of-state contractors and materials and equipment manufactured outside South Carolina." *Id.* at 196-97, 844 S.E.2d at 71; *see also Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 123, 747 S.E.2d 461, 465 (2013) (holding FAA applied where out-of-state materials used in dock construction were "instrumentalities of interstate commerce" and the parties' contract specifically invoked FAA).

After determining the FAA applied to the Purchase and Sale Agreements, the court in *Damico* found the Purchase and Sale Agreements' arbitration provision was valid and enforceable. *See id.* at 197, 844 S.E.2d at 71. In reaching its conclusion the court correctly recognized that the first step in analyzing the enforceability of an arbitration provision is to separate the arbitration provision from the rest of the contract. *See id.* This principle is known as the *Prima Paint* doctrine. *Id.*; *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406 (1967).

As the Court in *Damico* stated, there are two substantive laws derived from *Prima Paint* which are central to the proper analysis of the arbitration issue:

> 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.

430 S.C. at 197-98, 844 S.E.2d at 71 (quoting *Buckeye Check Cashing, Inc. v. Cardyna,* 546 U.S. 440, 445-46 (2006)); *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 imbedded and the issue of its validity is distinct from the substantive validity of the contract as a whole.").

The *Damico* Court went further to state:

> 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. Cole (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.").

430 S.C. at 198, 844 S.E.2d at 71-72.

Despite arguments by the owners, and erroneous conclusions by the circuit court, the *Damico* Court held that under the controlling legal standard it was impermissible for the owners or the circuit court to try to widen the scope of review for the challenge to the arbitration clause. Specifically, it was held to be improper to bring multiple arbitration provisions in other documents into the frame and to attempt to assert that those provisions are so co-mingled as to be inseparable from the arbitration agreement. Specifically, the *Damico* Court concluded that reliance on the decision in *Smith v. DR Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016), was inapposite and improper. In reviewing the specific arbitration provision (Section 16) in the Lennar Purchase and Sale Agreement, the *Damico* Court found that the arbitration provision was contained in "a distinct, separate section of the [Purchase and Sale Agreement]" and that the arguments and circuit court finding in that case "that the arbitration provision encompassed more than this section lacks adequate factual support. [The Court] therefore conclude[d] the circuit court erred by considering the contract as a whole rather than, as *Prima Paint* demands, focusing only on the discreet arbitration provision." 430 S.C. at 198-199, 844 S.E.2d at 72 (citing *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)).

Thus, the *Damico* Court held it was an error to find that the Purchase and Sale Agreement's arbitration provision encompasses more than Section 16. *See id.* The court concluded that the Purchase and Sale Agreement's arbitration provision (Section 16) is valid and § 2 of the FAA requires the court to enforce it. *See id.* at 199, 844 S.E.2d at 72. Upon finding the Purchase and Sale Agreement contains a valid and enforceable agreement to arbitrate, the court concluded that Lennar and the owners' unmistakably delegated the question of arbitrability (whether the asserted claims are within the scope of the arbitration agreement) to the arbitrator. *See id.*; *see also Henry*

Schein, Inc., 139 S. Ct. at 530, 202 L. Ed. 2d 480 ("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.").

The present case requires the Court to conduct the same analysis as performed in *Damico*. Because the controlling agreements and attendant circumstances are the same, this Court must reach the same conclusion—the Owners are required to arbitrate their claims against Lennar. Accordingly, the Court should reverse the circuit court's denial of Lennar's Motion to Compel Arbitration and compel Owners individually to arbitrate their claims against Lennar.

II. The Purchase and Sale Agreement's arbitration provision is valid and enforceable and requires that the Owners' claims against Lennar be compelled to arbitration.

The court's analysis and decision in the *Damico* case addresses all of the issues and considerations also applicable to this case and establishes that the circuit court's denial of Lennar's Motion to Compel Arbitration must be reversed. Nonetheless, while the *Damico* decision should be determinative in the present case, the following sections deal separately with each of the arguments raised by Owners below in their opposition to Lennar's Motions.

A. The FAA applies to the Purchase and Sale Agreement and it is not necessary that the notice provision of the South Carolina Uniform Arbitration Act be satisfied.

