

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**APPEAL FROM OCONEE COUNTY  
Court of Common Pleas**

**Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit**

---

**Appellate Case No.: 2012-213237**

---

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, and Robert White, Individually, and on behalf of all others similarly situated, Plaintiffs,

v.

IMK Development, Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bostic Brothers Construction, Inc., Miller/Players & Associates, Bradford D. Seckinger, John Ludwig, William Cox, Larry D. Lollis, Rick Thoennes, M Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc. T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo, Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, and Miller/Player & Associates, Defendants,

Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents.

**RECEIVED**

MAY 09 2013

**SC Court of Appeals**

**RESPONDENT HUTCH N SON CONSTRUCTION, INC.'S  
REPLY MEMORANDUM  
IN SUPPORT OF ITS MOTION TO STRIKE**

---

In Appellants' Return to Respondent Hutch N Son Construction, Inc.'s ("HNS") Motion to Strike, Appellants attempt an end-run around the requirements of Rules 209 and 210, SCACR, by asking this Court to include material in the Record on Appeal that: (1) was not set forth in their deficiently general Designation of Matter; (2) was not cited in Appellants' Brief; and (3) is akin to *ex parte* communications because neither Respondent was present for those arguments. The Appellate Court Rules are not "mere technicalities," *Henning v. Kaye*, 307 S.C. 436, 437-38, 415 S.E.2d 794, 794-95 (1992), and Appellants do not get two bites at the apple when framing arguments on appeal.

Under the guise of a "Return to Motion to Strike," Appellants endeavor to augment their Designation of Matter and previously-made arguments. Appellants' Brief cited to only *one* page of the Transcript, (Appellant's Brief, p. 12, n.1); HNS already has filed its Respondent Brief addressing those arguments. Appellants did not specify any other Transcript pages in their Designation of Matter as required by Rule 209(a), SCACR, nor does Appellants' Return offer an explanation for this deficiency.

Instead, Appellants ask for permission to include in the Record on Appeal 218 pages of "information presented to the lower court, throughout an entire day of hearings and arguments," (Return, p. 6), *even though Appellants do not rely on 217 of those pages in their presentation of the issues on appeal*. It should not be HNS's responsibility to guess what portions of the Transcript Appellants deem relevant, nor should Appellants be

allowed to infuse previously-made arguments with additional Transcript pages never before identified.<sup>1</sup>

Regardless, Transcript pages containing argument on the other approximately 60 motions heard by the circuit court that day are not relevant to this appeal and are akin to *ex parte* communications. The circuit court made clear its intent for HNS/Upstate's Motions for Summary Judgment to "stand on its own" such that arguments for and against should be presented "at the same time." (HNS Memorandum in Support of Motion to Strike, pp. 7-8 (citing Ex. E, Hrg. Tr., p. 40, l. 13-p. 41, l. 6)). And that is what transpired: arguments were made by HNS, Upstate, and Marick; the circuit court announced its oral ruling; HNS and Upstate committed to draft the order ruling in their favor; and the circuit court permitted counsel for HNS and Upstate to leave. (Ex. E, Hrg. Tr. p. 55, ll. 11-16). Based on the Transcript from the hearing on HNS/Upstate's motions, it is clear that Appellants are wrong when they state that the briefs, transcripts, and arguments for the approximately 60 motions were considered cumulatively by the Judge. (Return, p. 3).

