

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-001719

Margaret A. Eberly and Barbara J. Pavelik,..... Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.;
Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction
Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.' Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC, Defendants,

Of which D.R. Horton, Inc. is the..... Petitioner,

And

Hutton's Landscapes, Inc., Lather Construction SC, Inc., and Lather
Construction, Inc. are the Respondents.

APPENDIX

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702629

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629
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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Margaret A. Eberly and Barbara J. Pavelik;

Case No.: 2019-CP-07-02629

Plaintiffs,

v.

Advanced Flooring & Design Division of
ISI, LLC; Archer Exteriors, Inc.; Crossroads
Enterprises, LLC; D.R. Horton, Inc.; East
Coast Construction Cleanup Corp.; Hutton's
Landscapes, Inc.; Lather Construction SC,
Inc.; Lather Construction, Inc.; Professional
Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim
Construction, LLC;

**DEFENDANT D.R. HORTON, INC.'S
MOTION TO ALTER AND AMEND
JUDGMENT**

Defendants.

COMES NOW, Defendant D.R. Horton, Inc. ("D.R. Horton"), pursuant to Rules 52, 59 and all other applicable rules of the South Carolina Rules of Civil ("SCRCP"), hereby move this Court to alter or amend the judgment entered pursuant to this Court's Form 4 Order dated March 11, 2022, showing this honorable Court as follows:

In Defendant D.R. Horton's Answer to Amended Complaint and Crossclaims, D.R. Horton brought the following claims against the subcontractor Defendants including Defendant Hutton's Landscapes, Inc. ("Hutton's") and Defendants Lather Construction, Inc. and Lather Construction, SC, Inc. (collectively referred to as "Lather"): contractual indemnification, equitable indemnification, breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross/negligence/recklessness. Hutton's filed a Motion for Summary Judgment on D.R. Horton's Cross-Claims (the "Motion for Summary Judgment" or the "Motion") for equitable and contractual indemnity on December 9, 2021. Lather joined Hutton's Motion for Summary

Judgment on January 3, 2022. A hearing was held on March 3, 2022. At the hearing, the arguments made by Hutton's and Lather were limited to D.R. Horton's claims of contractual and equitable indemnification. Neither Hutton's nor Lather argued that they were entitled to summary judgment on D.R. Horton's Cross-Claims of breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness.

Pursuant to a Form 4 Order dated March 11, 2022, the Court granted Hutton's motion and Lather's joinder in Hutton's motion. (A copy of the Order is attached hereto as Exhibit A). The Order provides, in relevant part, as follows: "Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted." *See* Exhibit A. The Order does not include the basis for the Court's ruling, or the evidence considered. Additionally, the Order does not specify whether the Court has granted summary judgment as to all of D.R. Horton's Cross-Claims, (*i.e.*, including the claims of breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness) or solely the claims of contractual and equitable indemnification.

The Supreme Court of South Carolina has noted that while relevant findings and conclusions of law are not always required, "it is better practice—and in most cases common practice—as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order granting summary judgment." Woodson v. DLI Props., LLC, 406 S.C. 517, 753 S.E.2d 428 (S.C. 2014). However, a "form order may be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal." Porter v. Labor Depot, 372 S.C. 560, 568, 643 S.E.2d 96, 100 (S.C. Ct. App. 2007). *See also* Easterling v. Burger King Corp., 416 S.C. 437, 786 S.E.2d 443 (S.C. Ct. App. 2016).

In the present case, neither the Form 4 Order nor the record on appeal would be sufficient for meaningful appellate review of the Court's granting of Hutton's Motion for Summary Judgment and Lather's joinder in Hutton's Motion. Moreover, it is unclear whether the Order granted summary judgment only as to D.R. Horton's Cross-Claims of contractual and equitable indemnification or all of D.R. Horton's cross-claims against Hutton's and Lather. Therefore, based on the foregoing, D.R. Horton requests that the Court alter and amend its Form 4 Order and enter an order which details the Court's relevant findings of fact and conclusions of law. D.R. Horton also requests that the Court specify which of D.R. Horton's Cross-Claims are included in the Order.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ John T. Crawford, Jr.

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March 18, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Margaret A. Eberly and Barbara J. Pavelik;
Plaintiffs,

vs.

Advanced Flooring & Design Division of ISI,
LLC et. al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-07-02629

**ORDER DENYING DEFENDANT D.R.
HORTON, INC'S MOTION TO ALTER
OR AMEND JUDGMENT**

The Defendant D.R. Horton, Inc. filed a motion asking this Court to reconsider its March 11, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s motion, the Court hereby DENIES Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton’s Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy to them in the United States Mail, postage prepaid, on April 11, 2022, addressed as follows:

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Benjamin A.C. Traywick, Esquire
Ben Traywick Law Firm, LLC
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Charleston, South Carolina 29401

Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, South Carolina 29901

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)

John T. Crawford, Jr. (S.C. Bar No. 69682)

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Attorneys for Appellant

April 11, 2022

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Margaret A. Eberly and Barbara J. Pavelik;
Plaintiffs,

vs.

Advanced Flooring & Design Division of ISI,
LLC et. al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-07-02629

**ORDER DENYING DEFENDANT D.R.
HORTON, INC'S MOTION TO ALTER
OR AMEND JUDGMENT**

The Defendant D.R. Horton, Inc. filed a motion asking this Court to reconsider its March 11, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

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of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s motion, the Court hereby DENIES Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
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IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702629

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

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E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

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Certificate of Electronic Notification

Recipients

James Elliott - Notification transmitted on 04-11-2022 01:15:43 PM.

Benjamin Traywick - Notification transmitted on 04-11-2022 01:15:45 PM.

Thomas Dudley - Notification transmitted on 04-11-2022 01:15:46 PM.

Stacey Canaday - Notification transmitted on 04-11-2022 01:15:44 PM.

Emily Lucey - Notification transmitted on 04-11-2022 01:15:44 PM.

Clarke DuBose - Notification transmitted on 04-11-2022 01:15:44 PM.

Megan White - Notification transmitted on 04-11-2022 01:15:46 PM.

Scott Winograd - Notification transmitted on 04-11-2022 01:15:46 PM.

Alexandra Williams - Notification transmitted on 04-11-2022 01:15:45 PM.

Brent Boyd - Notification transmitted on 04-11-2022 01:15:42 PM.

Jeffrey Ross - Notification transmitted on 04-11-2022 01:15:45 PM.

Philip Cristaldi - Notification transmitted on 04-11-2022 01:15:44 PM.

Francis Grimball - Notification transmitted on 04-11-2022 01:15:46 PM.

John Crawford - Notification transmitted on 04-11-2022 01:15:43 PM.

Jason Imhoff - Notification transmitted on 04-11-2022 01:15:43 PM.

Michael Leech - Notification transmitted on 04-11-2022 01:15:45 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP0702629

Official File Stamp: 04-11-2022 01:15:27 PM

Court: CIRCUIT COURT

Common Pleas

Beaufort

Case Caption:

Margaret A Eberly , plaintiff, et al VS Advanced
Flooring & Design Division Of Isi Llc , defendant,
et al

Document(s) Submitted:

Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of:

Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Megan Christine White for Huttons Landscapes
Inc

Thomas Elihue Dudley, III for D R Horton Inc

Scott Harris Winograd for Lather Construction Inc,
Lather Construction Sc Inc

Jason Michael Imhoff for D R Horton Inc

Stacey Patterson Canaday for Valim Construction
Llc

Clarke W. DuBose for Professional Drywall &
Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast
Construction Cleanup Corp.

Brent Morris Boyd for Professional Drywall &
Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret
A Eberly et al

Francis Heyward Grimball for Archer Exteriors Inc

James H. Elliott, Jr. for Archer Exteriors Inc

Alexandra Scott Williams for Margaret A Eberly et
al

Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction
Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather
Construction Sc Inc

**The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:**

From: [Stephanie Simpson](#)
To: [Court Of Appeals Filings](#)
Cc: [Jason Imhoff](#); [John Crawford](#); [Tom Dudley](#); [Alexandra Williams](#); [Amanda K. Dudgeon](#); [B. Boyd](#); [B. Wilson](#); [Ben Traywick](#); [bmyers@rclawsc.com](#); [Cappy Trawick](#); [Carmen Williams](#); [Clark Dubose](#); [Emily Lucey](#); [Emily Seelig](#); [ewelk@rclawsc.com](#); [Heyward Grimball](#); [Jason Imhoff](#); [jelliott@richardsonplowden.com](#); [Joanna Brooks Stroud](#); [John "JD" Elliott](#); [jross@rclawsc.com](#); [Kelly Nix](#); [M. Leech](#); [Marcy Mayden](#); [Megan Taylor](#); [Megan White](#); [Morgan Reeves](#); [pcristaldi@rclawsc.com](#); [Scott H. Winograd](#); [Sharon Hughes](#); [Stacey P. Canaday](#); [Teresa Cassaro](#); [Thomas Holloway](#); ["twalker@clawsonandstaubes.com"](#)
Subject: Eberly v. D.R. Horton, Inc. - Case No. 2022-00469
Date: Thursday, April 28, 2022 1:40:31 PM
Attachments: [image.png](#)
[Appeals Clerk \[REDACTED\] 4-28-22.pdf](#)
[Amended Notice of Appeal.pdf](#)
[Order Denying Petition for Writ of Habeas Corpus \[REDACTED\] 4-28-22.pdf](#)
[Order Granting Motion to Dismiss \[REDACTED\] 4-28-22.pdf](#)

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Attached please find correspondence concerning a scrivener's error and an Amended Notice of Appeal and Proof of Service for filing in the above-referenced matter.

We respectfully request a file-marked copy by email at your earliest convenience.

Thank you for your kind assistance in this matter. If you have any questions, please do not hesitate to contact us.

With kind regards,



Stephanie Shell Simpson
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
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This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kenison, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.

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Apr 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

AMENDED NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton’s Landscapes, Inc filed on March 11, 2022, as well as the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
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*Attorneys for Respondents Lather
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SC, Inc.*

RECEIVED

Apr 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy to them in the United States Mail, postage prepaid, on April 28, 2022, addressed as follows:

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Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
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s/ Jason M. Imhoff

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April 28, 2022

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April 28, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
Apr 28 2022
SC Court of Appeals

Re: *Margaret Eberly v. D.R. Horton, Inc.*
Appellate Case No. 2022-000469

Dear Ms. Kitchings:

I spoke with Shelby Spencer in your office yesterday regarding a scrivener's error in Appellate's Notice of Appeal filed on April 11, 2022. In that Notice of Appeal, we inadvertently listed Plaintiffs as the Respondents. The *correct* Respondents are Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc.

Accordingly, we are filing the attached Amended Notice of Appeal to resolve the error and correctly state Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc. as Respondents.

Thank you for your kind assistance in this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

Stephanie Simpson

Paralegal to Jason M. Imhoff

Attachment

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Page | 2
April 28, 2022

cc(w/attach) via electronic mail: Emily Gifford Lucey, Esquire
Megan C. White, Esquire
Jeffrey A. Ross, Esquire
Philip P. Cristaldi, III, Esquire
And All Counsel of Record

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702629

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.


Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .



APR 13 2022
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Margaret A. Eberly and Barbara J. Pavelik;
Plaintiffs,

vs.

Advanced Flooring & Design Division of ISI,
LLC et. al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-07-02629

**ORDER DENYING DEFENDANT D.R.
HORTON, INC'S MOTION TO ALTER
OR AMEND JUDGMENT**

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APR 13 2022

SC Court of Appeals

The Defendant D.R. Horton, Inc. filed a motion asking this Court to reconsider its March 11, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s motion, the Court hereby DENIES Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-24 12:57:44 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 24 2:21 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

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May 11 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000469
CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,

PLAINTIFFS,

versus

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of whom

D.R. Horton, Inc. is

APPELLANT,

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.

RESPONDENTS.

**RESPONDENT HUTTON'S LANDSCAPES, INC.'S
MOTON TO DISMISS APPEAL**

Respondent Hutton’s Landscapes, Inc. (“Hutton’s”) hereby moves for an order dismissing the above-captioned appeal for failure to timely and properly serve a Notice of Appeal naming Hutton’s as a respondent within thirty (30) days after receipt of written notice of entry of the order or judgment as required by Rules 203(b)(1) and 262(c), SCACR. Hutton’s moves for this relief upon the following grounds:

On March 11, 2022, the circuit court issued an order granting summary judgment to Hutton’s and co-defendant, Lather Construction, Inc., on the cross-claims asserted by D.R. Horton, Inc. (“D.R. Horton”). The circuit court issued its order denying D.R. Horton’s motion to alter or amend judgment on March 24, 2022. See Orders attached hereto as Exhibits “A” and “B” respectively. D.R. Horton has acknowledged that it received written notice of the entry of the order denying the motion to alter or amend judgment on March 24, 2022. See Notice of Appeal attached hereto as Exhibit “C.”

Rule 203(b)(1) of the South Carolina Appellate Court Rules requires that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment,” or “[w]hen a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.”

“Service of the notice of appeal is a ‘jurisdictional requirement, and th[e] [c]ourt has no authority to extend or expand the time in which the notice of intent to appeal must be served.’” Camp v. Camp, 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010) (quoting Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)). Based upon the circuit

court's issuance of its order denying D.R. Horton's motion to alter or amend judgment on March 24, 2022 and D.R. Horton's receipt of written notice of such order on the same day, any notice of appeal was required to be served upon Hutton's naming it as a respondent no later than April 25, 2022 for this Court to have appellate jurisdiction to consider the appeal.

Furthermore, Rule 262(c) provides that service under the Appellate Court Rules is to be made upon the attorney if the party is represented by an attorney and prescribes three methods of service. First, service under Rule 262(c) may be made by delivering a copy of the document upon the attorney by either handing it to the attorney or leaving it at the office of that person with a clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. See Rule 262(c)(1).

Second, service under Rule 262(c) may be made by "depositing a copy in the U.S. mail, properly addressed to the person at that person's last known address with sufficient first class postage attached." See Rule 262(c)(2).

Finally, service may be made under Rule 262(c)(3) "by electronic means in a manner provided by order of the Supreme Court of South Carolina." The Supreme Court issued an order on August 25, 2021, which was in effect for the relevant time periods of this appeal, establishing the method for the electronic service of documents in the appellate courts. Paragraph (d)(1) of this August 25, 2021 order provided that "[a] lawyer admitted to practice law in South Carolina may serve a document on another lawyer

admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document." See Supreme Court's August 25, 2021 Order, ¶ (d)(1), a copy of which is attached hereto as Exhibit "D."

D.R. Horton filed a Notice of Appeal on April 11, 2022 which named only Plaintiffs Margaret A. Eberly and Barbara J. Pavelik as respondents to the appeal. The Notice of Appeal listed the only other counsel of record as the Plaintiffs' attorneys. The Proof of Service to the Notice of Appeal stated that service was accomplished by depositing a copy of the Notice of Appeal in the United States Mail to the Plaintiffs' attorneys, Alexandra S. Williams and Benjamin A.C. Traywick of the Ben Traywick Law Firm, LLC, on April 11, 2022. This Notice of Appeal was not served upon any other attorneys of record in the case via the three methods authorized for service under Rule 262(c). See Notice of Appeal attached hereto as Exhibit "C."

Therefore, Hutton's was not named as a respondent to the appeal by D.R. Horton in its Notice of Appeal filed on April 11, 2022. Counsel for Hutton's was also not served by April 25, 2022, the last day of the thirty (30) day time period for service of the notice of appeal, with a copy of a Notice of Appeal naming Hutton's as a respondent by either hand delivery, U.S. Mail, or via service by D.R. Horton's attorneys by using the primary e-mail addresses listed in the Attorney Information System (AIS) for Hutton's attorneys of record.

On April 28, 2022, three days after the expiration of the thirty (30) day time period for service of the notice of appeal, D.R. Horton served an Amended Notice of

Appeal upon counsel for Hutton's via U.S. Mail which now named Hutton's, along with Lather Construction SC., Inc. and Lather Construction, Inc., as respondents. See Amended Notice of Appeal, attached as Exhibit "E" hereto. In the cover letter to this Court, counsel for D.R. Horton described its failure to initially name Hutton's, Lather Construction SC, Inc., and Lather Construction, Inc. as respondents to the appeal as a "scrivener's error." See April 28, 2022 Letter, attached hereto as Exhibit "F."

