

THE STATE OF SOUTH CAROLINA  
In the Supreme Court  
APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

RECEIVED

Aug 15 2022

S.C. SUPREME COURT

The Honorable Henry W. Brown  
Special Referee

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Unpublished Opinion No. 2022-UP-175  
Filed April 20, 2022  
Petition for Rehearing Denied May 19, 2022

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Appellate Court Case No. 2022-000854

Brown Contractors, LLC under S.C. Residential Builders License No. 20378,  
..... Respondent-Petitioner,

v.

Andrew Joseph McMarlin a/k/a Andrew Joseph McMarlin and Amy Salzhauer,  
..... Petitioners-Respondents,

and

Andrew McMarlin and Amy Salzhauer,  
..... Petitioners-Respondents,

v.

James Brown IV and Brown-Meihaus Construction, LLC,  
..... Third-Party Defendants.

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**RESPONDENT-PETITIONER BROWN-CONTRACTOR'S REPLY TO THE  
RETURN OF PETITIONERS-RESPONDENTS ANDREW MCMARLIN AND  
AMY SALZHAUER OPPOSING PETITION FOR CERTIORARI**

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The Respondent-Petitioner Brown Contractors, LLC (“Respondent-Petitioner” or “Brown Contractors”), pursuant to Rule 242(g), South Carolina Appellate Court Rules (“SCACR”), file this *Reply to the Return* of Petitioners-Respondents Andrew Joseph McMarlin *et al.* (“Petitioners-Respondents” or “McMarlins”) opposing the June 21, 2022 *Petition for Certiorari* of Brown Contractors.

***1. Arguments About 16 Jade Street.***

The McMarlins argue that *16 Jade Street, LLC v. R. Design Constr. Co.*, 405 S.C. 384, 7474 S.E.2d 770 (2013) is irrelevant to whether Brown Contractors was properly licensed, and thus is not a proper ground for *certiorari*. But the McMarlins never analyze *16 Jade Street* and they ignore its central holding.

*16 Jade Street* specifically and deliberately states the Residential Builders Act (“Act”) is not for the benefit of a private party – and that the only consequences imposed by virtue of an individual’s license are to be meted out by the RBC. 405 S.C. at 389-390, 747 S.E.2d at 773. Thus, the Supreme Court has held the RBC has exclusive jurisdiction over the Act and makes its own determinations – not the state courts.<sup>1</sup>

So, that is the whole point; since the inception of this case, the McMarlins have asked the **state courts** to look into whether Brown Contractors followed § 40-59-410 of the Residential Builders Act [Return, pp. 4-5] – and not the RBC – even though *16 Jade Street* says they should have first taken the matter up with the Commission! Likewise, no exception exists to *16 Jade Street* allowing the **state courts** to determine whether the RBC issued a *timely* license [Return, p. 6] – again, it is for the RBC to determine first.

If the Supreme Court wishes to adopt the decision of the Special Referee, it can obviously do so – but only if it is willing to do major violence to its holding in *16 Jade Street*. Applying *16 Jade Street*, the matter **should** have been first tried before the RBC, because exclusive jurisdiction was vested in the RBC (with appeal to the Administrative

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<sup>1</sup> In this case, it is important to remember that the Residential Building Commission (“RBC”) did give Brown Contractors licenses (R. pp. 650-652). And Brown Contractors did ask for the RBC for the license – and communicated with the RBC – before work commenced on the McMarlins’ house (R. pp. 640-643, 647).

Law Judge Division [S.C. Code Ann. §§ 40-59-115, -90 and -160]). Thus, the circuit court lacked jurisdiction to challenge how a contractor obtained a license, or whether it was based on false pretenses, or whether it was timely. This is why Brown seeks *certiorari* – because the Court of Appeals’ ruling is in conflict with *16 Jade Street*. See Rule 242(b)(3), SCACR.

**2. Arguments About the Right to Cure Act.**

These arguments are not germane as to whether the Supreme Court should accept *certiorari* over Right to Cure Act issues. First, the McMarlins filed a COUNTERCLAIM. That is their “action” which the Right to Cure Act required them to first give notice (which they did not do, even though the Right to Cure Act plainly compelled them to do). But more importantly, the Court of Appeals read a “waiver” provision into the Act that was not placed in it by the General Assembly, which is both a novel question of law and impacts substantial constitutional issues [Rule 242(b)(1), (4)]. *Certiorari* is therefore applicable.

**3. All Grounds for Appeal Were Not Addressed.**

Brown Contractors takes issue with the McMarlin’s statement [Return, p. 6] that all grounds in Brown Contractors’ appeal (and petition for *certiorari*) were addressed, directly or indirectly, because they have not been.

Respectfully submitted,

/s Robert B. Varnado

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