An agreement to arbitrate must be enforceable under either the FAA, or an applicable state statute. It is not necessary that it be enforceable under both, and it is not necessary that the agreement satisfy the state arbitration statute when it is enforceable under the FAA. Owners argued to the circuit court that Lennar's Motion to Compel Arbitration should be denied because the notice provision at the top of the first page of the Purchase and Sale Agreement is not underlined and, therefore, does not comply with the South Carolina Arbitration Act's notice

provision requirement. *See* S.C. CODE ANN. § 15-48-10. Owners' argument is unavailing and provides no basis for denying Lennar's Motion to Compel Arbitration.

The FAA, 9 U.S.C.A. § 2, provides that a written arbitration provision in any contract "evidencing a transaction involving commerce" is to be compelled to arbitration if a controversy arises out of the contract or the refusal to perform the contract. The South Carolina Supreme Court has adopted the United States Supreme Court's broad interpretation of the phrase "involving commerce" to mean "affecting commerce." *See Zabinski*, 346 S.C. at 591, 553 S.E.2d at 115; *Blanton v. Stathos*, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct. App. 2002). Thus, an arbitration provision is subject to the FAA if the contract affects interstate commerce. *See id.*

The FAA governs the Purchase and Sale Agreements in this case because (1) Lennar and Owners expressly agreed that their transactions involve interstate commerce and are governed by the FAA; and (2) under South Carolina law, an agreement for the construction and purchase of a residential property involves interstate commerce.

1. The FAA applies to the Purchase and Sale Agreement because the Parties agreed and stipulated that the contract involved interstate commerce and that the FAA applies.

Section 16.1 of the Purchase and Sale Agreement states:

> 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.

(R. 191-192; 255-256). This provision is enforceable as written. *See Damico*, 430 S.C. at 196, 844 S.E.2d at 70; *Munoz*, 343 S.C. at 539, 542 S.E.2d at 363-64 (finding FAA applied because the parties agreed the contract involved interstate commerce); *Cape Romain Contractors, Inc.*, 405 S.C. at 126, 747 S.E.2d at 466 ("[T]he Contract expressly invokes the FAA and such contractual

provisions should be enforced in accordance with their unambiguous terms."). This clear and unambiguous term in the arbitration provision is not disputable. *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) ("If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect.").

This allowable and enforceable language establishes undeniably that Owners and Lennar chose to have any dispute arising from their transaction to be subject to arbitration and governed by the FAA. Therefore, any dispute arising from the Purchase and Sale Agreement is subject to arbitration that is governed by the FAA because the documents' plain language states as much.

2. The FAA applies to the Purchase and Sale Agreement because it is a contract for the construction of a residence which involves interstate commerce.

The FAA provides that a written arbitration provision in any contract "evidencing a transaction involving commerce" is to be compelled to arbitration if a controversy arises out of the contract. 9 U.S.C.A. § 2. Just as the court in *Damico* concluded, it is well settled that a contract for the construction of a house involves interstate commerce. *See Blanton*, 351 S.C. at 540-41, 570 S.E.2d at 568; *Episcopal Hous. Corp. v. Federal Ins. Co.*, 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977) (concluding a contract for the construction of an eighteen-story building involved interstate commerce because "[i]t would be virtually impossible to construct" such a building "with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina"). A contract for the construction of a home involves interstate commerce because it undoubtedly contemplates the use of materials, equipment and supplies that are manufactured outside of South Carolina. *See Blanton*, 351 S.C. at 541, 570 S.E.2d at 569.

Owners' argument that the transaction embodied in the Purchase and Sale Agreement is merely a purchase of completed residential real estate and does not involve interstate commerce is misplaced and wrong. As observed above, the court in *Damico* addressed and rejected this same

misplaced and incorrect proposition. *See Damico*, 430 S.C. at 196-97, 844 S.E.2d at 71. Consistent with the findings and decision in *Damico*, the transactions in this case between Owners and Lennar are clearly not simply or strictly sales of completed dwellings. They are agreements which involved the construction of those dwellings.