D.R. Horton's failure to name Hutton's as a respondent to the appeal and its corresponding failure to serve counsel for Hutton's with a Notice of Appeal naming Hutton's as a respondent within the thirty (30) day time period set forth under Rule 203(b)(1) and pursuant to the methods of service prescribed in Rule 262(c) is not a mere scrivener's error, but rather a failure of D.R. Horton to perfect its appeal against Hutton's in accordance with the requirements of the Appellate Court Rules.

A notice of appeal must be timely served because service of the notice of appeal is jurisdictional and therefore, the appellate court cannot extend the time for serving the notice of appeal. See Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) ("[The Supreme Court] has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and [the appellate court] has no authority to extend or expand the time in which the Notice of Appeal must be served."); see also Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended" (emphasis added)).

The notice of appeal must also be properly served upon the parties because the appellate court also cannot waive procedural defects in serving the notice. The failure of

a party to comply with the procedural requirements for perfecting an appeal deprives the court of appellate jurisdiction over the case. Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 82 n.5, 529 S.E.2d 6, 7 n.5 (2000); see also State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (holding the failure of a party to comply with the procedural requirements for perfecting an appeal from the magistrate's court deprived the circuit court of appellate jurisdiction over the case).

The Supreme Court has also held that an appeal against two defendants was required to be dismissed when the two defendants were not served with a notice of appeal naming them as respondents within the thirty (30) day time period prescribed by Rule 203(b)(1). Conner v. City of Forest Acres, 348 S.C. 454, 460–62, 560 S.E.2d 606, 609–10 (2002).

The last day for D.R. Horton to have served the Notice of Appeal upon Hutton's pursuant to the authorized methods for service under Rule 262(c) naming Hutton's as a respondent was April 25, 2022. D.R. Horton did not timely or properly serve a Notice of Appeal naming Hutton's as a respondent until April 28, 2022 – three days too late to confer appellate jurisdiction upon this Court. As such, this Court “lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party [here, D.R. Horton] by extending or ignoring the deadline for service of the notice.” Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

For the reasons set forth herein, Respondent Hutton's Landscapes, Inc. therefore respectfully requests this Court to dismiss the appeal of Appellant D.R. Horton, Inc. for lack of appellate jurisdiction due to the untimely and improper service of the Notice of Appeal.

Respectfully submitted,

/s Carmen V. Ganjehsani

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**ATTORNEYS FOR RESPONDENT
HUTTON'S LANDSCAPES, INC.**

May 11, 2022.

EXHIBIT “A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702629

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .

RECEIVED

APR 13 2022

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

EXHIBIT “B”

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Margaret A. Eberly and Barbara J. Pavelik;
Plaintiffs,

vs.

Advanced Flooring & Design Division of ISI,
LLC et. al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-07-02629

**ORDER DENYING DEFENDANT D.R.
HORTON, INC'S MOTION TO ALTER
OR AMEND JUDGMENT**

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SC Court of Appeals

The Defendant D.R. Horton, Inc. filed a motion asking this Court to reconsider its March 11, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent “highly unusual circumstances.” U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or “to raise argument or present evidence that could have been presented prior to the entry of judgment.” Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) (“Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.”).

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s motion, the Court hereby DENIES Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-24 12:57:44 page 3 of 3

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EXHIBIT “C”

916021

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APR 13 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
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Other Counsel of Record:

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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APR 13 2022

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy to them in the United States Mail, postage prepaid, on April 11, 2022, addressed as follows:

Alexandra S. Williams, Esquire
Benjamin A.C. Traywick, Esquire
Ben Traywick Law Firm, LLC
171 Church Street, Ste. 340
Charleston, South Carolina 29401

Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, South Carolina 29901

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
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Attorneys for Appellant

April 11, 2022



**KENISON, DUDLEY
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ATTORNEYS AT LAW

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imhoff@conlaw.com

April 11, 2022

RECEIVED

APR 13 2022

SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

**Re: Margaret A. Eberly & Barbara J. Pavelik, Respondents v. D.R. Horton, Inc.,
Appellant
Beaufort County Case No. 2019-CP-07-02629**

Dear Ms. Kitchings:

Enclosed please find the following for filing in the above-referenced matter:

1. Original and two copies of the Notice of Appeal;
2. Original and two copies of Proof of Service of the Notice of Appeal on the Respondents and the Clerk of Court for Beaufort County;
3. Copy of the Orders which are challenged on appeal; and
4. Filing fee of \$250.00.

Please return the file-marked copies to me in the enclosed self-addressed stamped envelope.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

Jason M. Imhoff

Jason M. Imhoff

Enclosures

cc(w/encl.): Alexandra S. Williams, Esquire
Benjamin A.C. Traywick, Esquire

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US POSTAGE  FIRST CLASS
ZIP 29601 \$ 001.96⁰
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KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW
704 East Miller Avenue • Greer, SC, South Carolina 29601

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APR 13 2022
SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

EXHIBIT “D”

Court News ...

2021-08-25-02

The Supreme Court of South Carolina

RE: Methods of Electronic Filing and Service Under Rule 262 of
the South Carolina Appellate Court Rules

Appellate Case No. 2020-000447

ORDER

(a) Purpose. Pursuant to Rule 262(a)(3) and (c)(3) of the South Carolina Appellate Court Rules (SCACR), this Court may by order establish methods for the electronic filing and service of documents. Since the Order Relating to the Operation of the Appellate Courts during the Coronavirus Emergency has been rescinded, including the electronic methods of filing and service provided for by that order, the purpose of this order is to specify the permissible methods of electronic filing and service under Rule 262, SCACR. For the purpose of this order, "Appellate Court" means the Supreme Court of South Carolina or the South Carolina Court of Appeals.

(b) Electronic Methods of Filing. Filings with an appellate court may be made electronically using the methods listed below.

(1) Electronic Filing by Lawyers. Lawyers who are licensed to practice law in South Carolina may utilize OneDrive for Business to electronically submit documents for filing with the Supreme Court and the Court of Appeals, and *lawyers are strongly encouraged to use this method of filing.* More information about this method, including registration and filing instructions, is available in the Attorney Information System (<https://ais.sccourts.org/AIS>) under the tab "Appellate Filings."

(2) Filing by E-mail. Filings may be made by e-mail. For the Supreme Court, the e-mail shall be sent to suptctfilings@sccourts.org; for the Court of Appeals, the e-mail shall be sent to ctappfilings@sccourts.org. This method may not be suitable for large documents, and if it becomes necessary to split a document into multiple parts, the e-mail shall identify the part being sent (i.e., Record on Appeal, Part 1 of 4). A document filed by this method must be in an Adobe Acrobat file format (.pdf).

(3) Faxing Documents. A document may be filed by an electronically transmitted facsimile copy. The fax number for the Supreme Court is 803-734-1499. The fax number of the Court of Appeals is 803-734-1839. While this method is well suited for relatively small documents, depending primarily upon the limitations of the sending fax machine, it may not be possible to send large documents, such as a record on appeal, in a single transmission. If it becomes necessary to split a document into multiple parts to make the fax transmission, a separate cover sheet should be used on each part to identify the document (i.e., Brief of Appellant, Part 1 of 4). In the event, the facsimile copy is not sufficiently legible, the clerk of the appellate court may require the party to provide a copy by mail.

(c) Filing Date and Payment of Fees for Documents Filed Electronically. When filed using one of the methods specified in (b) above, a document transmitted and received by 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. If a filing fee is required for the document, a check or money order for the fee must be mailed or delivered to the appellate court within five (5) days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order.

(d) Electronic Service Using AIS E-mail Address.

(1) Service on Another Lawyer. A lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.¹

(2) Service by an Appellate Court. An appellate court may send an order, opinion or other correspondence to a person admitted to practice law in South Carolina using that lawyer's primary e-mail address in AIS.

(3) Service on Persons Admitted Pro Hac Vice. For attorneys admitted pro hac vice under Rule 404, SCACR, service on the associated South Carolina lawyer using an electronic method permitted by this order shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

This order is effective immediately.

s/Donald W. Beatty_____C.J.

s/John W. Kittredge_____J.

s/Kaye G. Hearn_____J.

s/John Cannon Few_____J.

s/George C. James, Jr._____J.

Columbia, South Carolina
August 25, 2021

¹ The primary AIS e-mail address for lawyers admitted to practice in South Carolina may be obtained using the search function at <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. Lawyers may update their AIS information at <https://ais.sccourts.org/AIS>.

EXHIBIT “E”

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

AMENDED NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton’s Landscapes, Inc filed on March 11, 2022, as well as the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy to them in the United States Mail, postage prepaid, on April 28, 2022, addressed as follows:

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Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, South Carolina 29901

s/ Jason M. Imhoff

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John T. Crawford, Jr. (S.C. Bar No. 69682)
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Attorneys for Appellant

April 28, 2022

EXHIBIT “F”

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April 28, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Margaret Eberly v. D.R. Horton, Inc.*
Appellate Case No. 2022-000469

Dear Ms. Kitchings:

I spoke with Shelby Spencer in your office yesterday regarding a scrivener's error in Appellate's Notice of Appeal filed on April 11, 2022. In that Notice of Appeal, we inadvertently listed Plaintiffs as the Respondents. The *correct* Respondents are Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc.

Accordingly, we are filing the attached Amended Notice of Appeal to resolve the error and correctly state Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc. as Respondents.

Thank you for your kind assistance in this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

Stephanie Simpson

Paralegal to Jason M. Imhoff

Attachment

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Page | 2
April 28, 2022

cc(w/attach) via electronic mail: Emily Gifford Lucey, Esquire
Megan C. White, Esquire
Jeffrey A. Ross, Esquire
Philip P. Cristaldi, III, Esquire
And All Counsel of Record

RECEIVED

May 11 2022

SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent Hutton's Landscapes, Inc., do hereby certify that I have this date served the foregoing Motion to Dismiss Appeal, dated May 11, 2022, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated May 6, 2022, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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John T. Crawford, Jr.
Thomas E. Dudley, III
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Carl F. Muller
CARL F. MULLER,
ATTORNEY-AT-LAW, P.A.
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carl@carlmullerlaw.com
**ATTORNEYS FOR APPELLANT
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Scott H. Winograd
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pcristaldi@rclawsc.com
swinograd@rclawsc.com
**ATTORNEYS FOR LATHER
CONSTRUCTION, INC. AND
LATHER CONSTRUCTION SC, INC.**

A copy of the sent email is enclosed with this Certificate of Service.

/s Carmen V. Ganjehsani
Carmen V. Ganjehsani, S.C. Bar No. 73515
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street (29201)
Post Office Drawer 7788
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(803) 771-4400
cganjehsani@richardsonplowden.com
**ATTORNEYS FOR RESPONDENT
HUTTON'S LANDSCAPES, INC.**


Dated: May 11, 2022.

Carmen Ganjehsani

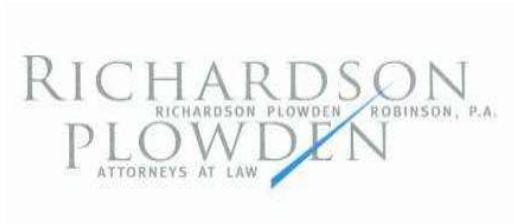
From: Carmen Ganjehsani
Sent: Wednesday, May 11, 2022 12:39 PM
To: imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; jross@rclawsc.com; pcrystal@rclawsc.com; swinograd@rclawsc.com
Cc: Emily Gifford Lucey; Megan White; Emily Seelig; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams; Kay Kelly; Erin Welk; Benjamin Traywick; Lin McDougall; Tom Bacon; Hope Grate (HGrate@RichardsonPlowden.com)
Subject: 2022-000469 Eberly v. D.R. Horton
Attachments: 2022-000469 Eberly v. D.R. Horton (Not of Appearance Ganjehsani).pdf; 2022-000469 Eberly v. D.R. Horton (Ltr re Mtn to Dismiss by Hutton's Landscapes).pdf; 2022-000469 Eberly v. D.R. Horton (Mtn to Dismiss Appeal by Hutton's Landscapes).pdf

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you the Notice of Appearance and Motion to Dismiss Appeal filed on behalf of Respondents Hutton's Landscapes, Inc. in the above-referenced appeal.

Thank you,
Carmen Ganjehsani

HOME	VCARD	LOCATION
	<p>Carmen V. Ganjehsani Shareholder Cganjehsani@RichardsonPlowden.com</p>	<p>Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.253.8692 Fax: 803.779.0016 www.RichardsonPlowden.com</p>

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1900 Barnwell St., Columbia, SC 29201 **P** 803-771-4400 **F** 803-779-0016

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2103 Farlow St., Suite B, Myrtle Beach, SC 29577 **P** 843-448-1008 **F** 843-448-1533

CHARLESTON P.O. Box 21203 • Charleston, SC 29413
235 Magrath Darby Blvd., Mount Pleasant, SC 29464 **P** 843-805-6550 **F** 843-805-6599

www.RichardsonPlowden.com

REPLY TO: Columbia
E-Mail: cganjehsani@richardsonplowden.com
Direct Dial: (803) 253-8692

May 11, 2022

Via hand delivery and e-mail (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
May 11 2022
SC Court of Appeals

Re: Margaret Eberly v. D.R. Horton, Inc.
Appellate Case No. 2022-000469
RPR File No.: 007534-49

Dear Ms. Kitchings:

Enclosed for filing is the Motion to Dismiss Appeal on behalf of Respondent Hutton's Landscapes, Inc. in the above-referenced case, along with our Certificate of Service. We are also filing this Motion electronically with the Court of Appeals via e-mail at ctappfilings@sccourts.org pursuant to Section (b)(2) of the Supreme Court's May 6, 2022 Order.

Also enclosed is our firm's check in the amount of \$50.00 for the filing fee in this matter.

We have served this Motion to Dismiss Appeal on counsel of record in the appeal upon their primary email addresses listed in the Attorney Information System.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,

/s Carmen V. Ganjehsani

Carmen V. Ganjehsani

Encs.

The Honorable Jenny Abbott Kitchings
May 11, 2022
Page 2

cc: Jason Imhoff (jmhoff@conlaw.com)
John T. Crawford, Jr. (crawford@conlaw.com)
Thomas E. Dudley, III (dudley@conlaw.com)
Carl F. Muller (carl@carlmullerlaw.com)
Jeffrey A. Ross (jross@rclawsc.com)
Philip P. Cristaldi, III (pcristaldi@rclawsc.com)
Scott H. Winograd (swinograd@rclawsc.com)
Emily Gifford Lucey (egiffordlucey@richardsonplowden.com)
Megan C. White (mwhite@richardsonplowden.com)

RECEIVED

May 12 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000469
CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,

PLAINTIFFS,

versus

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather
Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of whom

D.R. Horton, Inc. is

APPELLANT,

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.

RESPONDENTS.

**RESPONDENTS LATHER CONSTRUCTION, INC., AND
LATHER CONSTRUCTION, SC, INC.'S MOTION TO
DISMISS APPEAL**

Respondents Lather Construction, Inc., and Lather Construction, SC, Inc.’s (hereinafter collectively referred to as “Lather”) hereby move for an order dismissing the above-captioned appeal for failure to timely and properly serve a Notice of Appeal naming Lather as respondents within thirty (30) days after receipt of written notice of entry of the order or judgment as required by Rules 203(b)(1) and 262(c), SCACR. Lather moves for this relief upon the following grounds:

On March 11, 2022, the circuit court issued an order granting summary judgment to Lather and co-defendant, Hutton’s Landscapes, Inc. (“Hutton’s”), on the cross-claims asserted by D.R. Horton, Inc. (“D.R. Horton”). The circuit court issued its order denying D.R. Horton’s motion to alter or amend judgment on March 24, 2022. See Orders attached hereto as Exhibits “A” and “B” respectively. D.R. Horton has acknowledged that it received written notice of the entry of the order denying the motion to alter or amend judgment on March 24, 2022. See Notice of Appeal attached hereto as Exhibit “C.”

Rule 203(b)(1) of the South Carolina Appellate Court Rules requires that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment,” or “[w]hen a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.”

“Service of the notice of appeal is a ‘jurisdictional requirement, and th[e] [c]ourt has no authority to extend or expand the time in which the notice of intent to appeal must be served.’” Camp v. Camp, 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010) (quoting Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)). Based upon the circuit court’s issuance of its

order denying D.R. Horton's motion to alter or amend judgment on March 24, 2022 and D.R. Horton's receipt of written notice of such order on the same day, any notice of appeal was required to be served upon Lather naming it as respondents no later than April 25, 2022 for this Court to have appellate jurisdiction to consider the appeal.

Furthermore, Rule 262(c) provides that service under the Appellate Court Rules is to be made upon the attorney if the party is represented by an attorney and prescribes three methods of service. First, service under Rule 262(c) may be made by delivering a copy of the document upon the attorney by either handing it to the attorney or leaving it at the office of that person with a clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. See Rule 262(c)(1).

