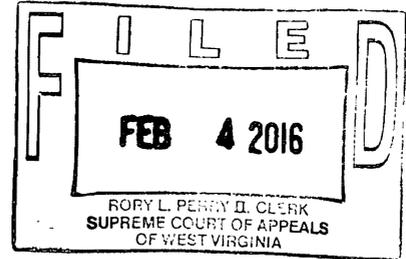


**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**  
**Docket No. 15-0920**

**G. & G. Builders,  
Plaintiff Below, Petitioner**



**v.**

**(Interlocutory Appeal from the  
Circuit Court of Cabell County 14-C-250)**

**Randie Gail Lawson and Deanna Dawn Lawson,  
Defendants Below, Respondents**

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**BRIEF OF RESPONDENT**

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Marvin W. Masters  
West Virginia State Bar No. 2359  
Kimberly K. Parmer  
West Virginia State Bar No. 9093  
The Masters Law Firm lc  
181 Summers Street  
Charleston, West Virginia 25301  
(304) 342-3106  
[mwm@themasterslawfirm.com](mailto:mwm@themasterslawfirm.com)  
[kkp@themasterslawfirm.com](mailto:kkp@themasterslawfirm.com)  
*Counsel for Respondents*

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## STATEMENT OF THE CASE

On March 20, 2014 Petitioner G. & G. Builders, Inc. (“Builders”) filed a Complaint in the Circuit Court of Cabell County against Respondents Randie Gail Lawson and Deanna Dawn Lawson (“Lawsons”), H.B. Fuller Construction Products Inc. (“Fuller”) and Newtech Systems, Inc. (“Newtech”) seeking judgment for amounts allegedly due under a home construction contract, plus interest, attorneys’ fees, and compensation for damages including payroll, overhead and administrative costs, loss of profit, loss of interest, damage to business reputation, and annoyance and convenience. APP000001-APP000006. In addition, Builders sought an order providing for the sale of the Lawsons’ home. APP000006. Builders’ Complaint asserted a claim for breach of contract against Randie Lawson, unjust enrichment against both of the Lawsons, and a claim for indemnification against Fuller for any losses resulting from the grout used in the project. APP000001-APP000006. Builders’ Complaint does not allege any agreement to arbitrate nor does it assert a right to arbitration. *See id.*

The Lawsons filed an answer, counterclaim, and crossclaims, denying Builders entitlement to judgment and alleging defects in the construction of the home and overcharges under the construction contract. APP000007-APP000024. Only then did Builders assert its “right” to arbitration, filing a motion to dismiss the Lawsons’ counterclaim, enforce an arbitration agreement, and stay the crossclaims pending arbitration. APP000025-APP000039. Builders’ motion does not seek to stay the claims asserted in its Complaint or enforce arbitration as to those claims. *See id.* This is an appeal of the August 20, 2015 Order of the Circuit Court of Cabell County (APP000139-APP000149) denying Builders’ motion.

Both parties conceded that the FAA governs consideration of the arbitration provision at issue and that the claims asserted are properly within the scope of that agreement. APP000139-

APP000149. Thus, the dispute focused solely on the validity and enforceability of the arbitration provision. The Lawsons raised several arguments against the enforceability of the provision; namely, (1) the arbitration provision could not bind Deanna Lawson as she was not a signatory to the Agreement; (2) Builders waived its right to compel arbitration by filing litigation against the Lawsons which exceeded the scope necessary to preserve its mechanics liens; (3) the arbitration provision is unconscionable because it was never disclosed to Mr. Lawson and because, under Builders' own interpretation, it allows Builders to bring a complaint against the Lawsons seeking a full and diverse range of relief, but requires the Lawsons counterclaim challenging Builders' right to that relief to be brought in arbitration; and, finally, (4) the arbitration was not properly incorporated by reference into the parties' agreement such that there was adequate meeting of the minds as to that term. APP000100-APP000127.