While South Carolina law allows that a transaction which is simply and strictly for the purchase of a completed residence is not the type of transaction historically deemed to involve interstate commerce, it is still true that in South Carolina a transaction that does involve the construction of a dwelling is deemed, as a matter of law, to involve interstate commerce. *See Blanton*, 351 S.C. at 540-41, 570 S.E.2d at 568; *Episcopal Hous. Corp.*, 269 S.C. at 640, 239 S.E.2d at 652.

The factual record in this case establishes that the Purchase and Sale Agreements executed between Owners and Lennar were not strictly for the purchase of a completed dwelling. The record reflects that both Owners entered into their respective Purchase and Sale Agreements prior to the start of the construction of the Properties. (R. 126; 137; 197; 314). Specifically, Kramer entered into the Purchase and Sale Agreement for his property on May 2, 2015, and his Purchase and Sale Agreement estimated that construction would begin on June 5, 2015. (R. 126; 197). Similarly, Hedges entered into a Purchase and Sale Agreement with Lennar on or about March 9, 2015, and his Purchase and Sale Agreement estimated that construction would begin on April 17, 2015. (R. 137; 314). Thus, it is manifestly evident that the Owners' Purchase and Sale Agreements were not strictly for the purchase of completed dwellings.

Moreover, the very decision upon which Owners seek to rely for the proposition that their agreements should not be deemed to involve interstate commerce (*Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012)) belies such a conclusion in this case. In

Bradley, 398 S.C. at 458, 730 S.E.2d at 318, the court made the express observation that when the sales agreement contains (and does not eliminate) provisions for the purchaser to select "options" and "color selections" or other matters essential to the completion of construction, it is not merely the sale of a completed dwelling but is one involving construction. 398 S.C. at 458, 730 S.E.2d at 318.

Unlike the contract at issue in *Bradley*, which specifically excluded such construction components, the Purchase and Sale Agreements and Options Summaries at issue in this case provide ample evidence that the Owners entered into agreements not merely for the sale of completed townhomes, but for the construction of townhomes. (R. 234-236; 298-309). Specifically, Kramer (who listed his address as Alexandria, Virginia when he executed the Purchase and Sale Agreement) made selections related to the color of his walls, cabinets, countertops, hardwood floors, carpets, shower tile, and kitchen backsplash. (R. 234-236). Kramer also selected a floor area plan and chose to add an optional fire place on an interior side wall. (R. 234-236). Similarly, Hedges made selections related to the color of his walls, cabinets, countertops, hardwood floors, carpets, shower tile, and kitchen backsplash. (R. 298-309). Hedges also selected a floor area plan; however, Hedges chose not to include the additional and optional interior fire place. (R. 298-309).

Owners' selection of layout plans and materials in the Purchase and Sale Agreements plainly demonstrates that the Purchase and Sale Agreements are contracts for the construction of residential property—not merely or strictly contracts for sale of a completed townhome. Moreover, construction of the Properties had not even begun when Owners executed their respective Purchase and Sale Agreements. As such, the Purchase and Sale Agreements involve construction and interstate commerce, and they are subject to the FAA.

Additionally, like the affidavit of Lennar's Controller that was submitted to the court in *Damico*, the Affidavit of Lennar's Vice President of Finance, Joe Johnston, filed with the circuit court in this case contains evidence that the construction of the Owners' properties involved interstate commerce. (R. 182). Specifically, Johnston's affidavit demonstrates that the construction of Owners' Properties involved interstate commerce because the Properties were constructed with products and materials that were manufactured in and/or supplied from outside of South Carolina and certain subcontractors used in the construction of the Properties were from outside of South Carolina. (R. 184-185). The use of materials and products manufactured in and/or supplied from outside of South Carolina and the use of out-of-state subcontractors further proves that the construction of Owners' Properties affected interstate commerce and, therefore, the Purchase and Sale Agreement's arbitration provision is subject to the FAA.

3. Owners' argument that the Purchase and Sale Agreement is ambiguous on the issue of arbitration fails as a matter of law.