Second, service under Rule 262(c) may be made by "depositing a copy in the U.S. mail, properly addressed to the person at that person's last known address with sufficient first-class postage attached." See Rule 262(c)(2).

Finally, service may be made under Rule 262(c)(3) "by electronic means in a manner provided by order of the Supreme Court of South Carolina." The Supreme Court issued an order on August 25, 2021, which was in effect for the relevant time periods of this appeal, establishing the method for the electronic service of documents in the appellate courts. Paragraph (d)(1) of this August 25, 2021 order provided that "[a] lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document." See Supreme Court's

August 25, 2021, Order, ¶ (d)(1), a copy of which is attached hereto as Exhibit “D.”

D.R. Horton filed a Notice of Appeal on April 11, 2022, which named only Plaintiffs Margaret A. Eberly and Barbara J. Pavelik as respondents to the appeal. The Notice of Appeal listed the only other counsel of record as the Plaintiffs’ attorneys. The Proof of Service to the Notice of Appeal stated that service was accomplished by depositing a copy of the Notice of Appeal in the United States Mail to the Plaintiffs’ attorneys, Alexandra S. Williams and Benjamin A.C. Traywick of the Ben Traywick Law Firm, LLC, on April 11, 2022. This Notice of Appeal was not served upon any other attorneys of record in the case via the three methods authorized for service under Rule 262(c). See Notice of Appeal attached hereto as Exhibit “C.”

Therefore, Lather was not named as respondents to the appeal by D.R. Horton in its Notice of Appeal filed on April 11, 2022. Counsel for Lather was also not served by April 25, 2022, the last day of the thirty (30) day time period for service of the notice of appeal, with a copy of a Notice of Appeal naming Lather as respondents by either hand delivery, U.S. Mail, or via service by D.R. Horton’s attorneys by using the primary e-mail addresses listed in the Attorney Information System (AIS) for Lather attorneys of record.

On April 28, 2022, three days after the expiration of the thirty (30) day time period for service of the notice of appeal, D.R. Horton served an Amended Notice of Appeal upon counsel for Lather via U.S. Mail which now named Lather, along with Hutton’s, as respondents. See Amended Notice of Appeal, attached as Exhibit “E” hereto. In the cover letter to this Court, counsel for D.R. Horton described its failure to initially name Lather and Hutton’s as respondents to the appeal as a “scrivener’s error.” See April 28, 2022 Letter, attached hereto as Exhibit “F.”

D.R. Horton’s failure to name Lather as respondents to the appeal and its corresponding failure to serve counsel for Lather with a Notice of Appeal naming Lather as respondents within

the thirty (30) day time period set forth under Rule 203(b)(1) and pursuant to the methods of service prescribed in Rule 262(c) is not a mere scrivener's error, but rather a failure of D.R. Horton to perfect its appeal against Lather in accordance with the requirements of the Appellate Court Rules.

A notice of appeal must be timely served because service of the notice of appeal is jurisdictional and therefore, the appellate court cannot extend the time for serving the notice of appeal. See Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (“[The Supreme Court] has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and [the appellate court] has no authority to extend or expand the time in which the Notice of Appeal must be served.”); see also Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended” (emphasis added)).

The notice of appeal must also be properly served upon the parties because the appellate court also cannot waive procedural defects in serving the notice. The failure of a party to comply with the procedural requirements for perfecting an appeal deprives the court of appellate jurisdiction over the case. Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 82 n.5, 529 S.E.2d 6, 7 n.5 (2000); see also State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (holding the failure of a party to comply with the procedural requirements for perfecting an appeal from the magistrate's court deprived the circuit court of appellate jurisdiction over the case).

The Supreme Court has also held that an appeal against two defendants was required to be dismissed when the two defendants were not served with a notice of appeal naming them as respondents within the thirty (30) day time period prescribed by Rule 203(b)(1). Conner v. City

of Forest Acres, 348 S.C. 454, 460–62, 560 S.E.2d 606, 609–10 (2002).

The last day for D.R. Horton to have served the Notice of Appeal upon Lather pursuant to the authorized methods for service under Rule 262(c) naming Lather as respondents was April 25, 2022. D.R. Horton did not timely or properly serve a Notice of Appeal naming Lather as respondents until April 28, 2022 – three days too late to confer appellate jurisdiction upon this Court. As such, this Court “lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party [here, D.R. Horton] by extending or ignoring the deadline for service of the notice.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

For the reasons set forth herein, Respondents Lather Construction, Inc., and Lather Construction, SC, Inc. therefore respectfully requests this Court to dismiss the appeal of Appellant D.R. Horton, Inc. for lack of appellate jurisdiction due to the untimely and improper service of the Notice of Appeal.

Respectfully submitted,

/s Scott H. Winograd

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Scott H. Winograd, Bar No.: 103483

863 Coleman Blvd., Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

swinograd@rclawsc.com

***Attorneys for Lather Construction, Inc. and
Lather Construction SC, Inc.***

Mt. Pleasant, South Carolina

May 12, 2022

EXHIBIT “A”

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702629

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .

RECEIVED
APR 13 2022
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

EXHIBIT “B”

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Margaret A. Eberly and Barbara J. Pavelik;
Plaintiffs,

vs.

Advanced Flooring & Design Division of ISI,
LLC et. al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-07-02629

**ORDER DENYING DEFENDANT D.R.
HORTON, INC'S MOTION TO ALTER
OR AMEND JUDGMENT**

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APR 13 2022

SC Court of Appeals

The Defendant D.R. Horton, Inc. filed a motion asking this Court to reconsider its March 11, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson

¹ Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.")

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s motion, the Court hereby DENIES Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-24 12:57:44 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 24 2:21 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

EXHIBIT “C”

96021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
Kenison, Dudley & Crawford, LLC
704 E. McBee Ave.
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(864) 242-4899
(864) 242-4844 (fax)
imhoff@conlaw.com
crawford@conlaw.com
dudley@conlaw.com
Attorneys for Appellant

Other Counsel of Record:

Alexandra S. Williams (S.C. Bar No. 102862)
Benjamin A.C. Traywick (S.C. Bar No. 74027)
Ben Traywick Law Firm, LLC
171 Church Street, Ste. 340
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ben@bentraywicklaw.com
ali@bentraywicklaw.com
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 13 2022

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy to them in the United States Mail, postage prepaid, on April 11, 2022, addressed as follows:

Alexandra S. Williams, Esquire
Benjamin A.C. Traywick, Esquire
Ben Traywick Law Firm, LLC
171 Church Street, Ste. 340
Charleston, South Carolina 29401

Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, South Carolina 29901

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)

John T. Crawford, Jr. (S.C. Bar No. 69682)

Thomas E. Dudley, III (S.C. Bar No. 66154)

Kenison, Dudley & Crawford, LLC

704 E. McBee Ave.

Greenville, South Carolina 29601

(864) 242-4899

(864) 242-4844 (fax)

imhoff@conlaw.com

crawford@conlaw.com

dudley@conlaw.com

Attorneys for Appellant

April 11, 2022



**KENISON, DUDLEY
& CRAWFORD, LLC**
ATTORNEYS AT LAW

Jason M. Imhoff
Of Counsel
Licensed in SC
704 East McBee Avenue
Greenville, SC 29601
864.242.4899
imhoff@conlaw.com

April 11, 2022

RECEIVED

APR 13 2022

SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

**Re: Margaret A. Eberly & Barbara J. Pavelik, Respondents v. D.R. Horton, Inc.,
Appellant
Beaufort County Case No. 2019-CP-07-02629**

Dear Ms. Kitchings:

Enclosed please find the following for filing in the above-referenced matter:

1. Original and two copies of the Notice of Appeal;
2. Original and two copies of Proof of Service of the Notice of Appeal on the Respondents and the Clerk of Court for Beaufort County;
3. Copy of the Orders which are challenged on appeal; and
4. Filing fee of \$250.00.

Please return the file-marked copies to me in the enclosed self-addressed stamped envelope.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

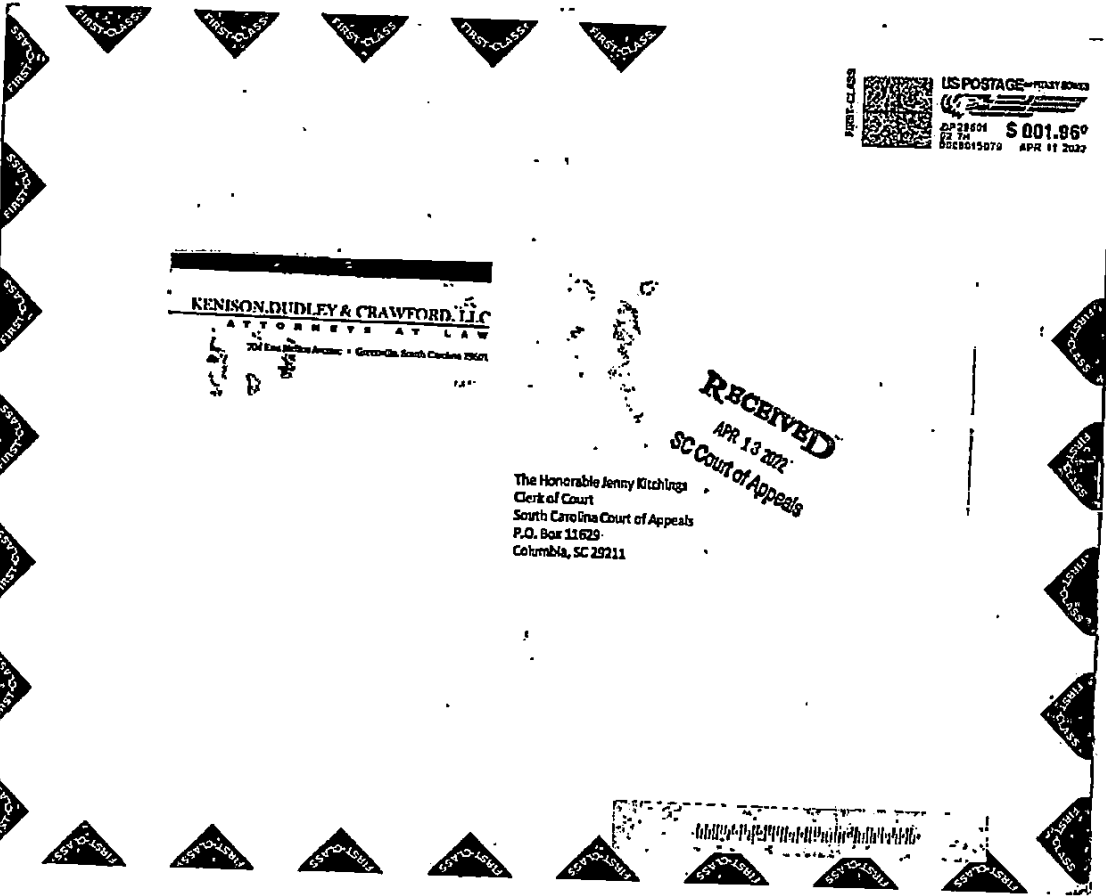
KENISON, DUDLEY & CRAWFORD, LLC

Jason M. Imhoff

Jason M. Imhoff

Enclosures

**cc(w/encl.): Alexandra S. Williams, Esquire
Benjamin A.C. Traywick, Esquire**



KENISON, DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW
704 East Miller Avenue • Georgetown, South Carolina 29601

RECEIVED
APR 13 2012
SC Court of Appeals

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

EXHIBIT “D”

Court News ...

2021-08-25-02

The Supreme Court of South Carolina

RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules

Appellate Case No. 2020-000447

ORDER

(a) Purpose. Pursuant to Rule 262(a)(3) and (c)(3) of the South Carolina Appellate Court Rules (SCACR), this Court may by order establish methods for the electronic filing and service of documents. Since the Order Relating to the Operation of the Appellate Courts during the Coronavirus Emergency has been rescinded, including the electronic methods of filing and service provided for by that order, the purpose of this order is to specify the permissible methods of electronic filing and service under Rule 262, SCACR. For the purpose of this order, "Appellate Court" means the Supreme Court of South Carolina or the South Carolina Court of Appeals.

(b) Electronic Methods of Filing. Filings with an appellate court may be made electronically using the methods listed below.

(1) Electronic Filing by Lawyers. Lawyers who are licensed to practice law in South Carolina may utilize OneDrive for Business to electronically submit documents for filing with the Supreme Court and the Court of Appeals, and *lawyers are strongly encouraged to use this method of filing.* More information about this method, including registration and filing instructions, is available in the Attorney Information System (<https://ais.sccourts.org/AIS>) under the tab "Appellate Filings."

(2) Filing by E-mail. Filings may be made by e-mail. For the Supreme Court, the e-mail shall be sent to suptcfilings@sccourts.org; for the Court of Appeals, the e-mail shall be sent to ctappfilings@sccourts.org. This method may not be suitable for large documents, and if it becomes necessary to split a document into multiple parts, the e-mail shall identify the part being sent (i.e., Record on Appeal, Part 1 of 4). A document filed by this method must be in an Adobe Acrobat file format (.pdf).

(3) Faxing Documents. A document may be filed by an electronically transmitted facsimile copy. The fax number for the Supreme Court is 803-734-1499. The fax number of the Court of Appeals is 803-734-1839. While this method is well suited for relatively small documents, depending primarily upon the limitations of the sending fax machine, it may not be possible to send large documents, such as a record on appeal, in a single transmission. If it becomes necessary to split a document into multiple parts to make the fax transmission, a separate cover sheet should be used on each part to identify the document (i.e., Brief of Appellant, Part 1 of 4). In the event, the facsimile copy is not sufficiently legible, the clerk of the appellate court may require the party to provide a copy by mail.

(c) Filing Date and Payment of Fees for Documents Filed Electronically. When filed using one of the methods specified in (b) above, a document transmitted and received by 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. If a filing fee is required for the document, a check or money order for the fee must be mailed or delivered to the appellate court within five (5) days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order.

(d) Electronic Service Using AIS E-mail Address.

(1) Service on Another Lawyer. A lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.¹

(2) Service by an Appellate Court. An appellate court may send an order, opinion or other correspondence to a person admitted to practice law in South Carolina using that lawyer's primary e-mail address in AIS.

(3) Service on Persons Admitted Pro Hac Vice. For attorneys admitted pro hac vice under Rule 404, SCACR, service on the associated South Carolina lawyer using an electronic method permitted by this order shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

This order is effective immediately.

s/Donald W. Beatty _____ C.J.
s/John W. Kittredge _____ J.
s/Kaye G. Hearn _____ J.
s/John Cannon Few _____ J.
s/George C. James, Jr. _____ J.

Columbia, South Carolina
August 25, 2021

¹ The primary AIS e-mail address for lawyers admitted to practice in South Carolina may be obtained using the search function at <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. Lawyers may update their AIS information at <https://ais.sccourts.org/AIS>.

EXHIBIT “E”

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

AMENDED NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022, as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy to them in the United States Mail, postage prepaid, on April 28, 2022, addressed as follows:

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Hon. Jerri Ann Roseneau
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s/ Jason M. Imhoff

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Attorneys for Appellant

April 28, 2022

EXHIBIT “F”



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April 28, 2022

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Margaret Eberly v. D.R. Horton, Inc.*
Appellate Case No. 2022-000469

Dear Ms. Kitchings:

I spoke with Shelby Spencer in your office yesterday regarding a scrivener's error in Appellate's Notice of Appeal filed on April 11, 2022. In that Notice of Appeal, we inadvertently listed Plaintiffs as the Respondents. The *correct* Respondents are Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc.

Accordingly, we are filing the attached Amended Notice of Appeal to resolve the error and correctly state Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc. as Respondents.

Thank you for your kind assistance in this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

Stephanie Simpson

Paralegal to Jason M. Imhoff

Attachment

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Page | 2
April 28, 2022

cc(w/attach) via electronic mail: Emily Gifford Lucey, Esquire
Megan C. White, Esquire
Jeffrey A. Ross, Esquire
Philip P. Cristaldi, III, Esquire
And All Counsel of Record

RECEIVED

May 12 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000469
CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,

PLAINTIFFS,

versus

Advanced Flooring & Design Division of ISI, LLC; Archer
Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather
Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of whom

D.R. Horton, Inc. is

APPELLANT,

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.

RESPONDENTS.

