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February 1, 2012

VIA CERTIFIED MAIL / RETURN RECEIPT

Oscar C. Carr III, Esq.
Glankler Brown, PLLC
6000 Poplar Avenue, Suite 400
Memphis, Tennessee 38119

Tim Johnson, Esq.
Pietrangelo Cook, PLC
6410 Poplar Avenue, Suite 190
International Place, Tower II
Memphis, Tennessee 38119

Re: David Clark Construction LLC v. Richard and Dana McLendon

Gentlemen:

Enclosed is the Arbitration Award dated February 1, 2012 reflecting the unanimous decision of the arbitrators.

Yours very truly,



Michael E. Goldstein

MEG/lkb
Enclosure

cc: Jack Turner, Jr.
John Cannon

PRIVATE ARBITRATION

In the Matter of the Arbitration between)
)
DAVID CLARK CONSTRUCTION, LLC)
)
 Claimant,)
)
and)
)
RICHARD & DANA MCLENDON,)
)
 Respondents,)
)
_____)
)
RICHARD & DANA MCLENDON,)
)
 Counter-Claimants,)
)
and)
)
DAVID CLARK CONSTRUCTION, LLC)
)
 Counter-Respondent.)

ARBITRATION AWARD

This matter was submitted to arbitration by David Clark Construction, LLC (Clark) and Richard and Dana McLendon (“McLendons”) for the resolution of disputes and controversies between them arising out of a contract dated April 28, 2008 (“Contract”). Pursuant to the Contract, the McLendons retained Clark to construct a residence in the “Enclave,” a subdivision in Shelby County Tennessee.

Generally, the McLendons claim that the residence was not constructed in accordance with standards imposed by the Contract and by law. Clark claims that the construction met such standards and, to the extent there were any problems with the

project, they were not substantial problems and the McLendons did not permit him to attempt repair or resolve such problems before they improperly removed him from the job. Further, Clark asserts that the McLendons failed to mitigate any damages they may have incurred.

The parties elected to arbitrate and chose the undersigned arbitrators pursuant to section 16 of the Contract.

The arbitrators conducted a hearing from October 31 - November 3, 2011. Based on the live proof presented at the hearing, affidavits submitted to the arbitrators, pre-hearing and post-hearing memoranda provided by the parties, and the entire record in the cause, the arbitrators have determined that Clark is entitled to an award against the McLendons in the amount of \$230,616.44.

The arbitrators find that Clark's changes to the plans, including the use of painted OSB in lieu of Tyvek, and the failure to use "through wall flashing," were not defaults under the Contract since (1) it was his customary business practice (and, according to persuasive expert proof, the customary building practice in Shelby County for most all similar residential construction), and (2) that these practices were accepted and approved by local building code inspectors.

The Arbitrators find that the first material default under the Contract arose out of the McLendons' demand letter (through counsel) dated February 5, 2009 and the McLendons' acts consistent with the requirements imposed on Clark pursuant to that letter. Therefore, the McLendons' failure to pay Clark's January, 2009 draw request based on Clark's refusal to abide by the demands in that letter constituted a material default. The McLendons refused to allow Clark a reasonable opportunity to attempt

repair before they terminated him and, therefore, made it impossible for him to complete the residence in accordance with the Contract.

The arbitrators were not convinced that the proof showed that problems identified by the McLendons surfacing after the termination were caused solely by Clark or that the expensive and drastic repairs carried out by the McLendons were necessary. In fact, there was proof that the McLendons had retained an inspector (who did not testify at the hearing) who basically agreed with that assessment, but the McLendons not only chose to ignore his advice, but withheld his assessment from Clark. There was persuasive expert proof that less drastic repair strategies should have been first implemented before the drastic and expensive path demanded by the McLendons, to be satisfactory to, and approved by, their own architect, was undertaken.

The arbitrators do find that there were defects and errors in Clark's work, including problems in connection with the veranda roof, certain flashing issues, the driveway and the hardwood floors. The Arbitrators consider these to be in the nature of "punch list" issues, and subject to repair/replacement. Therefore the amount awarded to Clark for the McLendons' breach of contract should be set off by the reasonable costs incurred by the McLendons to make these repairs, which costs were set out in the report of Robert Campbell as follows:

Exterior

8. Repair Window	\$ 898.24
10. Repair Window/Shutter	\$2,495.00
12. Rebuild Privacy Wall (accepted in Part)	\$ 500.00
14. Flashing	\$3,151.28
16A. Veranda Roof	\$3,815.50
21. Columns	\$1,366.38
	\$ 504.59
22-23. Veranda	\$ 947.85

24. Door Jambs	\$ 357.08
25. Driveway Caulk	\$3,101.96

Driveway

1-4.	\$8,102.48
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Interior

1. Leak Detection	\$1,005.75
2. SCAB	\$1,284.21
3. Pipe repair	\$ 257.75
5-6. Slab	\$ 748.92
7. Return Covers	\$ 240.46
8. Hardwood Floors	\$1,198.08
9. Hardwood Replacement	\$1,476.38
10. Hardwood Floor	\$6,201.23
12. Clean-up	\$ 318.67
13. Repair Window	\$ 237.45
14. Backsplash Tile	\$ 569.27


TOTAL	\$38,778.53
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In summary, the arbitrators make the following award:

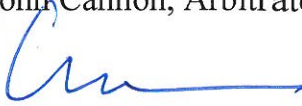
Damages to Clark for McLendon's default (per Exhibit 45)	\$172,094.97
Clark's Attorneys Fees (per Tim Johnson's November 10, 2011 letter)	\$ 90,000.00
Clark's Costs (per Tim Johnson's November 10, 2011 letter)	\$ 7,300.00
McClendons set off for repair costs	\$(38,778.53)
NET TOTAL AWARD:	\$230,616.44

The parties shall each bear all their own other costs incurred by them, including attorneys fees and costs not awarded herein. The other costs of arbitration, including the fees of the arbitrators, shall be borne by the parties equally.

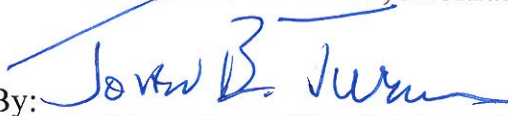
Submitted this 1st day of February, 2012:

By: 

John Cannon, Arbitrator

By: 

Michael E. Goldstein, Arbitrator

By: 

John B. Turner, Jr., Arbitrator