

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Sep 21 2022

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Benjamin Culbertson, Circuit Court Judge

Appellate Case No. 2022-000938

Denise M. Petersen, individually and as
Trustee of the Denise M. Petersen 2005
Revocable Trust Dated November 9, 2005,
as Trustee of the 601 Ocean Boulevard
Residence Trust Dated November 30, 2012,
and as Trustee of the 601 Ocean Boulevard
Residence Trust II Dated December 7, 2012,Respondent,

v.

DCTCL, L.P., d/b/a Buffington Homes, L.P.,
Donnix Construction, LLC, Hunt Brothers
Construction, Inc., Island Exteriors and
Siding, Inc., Plastering Surfaces, LLC, a
Unique Design, Inc., Berkeley Heating and
Air Conditioning, Inc., Energyone America,
LLC, Aqua Blue Pools of Charleston, Inc.,
Sunnyside Farms, Inc., TAMKO Building
Products, LLC, Haddigan Electrical
Contractors, LLC and John Doe Contractors
3 through 50,Defendants,

Of Which

Donnix Construction, LLC, isRespondent,

And

TAMKO Building Products, LLC isAppellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant, TAMKO Building Products, LLC (“TAMKO”) proposes the following to be included in the Record on Appeal:

Orders

1. Order dated June 9, 2022 Denying TAMKO’s Motion to Dismiss and Compel Arbitration (“Motion to Dismiss”);
2. Form 4 Order dated June 9, 2022 Denying TAMKO Motion to Dismiss; and
3. Form 4 Order dated June 29, 2022 Denying TAMKO Motion to Alter/Amend Order.

Pleadings

4. Third Amended Summons and Complaint dated April 28, 2022;
5. Donnix Construction, LLC’s (“Donnix”) Answer to Third Amended Complaint and Cross-Claims Against TAMKO dated May 10, 2022;
6. TAMKO’s Answer and Affirmative Defenses to Third Amended Complaint dated June 23, 2022;
7. TAMKO’s Motion to Dismiss dated May 11, 2022;
8. Donnix’s Memorandum in Opposition to TAMKO’s Motion to Dismiss dated May 20, 2022;
9. Plaintiff’s Memorandum in Opposition to TAMKO’s Motion to Dismiss dated May 31, 2022;
10. TAMKO’s Reply in Support of its Motion to Dismiss dated May 31, 2022; and
11. TAMKO’s Building Products, LLC’s Motion to Alter/Amend Order Denying its Motion to Dismiss dated June 17, 2022.

Other

12. Transcript of Oral Argument on TAMKO’s Motion to Dismiss held June 2, 2022;
13. Donnix’s Proposed Order Denying TAMKO Motion to Dismiss;

14. Plaintiff's Proposed Order Denying TAMKO Motion to Dismiss; and
15. TAMKO's Proposed Order Granting Motion to Dismiss and Compel Arbitration.

Exhibits

16. TAMKO WATERPROOFING, FENESTRATION FLASHINGS, UNDERLAYMENTS AND ACCESSORIES FIVE YEAR LIMITED MATERIAL WARRANTY (LIMITED WARRANTY) (emphasis in original);
17. Affidavit of G. Ross, TAMKO Technical Systems Analyst;
18. Buffington Homes, L.P. ("Buffington") Limited Warranty and Mandatory Mediation and Arbitration Agreement;
19. Subcontractor Agreement between Buffington and Donnix; and
20. ABC Supply Co., Inc., Purchase Order Invoices, Invoice Nos. 52062460, 52072321, 51973240, and 52102388.

I certify that this designation contains no matter which is irrelevant to this appeal.

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Columbia, South Carolina

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LLC, Aqua Blue Pools of Charleston, Inc.,
Sunnyside Farms, Inc., TAMKO Building
Products, LLC, Haddigan Electrical
Contractors, LLC and John Doe Contractors
3 through 50,Defendants,

Of Whom

Donnix Construction, LLC, isRespondent,

And

TAMKO Building Products, LLC isAppellant.

PROOF OF SERVICE

I certify that I have served the Designation of Matter to be Included in the Record on Appeal as the undersigned employee of the law offices of Williams Mullen, attorneys for Appellant, does hereby certify that service of the Designation of Matter to be Included in the Record on Appeal was made on all counsel of record, specified below, by electronically mailing a copy of the same to the following addresses:

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September 21, 2022

Columbia, South Carolina

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RE: Denise M. Petersen vs. DCTCL, L.P., et al.
Appellate Case No. 2022-000938

Dear Ms. Kitchings:

Please find enclosed Appellant's Initial Brief, Designation of Matter to be Included in the Record on Appeal, as well as both Proofs of Service for your review and filing in connection with the above-referenced matter.

Should you have any questions, or require additional information, please do not hesitate to contact our office.

Sincerely,



Ruth A. Levy

RAL/kmr

Enclosures: As referenced.

Cc: All counsel via email only w/ enclosures