Proof of Service

I certify that I have served Lather Construction, Inc. and Lather Construction, SC, Inc.'s Motion to Dismiss Appeal dated May 12, 2022, by personally serving the same pursuant to Rule 262 (c)(3),

SCACR, and S.C. Supreme Ct. Order dated August 25, 2021 on the following counsel of record using the primary email address listed in the Attorney Information System (if applicable):

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Attorneys for Hutton's Landscapes, Inc.

Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
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A copy of the sent email is enclosed with this Certificate of Service.

s/ Scott H. Winograd
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Construction SC, Inc.***

ROSS & CRISTALDI^{LLC}
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*Admitted in OH, NC, & SC

May 12, 2022

RECEIVED
May 12 2022
SC Court of Appeals

Filed via USPS & email (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Margaret A. Eberly and Barbara J. Pavelik v. DR Horton, Inc.
Appellate Case No.: 2022-000469

Dear Ms. Kitchings:

Enclosed please Respondents Lather Construction, Inc. and Lather Construction SC, Inc.'s Motion to Dismiss Appeal along with supporting exhibits and Certificate of Service for filing. We are also filing this Motion electronically with the Court of Appeals via email pursuant to Section (b)(2) of the Supreme Court's May 6, 2022 Order.

I have also enclosed a check in the amount of \$50.00 for the filing fee. Please return the filed copies to our office in the self-addressed, stamped envelope.

Thank you very much for your attention to the above.

Very truly yours,

Scott H. Winograd

SHW/bm

Enclosures

Cc: Jason Imohoff (jmhoff@conlaw.com)
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RECEIVED

May 23 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price, Circuit Court Judge

APPELLATE CASE NO. 2022-000469
Case No. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,
Plaintiffs /Respondents,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.; Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.; Professional Drywall & Paint Services, LLC; Professional Exteriors II, LLC; and Valim Construction, LLC

Defendants of whom D. R. Horton, Inc. is Appellant,

And

D. R. Horton, Inc.,

Cross-claimant and Appellant,

v.

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc
Cross-defendants and Respondents

APPELLANT D.R. HORTON, INC.'S RESPONSE IN OPPOSITION TO RESPONDENTS,
LATHER CONSTRUCTION, INC., LATHER CONSTRUCTION, SC, INC., AND HUTTON'S
LANDSCAPES, INC., MOTIONS TO DISMISS APPEAL

D. R. Horton, Inc., Appellant, through its undersigned counsel, files this Response In Opposition To Respondents,' Lather Construction, Inc., Lather Construction, SC, Inc., and Hutton's Landscapes, Inc., Motions To Dismiss Appeal. Respondents filed substantially identical motions to dismiss; accordingly, Appellant responds to Hutton's Landscapes, Inc. and Lather Construction, Inc. motions herein applying the same arguments to both. Appellant responds to Lather Construction, SC, Inc.'s motion to dismiss separately in Section II below.

Appellant filed crossclaims against Respondents Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's Landscapes, Inc. ("Hutton") in the circuit court. Respondents moved for summary judgment on Appellant's crossclaims. The circuit court granted Respondents' Hutton Landscapes, Inc. and Lather Construction, Inc. motions for summary judgment on March 11, 2022. Appellant timely moved to alter or amend on March 18, 2022, which the circuit court denied on March 24, 2022, and Appellant received the circuit court's order that same day. *The foregoing facts are not disputed.*¹

Section I – Response as to Hutton's Landscapes, Inc. and Lather Construction, Inc.

On April 11, 2022, 18 days after the circuit court issued its March 24, 2022, order on Appellant's motion to alter or amend, Appellant's counsel Jason Imhoff filed and served its notice of appeal alerting Respondents that the following orders are being appealed:

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of **Lather Construction and Hutton Landscapes, Inc.** filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022.

¹ The circuit court did not grant the motion for summary judgment as to Lather Construction SC, Inc. **Exhibit C "Circuit Court Order."**

(emphasis added). **Exhibit A “Notice of Appeal and Electronic Service.”** All parties were served on April 11, 2022, through the circuit court’s electronic service system. The first and second pages of the official court record in Exhibit A, specifically state: “**The following people were served electronically:** Megan Christine White for Huttons Landscapes Inc . . . Scott Harris Winograd for Lather Construction Inc, Lather Construction Sc Inc . . .” The third page lists “Emily Guifford Lucey for Huttons Landscapes Inc, Phillip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc, Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc.” The fourth page lists all of them. If there is anything that South Carolina attorneys should be able to rely upon, it is what the court tells them. In this case, the circuit court told Appellant’s attorneys that all the attorneys for all the parties in the case were served the notice of appeal on April 11, 2022, electronically through the circuit court’s electronic service system. The electronic service in Exhibit A also has a section in bold that states: “**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**” The list is empty because everyone in the case was in fact served electronically.² Thus, service was made to all attorneys for all parties no later than April 11, 2022 – well before the thirty-day window within which the rules require. See, Notice of Appeal and Electronic Service, attached as Exhibit A. Importantly, Respondents have not alleged *any facts* inconsistent with the foregoing.

After discovering a scrivener’s error in the case style, Appellant’s counsel discussed the issue with the Clerk’s office at the Court of Appeals and then filed an Amended Notice of Appeal and Proof of Service on April 28, 2022. **Exhibit B “Amended Notice of Appeal and Electronic Service.”** The Amended Notice of Appeal is identical to the original Notice of Appeal, except that

² The Plaintiffs in the case were also served via U.S Mail.

it corrects the case style as to Lather Construction, Inc. and Hutton Landscapes, Inc. and it was served on an attorney for every party in the case via U.S. Mail.³ As previously, they were also served electronically. Respondents do not dispute that they were served the Amended Notice of Appeal.

This is not a case in which timely proper service did not occur.⁴

After receiving the Notice of Appeal on April 11, 2022, Respondents did not reach out to Appellant's counsel to ask for the style to be corrected, nor did they ask or demand to be served again in a different manner.⁵ Instead, they set a trap for Appellant's counsel Imhoff and filed their Motions to Dismiss after the 30 days had passed. However, a new system of electronic service was in effect due to an international pandemic. Respondents cannot ignore that new system. Nor should they be allowed to blindside opposing counsel. "Civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party," which is precisely what Respondents seek to do in this matter. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). Respondents were served within the 30 days, on April 11, 2022. They were served electronically at the primary email addresses they provided the circuit court, and each Respondent received electronic service to at least two attorneys of record – Hutton to both attorneys of record (Megan Christine White and Emily Gifford Lucey) and Lather to three attorneys of record (Scott

³ The Amended Notice of Appeal also lists Lather Construction SC, Inc. as a Respondent, which is discussed below in Section II.

⁴ This is not a case in which service occurred outside the jurisdictional thirty-day period to provide a notice of appeal. Accordingly, Respondents cases *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010); *Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. Of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000); *Great Games, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 79, 529 S.E.2d 6 (2000) and *State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004) are all inapposite for this case.

⁵ Perhaps they do not understand the import of the August 25, 2021, Order of the Supreme Court providing for electronic service.

Harris Winograd, Phillip Paul Cristaldi, III, and Jeffrey A. Ross). The law was followed. See Exhibit A.

Nowhere in Respondents' Motions do they deny having been electronically served on April 11, 2022. Although it is clear from their Motions that they did receive the Notice of Appeal, they may have been confused. *See Wells Fargo v. Fallon, Opinion 27773*, Feb. 28, 2018 (S.C. Supreme Court acknowledged the confusion that has arisen from electronic communications in the litigation sphere). In this case, the electronic service provisions, put into place due to the pandemic, may have created some confusion about service.⁶ Because the attorneys in circuit court cases must keep their primary email address up to date with the circuit court, the circuit court email list has all the parties and their attorneys' emails, and the circuit court service system provides almost instantaneous service of process to all attorneys of record. Service was perfected on all attorneys of record at their primary email addresses on April 11, 2022. Service via the circuit court system complies with Rule 262, SCACR, because it provides service to each attorney at the primary email address each attorney has provided the court system. *See Exhibit A*, which shows the electronic service of process for all of Lather's and Hutton's lawyers. Moreover, no Respondent has asserted that the email used by counsel as their primary email in the circuit court's system is not their primary email address – which makes sense because the burden to update one's primary email address is on the attorney whose email address has changed and not the Appellant serving a Notice of Appeal. Respondents were served within the 30-day requirement and at each of their primary email addresses. Respondents have not alleged otherwise, nor could they genuinely do so.

⁶ The South Carolina Supreme Court has held that fairness dictates that its ruling regarding Rule 203, SCACR, be applied prospectively due to confusion about the Rule regarding electronic correspondence. *Wells Fargo v. Fallon, Opinion 27773*, Feb. 28, 2018. In the event that this Court determines that electronic service via the circuit court's electronic service system is not sufficient service, Appellant requests the Court to apply the decision prospectively as Appellants served via that method in good faith and reliance upon the plain language of the August 25, 2021 Order.

The Amended Notice of Appeal was filed due to a scrivener's error. South Carolina allows Notice of Appeal scrivener's errors to be corrected. It is well settled law in South Carolina that corrected errors are allowed and do not divest the appeals court of jurisdiction. Since at least 1899, South Carolina law has consistently held that "clerical errors in a notice of appeal do not destroy the appeal." *Moody v. Dickinson*, 54 S.C.526, 32 S.E. 563 (1899) ("the court may properly allow an appellant to correct a mere clerical error in the title to his notice of intention to appeal where there is no prejudice to the appellee"). Respondents have not been prejudiced, nor have they alleged any prejudice, nor can they. Respondents were electronically served notice of the appeal on April 11, 2022; that notice clearly advises them of the summary judgment orders being appealed, and specifically names Hutton's Landscapes, Inc., and Lather Construction in the description of the summary judgment decisions being appealed. Moreover, there have been no other dispositive motions decided by the circuit court in the case that could have possibly confused Respondents. Respondents are in a position similar to that of the appellees in *Charlestown Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995), in which the court held that a scrivener's error in the cases listed for appeal in a multi-case matter did not warrant a dismissal of the appeal and there was no prejudice. *Id.* at 478. Respondents rely upon *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) for the proposition that Connor's appeal was not perfected because she had not listed two defendants as respondents within 30 days of the order on appeal. However, that is an incorrect understanding of *Connor*. The appeals court notified Connor of her error and she did not correct the error soon after filing or even within 5 months of having filed her appeal. The court held that "Indeed, the rule of *Moody* compels us under these facts to find Rowe and Langley were misled into believing they were not part of this appeal by the almost five-month delay in amending the Notice, and therefore, they clearly were

prejudiced by the amendment.” *Id.* at 462. Here, unlike in *Connor*, the correction was quickly made, Respondents were served both Notices of Appeal, and the description of what is being appealed specifically names them. Counsel for the Appellant did not delay. In fact, it is counsel for the Respondents who delayed, and did so deliberately. There was no prejudice or laxity alleged in Respondents’ Motions to Dismiss Appeal, nor could any be alleged in this case.

Section II – Response to Lather Construction SC, Inc.

The circuit court’s order did not grant summary judgment to Lather Construction SC, Inc. See **Exhibit C, “Circuit Court’s Order.”** The court’s order specifically states that it granted Lather Construction, Inc.’s motion for summary judgment, but it did not state that it granted Lather Construction SC, Inc.’s motion for summary judgment. Lather Construction SC, Inc. should have filed a motion to dismiss the appeal as to it because there is no circuit court order that applies to it at this time and, hence, nothing to appeal. Or it simply could have alerted Appellants to the situation and a joint motion to remove it as Respondent under the Amended Notice of Appeal could have been quickly filed.

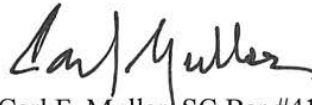
The response in Section I above as to service and the scrivener’s error that occurred also applies to Lather Construction SC, Inc. to the extent that Lather Construction SC, Inc. is a Respondent.

Conclusion

Appellants request the Court to deny Respondents Lather Construction, Inc., Lather Construction SC, Inc., and Hutton’s Landscapes, Inc. Motions to Dismiss the Appeal.

May 23, 2022

Respectfully,



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**Exhibit A “Notice of Appeal and Electronic
Service.”**

10

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2019CP0702629

Official File Stamp: 04-11-2022 01:15:27 PM

Court: CIRCUIT COURT

Common Pleas

Beaufort

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design Division Of Isi Llc , defendant, et al

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits

- Exhibit/Filing of Exhibits

Filed by or on behalf of: Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Megan Christine White for Huttons Landscapes Inc

Thomas Elihue Dudley, III for D R Horton Inc

Scott Harris Winograd for Lather Construction Inc, Lather Construction Sc Inc

Jason Michael Imhoff for D R Horton Inc

Stacey Patterson Canaday for Valim Construction Llc

Clarke W. DuBose for Professional Drywall & Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast Construction Cleanup Corp.

//

ELECTRONICALLY FILED - 2022 Apr 11 2:56 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

Brent Morris Boyd for Professional Drywall & Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret A Eberly et al

Francis Heyward Grimball for Archer Exteriors Inc

James H. Elliott, Jr. for Archer Exteriors Inc

Alexandra Scott Williams for Margaret A Eberly et al

Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Certificate of Electronic Notification

Recipients

James Elliott - Notification transmitted on 04-11-2022 01:15:43 PM.
Benjamin Traywick - Notification transmitted on 04-11-2022 01:15:45 PM.
Thomas Dudley - Notification transmitted on 04-11-2022 01:15:46 PM.
Stacey Canaday - Notification transmitted on 04-11-2022 01:15:44 PM.
Emily Lucey - Notification transmitted on 04-11-2022 01:15:44 PM.
Clarke DuBose - Notification transmitted on 04-11-2022 01:15:44 PM.
Megan White - Notification transmitted on 04-11-2022 01:15:46 PM.
Scott Winograd - Notification transmitted on 04-11-2022 01:15:46 PM.
Alexandra Williams - Notification transmitted on 04-11-2022 01:15:45 PM.
Brent Boyd - Notification transmitted on 04-11-2022 01:15:42 PM.
Jeffrey Ross - Notification transmitted on 04-11-2022 01:15:45 PM.
Philip Cristaldi - Notification transmitted on 04-11-2022 01:15:44 PM.
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John Crawford - Notification transmitted on 04-11-2022 01:15:43 PM.
Jason Imhoff - Notification transmitted on 04-11-2022 01:15:43 PM.
Michael Leech - Notification transmitted on 04-11-2022 01:15:45 PM.

Subject: Received Notice: Your filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received

efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>
to Jason Imhoff, Stephanie Simpson ▾

Mon, Apr 11, 2022

! You are viewing an attached message. Carl Muller Attorney at Law Mail can't verify the authenticity of attached messages.

To: Jason Michael Imhoff imhoff@conlaw.com
From: efiledonotreply@sccourts.org
Date: 2022-04-11 13:15:27.133
Subject: Your electronic filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Appeals, was received by CIRCUIT COURT.

Case Number: 2019CP0702629

Case Type: (100) Constructions

Document Type: Appeal/Notice of Appeal to Court of Appeals

Document Type: Exhibit/Filing of Exhibits

Document Type: Exhibit/Filing of Exhibits

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14

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

---

CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

---

**NOTICE OF APPEAL**

---

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

*s/ Jason M. Imhoff*

---

Jason Imhoff (S.C. Bar No. 69355)  
John T. Crawford, Jr. (S.C. Bar No. 69682)  
Thomas E. Dudley, III (S.C. Bar No. 66154)  
Kenison, Dudley & Crawford, LLC  
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*Attorneys for Appellant*

Other Counsel of Record:

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Benjamin A.C. Traywick (S.C. Bar No. 74027)  
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[ali@bentraywicklaw.com](mailto:ali@bentraywicklaw.com)  
*Attorneys for Respondent*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

---

CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on Respondent by depositing a copy to them in the United States Mail, postage prepaid, on April 11, 2022, addressed as follows:

Alexandra S. Williams, Esquire  
Benjamin A.C. Traywick, Esquire  
Ben Traywick Law Firm, LLC  
171 Church Street, Ste. 340  
Charleston, South Carolina 29401

Hon. Jerri Ann Roseneau  
Beaufort County Clerk of Court  
P.O. Box 1128  
Beaufort, South Carolina 29901

*s/ Jason M. Imhoff*

Jason Imhoff (S.C. Bar No. 69355)

John T. Crawford, Jr. (S.C. Bar No. 69682)

Thomas E. Dudley, III (S.C. Bar No. 66154)

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*Attorneys for Appellant*

April 11, 2022

**Exhibit B “Amended Notice of Appeal and  
Electronic Service.”**

*19*

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

-

**A filing has been submitted to the court RE:** 2019CP0702629

**Official File Stamp:** 05-06-2022 12:09:35 PM

**Court:** CIRCUIT COURT

Common Pleas

Beaufort

**Case Caption:** Margaret A Eberly , plaintiff, et al VS Advanced  
Flooring & Design Division Of Isi Llc , defendant,  
et al

**Document(s) Submitted:** Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filing/Other

**Filed by or on behalf of:** Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

-

**The following people were served electronically:**

Carl F. Muller for D R Horton Inc

Megan Christine White for Huttons Landscapes  
Inc

Thomas Elihue Dudley, III for D R Horton Inc

Scott Harris Winograd for Lather Construction Inc,  
Lather Construction Sc Inc

Jason Michael Imhoff for D R Horton Inc

Stacey Patterson Canaday for Valim Construction  
Llc

20

Clarke W. DuBose for Professional Drywall & Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast Construction Cleanup Corp.