The Circuit Court found West Virginia law against compelling an individual non-signatory to arbitration to be well settled and denied Builders' motion as to Deanna Lawson. APP000143-APP000144. The Circuit Court further found there was no meeting of the minds as to the inclusion of an arbitration provision, as that provision was not adequately incorporated by reference into the signed Agreement and thus, it need not rule on the other arguments against enforcement asserted by the Lawsons. APP000145-APP000148. In so ruling, the Circuit Court considered the following facts, none of which were disputed.

In the fall of 2010, Randie Lawson entered into negotiations with Builders to assume responsibility for the construction of a home for himself, his wife, Deanna, and their three children. APP000110-APP000112. After oral discussions with Builders' agents, consisting only of the scope of the project, its cost, and the amount of compensation Builders should receive for taking over the work already begun by a previous builder, Mr. Lawson – and Mr. Lawson only – signed

a slightly modified AIA Document A111-1997 Standard Form of Agreement Between Owner and Contractor (the “Agreement”) on November 18, 2010, a form document consisting of twelve typewritten pages. *Id.*; APP000040-APP000051. The only papers Mr. Lawson was presented, either before or after execution of the Agreement, were the Agreement itself and Exhibits “A”, “B”, and “C” thereto (APP000052-APP000056) (the “Agreement Exhibits”). APP000110-APP000112. These papers were prepared by GGB and brought to Mr. Lawson at the building site – already modified – for him to sign. *Id.* Mrs. Lawson was not present at the time Mr. Lawson signed the Agreement, nor did Builders ever request that she sign anything. *Id.*

The first page of the Agreement contains several boilerplate statements in a sidebar on the right of the page, including “AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.” APP000040. Article 15 of the Agreement also references the Conditions as a contract document, albeit not very clearly. APP000049-APP000050. The Conditions is a form document consisting of thirty-eight typewritten pages, prefaced by four typewritten pages of “Instructions.” APP000057-APP000098. This document was not modified to reflect the particulars of the project at all. *See id.*

The arbitration provision at issue does not appear in the Agreement or the Agreement Exhibits which were presented to, and signed by, Mr. Lawson. *See* APP000040-APP000056. Instead, it only appears in the Conditions. *Id.*; APP000080-APP000081. This document is unsigned, despite the fact that the document itself states at § 1.5.1 that “[t]he Contract Documents shall be signed by the Owner and Contractor.” *See* APP000071; APP000057-APP000098. Mr. Lawson did not see the Conditions (or its Instructions) at any point prior to his execution of the Agreement and, in fact, had not seen either document prior to this litigation. APP000110-

APP000112. Not only that, the Conditions are not even readily available as they are protected by copyright, produced by software sold by the AIA, and available for purchase from AIA distributors. APP000105; APP000113-000116. There is no reference in the Agreement to arbitration at all, or to the fact that the Conditions include additional material terms of the Agreement rather than merely elaboration of the terms set forth in the Agreement. See APP000040-APP000056. Interestingly, the AIA form documents were updated in 2007, three years prior to the parties' contract. One of the changes made was the addition of a term in the *Agreement* not only making clear that alternative dispute resolution was a term of the contract, but requiring the owner to check a box if intending to agree to arbitration. APP000106; APP000117-APP000127.

#### **SUMMARY OF ARGUMENT**

The facts of this case demand the application of clear legal precedent established by this Court. Deanna Lawson neither negotiated nor signed the Agreement or the Conditions at issue in this case. There is no legal precedent for holding that her husband's signature may bind her as her agent, nor is there any legal precedent to suggest that she assumed the obligations of the Agreement or Conditions by living in a home constructed pursuant to the Agreement as signed by her husband. She simply cannot be bound to the terms thereof.

Randie Lawson did not, by his signature to a twelve page Agreement, clearly and unequivocally give his assent to additional, material terms hidden in a twenty-eight page document never pointed out to him or provided to him. Mr. Lawson's right to have his claims adjudicated by a court of law must be protected and not be held to be waived by him without any indication that he intended to do the same. To do so would result in both surprise and hardship.

