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Apr 28 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the 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.

MOTION TO REINSTATE APPEAL

Richard H. Willis (SC Bar: 6159)
Ruth A Levy (SC Bar 103371)
John G. Tamasitis (SC Bar: 101875)
Derek D. Tarver (SC Bar: 103289)
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*Attorneys for Appellant TAMKO
Building Products, LLC*

April 28, 2023

Columbia, South Carolina

MOTION TO REINSTATE APPEAL

Pursuant to Rules 240 and 260, SCACR, Appellant TAMKO Building Products, LLC hereby moves this Court for an order reinstating its appeal, for good cause as set forth below:

1. On April 14, 2023, this Court issued a letter seeking a status update as to the parties' settlement efforts in the above matter by April 24, 2023. Specifically, the letter stated: "A status update is needed within 10 days from the date of this letter or this appeal will be dismissed." A copy of this letter is enclosed as Exhibit 1.

2. On April 24, 2023, Mr. Timbes, counsel for Respondent, wrote the Court with an update as to the parties' settlement status and copied all counsel. It was received by the Court the same day. A copy of Mr. Timbes' letter is enclosed as Exhibit 2. It accurately recites the case status. Accordingly, Appellant's counsel believed in good faith that the Court's request for a status report had been fulfilled.

3. On April 27, 2023, the Court issued an order dismissing the appeal.

4. The April 14 letter from the Court did not state that *each party* was to update the Court. Appellant did not see the need to send a separate status update and burden the court with superfluous filings. If this was in error, it was not willful or in any effort to ignore the Court's request.

5. While progress has been made toward resolving this matter, a settlement of all claims has not yet been finalized. As such, good cause exists to reinstate the appeal pursuant to Rule 260(a).

6. Appellant respectfully request the Court reinstate the above appeal.

[Signature block on the following page.]

WILLIAMS MULLEN

By: s/ Ruth A. Levy

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*Attorneys for Appellant TAMKO
Building Products, LLC*

April 28, 2023

Columbia, South Carolina

Exhibit 1



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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April 14, 2023

Mr. Richard Hood Willis, Esquire
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Mr. Derek Devere Tarver, Esquire
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Mr. John Gwilym Tamasitis, Esquire
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Ms. Ruth Ann Levy, Esquire
1230 Main Street
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Columbia SC 29201

Re: Denise M. Petersen v. DCTCL, L.P.
Appellate Case No. 2022-000938

Dear Counsel:

The Court issued an order dated February 2, 2023 holding this appeal in abeyance pending execution of a settlement agreement and proposed dismissal of the appeal. A status update is needed within 10 days from the date of this letter or this appeal will be dismissed.

Very truly yours,


CLERK

cc: Patrick J. McDonald, Esquire
Jessica Wilds Stratta, Esquire
Michael A. Timbes, Esquire
Jesse A. Kirchner, Esquire
Sarah D. Baum, Esquire
Thomas Happel Scurry, Esquire

Exhibit 2

April 24, 2023

VIA E-MAIL ONLY

The Honorable V. Claire Allen
Chief Deputy Clerk of Court
South Carolina Court of Appeals
ctappfilings@sccourts.org

RECEIVED
Apr 24 2023
SC Court of Appeals

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

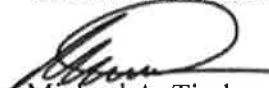
Dear Ms. Allen:

I write on behalf of Respondent Denise M. Petersen in reply to the Court's letter of April 14, 2023 seeking a status update as to the parties' settlement efforts in the above matter.

Plaintiff has reached an agreement in principle with Appellant TAMKO, which agreement also contemplates a resolution of matters in controversy between TAMKO and Donnix. Plaintiff has executed the settlement agreement, which she desires to consummate. However, we are presently awaiting word from TAMKO and Donnix as to the status of resolving their claims as part of that agreement.

Very truly yours,

THURMOND KIRCHNER & TIMBES, P.A.



Michael A. Timbes
michael@tktlawyers.com

MAT/src

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Benjamin Culbertson, Circuit Court Judge

Case No. 2021-CP-10-01973

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 Whom

Donnix Construction, LLC, isRespondent,

And

TAMKO Building Products, LLC isAppellant.

PROOF OF SERVICE

The undersigned employee of the law offices of Williams Mullen, attorneys for Appellant TAMKO Building Products, LLC, does hereby certify that service of the Motion to Reinstate 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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-and-

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*Attorneys for Appellant TAMKO
Building Products, LLC*

April 28, 2023

Columbia, South Carolina

WILLIAMS MULLEN

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April 28, 2023

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SC Court of Appeals

VIA U.S. MAIL & EMAIL

The Honorable V. Claire Allen
Chief Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

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

Dear Ms. Allen:

Please find enclosed Appellants' Motion to Reinstate in connection with the above-referenced matter. Kindly please file the same and return a clocked-in copy to my office via e-mail. This firm's check in the amount of \$50.00 for the associated filing fee will be mailed to your office.

The enclosed documents have been served upon counsel today via electronic mail as indicated in the Proof of Service.

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

Sincerely,



Ruth A. Levy

*Counsel for Defendant-Appellant
TAMKO Building Products*

RAL/kmr

Enclosure: As referenced.

Cc: All Counsel via E-Mail w/ enclosure