Brent Morris Boyd for Professional Drywall & Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret A Eberly et al

Francis Heyward Grimball for Archer Exteriors Inc

James H. Elliott, Jr. for Archer Exteriors Inc

Alexandra Scott Williams for Margaret A Eberly et al

Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

**Certificate of Electronic Notification**

| <b>Recipients</b>                                                               |
|---------------------------------------------------------------------------------|
| <b>James Elliott</b> - Notification transmitted on 05-06-2022 12:09:52 PM.      |
| <b>Benjamin Traywick</b> - Notification transmitted on 05-06-2022 12:09:54 PM.  |
| <b>Thomas Dudley</b> - Notification transmitted on 05-06-2022 12:09:55 PM.      |
| <b>Stacey Canaday</b> - Notification transmitted on 05-06-2022 12:09:53 PM.     |
| <b>Emily Lucey</b> - Notification transmitted on 05-06-2022 12:09:52 PM.        |
| <b>Clarke DuBose</b> - Notification transmitted on 05-06-2022 12:09:53 PM.      |
| <b>Carl Muller</b> - Notification transmitted on 05-06-2022 12:09:56 PM.        |
| <b>Megan White</b> - Notification transmitted on 05-06-2022 12:09:56 PM.        |
| <b>Scott Winograd</b> - Notification transmitted on 05-06-2022 12:09:55 PM.     |
| <b>Alexandra Williams</b> - Notification transmitted on 05-06-2022 12:09:54 PM. |
| <b>Brent Boyd</b> - Notification transmitted on 05-06-2022 12:09:51 PM.         |
| <b>Jeffrey Ross</b> - Notification transmitted on 05-06-2022 12:09:54 PM.       |
| <b>Philip Cristaldi</b> - Notification transmitted on 05-06-2022 12:09:53 PM.   |
| <b>Francis Grimball</b> - Notification transmitted on 05-06-2022 12:09:55 PM.   |
| <b>John Crawford</b> - Notification transmitted on 05-06-2022 12:09:51 PM.      |
| <b>Jason Imhoff</b> - Notification transmitted on 05-06-2022 12:09:52 PM.       |
| <b>Michael Leech</b> - Notification transmitted on 05-06-2022 12:09:55 PM.      |

**Amanda Hammond**

---

**From:** efiledonotreply@sccourts.org  
**Sent:** Thursday, May 5, 2022 3:52 PM  
**To:** Jason Imhoff  
**Cc:** Stephanie Simpson  
**Subject:** Received Notice: Your filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received

**To:** Jason Michael Imhoff imhoff@conlaw.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2022-05-05 15:51:44.987  
**Subject:** Your electronic filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received by CIRCUIT COURT.

Case Number: 2019CP0702629  
Case Type: (100) Constructions  
Document Type: Appeal/Notice of Appeal to Court of Appeals  
Document Type: Exhibit/Filing of Exhibits  
Document Type: Exhibit/Filing of Exhibits  
Document Type: Exhibit/Filing of Exhibits

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Apr 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

AMENDED NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton’s Landscapes, Inc filed on March 11, 2022, as well as the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

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*Attorneys for Respondents Lather
Construction, Inc. and Lather Construction
SC, Inc.*

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Apr 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy to them in the United States Mail, postage prepaid, on April 28, 2022, addressed as follows:

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Attorney for Defendant Valim Construction, LLC

Hon. Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Box 1128
Beaufort, South Carolina 29901

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
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crawford@conlaw.com
dudley@conlaw.com
Attorneys for Appellant

April 28, 2022

Exhibit C, “Circuit Court’s Order.”

29

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2019CP0702629

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .

RECEIVED

APR 13 2022

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

30

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

31



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

32

RECEIVED

May 23 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton’s Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.....Respondents.

PROOF OF SERVICE

I certify that I have served Appellant D.R. Horton, Inc.’s Response in Opposition to Respondents, Lather Construction, Inc., Lather Construction, SC, Inc., and Hutton’s Landscapes, Inc., Motions to Dismiss Appeal upon Respondents by depositing a copy to them via e-mail and United States Mail, postage prepaid, on May 23, 2022, addressed as follows:

Benjamin Traywick, Esquire
Alexandra Williams, Esquire
Ben Traywick Law Firm, LLC
1714 Church Street, Suite 340
Charleston, SC 29401

Megan Christine White, Esquire
Richardson, Plowden & Robinson, PA
235 MaGrath Darby Blvd, Suite 100
Mt. Pleasant, SC 29464
mwhite@richardsonplowden.com

ben@bentraywicklaw.com
ali@bentraywicklaw.com
Attorneys for Plaintiffs

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William Thomas Bacon, IV
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Attorneys for the Respondent Plaintiff

Jeffrey A. Ross, Esquire
Philip P. Cristaldi, III, Esquire
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jross@relawsc.com
pcristaldi@relawsc.com
*Attorneys for Respondents Lather
Construction, Inc. and Lather Construction
SC, Inc.*

*Counsel for Respondent Hutton's Landscapes,
Inc.*

Scott Harris Winograd, Esquire
Ross & Cristaldi, LLC
863 Coleman Blvd., Ste. B
Mt. Pleasant, SC 29464
swinograd@relawsc.com
*Counsel for Respondent Lather Construction,
Inc, Lather Construction SC, Inc.*

Emily Gifford Lucey, Esquire
Megan C. White, Esquire
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235 McGrath Darby Blvd, Ste. 100.
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*Attorneys for Respondent Hutton's Landscapes,
Inc.*

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
Kenison, Dudley & Crawford, LLC
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(864) 242-4844 (fax)
imhoff@conlaw.com
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dudley@conlaw.com
Attorneys for Appellant

May 23, 2022

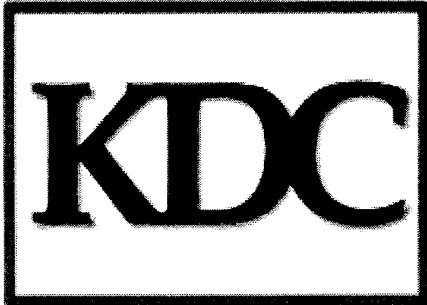
Amanda Hammond

From: Amanda Hammond
Sent: Monday, May 23, 2022 2:17 PM
To: 'mwhite@richardsonplowden.com'; 'ben@bentraywicklaw.com'; 'ali@bentraywicklaw.com'; 'lin@mlf.law'; 'tom@mlf.law'; 'swinograd@rclawsc.com'; 'jross@rclawsc.com'; 'pcristaldi@rclawsc.com'; 'egiffordlucy@richardsonplowden.com'; 'mwhite@richardsonplowden.com'
Cc: Carl Muller; John Crawford; Jason Imhoff; Stephanie Simpson; Kelly Nix; Cara Smith; Tom Dudley; Jen Beckley
Subject: Appellate Case No. 2022-000469 - D.R. Horton, Inc.'s Response in Opposition to Respondents, Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's Landscapes, Inc., Motions to Dismiss Appeal
Attachments: 20225.23 - D.R. Horton's Response in Oppisition to Motions to Dismiss Appeal.pdf; 2022.5.23 Supplemental Proof of Service - Eberly.pdf

All,

Appellant D.R. Horton, Inc.'s Supplemental Proof of Service and Response in Opposition to Respondents, Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's Landscapes, Inc., Motions to Dismiss Appeal are herewith served upon you via e-mail.

Sincerely,



Amanda Hammond

Paralegal
KENISON, DUDLEY & CRAWFORD, LLC
704 East McBee Avenue
Greenville, SC 29601
Email: hammond@conlaw.com
Direct Dial: (864) 501-2421
Main: (864) 242-4899
Website: www.conlaw.com

RECEIVED

May 31 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000469
CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,

PLAINTIFFS,

versus

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of whom

D.R. Horton, Inc. is

APPELLANT,

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.

RESPONDENTS.

**RESPONDENT HUTTON'S LANDSCAPES, INC.'S REPLY TO
D.R. HORTON, INC.'S RESPONSE IN OPPOSITION TO THE
MOTON TO DISMISS APPEAL**

Respondent Hutton’s Landscapes, Inc. (“Hutton’s”) hereby submits its Reply to the Response in Opposition by Appellant D.R Horton, Inc. (“D.R. Horton”) to the Motion to Dismiss the Appeal and shows the Court as follows:

For this Court to obtain jurisdiction over D.R. Horton’s appeal against Hutton’s, D.R. Horton must show that it timely and properly served Hutton’s with a notice of appeal naming it as a respondent in accordance with the Appellate Court Rules. It cannot do so.

It is undisputed that when D.R. Horton filed its original Notice of Appeal on April 11, 2022, it did not name Hutton’s as a respondent. It is also undisputed that D.R. Horton did not serve the Notice of Appeal pursuant to the three methods of service authorized under Rule 262(c) of the South Carolina Appellate Court Rules – either by hand delivery, U.S. Mail, or by an e-mail sent to counsel for Hutton’s as permitted under the Supreme Court’s August 25, 2021 Order with a copy of the sent e-mail attached to the proof of service for the Notice of Appeal.

D.R. Horton did not attempt to correct its error until April 28, 2022 after the thirty (30) day time period for service of the Notice of Appeal expired. D.R. Horton failed to meet the jurisdictional requirement of timely and proper service of a notice of appeal naming Hutton’s as a respondent, and therefore, this Court lacks jurisdiction over D.R. Horton’s appeal as to Hutton’s. See, e.g., Camp v. Camp, 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010); State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000).

D.R. Horton unscrupulously paints its failure to comply with the Appellate Court

Rules as a “trap” set by Hutton’s. As appellant, D.R. Horton was required to comply with the procedural requirements of the Appellate Court Rules in perfecting its appeal, as all litigants are expected to do. State v. Burton, 356 S.C. 259, 265, n.5, 589 S.E.2d 6, 9, n.5 (2003). D.R. Horton was responsible for ensuring it had appealed its case properly, something that should not be taken lightly, and as appellant, it alone controlled what was appealed, who was named in the appeal, and service of the appeal.

On April 19, 2022, this Court issued its initial appeal letter to D.R. Horton via e-mail, which, in providing the caption for the appeal, alerted D.R. Horton to the fact that Hutton’s was not a respondent. This Court’s letter also only copied counsel for the plaintiffs and did not copy counsel for Hutton’s because the Court did not consider Hutton’s as a respondent to the appeal.¹ See the Court’s April 19, 2022 e-mail and letter attached hereto as Exhibit “A.”

Despite the issuance of this Court’s initial appeal letter which clearly gave notice to D.R. Horton that Hutton’s was not a respondent in the appeal, D.R. Horton took no steps before the thirty (30) day time period for service of the notice of appeal expired on April 25, 2022 to properly add and serve Hutton’s as a respondent to the appeal. Nothing prevented D.R. Horton from correcting its own error – an error which if not corrected was fatal to this Court’s jurisdiction over Hutton’s.

D.R. Horton also insists that the Notice of Electronic Filing [NEF] generated by the Circuit Court’s E-Filing System complies with Paragraph (d)(1) of the Supreme Court’s August 25, 2021 Order permitting service of a document by a lawyer upon another lawyer via e-mail. The Supreme Court’s Order contemplates specifically sending

¹ A copy of this letter was located by counsel for Hutton’s on the judicial department’s C-Track Public Access system.

the lawyer an e-mail with the document to be served attached and requires that the sent e-mail accompany all proofs, affidavits, or certificates of service.

The NEF, on the other hand, is a notice automatically generated by the circuit courts' E-Filing System which merely includes a description of the filed document and does not actually include the document as an attachment. See In re S.C. Elec. Filing Pol'ys & Guidelines, 415 S.C. 1, 2, 780 S.E.2d 600, 600 (2015). Under the rules for E-Filing in the circuit courts, the NEF constitutes proper service under only Rule 5 of the South Carolina Rules of Civil Procedure. Id. at 7-8, 780 S.E.2d at 603.

On the other hand, the NEF does not constitute proper service for a notice of appeal under the Appellate Court Rules, and there is no order authorizing an NEF automatically generated by the circuit courts' E-Filing System to qualify as proper service of a notice of appeal. If the Supreme Court had intended an NEF automatically generated from the circuit courts' E-Filing System to suffice for the service of a notice of appeal under the Appellate Court Rules, it could have expressly authorized such manner of service in its August 25, 2021 Order but it chose not to do so. Therefore, D.R. Horton cannot rely upon the automatically generated NEF to constitute service of the April 11, 2022 Notice of Appeal upon Hutton's.

D.R. Horton's failure to serve Hutton's with a notice of appeal naming it as a respondent within the thirty (30) day time period for the service of the notice of appeal is not a mere clerical or scrivener's error which can be corrected because this Court has no authority to rescue a litigant from an untimely notice of appeal. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

Accordingly, for the reasons set forth herein and in the Motion to Dismiss Appeal,

Respondent Hutton's Landscapes, Inc. therefore respectfully requests this Court to dismiss the appeal of Appellant D.R. Horton, Inc. for lack of appellate jurisdiction due to the untimely and improper service of the Notice of Appeal.

Respectfully submitted,

/s Carmen V. Ganjehsani

Carmen V. Ganjehsani, S.C. Bar No. 73515
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Emily Gifford Lucey (S.C. Bar No. 72785)
Megan C. White (S.C. Bar No. 101895)
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egiffordlucey@richardsonplowden.com
mwhite@richardsonplowden.com

**ATTORNEYS FOR RESPONDENT
HUTTON'S LANDSCAPES, INC.**

May 31, 2022.

EXHIBIT “A”

Spencer, Shelby

From: Spencer, Shelby
Sent: Tuesday, April 19, 2022 3:37 PM
To: 'dudley@conlaw.com'; 'imhoff@conlaw.com'; 'crawford@conlaw.com';
'ali@bentraywicklaw.com'; 'ben@bentraywicklaw.com'
Subject: Margaret Eberly v. D.R. Horton, Inc. (2022-000469)
Attachments: Eberly v. D.R. Horton, Inc. - Initial Letter.pdf

Dear Counsel,

Attached is a copy of this Court's letter. If you have any questions or concerns, please do not hesitate to contact our office.

Warmly,

Shelby Spencer

Appeals Specialist II
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
Phone: 803.734.1890
Fax: 803.734.1839
E-Filing Email: ctappfilings@sccourts.org



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
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April 19, 2022

Mr. Jason Michael Imhoff, Esquire
704 East Mcbee Avenue
Greenville SC 29601

Mr. John T. Crawford, Jr., Esquire
704 E. McBee Ave.
Greenville SC 29601

Mr. Thomas Elihue Dudley, III, Esquire
704 E. McBee Ave.
Greenville SC 29601

Re: Margaret Eberly v. D.R. Horton, Inc.
Appellate Case No. 2022-000469

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Margaret A. Eberly and Barbara J. Pavelik, Respondents,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.; Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.' Professional Drywall & Paint Services, LLC; Professional Exteriors II, LLC; and Valim Construction, LLC, Defendants,

Of which D.R. Horton, Inc. is the Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine J. Fanning, deputy". The signature is written in a cursive style.

CLERK

cc: Alexandra Scott Williams, Esquire
Benjamin Alexander Crute Traywick, Esquire

RECEIVED

May 31 2022

SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent Hutton's Landscapes, Inc., do hereby certify that I have this date served the foregoing Reply to D.R. Horton, Inc.'s Response in Opposition to the Motion to Dismiss Appeal, dated May 31, 2022, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated May 6, 2022, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

Jason Imhoff
John T. Crawford, Jr.
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704 E. McBee Ave.
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Carl F. Muller
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**ATTORNEYS FOR APPELLANT
D.R. HORTON, INC.**

Jeffrey A. Ross
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Scott H. Winograd
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pcristaldi@rclawsc.com
swinograd@rclawsc.com
**ATTORNEYS FOR LATHER
CONSTRUCTION, INC. AND
LATHER CONSTRUCTION SC, INC.**

A copy of the sent email is enclosed with this Certificate of Service.