The arbitration provision in the Purchase and Sale Agreement is not ambiguous. The Purchase and Sale Agreement, Section 16, states that the parties agree to submit their disputes to "binding arbitration as provided by the Federal Arbitration Act." (R. 191-192; 255-256). The mere notice provision on the top of the first page is not contradictory, and it creates no ambiguity. The statement at the top of the first page merely provides notice to review Section 16 which sets forth the arbitration provision. That notice statement provides:

> **PURSUANT TO SECTION 15-48-10, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED THIS SHALL CONSTITUTE WRITTEN NOTICE THAT THIS AGREEMENT IS SUBJECT TO MANDATORY BINDING ARBITRATION PURSUANT TO SECTION 16 OF THIS AGREEMENT.**

(R. 189; 251).

It is a well-established principle of law that, when interpreting a contract, a court should recognize that the specific language of a contract trumps the general language. *See Aetna Cas. & Sur. Co. v. Holsten*, 100 F.3d 950 (4th Cir. 1996) ("[W]hen interpreting a contract, a court should follow the interpretive philosophy that specific language trumps general text." (citation omitted)).

The notice at the top of the first page of the Purchase and Sale Agreement indicates the contract is subject to binding arbitration as set forth specifically in Section 16. It does not state that Section 16 is governed by S.C. CODE ANN. § 15-48-10. In Section 16, the specific language of the arbitration provision states plainly and unambiguously that the parties agree to submit to "binding arbitration as provided by the Federal Arbitration Act (9 U.S.C. §§1 et. seq.)." (R. 191-192; 255-256). The specific language of the arbitration provision governs its terms, and Section 16 states that the arbitration is governed by the FAA. Section 16 makes no reference to the South Carolina Code.

Furthermore, this same argument was raised in the *Damico* case, and the Court's opinion does not even address the issue. Rather, the court in *Damico* found the arbitration provision in the Purchase and Sale Agreement was valid, enforceable, and required those owners to arbitrate their claims against Lennar.

B. The Purchase and Sale Agreement's arbitration provision must be analyzed in accordance with the *Prima Paint* doctrine and be construed on its own terms without reference to other, separate provisions of the Purchase and Sale Agreement or other documents associated with the relationship between Owners and Lennar.

Under the *Prima Paint* doctrine, the Court must not look beyond the terms of the specific arbitration provision in deciding that there is a valid and enforceable arbitration agreement. Nevertheless, Owners argued the circuit court should consider terms outside of Section 16 when determining whether the arbitration provision in the Purchase and Sale Agreement is enforceable.

Owners' argument encourages a misapplication (violation) of the *Prima Paint* doctrine, and is wrong.

The *Prima Paint* doctrine compels rejection of Owners' argument and bars consideration of terms outside of the arbitration provision (Section 16 of the Purchase and Sale Agreement) when determining whether the arbitration provision is enforceable. The *Prima Paint* doctrine stands for the basic principle that when a court reviews the validity of an arbitration provision in an agreement, the court's analysis is restricted to that provision alone. *Prima Paint Corp.*, 388 U.S. at 406; *see also S.C. Pub. Serv. Auth. v. Great W. Coal (Ky.), Inc.*, 312 S.C. 559, 562-63, 437 S.E.2d 22, 24 (1993) (adopting a broad interpretation of *Prima Paint* in South Carolina, and holding that "a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause"). A party contesting the validity of a contract's arbitration provision "must allege that the *arbitration agreement* is unconscionable, not that the *entire contract* is unconscionable." *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016) (emphasis in original). Therefore, when applying the *Prima Paint* doctrine, it is an error of law to find an arbitration provision is unconscionable based upon other terms of the contract that are not themselves set forth in the arbitration provision. A court may only consider the terms of the arbitration provision itself—not the terms of the whole contract or other documents. *See id.*

Owners argued to ignore the plain and obvious fact that Section 16 of the Purchase and Sale Agreement is a separate and isolated arbitration provision that does not include any unconscionable terms. Owners' misguided approach, just as attempted in *Damico*, sought to have the circuit court search far and wide through provisions of multiple agreements to construct a

position that broadly conflates everything together and gives rise to a proposition that the arbitration provision is unconscionable.

Section 16.1 of the Purchase and Sale Agreement provides:

> The parties to this Agreement specifically agree that this transaction involves interstate commerce and that any Dispute (as hereinafter defined) shall . . . 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.

(R. 191-192; 255-256).

