

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

**Nov 18 2022**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Benjamin Culbertson, Circuit Court Judge

Appellate Case No. 2022-000938

Denise M. Petersen, individually and as Trustee of the Denise M. Petersen 2005 Recovable 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 is the Respondent and TAMKO Building Products, LLC is the Appellant.

**RESPONDENT, DONNIX CONSTRUCTION, LLC'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent, Donnix Construction, LLC ("Donnix") 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. Plaintiffs 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. 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.

Respectfully submitted,

**RESNICK & LOUIS, P.C.**

*/s/ Patrick J. McDonald*

Patrick J. McDonald, Esq. (SC Bar # 16921)

Jessica W. Stratta, Esq. (SC Bar # 103958)

146 Fairchild Street, Suite 130

Charleston, South Carolina 29492

843-647-7114

[pmcdonald@rlattorneys.com](mailto:pmcdonald@rlattorneys.com)

[jstratta@rlattorneys.com](mailto:jstratta@rlattorneys.com)

*Attorneys for Respondent Donnix Construction Inc.*

November 18, 2022

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

**Nov 18 2022**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Benjamin H. 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<sup>^</sup>/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 is the Respondent and TAMKO Building Products, LLC is the Appellant.

---

**PROOF OF SERVICE**

---

The undersigned certifies that she served a copy of the foregoing *Respondent, Donnix Construction, LLC's Designation of Matter to be Included in the Record on Appeal* on all counsel of record on this 18<sup>st</sup> day of November 2022 via electronic mail and/or by U.S Mail, postage pre-paid to the following:

Richard H. Willis, Esq.  
Derek D. Tarver, Esq.  
Williams Mullen  
1230 Main Street, Suite 330  
Columbia, SC 29201  
rwillis@williamsmullen.com  
dtarver@williamsmullen.com

***Attorneys for Appellant, TAMKO Building Products, LLC***

Michael A. Timbes, Esq.  
Jesse A. Kirchner, Esq.  
Sarah D. Baum, Esq.  
Thurmond Kirchner & Timbes, P.A.  
15 Middle Atlantic Wharf  
Charleston, SC 29401  
michael@tktlawyers.com  
jesse@tktlawyers.com  
sarah@tktlawyers.com

***Attorneys for Plaintiff and Respondent, 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***

James H. Elliott, Jr, Esq.  
Cameron D. Berthelsen, Esq.  
Richardson Plowden & Robinson, P.A.  
235 Magrath Darby Blvd., Ste. 100  
Mt. Pleasant, SC 29464  
jelliott@richardsonplowden.com  
cberthelsen@richardsonplowden.com

***Attorneys for Island Exteriors and Siding, Inc.***

Adam Ribock, Esq.  
Creighton Segars, Esq.  
McAngus Goudelock & Courie, L.L.C.  
Post Office Box 12519  
1320 Main Street, 10th Floor (29201)  
Columbia, South Carolina 29211  
adam.ribock@mgclaw.com  
creighton.segars@mgclaw.com

***Attorneys for DCTCL, L.P. d/b/a Buffington Homes, L.P.***

David C. Cleveland, Esq.  
Clawson and Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, South Carolina 29492  
dcleveland@clawsonandstaubes.com

***Attorney for Sunnyside Farms, Inc.***

Jenkins H. Wilson, Esq.  
L. Dean Best, Esq.  
Best Honeycutt, P.A.  
Post Office Box 13466  
102 Wappoo Creek Drive, Suite 8 (29412)  
Charleston, South Carolina 29422  
jenkins@besthoneycutt.com  
dean@besthoneycutt.com

***Attorneys for A Unique Design, Inc***

Morgan S. Templeton, Esq.  
Stephanie G. Brown, Esq.  
Wall Templeton & Haldrup, PA  
Post Office Box 1200  
Charleston, SC 29402  
morgan.templeton@walltempleton.com  
stephanie.brown@walltempleton.com

***Attorneys for Plastering Surfaces, LLC***

Jeffrey A. Ross, Esq.  
Philip P. Cristaldi, III, Esq.  
Emily Sheets, Esq.  
Ross & Cristaldi, LLC  
863 Coleman Blvd. Ste. B  
Mt. Pleasant, South Carolina 29464  
jross@rclawsc.com  
pcristaldi@rclawsc.com  
esheets@rclawsc.com

***Attorneys for Energy One America, LLC***

William W. Watkins, Jr., Esq.  
Ford H. Thrift, Esq.  
Wall Templeton & Haldrup, P.A.  
145 King Street, Suite 300  
Charleston, South Carolina 29401  
Trey.Watkins@walltempleton.com  
Ford.Thrift@walltempleton.com

***Attorneys for Aqua Blue Pools of Charleston, Inc.***

Katherine A. Walker, Esq.  
Ethridge Law Group, LLC  
1100 Queensborough Blvd., Suite 200  
Mount Pleasant, SC 29464  
kwalker@ethridgelawgroup.com  
*and*  
L. Dean Best, Esq.  
Jenkins H. Wilson, Esq.  
Best Law, P.A.  
102 Wappoo Creek Drive, Suite 8  
Charleston, SC 29412  
jenkins@bestlawsc.com  
dean@bestlawsc.com

***Attorneys for Berkeley Heating and Air Conditioning, Inc.***

Shanna M. Stephens, Esq.  
W. Coleman Lawrimore, Esq.  
Danielle B. Wegener, Esq.  
Anderson, Reynolds, & Stephens, LLC  
P.O. Box 87 Charleston, SC 29401  
(843) 723-0185  
sstephens@arlawsc.com  
clawrimore@arlawsc.com  
dwegener@arlawsc.com

*Attorneys for Hunt Brothers Construction, Inc.*

James Keith Bryson, Esquire  
Ethridge Law Group, LLC  
1100 Queensborough Blvd., Suite 200  
Mount Pleasant, SC 29464  
jbryson@ethridgelawgroup.com  
and  
Kevin W. Mims, Esquire  
Rachel N. Stewart, Esquire  
Luzuriaga Mims, LLP  
1156 King Street  
Charleston, SC 29403  
kmims@lmlawllp.com

*Attorneys for Haddigan Electrical Contractors LLC*

*Hailea Ford*

---

Hailea Ford  
Paralegal to Patrick J. McDonald, Esquire

 **RESNICK & LOUIS, P.C.**  
ATTORNEYS AT LAW

Patrick J. McDonald  
Admitted in MI and SC  
[pmcdonald@rlattorneys.com](mailto:pmcdonald@rlattorneys.com)

REPLY TO THE CHARLESTON OFFICE  
146 Fairchild Street, Suite 130  
Charleston, SC 29492  
843.639.5659

November 18, 2022

**VIA ELECTRONIC MAIL**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

**RECEIVED**  
**Nov 18 2022**  
**SC Court of Appeals**

Re: *Denise M. Petersen, et al vs. DCTCL, L.P. d/b/a Buffington Homes, L.P., et al*  
Appellate Action No. 2022-000938

Dear Ms. Kitchings:

Enclosed please find Respondent, Donnix Construction, LLC's Initial Brief, Designation of Matter and Proofs of Service for your review and filing in connection with the above-referenced appeal.

With kindest regards, I am

Very truly yours,

*/s/ Patrick J. McDonald*  
Patrick J. McDonald, Esq.  
For the Firm

PJM/hf  
Enclosures

Cc: All Counsel of Record (*via e-mail only*) w/ Enclosures