/s Carmen V. Ganjehsani
Carmen V. Ganjehsani, S.C. Bar No. 73515
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cganjehsani@richardsonplowden.com
**ATTORNEYS FOR RESPONDENT
HUTTON'S LANDSCAPES, INC.**


Dated: May 31, 2022.

Carmen Ganjehsani

From: Carmen Ganjehsani
Sent: Tuesday, May 31, 2022 12:03 PM
To: imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; jross@rclawsc.com; pcristaldi@rclawsc.com; swinograd@rclawsc.com
Cc: Emily Gifford Lucey; Megan White; Emily Seelig; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams; Kay Kelly; Benjamin Traywick; Lin McDougall; Tom Bacon; Hope Grate; kbarnes@rclawsc.com
Subject: 2022-000469 Eberly v. D.R. Horton
Attachments: 2022-000469 Eberly v. D.R. Horton (Reply to Response to Mtn to Dismiss Appeal).pdf

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you the Reply to D.R. Horton, Inc.'s Response in Opposition to the Motion to Dismiss Appeal filed on behalf of Respondent Hutton's Landscapes, Inc. in the above-referenced appeal.

Thank you,
Carmen Ganjehsani

| HOME | VCARD | LOCATION |
|--|--|--|
|  | Carmen V. Ganjehsani
Shareholder
Cganjehsani@RichardsonPlowden.com | Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
Tel: 803.253.8692
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www.RichardsonPlowden.com |

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.

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May 31 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000469
CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,

PLAINTIFFS,

versus

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather
Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of whom

D.R. Horton, Inc. is

APPELLANT,

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.

RESPONDENTS.

**RESPONDENTS LATHER CONSTRUCTION, INC., AND LATHER
CONSTRUCTION, SC, INC.'S REPLY TO D.R. HORTON, INC.'S
RESPONSE IN OPPOSITION TO THE MOTION TO DISMISS APPEAL**

Respondents Lather Construction, Inc., and Lather Construction, SC, Inc.’s (hereinafter collectively referred to as “Lather”) hereby submit their Reply to the Response in Opposition by Appellant D.R Horton, Inc. (“D.R. Horton”) to the Motion to Dismiss the Appeal and shows the Court as follows:

For this Court to obtain jurisdiction over D.R. Horton’s appeal against Lather, D.R. Horton must show that it timely and properly served Lather with a notice of appeal naming it as a respondent in accordance with the Appellate Court Rules. It cannot do so.

It is undisputed that when D.R. Horton filed its original Notice of Appeal on April 11, 2022, it did not name Lather as a respondent. It is also undisputed that D.R. Horton did not serve the Notice of Appeal pursuant to the three methods of service authorized under Rule 262(c) of the South Carolina Appellate Court Rules – either by hand delivery, U.S. Mail, or by an e-mail sent to counsel for Lather as permitted under the Supreme Court’s August 25, 2021 Order with a copy of the sent e-mail attached to the proof of service for the Notice of Appeal.

D.R. Horton did not attempt to correct its error until April 28, 2022 after the thirty (30) day time period for service of the Notice of Appeal expired. D.R. Horton failed to meet the jurisdictional requirement of timely and proper service of a notice of appeal naming Lather as a respondent, and therefore, this Court lacks jurisdiction over D.R. Horton’s appeal as to Lather. See, e.g., Camp v. Camp, 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010); State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000).

D.R. Horton unscrupulously paints its failure to comply with the Appellate Court Rules as a “trap” set by Lather. As the appellant, D.R. Horton was required to comply with the procedural requirements of the Appellate Court Rules in perfecting its appeal, as all litigants are expected to

do. State v. Burton, 356 S.C. 259, 265, n.5, 589 S.E.2d 6, 9, n.5 (2003). D.R. Horton was responsible for ensuring it had appealed its case properly, something that should not be taken lightly, and as appellant, it alone controlled what was appealed, who was named in the appeal, and the service of the appeal.

On April 19, 2022, this Court issued its initial appeal letter to D.R. Horton via e-mail, which, in providing the caption for the appeal, alerted D.R. Horton to the fact that Lather was not a respondent. This Court's letter also only copied counsel for the plaintiffs and did not copy counsel for Lather because the Court did not consider Lather as a respondent to the appeal.¹ See the Court's April 19, 2022 e-mail and letter attached hereto as Exhibit "A."

Despite the issuance of this Court's initial appeal letter which clearly gave notice to D.R. Horton that Lather was not a respondent in the appeal, D.R. Horton took no steps before the thirty (30) day time period for service of the notice of appeal expired on April 25, 2022 to properly add and serve Lather as a respondent to the appeal. Nothing prevented D.R. Horton from correcting its own error – an error which if not corrected was fatal to this Court's jurisdiction over Lather.

D.R. Horton also insists that the Notice of Electronic Filing [NEF] generated by the Circuit Court's E-Filing System complies with Paragraph (d)(1) of the Supreme Court's August 25, 2021 Order permitting the service of a document by a lawyer upon another lawyer via e-mail. The Supreme Court's Order contemplates specifically sending the lawyer an e-mail with the document to be served attached and requires that the sent e-mail accompany all proofs, affidavits, or certificates of service.

The NEF, on the other hand, is a notice automatically generated by the circuit courts' E-Filing System which merely includes a description of the filed document and does not actually

¹ A copy of this letter was located by counsel for Lather on the judicial department's C-Track Public Access system.

include the document as an attachment. See In re S.C. Elec. Filing Pol'ys & Guidelines, 415 S.C. 1, 2, 780 S.E.2d 600, 600 (2015). Under the rules for E-Filing in the circuit courts, the NEF constitutes proper service under only Rule 5 of the South Carolina Rules of Civil Procedure. Id. at 7-8, 780 S.E.2d at 603.

On the other hand, the NEF does not constitute proper service for a notice of appeal under the Appellate Court Rules, and there is no order authorizing a NEF automatically generated by the circuit courts' E-Filing System to qualify as proper service of a notice of appeal. If the Supreme Court had intended a NEF automatically generated from the circuit courts' E-Filing System to suffice for the service of a notice of appeal under the Appellate Court Rules, it could have expressly authorized such manner of service in its August 25, 2021 Order but it chose not to do so. Therefore, D.R. Horton cannot rely upon the automatically generated NEF to constitute service of the April 11, 2022 Notice of Appeal upon Lather.

D.R. Horton's failure to serve Lather with a notice of appeal naming it as a respondent within the thirty (30) day time period for the service of the notice of appeal is not a mere clerical or scrivener's error which can be corrected because this Court has no authority to rescue a litigant from an untimely notice of appeal. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

In response to D.R. Horton's Section II of its Response in Opposition, Lather states that it believes it was an oversight by the lower court to not include both Lather entities in its Order Granting Summary Judgment, as the motion for summary judgment was as to both entities and upon information and belief, the Court intended to include both Lather entities. This was indeed a scrivener's error. Since the case is stayed at the circuit court level, this issue will need to be addressed down the road. However, that does not change the fact the Appellate court lacks jurisdiction to hear

an appeal as to either Lather entity.

Accordingly, for the reasons set forth herein and in the Motion to Dismiss Appeal, Respondents Lather Construction, Inc., and Lather Construction, SC, Inc. therefore respectfully request this Court to dismiss the appeal of Appellant D.R. Horton, Inc. for lack of appellate jurisdiction due to the untimely and improper service of the Notice of Appeal.

Respectfully submitted,

/s Scott H. Winograd

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Scott H. Winograd, Bar No.: 103483

863 Coleman Blvd., Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: jross@rclawsc.com

pcristaldi@rclawsc.com

swinograd@rclawsc.com

Attorneys for Lather Construction, Inc. and Lather Construction SC, Inc.

Mt. Pleasant, South Carolina

May 31, 2022

EXHIBIT “A”

Spencer, Shelby

From: Spencer, Shelby
Sent: Tuesday, April 19, 2022 3:37 PM
To: 'dudley@conlaw.com'; 'imhoff@conlaw.com'; 'crawford@conlaw.com';
'ali@bentraywicklaw.com'; 'ben@bentraywicklaw.com'
Subject: Margaret Eberly v. D.R. Horton, Inc. (2022-000469)
Attachments: Eberly v. D.R. Horton, Inc. - Initial Letter.pdf

Dear Counsel,

Attached is a copy of this Court's letter. If you have any questions or concerns, please do not hesitate to contact our office.

Warmly,

Shelby Spencer

Appeals Specialist II
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201
Phone: 803.734.1890
Fax: 803.734.1839
E-Filing Email: ctappfilings@sccourts.org



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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April 19, 2022

Mr. Jason Michael Imhoff, Esquire
704 East Mcbee Avenue
Greenville SC 29601

Mr. John T. Crawford, Jr., Esquire
704 E. McBee Ave.
Greenville SC 29601

Mr. Thomas Elihue Dudley, III, Esquire
704 E. McBee Ave.
Greenville SC 29601

Re: Margaret Eberly v. D.R. Horton, Inc.
Appellate Case No. 2022-000469

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

Margaret A. Eberly and Barbara J. Pavelik, Respondents,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.; Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.' Professional Drywall & Paint Services, LLC; Professional Exteriors II, LLC; and Valim Construction, LLC, Defendants,

Of which D.R. Horton, Inc. is the Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine J. Fanning, deputy". The signature is written in a cursive style.

CLERK

cc: Alexandra Scott Williams, Esquire
Benjamin Alexander Crute Traywick, Esquire

RECEIVED
May 31 2022
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000469
CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,

PLAINTIFFS,

versus

Advanced Flooring & Design Division of ISI, LLC; Archer
Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather
Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of whom

D.R. Horton, Inc. is

APPELLANT,

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.

RESPONDENTS.

Proof of Service

I certify that I have served Lather Construction, Inc. and Lather Construction, SC, Inc.'s Reply to D.R. Horton's Response in Opposition to the Motion to Dismiss Appeals dated May 31, 2022, by personally serving the same pursuant to Rule 262 (c)(3), SCACR, and S.C. Supreme Ct. Order

dated August 25, 2021 on the following counsel of record using the primary email address listed in the Attorney Information System (if applicable):

Emily Lucey, Esq.
Carmen V. Ganjehsani, Esq.
Megan C. White, Esq.
Richardson, Plowden & Robinson, PA
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egiffordlucey@richardsonplowden.com
cganjehsani@richardsonplowden.com
mwhite@richardsonplowden.com
Attorneys for Hutton's Landscapes, Inc.

John T. Crawford, Jr., Esq.
Jason Michael Imhoff, Esq.
Kenison Dudley & Crawford, LLC
704 E. Mcbee Ave.
Greenville, SC 29601
crawford@conlaw.com
jimhoff@conlaw.com
and
Carl F. Muller, Esq.
P.O. Box 1717
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carl@carrlmullerlaw.com
Attorneys for D.R. Horton, Inc.

A copy of the sent email is enclosed with this Certificate of Service.

s/ Scott H. Winograd
Jeffrey A. Ross, Bar No.: 74254
Philip P. Cristaldi, III, Bar No.: 102219
Scott H. Winograd, Bar No.: 103483
863 Coleman Blvd., Ste. B
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pcristaldi@rclawsc.com
swinograd@rclawsc.com
*Attorneys for Lather Construction, Inc. and Lather
Construction SC, Inc.*

Scott Winograd

From: Scott Winograd
Sent: Tuesday, May 31, 2022 5:57 PM
To: 'Carmen Ganjehsani'; imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; Jeff Ross; Philip Cristaldi
Cc: Emily Gifford Lucey; Megan White; Emily Seelig; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams; Kay Kelly; Benjamin Traywick; Lin McDougall; Tom Bacon; Hope Grate; Katy Barnes
Subject: RE: 2022-000469 Eberly v. D.R. Horton
Attachments: 2022.05.31 Lather Reply to DR Horton Response.pdf

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you the Reply to D.R. Horton, Inc.'s Response in Opposition to the Motion to Dismiss Appeal filed on behalf of Respondents Respondents Lather Construction, Inc., and Lather Construction, SC, Inc. in the above-referenced appeal.



Scott Winograd
Associate
Ross & Cristaldi, LLC
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swinograd@rclawsc.com

Admitted in SC, NC, & OH

Please note our email address change – our entire firm will now be “first initial, last name @rclawsc.com”

Please note our firm address change

Please note our firm is paperless – please request hard copies if desired

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From: Carmen Ganjehsani <CGanjehsani@RichardsonPlowden.com>
Sent: Tuesday, May 31, 2022 12:03 PM
To: imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; Jeff Ross <jross@rclawsc.com>; Philip Cristaldi <pcristaldi@rclawsc.com>; Scott Winograd <swinograd@rclawsc.com>
Cc: Emily Gifford Lucey <egiffordlucey@richardsonplowden.com>; Megan White <MWhite@RichardsonPlowden.com>; Emily Seelig <ESeelig@RichardsonPlowden.com>; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams <ali@bentraywicklaw.com>; Kay Kelly <kay@carlmullerlaw.com>; Benjamin Traywick <ben@bentraywicklaw.com>; Lin McDougall <lin@mlf.law>; Tom Bacon <tom@mlf.law>; Hope Grate <HGrate@RichardsonPlowden.com>; Katy Barnes <Kbarnes@rclawsc.com>
Subject: 2022-000469 Eberly v. D.R. Horton

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you the Reply to D.R. Horton, Inc.'s Response in Opposition to the Motion to Dismiss Appeal filed on behalf of Respondent Hutton's Landscapes, Inc. in the above-referenced appeal.

Thank you,
Carmen Ganjehsani

[HOME](#)

[VCARD](#)

[LOCATION](#)



Carmen V. Ganjehsani
Shareholder
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The South Carolina Court of Appeals

Margaret A. Eberly and Barbara J. Pavelik, Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup
Corp.; Hutton's Landscapes, Inc.; Lather Construction
SC, Inc.; Lather Construction, Inc.' Professional Drywall
& Paint Services, LLC; Professional Exteriors II, LLC;
and Valim Construction, LLC, Defendants,

Of which D.R. Horton, Inc. is the Appellant,

And

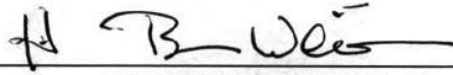
Hutton's Landscapes, Inc., Lather Construction SC, Inc.,
and Lather Construction, Inc. are the Respondents.

Appellate Case No. 2022-000469

ORDER

Appellant received written notice of entry of the order on appeal on March 24, 2022. On April 11, 2022, Appellant attempted to use the circuit court's electronic service system to serve Respondents with a copy of a notice of appeal that did not list any of the correct Respondents. Thereafter, on April 28, 2022, Appellant served the correct Respondents through the United States mail with an amended notice of appeal. Because Appellant failed to timely serve Respondents pursuant to Rule 262 of the South Carolina Appellate Court Rules, Respondents' motions to dismiss are granted. This court notes that Respondents' April 11, 2022 attempted service is not in compliance with the Supreme Court of South Carolina's order on "Methods of Electronic Filing and Service." *See RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As*

Amended May 6, 2022), S.C. Sup. Ct. Order dated May 6, 2022. Appellant effectuated proper service of the notice of appeal on April 28, 2022; however, it was not within thirty days after receipt of written notice of entry of the order. *See* Rule 203(b)(1), SCACR. Accordingly, this appeal is dismissed and the remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Jason Michael Imhoff, Esquire
John T. Crawford, Jr., Esquire
Thomas Elihue Dudley, III, Esquire
Emily Gifford Lucey, Esquire
Megan Christine White, Esquire
Jeffrey A Ross, Esquire
Philip Paul Cristaldi, III, Esquire
Scott Harris Winograd, Esquire
Carl F. Muller, Esquire
Carmen Vaughn Ganjehsani, Esquire

FILED
Jul 21 2022

RECEIVED

Aug 02 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2022-000469
Case No. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,
Plaintiffs /Respondents,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.; Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.; Professional Drywall & Paint Services, LLC; Professional Exteriors II, LLC; and Valim Construction, LLC

Defendants of whom D. R. Horton, Inc. is Appellant,

And

D. R. Horton, Inc.,

Cross-claimant and Appellant,

v.

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc
Cross-defendants and Respondents

PETITION FOR REHEARING

Carl F. Muller
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
Attorney for Appellant D. R. Horton, Inc.