Furthermore, the Circuit Court's Order denying Builder's motion to compel the arbitration of the Lawson's counterclaims while allowing the litigation Builder's claims, is properly affirmed because: (1) Builders waived its right to compel arbitration by filing its claims in court and, (2) the arbitration provision – as interpreted by Builders itself – is both substantively and procedurally unconscionable

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Respondents assert that oral argument is unnecessary because the dispositive issues have been authoritatively decided and the facts and legal arguments are adequately presented in the briefs and the record on appeal, such that the decisional process would not be significantly aided by oral argument.

### **ARGUMENT**

#### **A. Standard of Review**

The appeal of a denial of a motion to dismiss and compel arbitration is subject to *de novo* review. *Credit Acceptance Corp. v. Front*, 231 W. Va. 518, 745 S.E.2d 556 (2013).

#### **B. The Circuit Court followed well-settled law in correctly finding Deanna Lawson could not be compelled to arbitration.**

The United States Supreme Court has repeatedly emphasized that arbitration is a matter of consent, not coercion. *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 293, 122 S.Ct. 754, 151 L.Ed.2d 755 (2002); *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n. 12, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). As such, it is well-settled law that a court may not direct a nonsignatory to arbitration absent evidence that would justify consideration of whether the nonsignatory exception to the rule requiring express assent to arbitration should be

invoked. *State ex rel. United Asphalt Suppliers, Inc. v. Sanders*, 204 W. Va. 23; 511 S.E.2d 134 (1998).

It is not clear exactly what argument Builders seek to make regarding the Circuit Court's finding that Deanna Lawson may not be compelled to arbitration. In the Circuit Court, Builders argued for application of the exception to the general rule against compelling a non-signatory to arbitration set forth in *J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315 (4<sup>th</sup> Cir. 1988). APP000130-APP000132. That decision held that claims against a parent company could be referred to arbitration where the arbitration agreement was executed only by a subsidiary. *See J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315 (4<sup>th</sup> Cir. 1988). The Circuit Court found that decision inapplicable to an attempt to hold a wife bound by the signature of her husband – and rightly so. APP000143-APP000144.

On appeal, Builders seems to suggest that this Court's recent decision in *Chesapeake Appalachia, L.L.C. v. Hickman*, -- S.E.2d --, 2015 WL 7366450 (W. Va., Nov. 18, 2015) establishes new law that would require overturning the decision of the Circuit Court as to Deanna Lawson. Pet.'s Br., p. 13-14. That simply is not the case. *Chesapeake* did not establish new law, it simply elaborated on the existing general rule by setting forth five traditional exceptions under which a non-signatory might be compelled to arbitration in certain circumstances. *See Chesapeake Appalachia, L.L.C. v. Hickman*, -- S.E.2d --, 2015 WL 7366450 (W. Va., Nov. 18, 2015).

The Circuit Court correctly decided that, without more, the signature of a husband cannot bind the wife. This has long been the law and has been the subject of numerous decisions. The facts of this case are quite similar to the facts in *Dan Ryan Builders, Inc. v. Nelson*, No. 3:10-cv-76, 2014 WL 496775 (N.D.W. Va., Feb. 6, 2014). There, the United States District Court for the Northern District of West Virginia found the non-signatory wife could not be bound to arbitrate

based upon an arbitration provision in a contract signed only by her husband. *Id.* Indeed, in that case, the wife was even present when her husband reviewed and signed the contract. *Id.* Here, Deanna Lawson was not present for any discussions with Builders or present when Mr. Lawson signed the Agreement. The Circuit Court's denial of Builders' motion to compel Deanna Lawson to arbitration was in perfect keeping with West Virginia law.

**C. The Circuit Court correctly found the arbitration provision was not properly incorporated by reference into the Agreement between Mr. Lawson and Builders and thus, the necessary meeting of the minds as to arbitration was lacking.**

The Circuit Court found the facts of this case strikingly similar to the facts considered by this Court in *State ex rel. U-Haul Co. of West Virginia v. Zakaib*, 232 W. Va. 432, 752 S.E.2d 586 (2013). There, this Court found that an addendum to the contract signed by consumers was not properly incorporated by reference and binding where the consumers were not shown the addendum until after the contract was signed and the contract itself made no reference to the inclusion of an arbitration provision in the agreement. *Id.* Here, not only was Mr. Lawson not provided the Conditions before signing the Contract, he was *never* provided the Conditions. Moreover, the Conditions are not available except by purchase.

