THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Whitesides Park Townhomes Property Owners Association, Inc., Respondent,

v.

CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. and also d/b/a Calatlantic Homes; Lennar Carolinas, LLC; Southend Exteriors, Inc.; Alpha Omega Construction Group, Inc.; and Fogel Services, Inc., Defendants,

Of whom CalAtlantic Group, Inc., f/k/a The Ryland Group, Inc. f/k/a Standard Pacific Corp. And also d/b/a Calatlantic Homes; and Lennar Carolinas, LLC; are the Appellants.

Appellate Case No. 2021-000779

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge,

Unpublished Opinion No. 2024-UP-161
Heard April 1, 2024 – Filed May 8, 2024

AFFIRMED

James Lynn Werner and Katon Edwards Dawson, Jr.,

both of Parker Poe Adams & Bernstein, LLP, of Columbia, for Appellants.

Amanda Morgan Blundy, of Blundy Law Firm, LLC, and English Hanahan Maull, both of Charleston, for Respondent.

PER CURIAM: CalAtlantic Group, Inc. and Lennar Carolinas, LLC (collectively, CalAtlantic) appeal the circuit court's order denying their motion to compel arbitration. On appeal, CalAtlantic argues the circuit court erred by (1) finding CalAtlantic could not compel arbitration pursuant to the townhome owners' (Owners') individual Purchase and Sale Agreements (Purchase Agreements) because the Property Owners Association (Association) specifically alleged it was pursuing claims assigned to it by the Owners; asserted a cause of action for breach of the implied warranty of habitability, which arose solely from the sale of the townhomes to the Owners; and asserted damages related to items that were the Owners' responsibility and not common elements of the Association; and (2) failing to determine whether the Association's claims fell within the scope of the arbitration clause in the Purchase Agreements.[1] We affirm.

This case arises out of the construction of Whitesides Park, a townhome development built by CalAtlantic from 2016-2018.[2] CalAtlantic created the Association in September 2016 through the execution of a document entitled "Declaration of Covenants, Conditions, Restrictions, and Easements for Whitesides Park" (Covenants). Through the Covenants, the Association acquired interests, rights, and obligations in the common elements of the property; it also set forth areas of the property for which the Owners retained responsibility—most importantly for this case, windows, exterior doors, the heating and air conditioning units serving the individual townhomes, and almost all interior elements of the townhomes. The Covenants also contained a dispute resolution provision which stated, among other things, that "all persons subject to [the Covenants] . . . agree" to resolve "all claims, grievances, or disputes" between them that involve the property through mediation and binding arbitration. Between 2016 and 2018, the thirteen townhomes were sold and the Owners entered into individual Purchase

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[1] We have combined some of CalAtlantic's issues on appeal for purposes of our analysis.

[2] CalAtlantic was the entity in operation at the time construction began on the townhomes in 2016; it was acquired by Lennar Corporation in 2017.

Agreements. The terms of the Purchase Agreements varied, but according to CalAtlantic, each contained an arbitration clause requiring the Owners to arbitrate any claims or disputes related to their properties.

On June 1, 2020, the Association filed a complaint against CalAtlantic and various subcontractors, alleging multiple causes of action related to the construction of the townhomes. In the complaint, the Association asserted it had "authority to bring th[e] action on behalf of the [Association] and its members . . . by virtue of having been assigned individual claims" by the Owners. It alleged damages due to, among other things, the "loss of use, enjoyment, and depreciation of the value of [the Owners'] property." CalAtlantic filed a motion to dismiss and compel arbitration, arguing that because the Association had brought the complaint on behalf of the Owners, the arbitration provisions in the Covenants, the Purchase Agreements, and/or CalAtlantic's "Homeowner's Limited Warranty & Maintenance Manual" bound the Association as well.

The circuit court denied CalAtlantic's motion and found that because the Owners were not named plaintiffs in this action and the Association was not a party to the Purchase Agreements, CalAtlantic was not entitled to compel arbitration pursuant to the arbitration provisions contained therein.[3] CalAtlantic filed a motion to alter or amend the order pursuant to Rule 59(e), SCRCP, and attached, among other things, the remaining twelve Purchase Agreements. On June 21, 2021, the circuit court denied the motion.

We hold that even if the circuit court erred in finding the arbitration provisions of the Purchase Agreements were inapplicable to the Association because the Owners were not named plaintiffs in this action, CalAtlantic failed to provide an adequate record for appellate review because it only included three of the thirteen Purchase Agreements in the record on appeal; thus, we affirm. *See Davis v. ISCO Indus., Inc.*, 434 S.C. 488, 493-94, 864 S.E.2d 391, 394 (Ct. App. 2021) ("Determinations of arbitrability are subject to de novo review . . . ."); *In re Est. of Moore*, 435 S.C. 706, 715, 869 S.E.2d 868, 872-73 (Ct. App. 2022) ("The Appellant bears the burden of providing a sufficient record on appeal from which this court can make an intelligent review."). This court is unable determine

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[3] The circuit court also found the arbitration provision in the Covenants was unconscionable and therefore unenforceable; CalAtlantic did not challenge this finding in this appeal, and therefore, it is now the law of the case. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case.").

whether the Purchase Agreements were validly assigned to the Association and if the Association's claims on behalf of the Owners arose from the Purchase Agreements, rather than the Covenants and/or the Limited Warranty and Homeowner's Manual (Manual). In fact, the three Purchase Agreements that *were* included in the record contained clauses specifically prohibiting their assignment. Additionally, five owners submitted affidavits stating they never received the Manual. CalAtlantic produced a "representative copy" of the Manual it used at the time Whitesides Park was being constructed, but it never provided any evidence that the Owners actually received a copy of it. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420-21, 526 S.E.2d 716, 723 (2000) ("[A]n appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal."); *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019) ("A party seeking to compel arbitration . . . must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement."); *id.* at 337, 827 S.E.2d at 173 ("[T]he presumption in favor of arbitration applies to the scope of an arbitration agreement; it does not apply to the existence of such an agreement *or to the identity of the parties who may be bound* to such an agreement." (quoting *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 496 (Tex. App. 2011) (alteration in original) (emphasis in original)); *id.* at 338, 827 S.E.2d at 174 ("South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including . . . assumption . . . ."); *duPont de-Bie v. Vredenburgh*, 490 F.2d 1057, 1061 (4th Cir. 1974) ("The principle is well settled that a *valid assignment* operates to pass the whole right of the assignor, and that thereafter the assignee stands in the place of the assignor . . . ." (emphasis added)); *Aperm of S.C. v. Roof*, 290 S.C. 442, 448, 351 S.E.2d 171, 174 (Ct. App. 1986) (finding a licensing agreement was not "effectively assigned and assumed" by alleged assignee because there was no evidence the agreement's provisions for assignment and assumption were followed).

AFFIRMED.[4]

GEATHERS, HEWITT, and VINSON, JJ., concur.

[4] We decide this case without oral argument pursuant to Rule 215, SCACR.