Section 16.3 of the Purchase and Sale Agreement further states:

> [T]he Dispute shall be submitted to binding arbitration and administered by the AAA in accordance with the AAA's Home Construction Arbitration Rules currently in effect on the date of the request.

(R. 192; 256).

Section 16 of the Purchase and Sale Agreement is self-contained and contains no cross-reference to other sections or other documents. Neither does Section 16 intertwine or comingle other provisions or documents, otherwise that would permit consideration of any other terms. *See Damico*, 430 S.C. at 198-99, 844 S.E.2d at 72 (holding that the circuit court erred in finding the arbitration provision encompassed more than Section 16 of the Purchase and Sale Agreement). Section 16 is a fair and proper agreement to arbitrate between Lennar and Owners. There is no term of Section 16 that would render it unconscionable or unenforceable. Therefore, the circuit court erred in refusing to compel Owners to individually arbitrate their claims against Lennar.

C. Owners' claims are within the scope of the Purchase and Sale Agreement's arbitration provision

No other analysis is necessary after the Court finds Section 16 of the Purchase and Sale Agreement is a valid and enforceable agreement to arbitrate, because in Section 16.3 of the Purchase and Sale Agreement Lennar and Owners agreed that "[a]ll decisions respecting the

arbitrability of any Dispute shall be decided by the arbitrator(s)." (R. 192; 256); *see Henry Schein*, 139 S. Ct. at 526 ("[W]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. . . ."); *Rent-A-Ctr., W., Inc.*, 561 U.S. at 72, 130 S. Ct. at 2779 (concluding that unless the delegation provision is challenged specifically, the court must treat it as valid and enforce it, leaving any challenge to the validity of the arbitration agreement as a whole for the arbitrator); *Doe v. TCSC, LLC*, 430 S.C. 602, 608–09, 846 S.E.2d 874, 877 (Ct. App. 2020) (holding that a Court must treat a delegation clause as valid under § 2 of the FAA and leave any challenge to the validity of the arbitration agreement as a whole for the arbitrator). Because Lennar and Owners delegated the arbitrability question to the arbitrator, the Court may not override the Purchase and Sale Agreement. Accordingly, the Court must compel Lennar and Owners to arbitration, and the arbitrator will decide the question of whether Owners' claims are within the scope of the Purchase and Sale Agreement's arbitration provision.

D. Owners' argument that the outrageous tort exception justified the circuit court in denying Lennar's Motion to Compel Arbitration is unavailing.

Owners argued to the circuit court that the outrageous tort exception applies to their claims and justified denial of Lennar's Motion to Compel Arbitration. This argument fails and the circuit court was not justified in denying the Motion to Compel Arbitration on this basis. The outrageous tort exception is a question of arbitrability that has been properly delegated to the arbitrator by the terms of the arbitration provision in the Purchase and Sale Agreement. *Doe*, 430 S.C. at 616, 846 S.E.2d at 881. Thus, it is not an issue for the Court.

Recently, in *Doe*, 430 S.C. at 616, 846 S.E.2d at 881, the court addressed whether the outrageous tort exception applied to a woman's claim against a car dealership. The court found that the outrageous tort exception was a question of arbitrability that was delegated to the arbitrator and not proper for consideration by the court. In *Doe*, the plaintiff (Jane Doe) purchased a vehicle

from a car dealership in 2011. 430 S.C. at 606, 846 S.E.2d at 876. The purchase agreement for the vehicle included an arbitration provision. *See id.* Four and one-half years later, Doe returned to the dealership to have her vehicle serviced and discuss trading in her vehicle for a new one. Doe chose not to purchase another vehicle from the dealership on that day. *See id.* For unknown reasons, the dealership's salesperson sought revenge against Doe by posting an ad posing as Doe on a sexually explicit website. *See id.* Minutes after the salesperson posted her information, Doe began receiving telephone calls and text messages, some of which were sexually suggestive. *See id.* Doe filed a complaint against the dealership asserting various tort claims. *See id.* In response to the complaint, the dealership moved to compel Doe's claims to arbitration pursuant to the arbitration provision in the 2011 vehicle purchase agreement. *See id.* The circuit court denied TCSC, LLC's motion to compel arbitration on the grounds that the agreement was unconscionable and TCSC, LLC appealed. *See id.*