This Court held in *U-Haul* that in order to uphold the validity of terms in a document incorporated by reference is must be certain that the parties to the agreement had knowledge, and assented to, the incorporated document and its terms. *Id.*, at 444. In so holding, the Court cited a case New York case as an example of poor identification of a document sought to be incorporated into a writing. *Id.*, at fn. 14 (citing *Weiner v. Mercury Artists Corp.*, 284 A.D. 108, 130 N.Y.S.2d 570 (1954)). In that case, a seller tried to incorporate a 207 page booklet containing an arbitration provision into a one page contract.

Here, the signed Agreement is a twelve page document, which is argued to purportedly incorporate by reference a separate thirty-eight page document that is neither signed nor attached. Not only does the Agreement not clearly state that it intends to incorporate, in toto, the entirety of the Conditions, in multiple articles of the Agreement various provisions of the Conditions are referred to as providing definitions of terms or additional detail regarding the Contract term. APP000040-APP000056. Nowhere in the Agreement is it suggested that there are ***additional, material, substantive*** contract terms buried in the Conditions.

As in *U-Haul*, there is simply no basis upon which to conclude that Mr. Lawson had the requisite knowledge of the contents of the Conditions to establish his consent to be bound by its terms. A sophisticated contractor should not be allowed to hide substantive provisions attempting to limit a consumer's right to have his claims adjudicated by a court of this State in a document never signed or even seen by the consumer. Apparently, this is not the first time the insufficiency of the arbitration provision contained in these form documents has been pointed out, as the documents have now been modified to provide both a conspicuous reference to the arbitration in the actual signed Agreement, but also to require the consumer to separately signify acceptance of the arbitration provision.

The Petitioner does not even attempt to distinguish the facts of this case from the facts present in *U-Haul*. Instead, they seek again to rely on *Johnson Controls v. Tucker*, 229 W. Va. 486 (2012) as evidence that the arbitration provision is properly incorporated by reference. Pet's Br. p. 8. However, even the Petitioner is forced to acknowledge that this Court did not decide the issue of proper incorporation in *Johnson Controls*. *Id.* As such, *Johnson Controls* has no bearing on the issue presented in this case. Moreover, this Court cautioned against the Petitioners very argument in *Johnson Controls*, making clear that agreements to arbitrate are fact specific and while

a specific contractual provision may be enforceable and binding in some circumstances, it may be unenforceable in others.

Despite this Court's cautionary statement, and despite the fact that the facts of this case cannot be meaningfully distinguished from the facts in *U-Haul*, Petitioners go on to argue that this Court ought to follow the decision of the Texas Court of Appeals, Houston (14<sup>th</sup> District) in *LDF Construction, Inc. v. Texas Friends of Chabad Lubavitch, Inc.*, 459 S.W. 3d 720 (2015). The *LDF Construction* case involved a motion to compel arbitration brought under the Texas General Arbitration Act. Also in contrast with this case, it would appear the party against whom the arbitration provision was being enforced was a corporate entity. In addition, in reaching its holding, it utilized solely Texas case law on the incorporation of documents by reference. Most significantly, however, to follow *LDF Construction* would be directly contradictory to the precedence set forth by this Court in *U-Haul*.

The Petitioner's remaining arguments are misplaced. The cases cited by the Petitioner regarding a party's duty to read the contract he has signed are simply not relevant where, as here, the issue is whether or not the provisions at issue were properly incorporated into the contract in the first instance. This Court's holding in *U-Haul* compels a finding that, in this case, they were not. Moreover, while the relative lengths of the contract and the document sought to be found properly incorporated by reference may not be a deciding factor, it is certainly illustrative when considering whether the parties had sufficient knowledge of the document and its terms to be said to have assented to the same, a factor which is decisive under this Court's decision in *U-Haul*.