Appellant D.R. Horton, Inc., through its undersigned counsel, files this Petition for Rehearing of the Court’s Order dated July 21, 2022, dismissing its appeal. The Petition is pursuant to and in compliance with Rules 221, 240 and 242(c), SCACR, and asks the Court to reconsider and vacate its Order dismissing Appellant’s appeal, to deny Respondents’ motions requesting dismissal, and to reinstate Appellant’s appeal. The Petition is based upon the following reasons and issues.¹

1. Appellant’s Notice of Appeal was timely served utilizing the South Carolina Electronic Filing Policies and Guidelines (SCEF) promulgated by the South Carolina Supreme Court. Rule 4(e)(2), SCEF, provides “the E-Filing of that pleading, motion or other paper . . . constitutes proper service under Rule 5, SCRCF . . .” Rule 4(e)(3), SCEF, states “Service of a pleading, motion or other paper . . . is complete at the time of the submission of the pleading, motion, or other paper for E-Filing) . . .” The Supreme Court Order in Appellate Case No. 2022-000029, Order No. 2022-05-06-04, dated May 6, 2022, states, “(e) Requirement for Service. In all cases: . . . (4) . . . “Lawyers are reminded that **the E-Filing System automatically serves parties that have appeared in a case, and the Notice of Electronic Filing (NEF) indicates which parties have been served.**” (Emphasis supplied). That Order also states in footnote 1, “The Supreme Court similarly permits service by electronic means in matters governed by the SCACR in accordance with 262(c)(3), SCACR, which states that, in addition to service by delivery or via U.S. mail, a party may also serve a copy by electronic means in a manner specified by order of the Supreme Court.” Timely service of a notice of appeal is

¹ Appellant incorporates herein Appellant D.R. Horton, Inc.’s Response in Opposition to Respondents, Lather Construction, Inc., Lather Construction, SC, Inc., and Hutton’s Landscapes, Inc., Motions to Dismiss Appeal.

covered by both the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules. E.g., Rule 6(b) SCRCRCP and Rule 203 SCACR. Appellant's Notice of Appeal was timely and properly served under the rules.

2. The official court record states, "The following people were served electronically." It lists the Respondents. See Exhibit A. They were served within the required thirty-day period. Exhibit A also states, "The following people . . . must be served by traditional means." No one is listed to be served that way. The Respondents were properly served.
3. The Supreme Court has noted that confusion has arisen regarding the electronic service rules. *See Wells Fargo v. Fallon*, Opinion 277773, Feb. 28, 2018 (S.C. Supreme Court acknowledged the confusion that has arisen by electronic communications in the litigation sphere). Accordingly, the Supreme Court has stated that fairness dictates that clarification concerning Rule 203, SCACR, for notices of appeal should be applied only prospectively. *See Id.* Fairness should apply in this case, as well.
4. In the original notice of appeal, the proper respondents were misidentified. This was a scrivener's error. The order under appeal was properly identified, however, and for that reason there could be no mistake about the respondents. Since at least 1899 the Supreme Court has allowed scrivener's errors in notices of appeal to be corrected, including a mistake in the case caption wherein respondents are incorrectly listed. *See Moody v. Dickinson*, 54 S.C. 526, 32 S.E. 563 (1899) (error in title/no prejudice found); *Charlestown Lumber Co. Inc. v. Miller Housing Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431 (Ct. App. 1995) (failure to identify order appealed from/no prejudice found; also, "Clerical errors in a notice of appeal do not destroy the appeal") (citing *Moody, supra*) ("the court may properly allow an appellant to correct a mere clerical error in the title to

his notice of intention to appeal where there is no prejudice to appellee”). In *Charleston Lumber* the court stated, “Clerical errors in a notice of appeal do not destroy the appeal . . . We find this error was clerical in nature, and does not warrant dismissal of the appeal. Charleston Lumber does not allege any prejudice as a result of the omission and there can be no doubt that Charleston Lumber had notice that the Millers had appealed all cases. Charleston Lumber’s effort to take advantage of a mere clerical error by which they were in no way prejudiced or misled is rejected.” 318 S. C. at 478. There was no prejudice in this case, no prejudice was asserted, and none could be asserted in good faith because the scrivener’s error concerning the respondents was corrected as soon as it was discovered.²

5. The Order dismissing the appeal is one paragraph long. It cites Rule 262, SCACR, as the basis for dismissal but does not explain why that rule requires dismissal. It does not explain why the official court record in this case--noting sufficient service--is not valid. It does not explain why Rule 4, SCEF--which validates service in this case--does not apply. It offers no explanation as to why it is not following the law stated by the Supreme Court allowing correction of scrivener’s errors. *See Moody v. Dickinson*, 54 S.C. 526, 32 S.E. 563 (1899); *Charlestown Lumber Co. Inc. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995). It does not dispute that confusion exists in the application of the electronic service rules, and does not explain why it does not in fairness follow the South Carolina Supreme Court’s decision in *Wells Fargo v. Fallon*, *supra*, and apply its ruling on electronic service only prospectively.

² As Appellant clarified in its Response in Opposition to Respondents’ Motion to Dismiss Appeal, Lather Construction SC, Inc. was not a proper party respondent in the appeal because the circuit court did not grant that entity’s motion for summary judgment – which neither it nor any other party respondent has disputed.

6. Lather Construction SC, Inc. is not a proper party to the appeal because the circuit court did not grant its motion for summary judgment. Regarding Lather Construction SC, Inc. there is no order to appeal. Appellants request that the Court acknowledge this so there is no confusion on that issue.

Conclusion and Requested Relief

Appellant respectfully requests that the Court rehear and reconsider its July 21 Order dismissing Appellant's appeal, that it vacate that Order, that it deny the Respondents' Motions to Dismiss, and that it clarify its ruling regarding Lather Construction SC, Inc.

Respectfully,



s/Carl F. Muller, SC Bar #4131
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Attorneys for Appellant
D. R. Horton, Inc.

August 2, 2022

Other Counsel of Record:

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Carmen Vaughn Ganjehsani, Esquire
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Attorney for Respondent Hutton's Landscapes, Inc.

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Philip P. Cristaldi, (S.C. Bar#102219)
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Attorneys for Respondent Lather Construction, Inc., and
Lather Construction SC, Inc.

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lin@mlf.law
tom@mlf.law
Attorneys for the Respondent Plaintiff

**Exhibit A “Notice of Appeal and Electronic
Service.”**

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP0702629

Official File Stamp:

04-11-2022 01:15:27 PM

Court:

CIRCUIT COURT

Common Pleas

Beaufort

Case Caption:

Margaret A Eberly , plaintiff, et al VS Advanced
Flooring & Design Division Of Isi Llc , defendant,
et al

Document(s) Submitted:

Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits

- Exhibit/Filing of Exhibits

Filed by or on behalf of:

Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Megan Christine White for Huttons Landscapes
Inc

Thomas Elihue Dudley, III for D R Horton Inc

Scott Harris Winograd for Lather Construction Inc,
Lather Construction Sc Inc

Jason Michael Imhoff for D R Horton Inc

Stacey Patterson Canaday for Valim Construction
Llc

Clarke W. DuBose for Professional Drywall &
Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast
Construction Cleanup Corp.

ELECTRONICALLY FILED - 2022 Apr 11 2:56 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

Brent Morris Boyd for Professional Drywall & Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret A Eberly et al

Francis Heyward Grimball for Archer Exteriors Inc

James H. Elliott, Jr. for Archer Exteriors Inc

Alexandra Scott Williams for Margaret A Eberly et al

Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Certificate of Electronic Notification

Recipients

James Elliott - Notification transmitted on 04-11-2022 01:15:43 PM.
Benjamin Traywick - Notification transmitted on 04-11-2022 01:15:45 PM.
Thomas Dudley - Notification transmitted on 04-11-2022 01:15:46 PM.
Stacey Canaday - Notification transmitted on 04-11-2022 01:15:44 PM.
Emily Lucey - Notification transmitted on 04-11-2022 01:15:44 PM.
Clarke DuBose - Notification transmitted on 04-11-2022 01:15:44 PM.
Megan White - Notification transmitted on 04-11-2022 01:15:46 PM.
Scott Winograd - Notification transmitted on 04-11-2022 01:15:46 PM.
Alexandra Williams - Notification transmitted on 04-11-2022 01:15:45 PM.
Brent Boyd - Notification transmitted on 04-11-2022 01:15:42 PM.
Jeffrey Ross - Notification transmitted on 04-11-2022 01:15:45 PM.
Philip Cristaldi - Notification transmitted on 04-11-2022 01:15:44 PM.
Francis Grimbball - Notification transmitted on 04-11-2022 01:15:46 PM.
John Crawford - Notification transmitted on 04-11-2022 01:15:43 PM.
Jason Imhoff - Notification transmitted on 04-11-2022 01:15:43 PM.
Michael Leech - Notification transmitted on 04-11-2022 01:15:45 PM.

Subject: Received Notice: Your filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received

? efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>
to Jason Imhoff, Stephanie Simpson

Mon, Apr

ⓘ You are viewing an attached message. Carl Muller Attorney at Law Mail can't verify the authenticity of attached messages.

To: Jason Michael Imhoff lmhoff@conlaw.com
From: efiledonotreply@sccourts.org
Date: 2022-04-11 13:15:27.133
Subject: Your electronic filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Appeals, was received by CIRCUIT COURT.

Case Number: 2019CP0702629
Case Type: (100) Constructions
Document Type: Appeal/Notice of Appeal to Court of Appeals
Document Type: Exhibit/Filing of Exhibits
Document Type: Exhlbit/Filing of Exhibits

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//

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

---

CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

---

NOTICE OF APPEAL

---

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)

John T. Crawford, Jr. (S.C. Bar No. 69682)

Thomas E. Dudley, III (S.C. Bar No. 66154)

Kenison, Dudley & Crawford, LLC

704 E. McBee Ave.

Greenville, South Carolina 29601

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[crawford@conlaw.com](mailto:crawford@conlaw.com)

[dudlev@conlaw.com](mailto:dudlev@conlaw.com)

*Attorneys for Appellant*

Other Counsel of Record:

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Benjamin A.C. Traywick (S.C. Bar No. 74027)

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[ben@bentraywicklaw.com](mailto:ben@bentraywicklaw.com)

[ali@bentraywicklaw.com](mailto:ali@bentraywicklaw.com)

*Attorneys for Respondent*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

---

CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on Respondent by depositing a copy to them in the United States Mail, postage prepaid, on April 11, 2022, addressed as follows:

Alexandra S. Williams, Esquire  
Benjamin A.C. Traywick, Esquire  
Ben Traywick Law Firm, LLC  
171 Church Street, Ste. 340  
Charleston, South Carolina 29401

Hon. Jerri Ann Roseneau  
Beaufort County Clerk of Court  
P.O. Box 1128  
Beaufort, South Carolina 29901

*s/ Jason M. Imhoff*

---

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*Attorneys for Appellant*

April 11, 2022

**RECEIVED**  
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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

---

Appellate Case No. 2022-000469  
Case No. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik,  
Plaintiffs /Respondents,

v.

Advanced Flooring & Design Division of ISI, LLC; Archer Exteriors, Inc.; Crossroads Enterprises, LLC; D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.; Professional Drywall & Paint Services, LLC; Professional Exteriors II, LLC; and Valim Construction, LLC

Defendants of whom D. R. Horton, Inc. is Appellant,

And

D. R. Horton, Inc.,

Cross-claimant and Appellant,

v.

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc  
Cross-defendants and Respondents

---

CERTIFICATE OF SERVICE AND FILING

---

The undersigned does hereby certify that on August 2, 2022, a copy of the Petition For Rehearing was served by email and United States 1<sup>st</sup> class mail on counsel for all Respondents as follows and filed by email with the Clerk of Court for Beaufort County in this proceeding:

August 2, 2022

  
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Lather Construction SC, Inc.

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August 2, 2022

**RECEIVED**  
**Aug 02 2022**  
**SC Court of Appeals**

PHONE: 864-991-8904  
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Jenny Abbott Kitchings  
Clerk of Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Re: Petition For Rehearing  
Margaret A. Eberly and Barbara J. Pavelik vs. Advanced Flooring & Design *et al.*;  
Appellate Case No. 2022-000469  
CASE NO.: 2019-CP-07-02629  
Beaufort County

Dear Ms. Kitchings:

Please find enclosed the Petition For Rehearing in the above case. Per your office we are emailing a copy (ctappfilings@sccourts.org) of the Petition For Rehearing and Certificate of Service and we're mailing the originals with a check for the \$50.00 filing fee.

Thank you for emailing a court stamped copy of the Petition For Rehearing and Certificate of Service. We appreciate!

Very truly yours,



Carl F. Muller

CFM:dkk  
Enclosures

**RECEIVED**  
Oct 04 2022  
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENTLEY D. PRICE  
CIRCUIT COURT JUDGE

---

APPELLATE CASE NO. 2022-000469  
CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik,

**PLAINTIFFS,**

versus

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather  
Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC,

**DEFENDANTS,**

Of whom

D.R. Horton, Inc.<sup>is</sup>

**APPELLANT,**

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.

**RESPONDENTS.**

---

**RESPONDENTS LATHER CONSTRUCTION, INC., AND LATHER  
CONSTRUCTION, SC, INC.'S RETURN TO D.R. HORTON, INC.'S  
PETITION FOR REHEARING**

---

Respondents Lather Construction, Inc., and Lather Construction, SC, Inc.'s (hereinafter collectively referred to as "Lather") hereby submit their Return to the Petition for Rehearing filed by Appellant D.R Horton, Inc. ("D.R. Horton"):

Lather incorporates herein by reference its May 31, 2022 Reply to D.R. Horton's Response in Opposition to the Motion to Dismiss Appeal as if fully restated herein. Simply put, for this Court to obtain jurisdiction over D.R. Horton's appeal against Lather, D.R. Horton must show that it timely and properly served Lather with a notice of appeal naming it as a respondent in accordance with the Appellate Court Rules. It cannot do so.

D.R. Horton in its Petition for Rehearing does not put forth any relevant information that the Court might have overlooked or misapprehended and therefore there is no basis to grant such a request for rehearing. D.R. Horton attempts to divert the Court's attention from the clear facts and law that led the court to its sound decision to dismiss the appeal. The applicable rules say that respondents must be served within thirty days after notice of entry of the order or judgment. *See* Rule 203(b)(1), SCACR. As to Lather, to serve its attorneys, D.R. Horton was to e-mail the pleading to the lawyer's primary e-mail address listed in the Attorney Information System. *See Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022)*, S.C. Sup. Ct. Order dated May 6, 2022. D.R. Horton did not do that within the above-described thirty-day window. Further, there is no confusion in the electronic service rules and no scrivener errors. Simply, D.R. Horton did not name Lather in its original appeal. A scrivener's error, or clerical error, is "an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination." *Clerical Error*. Black's Law Dictionary (8<sup>th</sup> Ed. 2004). Not filing an appeal against three parties cannot be a scrivener's error. D.R. Horton's failure to serve Lather with

a notice of appeal naming it as a respondent within the thirty (30) day time period for the service of the notice of appeal is not a mere clerical or scrivener's error which can be corrected because this Court has no authority to rescue a litigant from an untimely notice of appeal. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

As to Lather Construction SC, Inc., the Court does not need to address anything as to that entity, as the appeal was properly dismissed, and any issue as to the lower court not yet ruling on Lather Construction SC, Inc.'s Motion for Summary Judgment can be addressed by the lower court once the case resumes.

i

Accordingly, for the reasons set forth herein, in its May 31, 2022 Reply to D.R. Horton's Response in Opposition to the Motion to Dismiss Appeal, in the Motion to Dismiss Appeal, and incorporating arguments of Hutton's Landscapes, Inc. as to the same (to the extent they apply to Lather), Respondents Lather Construction, Inc., and Lather Construction, SC, Inc. therefore respectfully request this Court to deny the Petition for Rehearing from Appellant D.R. Horton, Inc.

Respectfully submitted,

/s Scott H. Winograd

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

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***Attorneys for Lather Construction, Inc. and Lather Construction SC, Inc.***

Mt. Pleasant, South Carolina

October 4, 2022

**RECEIVED**

**Oct 04 2022**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENTLEY D. PRICE  
CIRCUIT COURT JUDGE

---

APPELLATE CASE NO. 2022-000469  
CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik,

**PLAINTIFFS,**

versus

Advanced Flooring & Design Division of ISI, LLC; Archer  
Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather  
Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC,

**DEFENDANTS,**

Of whom

D.R. Horton, Inc. is

**APPELLANT,**

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.