On appeal, the court held that the arbitration provision in the 2011 vehicle purchase agreement was valid and enforceable, and further concluded that in the agreement the parties delegated the issue of arbitrability to the arbitrator. *See id.* at 615-16, 846 S.E.2d at 881. Doe raised the outrageous tort exception as a method and means of seeking to avoid the enforcement of the arbitration provision; however, the court held that "the outrageous and unforeseen torts exception relates to the interpretation and scope of the arbitration contract and the arbitrability of the dispute." *Id.* at 615, 846 S.E.2d at 881. Thus, the court held the issue of arbitrability of Doe's claim was not before the Court because the parties delegated that issue to the arbitrator. *See id.*; *see also Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007) (treating outrageous and unforeseen torts exception as a question of arbitrability).

Applying the law plainly and recently stated in *Doe*, requires the Court to find that analysis of whether the outrageous tort exception applies—which it does not—has been delegated to the arbitrator and is not a proper basis for denying Lennar's Motion to Compel Arbitration.

E. Owners' argument that enforcing the Purchase and Sale Agreement's arbitration provision violates the Owners' rights under the United States Constitution is not a valid grounds for the circuit court to have denied Lennar's Motion to Compel Arbitration.

Owners argued that the Purchase and Sale Agreement's arbitration provision violates the United States Constitution because it results in the waiver of Owners' right to a jury trial. This argument lacks merit.

The United States District Court for the District of South Carolina, in *Osborne v. Marina Inn at Grande Dunes, LLC*, No. CIV.A. 4:08-CV-0490, 2009 WL 3152044, at *6 (D.S.C. Sept. 23, 2009), expressly found that the plaintiffs' argument that the arbitration provision violates public policy by requiring the plaintiffs to give up their right to a jury trial is "without merit." Furthermore, the Fourth Circuit Court of Appeals in *Snowden v. Checkpoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002), addressed a similar argument regarding the waiver of a jury trial pursuant to an agreement to arbitrate and reasoned that common sense dictated that the Court reject the plaintiff's argument because "[t]he loss of the right to a jury trial is a necessary and fairly obvious consequence of an agreement to arbitrate."

Owners' argument that the arbitration provision violates the United States Constitution lacks any merit and has been rejected by the United States District Court and the Fourth Circuit. Accordingly, the Court should reject this meritless argument and compel Owners individually to arbitrate their claims against Lennar pursuant to the Purchase and Sale Agreement's valid and enforceable arbitration provision.

CONCLUSION

For the foregoing reasons, the circuit court erred in denying Lennar's Motion to Compel Arbitration and Lennar respectfully requests the Court issue an order reversing the circuit court and compelling Owners to individually arbitrate their claims against Lennar.

s/Katon E. Dawson Jr.
James Lynn Werner, (SC Bar No. 6029)
Taylor H. Stair (SC Bar No. 78430)
Katon E. Dawson, Jr. (SC Bar No. 101167)
Robert C. Osborne III (S.C. Bar No. 101827)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000

May 7, 2021
Columbia, South Carolina

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

RECEIVED
MAY 07 2021
SC Court of Appeals

Appellate Case No. 2020-001223
Case No. 2019-CP-10-04807

Erik Kramer and Kevin N. Hedges, on behalf of themselves and others similarly situated, Respondents,

v.

Lennar Carolinas, LLC, Alpha Prime, LLC, Alpha Prime Construction, LLC, Sagehorn and Company, Inc., and Royal Palms Holding, LLC, Defendants,

of which Lennar Carolinas, LLC is the Appellant.

LENNAR CAROLINAS, LLC'S CERTIFICATE OF COUNSEL

The undersigned hereby certifies on May 7, 2021, that Lennar Carolinas, LLC's Final Brief and Final Reply Brief comply with Rule 211(b), SCACR.

s/Katon E. Dawson Jr.
James Lynn Werner, (SC Bar No. 6029)
Taylor H. Stair (SC Bar No. 78430)
Katon E. Dawson, Jr. (SC Bar No. 101167)
Robert C. Osborne III (S.C. Bar No. 101827)
Parker Poe Adams & Bernstein LLP
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000

May 7, 2021

Attorneys for Appellant Lennar Carolinas, LLC