Arbitration is a matter of contract and a party cannot be compelled to submit to arbitration unless it is clear he agreed to do so. *Levin v. Alms and Associates, Inc.*, 634 F.3d 260 (4<sup>th</sup> Cir. 2011). The FAA does not require courts to enforce an arbitration clause when the parties never

reached a meeting of the minds about the clause. *State ex rel. Richmond American Homes of West Virginia, Inc. v. Sanders*, 228 W. Va. 125, 128, 717 S.E.2d 909 (2011). A court may submit to arbitration only those disputes that the parties have agreed to submit. *Id.* An agreement to arbitrate will not be extended by construction or implication. *State ex rel. U-Haul Co. of West Virginia v. Zakaib*, 232 W. Va. 432, 439 752 S.E.2d 586, 593 (2013). To be valid, an agreement to arbitrate must have (1) competent parties; (2) legal subject matter; (3) valuable consideration; *and* (4) mutual assent. *Id.* Absent any one of the elements, the agreement is invalid. *Id.* Here, as in *U-Haul*, there is simply no basis upon which to conclude that Mr. Lawson had the requisite knowledge of the arbitration provision to establish his consent to be bound by its terms.

**D. The Circuit Court’s Order can be properly upheld on the other legal grounds argued before it.**

The West Virginia Supreme Court of Appeals may uphold an order of a circuit court when it appears that such judgment is correct on any legal ground disclosed by the record, whether or not that ground was cited by the lower court as a basis for its ruling. Syl. Pt. 3, *Barnett v. Wolfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965). While the Circuit Court concluded there was no need to address the additional arguments set forth by the Lawsons against enforcement of the arbitration provision, those grounds may be considered by this Court on appeal.

**1. Builders waived its right to compel arbitration.**

Generally applicable state law defenses to a contract may be applied to invalidate an arbitration agreement. *New v. GameStop, Inc.*, 232 W. Va. 564, 753 S.E.2d 62 (2013). The mere existence of a contractual agreement to arbitrate does not deprive the court of subject matter jurisdiction because, as with any contract right, an arbitration requirement may be waived through the conduct of the parties. *State ex rel. Barden and Robeson Corp. v. Hill*, 208 W. Va. 163, 539 S.E.2d 106 (2000). In *Barden*, this Court held the right to arbitration is an additional affirmative

defense under Rule 8 of the West Virginia Rules of Civil Procedure and is waived if not asserted in the responsive pleading. The Fourth Circuit has stated that it is quite generally held that right to rely upon an arbitration agreement is waived by filing a counterclaim, which without demanding arbitration, asks relief from the court with respect to matters embraced within the agreement. *E.I. Du Pont De Nemours & Co. v. Lyles & Lang Const. Co.*, 219 F.2d 328 (4<sup>th</sup> Cir. 1955).

In the instant case, Builders did not merely fail to assert arbitration in a *responsive* pleading, Builders, as the plaintiff, chose its forum – that of litigation before this Court. Surely, there can be no better example of waiver. Builders argues that its filing of the lawsuit did not constitute a waiver because it was required by West Virginia statute to file suit in order to preserve its mechanic lien. However, Builders did far more than file a petition to preserve a mechanics' lien. Builders' complaint asserts both breach of contract and unjust enrichment claims and seeks personal judgments against the Lawsons for amounts allegedly due under the contract, interest, attorneys' fees, lost profits, damage to business reputation, and compensation for annoyance and inconvenience. (Compl.) The complaint makes absolutely no mention of arbitration. Nor did Builders, as it could have done, file a motion to stay the proceeding pending arbitration along with its complaint. Builders chose to file litigation covering all claims it could possibly have asserted against the Lawsons. It did not file a limited petition seeking merely to enforce its lien. It neither reserved (nor mentioned) the right to arbitration in its complaint, nor did it file a simultaneous motion to stay the proceeding. It should not be allowed to change forums simply because the Lawsons filed a counterclaim.