Appellants' Return plucks comments made in opposition to *other* motions heard that day in an unabashed effort to compensate for the arguments Appellants failed to

---

<sup>1</sup> Interestingly, Appellants argue for inclusion of the entire Transcript as "relevant and necessary" by citing to *Mauro v. Clabaugh*, 299 S.C. 184, 383 S.E.2d 244 (Ct. App. 1989). (Return, pp. 2-3)(with citation corrected). *Mauro* is inapposite. It was decided before the effective date of the South Carolina Appellate Court Rules, which now obligate Appellants "[a]t the same time [they] serve [their] initial brief(s) . . . [to] set forth with specificity [in their Designation] those parts of the transcript . . . which [they] propose[] to include in the record on appeal." Rule 209(a), SCACR (effective September 1, 1990). In any event, this Court in *Mauro* rejected the very same position Appellants present in their Return – that "the entire transcript is relevant." *Mauro*, 299 S.C. at 187, 383 S.E.2d at 246 ("[W]e disagree . . . that 'the entire transcript is relevant . . . .'").

make when opposing HNS/Upstate's motions.<sup>2</sup> Those comments are not part of this appeal and should not be considered because they were not made in opposition to HNS/Upstate's motions and because neither HNS's nor Upstate's counsel was present for them.

Appellants' Return also misstates HNS's Motion to Strike. The Appellants argue that "the Respondents argument that Appellant did not submit a brief or deposition testimony to the Judge is false." (Return, p. 7). HNS did not move to strike the brief; rather, HNS argued that Appellants failed to present the *pages* from the transcript of Randy Still's deposition to the court. (HNS Memorandum in Support of Motion to Strike, p. 7). Appellants' Return fails to provide an explanation for why the pages from Randy Still's deposition were not presented to the court and why the pages should not be struck from Appellants' Designation of Matter.

Finally, Appellants' Return improperly addresses the issue of whether Appellants stipulated or admitted that all of Appellants' causes of action should be collapsed into one cause of action for equitable indemnity. (Return, p. 8). That issue was not included in HNS's Motion to Strike. Although it was addressed in HNS's Brief of Respondent, (Respondent's Brief, pp. 10-12), Appellants chose not to file a Reply Brief. Appellants

---

<sup>2</sup> Appellants' Return makes clear its intention to "evidence[] the fact that Marick's counsel argued throughout the day that the causes of action should not collapse into equitable indemnity." (Return, p. 8). Any arguments made in response to other motions, however, cannot rescue Appellants' collapsing argument for consideration *in this appeal*. As outlined in HNS's Brief of Respondent, Appellants not only failed to argue against collapsing during argument on HNS/Upstate's Motion for Summary Judgment, but *they failed to seek reconsideration of the circuit court's order relying on that concession*. (Respondent's Brief, pp. 10-12). It does not matter what Appellants argued in response to other motions after counsel for HNS and Upstate left the hearing; as to the motions at issue in this appeal, Appellants failed to preserve the collapsing issue for appellate review because they did not seek reconsideration (or correction) under Rule 59(e), SCRCF.

cannot use their Return as a substitute to address the substantive points raised in Respondent's Brief.

**Conclusion**

HNS respectfully requests that this Court: (1) strike Appellants' irrelevant and unspecified designation of the entire September 5, 2012 Transcript; (2) strike Appellants' designation of deposition pages that were never presented to the circuit court; and (3) prohibit Appellants from citing to, or relying on, these matters in their briefs and arguments to this Court on appeal. HNS expressly reserves its right to seek costs at the conclusion of this appeal, pursuant to Rule 222(c), SCACR, to recoup the costs of addressing this irrelevant and non-compliant material.

Respectfully Submitted,

**GALLIVAN, WHITE & BOYD, P.A.**

**BY:**



Shelley S. Montague (SC Bar # 68019)

Laura W. Jordan (SC Bar # 100374)

Post Office Box 7368

Columbia, South Carolina 29202

TEL: (803) 779-1833

FAX: (803) 779-1767

smontague@gwblawfirm.com

ljordan@gwblawfirm.com

**ATTORNEYS FOR RESPONDENT**

**HUTCH N SON CONSTRUCTION, INC.**

Columbia, South Carolina

May 7, 2013.

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**APPEAL FROM OCONEE COUNTY  
Court of Common Pleas**

**Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit**

---

**Appellate Case No.: 2012-213237**

---

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, and Robert White, Individually, and on behalf of all others similarly situated, Plaintiffs,

v.