**2. The arbitration provision is unconscionable and thus, unenforceable.**

According to Builders, the arbitration provision at issue allows for the filing of the complaint filed in this matter. If this is true, and the arbitration provision is found to be a valid

term of the parties' agreement, then the arbitration provision is unconscionable and unenforceable under West Virginia law. Under West Virginia law, a contract term must be both procedurally and substantively unconscionable for a court to refuse to enforce it, though they need not both be present in the same degree. *Brown v. CMH Mfg., Inc.*, No. 2:13 – 31404, 2014 WL 4298332, \*5 (S.D.W. Va. August 29, 2014).

Procedural unconscionability is concerned with inequities, improprieties, or unfairness in the bargaining process and formation of the contract. *Id.*, at 6. Generally, this turns on the age, literacy, or lack of sophistication of a party; hidden or unduly complex contract terms; the adhesive nature of the contract; the lack of a real and voluntary meeting of the minds; and the manner and setting in which the contract was formed, including whether each party had a reasonable opportunity to understand the terms of the contract. *Id.* (quoting Syl. Pt. 10, *Brown v. Genesis Healthcare Corp. (Brown II)*, 729 S.E.2d 217, 229 W. Va. 382 (2012)); *State ex rel. Johnson Controls, Inc. v. Tucker*, 229 W. Va. 486, 729 S.E.2d 808 (2012). Here, Builders is a contractor that utilizes the AIA forms in its business. Mr. Lawson is a first time home builder signing a construction contract for the first time. The contract was presented to him in final form for signature. Moreover, the terms were hidden, not within the pages of the actual contract signed, but within another lengthy document not ever shown or given to Mr. Lawson.

Substantive unconscionability involves unfairness in the contract itself and whether a contract term is on-sided and will have an overly harsh effect on the disadvantaged party. “The paramount consideration is mutuality,” where there must be “at least a ‘modicum of bilaterality’ to avoid unconscionability.” Syl. Pt. 19, *Brown v. Genesis Healthcare Corp. (Brown I)*, 724 S.E.2d 205 (W. Va. 2011) (overruled in part on other grounds). In a majority of jurisdictions, it is well-settled that a contract which requires the weaker party to arbitrate any claims he or she may have,

but permits the stronger party to seek redress through the courts, may be found to be unconscionable. *Dan Ryan Builders, Inc. v. Nelson*, 230 W. Va. 281, 737 S.E.2d 550 (2012).

According to Builders' own interpretation of the arbitration provision, it is allowed to choose arbitration or litigation to pursue any conceivable claim it may have against the Lawsons. While the West Virginia Supreme Court has determined that an arbitration agreement allowing the holder of a security interest to bring litigation solely to recover on the security interest does not lack mutuality (*State ex rel. Ocwen Loan Servicing, LLC v. Webster*, 232 W. Va. 341, 752 S.E.2d 372 (2013)), GGB argues the arbitration provision at issue here allows it to bring the complaint it filed in this case - which seeks not only to protect a security interest but to attain personal judgments against the Lawsons. According to its own argument, the arbitration agreement it concealed from the Lawsons allows it to bring litigation to enforce its lien, determine the amounts owed, *and* collect personal judgments against the Lawsons for any amounts owed as well as interest, attorneys' fees, and incidental damages but requires that the Lawsons' counterclaims challenging the amount alleged owed must be arbitrated. Non-reciprocal agreements such as this are unconscionable and unenforceable. *Arnold v. United Companies Lending Corp.*, 204 W. Va. 229, 511 S.E.2d 854 (1998).

Contrary to Builders' position, *State ex rel. Johnson Controls, Inc. v. Tucker*, 229 W. Va. 486, 729 S.E.2d 808 (2012) is distinguishable from this case and does not save the arbitration provision from being found unconscionable under the circumstances of this case. First, the court stated itself that certain contracts or contractual provisions may be unconscionable in some situations but not in others. *Id.*, at 494-95. Second, *Johnson Controls* involved multiple corporate parties. Finally, the court overturned the circuit court's finding of unconscionability because it was founded solely in the court's finding that requiring arbitration would require piecemeal

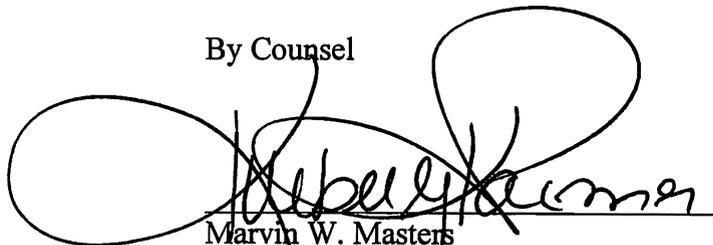
litigation (as only some parties and claims were subject to the arbitration provision). In fact, it is clear from the decision that neither the West Virginia Supreme Court nor the circuit court below considered any of the issues presented here.

### CONCLUSION

The integrity of the contracting process and the right of West Virginia residents to have their claims resolved by a court of law must be protected. The drafter of a contract must not be allowed to choose to hide substantive, material terms of that contract in another long document and then enforce those material terms against a party without ever providing that party with a copy of the document sought to be incorporated or making known to the party that additional material terms are contained therein. Parties who did not sign a contract must not be bound to its terms against their will. The Circuit Court of Cabell County understood the importance of these principles, correctly applied West Virginia law, and denied Builders' motion to dismiss the Lawsons' counterclaims and compel them to arbitration. The Respondents pray this Honorable Court upheld the August 20, 2015 Order of the Circuit Court of Cabell County.

RANDIE GAIL LAWSON and  
DEANNA DAWN LAWSON  
Defendants below, Respondents herein

By Counsel

A large, stylized handwritten signature in black ink, appearing to read "Marvin W. Masters", is written over a horizontal line. The signature is highly cursive and loops around the line.

Marvin W. Masters  
West Virginia State Bar No. 2359  
Kimberly K. Parmer  
West Virginia State Bar No. 9093  
The Masters Law Firm lc  
181 Summers Street  
Charleston, West Virginia 25301  
(304) 342-3106

CERTIFICATE OF SERVICE

I, Kimberly K. Parmer, counsel for Defendants Randie Gail Lawson and Deanna Dawn Lawson, do hereby certify that true and exact copies of the foregoing "Respondents Brief" were served upon:

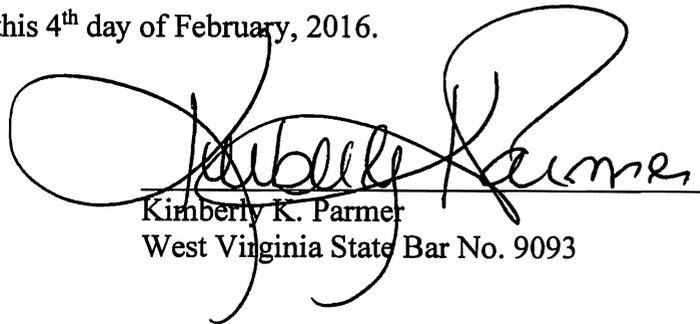
Mary K. Prim  
Post Office Box 232  
Scott Depot, West Virginia 25560  
Counsel for Plaintiff

Robert H. Sweeney, Jr.  
Jenkins Fenstermaker, PLLC  
Post Office Box 2688  
Huntington, West Virginia 25726-2688  
Counsel for Plaintiff

James D. McQueen, Jr.  
Ralph J. Hagy  
McQueen Davis, PLLC  
The Frederick, Suite 222  
940 Fourth Avenue  
Huntington, West Virginia 25701  
H.B. Fuller Construction Products, Inc.

J. Philip Fraley  
Litchfield Cavo, LLP  
Village Professional Building  
99 Cracker Barrel Drive, Suite 100  
Barboursville, WV 25504  
Counsel for Intervener CADCO Heating & Cooling, Inc.

via United States Mail, postage prepaid, this 4<sup>th</sup> day of February, 2016.

  
Kimberly K. Parmer  
West Virginia State Bar No. 9093