IMK Development, Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bostic Brothers Construction, Inc., Miller/Players & Associates, Bradford D. Seckinger, John Ludwig, William Cox, Larry D. Lollis, Rick Thoennes, M Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc. T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo, Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, and Miller/Player & Associates, Defendants,

Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents.

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

---

**APPEAL FROM OCONEE COUNTY**  
**Court of Common Pleas**

**Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit**

---

**Appellate Case No.: 2012-213237**

---

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, and Robert White, Individually, and on behalf of all others similarly situated, Plaintiffs,

v.

IMK Development, Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bostic Brothers Construction, Inc., Miller/Players & Associates, Bradford D. Seckinger, John Ludwig, William Cox, Larry D. Lollis, Rick Thoennes, M Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc. T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo, Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, and Miller/Player & Associates, Defendants,

Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents.

**RECEIVED**

MAY 09 2013

**SC Court of Appeals**

---

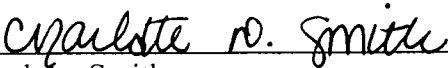
PROOF OF SERVICE

---

I, Charlotte Smith, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondent Hutch N Son Construction, Inc., do hereby certify that I have served a copy of the foregoing **Respondent Hutch N Son Construction, Inc.'s Reply Memorandum in Support of Its Motion to Strike** in the above-referenced matter upon counsel for Appellant and Respondent Upstate Utilities, Inc. via United States Mail, postage prepaid, on this the 7 day of May, 2013, to the following addresses:

Jason M. Imhoff  
C. Reed Teague  
The Ward Law Firm, P.A.  
P.O. Box 5663  
Spartanburg, SC 29304  
*Counsel for Appellant Marick Homebuilders, LLC*

S. Markey Stubbs  
Baker Ravenel & Bender, LLP  
P.O. Box 8057  
Columbia, SC 29202  
*Counsel for Respondent Upstate Utilities, Inc.*

  
\_\_\_\_\_  
Charlotte Smith  
Assistant to Shelley S. Montague

Columbia, South Carolina

SHELLEY SUNDERMAN MONTAGUE  
DIRECT DIAL: 803.724.1818  
SMONTAGUE@GWBLAWFIRM.COM



1201 Main Street, Suite 1200  
Post Office Box 7368 (29202)  
Columbia, South Carolina 29201  
Telephone 803.779.1833  
Facsimile 803.779.1767  
www.GWBlawfirm.com

**Gallivan, White & Boyd, P.A.**  
ATTORNEYS AT LAW

May 7, 2013

**VIA U.S. MAIL**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals Clerk  
Post Office Box 11639  
Columbia, SC 29211

Re: Stoneledge at Lake Keowee Owners' Association, Inc., et al. v. IMK Development Co., LLC, et al., Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants, and Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents  
**Appellate Case No.: 2012-213237**

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and seven (7) copies of Respondent Hutch N Son Construction, Inc.'s Reply Memorandum in Support of Its Motion to Strike together with Proof of Service in the above-referenced matter. Please file the original and return a clocked copy to me in the enclosed envelope.

By copy of this letter I am serving the same upon counsel for Appellants and counsel for Respondent Upstate Utilities, Inc.

Please do not hesitate to contact me if you have any questions or concerns.

With kind regards, I am

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.



Shelley Sunderman Montague

**RECEIVED**  
MAY 09 2013

SSM/cds  
Enclosures

**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings

May 7, 2013

Page 2

---

cc: Jason M. Imhoff  
C. Reed Teague  
The Ward Law Firm, P.A.  
P.O. Box 5663  
Spartanburg, SC 29304  
*Counsel for Appellant Marick Home Builders, LLC*

S. Markey Stubbs  
Baker Ravenel & Bender, LLP  
P.O. Box 8057  
Columbia, SC 29202  
*Counsel for Respondent Upstate Utilities, Inc.*