**RESPONDENTS.**

---

**Proof of Service**

---

I certify that I have served Lather Construction, Inc. and Lather Construction, SC, Inc.'s Return to D.R. Horton, Inc.'s Petition for Rehearing dated October 4, 2022, by personally serving the same pursuant to Rule 262 (c)(3), SCACR, and S.C. Supreme Ct. Order dated August 25, 2021 on the

following counsel of record using the primary email address listed in the Attorney Information System (if applicable):

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***Attorneys for D.R. Horton, Inc.***

A copy of the sent email is enclosed with this Certificate of Service.

s/ Scott H. Winograd  
Jeffrey A. Ross, Bar No.: 74254  
Philip P. Cristaldi, III, Bar No.: 102219  
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***Attorneys for Lather Construction, Inc. and Lather  
Construction SC, Inc.***

## Bobbi Myers

---

**From:** Bobbi Myers  
**Sent:** Tuesday, October 4, 2022 5:02 PM  
**To:** 'Jason Imhoff'; 'John Crawford'; 'Tom Dudley'; 'carl@carlmullerlaw.com'; 'Alexandra Williams'; Ben@bentraywicklaw.com  
**Cc:** Cassaro, Teresa; Megan White; Emily Gifford Lucey; Carmen Ganjehsani; 'cappy@bentraywicklaw.com'; Kay Kelly; lin@mlf.law; tom@mlf.law; HGrate@RichardsonPlowden.com; 'Scott Winograd'; Philip Cristaldi; Jeff Ross  
**Subject:** Appellate Case no.: 2022-000469 - Return to DR Horton's Petition for Rehearing  
**Attachments:** 2022.10.04 SHW to Ct. Appeals re Return to DRH Petition for Rehearing.pdf

Counselors,

Attached please find Lather Construction, Inc., and Lather Construction SC, Inc.'s Return to DR Horton, Inc.'s Petition for Rehearing and Certificate of Service being filed with the Court of Appeals today by electronic service in connection with the above referenced matter.

Thank you,



**Bobbi Myers**  
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Mt. Pleasant, SC 29464  
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*Please note our email address change – our entire firm will now be “first initial, last name @rclawsc.com”  
Please note our firm address change*

This e-mail and the information transmitted herein may contain privileged and/or confidential information and is the property of the sender. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this information, or the taking of any action in reliance on the content of this email, is strictly prohibited. If you have received this e-mail in error, please immediately contact Jeff Ross or Phil Cristaldi at Ross & Cristaldi, LLC, (843) 329-4040, and please delete the original email, all attachments and any copies thereof.

**ROSS & CRISTALDI<sup>LLC</sup>**  
ATTORNEYS AT LAW

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(843) 329-4040

\*Admitted in OH, NC, & SC

October 4, 2022

**VIA E-MAIL (ctappfilings@sccourts.org)**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Margaret A. Eberly and Barbara J. Pavelik v. DR Horton, Inc.  
Appellate Case No.: 2022-000469

Dear Ms. Kitchings:

Enclosed please Respondents Lather Construction, Inc. and Lather Construction SC, Inc.'s Return to D.R. Horton, Inc.'s Petition for Rehearing and Certificate of Service for filing.

Thank you very much for your attention to the above.

Very truly yours,



Scott H. Winograd

SHW/bm

Enclosures

Cc: Jason Imohoff ([jimhoff@conlaw.com](mailto:jimhoff@conlaw.com))  
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**SC Court of Appeals**

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**Oct 10 2022**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENTLEY D. PRICE  
CIRCUIT COURT JUDGE

---

APPELLATE CASE NO. 2022-000469  
CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik,

**PLAINTIFFS,**

versus

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC,

**DEFENDANTS,**

Of whom

D.R. Horton, Inc. is

**APPELLANT,**

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.

**RESPONDENTS.**

---

**RESPONDENT HUTTON'S LANDSCAPES, INC.'S RETURN TO  
D.R. HORTON, INC.'S PETITION FOR REHEARING**

---

Respondent Hutton’s Landscapes, Inc. (“Hutton’s”) hereby submits its Return to the Petition for Rehearing of Appellant D.R Horton, Inc. (“D.R. Horton”) seeking review of this Court’s July 21, 2022 Order dismissing D.R. Horton’s appeal and shows the Court as follows:

This Court dismissed D.R. Horton’s appeal because it failed to timely serve the Respondents, including Hutton’s, with the Notice of Appeal pursuant to the requirements of Rule 262 of the South Carolina Appellate Court Rules. As shown in Hutton’s May 11, 2022 Motion to Dismiss Appeal and its corresponding Reply filed on May 31, 2022, both of which Hutton’s incorporates herein, it is undisputed that when D.R. Horton filed its original Notice of Appeal on April 11, 2022, it did not name Hutton’s as a respondent. It is also undisputed that D.R. Horton did not serve the Notice of Appeal pursuant to the three methods of service authorized under Rule 262(c), SCACR– either by hand delivery, U.S. Mail, or by an e-mail sent to counsel for Hutton’s as permitted under the Supreme Court’s August 25, 2021 Order (amended May 6, 2022) with a copy of the sent e-mail attached to the proof of service for the Notice of Appeal.

D.R. Horton did not attempt to correct its error until April 28, 2022 after the thirty (30) day time period for service of the Notice of Appeal expired. See Rule 203(b)(1), SCACR. Therefore, D.R. Horton failed to meet the jurisdictional requirement of timely and proper service of a notice of appeal naming Hutton’s as a respondent, and this Court properly dismissed its appeal. See, e.g., Camp v. Camp, 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010); State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); Ex Parte Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000).

D.R. Horton’s Petition for Rehearing does not raise any valid points that were overlooked or misapprehended by this Court in dismissing the appeal. First, D.R. Horton argues that its Notice of Appeal was timely served under the South Carolina Electronic Filing Policies and Guidelines. These policies and guidelines, however, only apply to E-filing in the circuit courts, and a Notice of Electronic Filing [NEF] generated by the Circuit Court’s E-Filing System constitutes proper service only under Rule 5 of the South Carolina Rules of Civil Procedure. See In re S.C. Elec. Filing Pol'ys & Guidelines, 415 S.C. 1, 2, 7-8, 780 S.E.2d 600, 600, 603 (2015). The South Carolina Electronic Filing Policies and Guidelines do not apply to service under the South Carolina Appellate Court Rules.

D.R. Horton also incorrectly states that it timely and properly served the Notice of Appeal upon Hutton’s in accordance with the Supreme Court’s May 6, 2022 Order. See Order No. 2022-05-06-04 in Appellate Case No. 2022-000029. This particular Supreme Court Order, however, addressees “Service by E-mail in the Trial Courts” and is limited to methods of service in the trial courts throughout the state. The Supreme Court issued a separate order on May 6, 2022 in Appellate Case No. 2020-000447, Order No. 2022-05-06-03, for “Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022).” This particular order and the previous order issued by the Supreme Court on August 25, 2021, Order No. 2021-08-25-02, do not authorize use of the Circuit Court’s E-filing system established under the South Carolina Electronic Filing Policies and Guidelines as a method of service under the Appellate Court Rules.

The Supreme Court issued two separate orders regarding electronic service—one

order for cases pending in the circuit courts and a different order for cases pending in the appellate courts. It is misleading for D.R. Horton to cite to the Supreme Court's Order regarding electronic service in the circuit courts versus the Supreme Court's Order applicable to the appellate courts. The Supreme Court's issuance of two separate orders authorizing different methods of service in the trial courts versus the appellate courts demonstrates that had the Supreme Court meant for the Circuit Court's E-filing method of service to apply to the appellate courts, it could have explicitly referred to this particular means of service in its order applicable to the appellate courts. The Supreme Court chose not to do so. Therefore, the automatically generated NEF for D.R. Horton's April 11, 2022 filing of its Notice of Appeal with the circuit court did not constitute proper service under Rule 262(c), SCACR.

Second, D.R. Horton's reliance upon Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC, 422 S.C. 211, 810 S.E.2d 856 (2018) has no relevance here. This particular case dealt with whether notice of the entry of an order received via e-mail would trigger the time to appeal under Rule 203(b)(1), SCACR. It was unclear at the time because nothing about e-mail was referenced in the applicable rules. The Supreme Court, while determining that an e-mail providing written notice of entry of an order or judgment for purposes of Rule 203(b)(1), SCACR does trigger the time to appeal, applied this holding prospectively out of fairness since the rule was, prior to the Supreme Court's holding, ambiguous.

In contrast to the facts of Wells Fargo Bank, there is both a specific rule [Rule 262(c)] and order [the Supreme Court's August 25, 2021 Order, amended May 6, 2022] expressly establishing the methods of service in the appellate courts, including the proper

way to serve documents via e-mail. The applicable rule and order pose no confusion here unlike in Wells Fargo Bank where the rule did not provide clear guidance. Accordingly, there is no need for this Court to apply the service rules of Rule 262(c) and the Supreme Court's August 25, 2021 Order, amended May 6, 2022, prospectively because the rules regarding service in the appellate courts are explicit and clear-cut.

The issue here is also not simply a scrivener's error as D.R. Horton tries to convince this Court. This is a case where the notice of appeal was not properly served by an authorized method under the applicable rules within the thirty (30) day time period. See Rule 203(b)(1), SCACR. D.R. Horton's failure to serve Hutton's with a notice of appeal naming it as a respondent within this required thirty (30) day time period for the service of the notice of appeal is not a mere clerical or scrivener's error which can be corrected because this Court has no authority to rescue a litigant from an untimely notice of appeal. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

Finally, this Court's Order sufficiently explains to D.R. Horton that the appeal was dismissed because D.R. Horton did not comply with service requirements set forth in the Appellate Court Rules and the Supreme Court's Order for electronic service in the appellate courts and thus did not timely and properly serve Hutton's with the notice of appeal within the required thirty (30) day time period.

Accordingly, for the reasons set forth herein and in its previously filed Motion to Dismiss Appeal and corresponding Reply, Respondent Hutton's Landscapes, Inc. respectfully requests this Court to deny Appellant D.R. Horton, Inc.'s Petition for Rehearing.

Respectfully submitted,

/s Carmen V. Ganjehsani  
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[mwhite@richardsonplowden.com](mailto:mwhite@richardsonplowden.com)  
**ATTORNEYS FOR RESPONDENT  
HUTTON'S LANDSCAPES, INC.**

October 10, 2022.

RECEIVED

Oct 10 2022

SC Court of Appeals

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent Hutton's Landscapes, Inc., do hereby certify that I have this date served the foregoing Return to D.R. Horton, Inc.'s Petition for Rehearing, dated October 10, 2022, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated May 6, 2022, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

Jason Imhoff  
John T. Crawford, Jr.  
Thomas E. Dudley, III  
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Carl F. Muller  
CARL F. MULLER,  
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**ATTORNEYS FOR APPELLANT  
D.R. HORTON, INC.**

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**ATTORNEYS FOR LATHER  
CONSTRUCTION, INC. AND  
LATHER CONSTRUCTION SC, INC.**

A copy of the sent email is enclosed with this Certificate of Service.

/s Carmen V. Ganjehsani  
Carmen V. Ganjehsani, S.C. Bar No. 73515  
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[cganjehsani@richardsonplowden.com](mailto:cganjehsani@richardsonplowden.com)  
**ATTORNEYS FOR RESPONDENT  
HUTTON'S LANDSCAPES, INC.**

Dated: October 10, 2022.


## Carmen Ganjehsani

---

**From:** Carmen Ganjehsani  
**Sent:** Monday, October 10, 2022 10:13 AM  
**To:** imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; jross@rclawsc.com; pcristaldi@rclawsc.com; swinograd@rclawsc.com  
**Cc:** Emily Gifford Lucey; Megan White; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams; Kay Kelly; Benjamin Traywick; Lin McDougall; Tom Bacon; Hope Grate; kbarnes@rclawsc.com; Paige Enright  
**Subject:** 2022-000469 Eberly v. D.R. Horton  
**Attachments:** 2022-000469 Eberly v. D.R. Horton (Hutton's Rtn to Pet for R'hing).pdf

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you Respondent Hutton's Landscapes, Inc.'s Return to D.R. Horton, Inc.'s Petition for Rehearing in the above-referenced appeal.

Thank you,  
Carmen Ganjehsani

| <a href="#">HOME</a>                                                               | <a href="#">VCARD</a>                                                                                                                           | <a href="#">LOCATION</a>                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><b>Carmen V. Ganjehsani</b><br/>Shareholder<br/><a href="mailto:Cganjehsani@RichardsonPlowden.com">Cganjehsani@RichardsonPlowden.com</a></p> | <p><b>Richardson Plowden &amp; Robinson, P.A.</b><br/>1900 Barnwell Street<br/>Columbia, SC 29201<br/>Tel: 803.253.8692<br/>Fax: 803.779.0016<br/><a href="http://www.RichardsonPlowden.com">www.RichardsonPlowden.com</a></p> |

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# The South Carolina Court of Appeals

Margaret A. Eberly and Barbara J. Pavelik, Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup  
Corp.; Hutton's Landscapes, Inc.; Lather Construction  
SC, Inc.; Lather Construction, Inc.' Professional Drywall  
& Paint Services, LLC; Professional Exteriors II, LLC;  
and Valim Construction, LLC, Defendants,

Of which D.R. Horton, Inc. is the Appellant,

And Hutton's Landscapes, Inc., Lather Construction SC,  
Inc., and Lather Construction, Inc. are the Respondents.

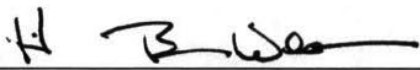
Appellate Case No. 2022-000469


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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ C.J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

**FILED**  
**Nov 15 2022**

---

Columbia, South Carolina

cc:

Jason Michael Imhoff, Esquire  
John T. Crawford, Jr., Esquire  
Thomas Elihue Dudley, III, Esquire  
Emily Gifford Lucey, Esquire  
Megan Christine White, Esquire  
Jeffrey A Ross, Esquire  
Philip Paul Cristaldi, III, Esquire  
Scott Harris Winograd, Esquire  
Carl F. Muller, Esquire  
Carmen Vaughn Ganjehsani, Esquire

**Exhibit A**

**RECEIVED**  
**Dec 08 2022**  
S.C. SUPREME COURT

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP0702629

Official File Stamp: 04-11-2022 01:15:27 PM

Court: CIRCUIT COURT

Common Pleas

Beaufort

Case Caption:

Margaret A Eberly , plaintiff, et al VS Advanced  
Flooring & Design Division Of Isi Llc , defendant,  
et al

Document(s) Submitted:

Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits

- Exhibit/Filing of Exhibits

Filed by or on behalf of:

Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Megan Christine White for Huttons Landscapes  
Inc

Thomas Elihue Dudley, III for D R Horton Inc

Scott Harris Winograd for Lather Construction Inc,  
Lather Construction Sc Inc

Jason Michael Imhoff for D R Horton Inc

Stacey Patterson Canaday for Valim Construction  
Llc

Clarke W. DuBose for Professional Drywall &  
Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast  
Construction Cleanup Corp.

ELECTRONICALLY FILED - 2022 Apr 11 2:56 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

15

Brent Morris Boyd for Professional Drywall & Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret A Eberly et al

Francis Heyward Grimball for Archer Exteriors Inc

James H. Elliott, Jr. for Archer Exteriors Inc

Alexandra Scott Williams for Margaret A Eberly et al

Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

## Certificate of Electronic Notification


### Recipients

James Elliott - Notification transmitted on 04-11-2022 01:15:43 PM.  
Benjamin Traywick - Notification transmitted on 04-11-2022 01:15:45 PM.  
Thomas Dudley - Notification transmitted on 04-11-2022 01:15:46 PM.  
Stacey Canaday - Notification transmitted on 04-11-2022 01:15:44 PM.  
Emily Lucey - Notification transmitted on 04-11-2022 01:15:44 PM.  
Clarke DuBose - Notification transmitted on 04-11-2022 01:15:44 PM.  
Megan White - Notification transmitted on 04-11-2022 01:15:46 PM.  
Scott Winograd - Notification transmitted on 04-11-2022 01:15:46 PM.  
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Subject: Received Notice: Your filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received

 [efiledonotreply@sccourts.org](mailto:efiledonotreply@sccourts.org) <[efiledonotreply@sccourts.org](mailto:efiledonotreply@sccourts.org)>  
to Jason Imhoff, Stephanie Simpson

Mon, Apr

 **You are viewing an attached message.** Carl Muller Attorney at Law Mail can't verify the authenticity of attached messages.

**To:** Jason Michael Imhoff [imhoff@conlaw.com](mailto:imhoff@conlaw.com)  
**From:** [efiledonotreply@sccourts.org](mailto:efiledonotreply@sccourts.org)  
**Date:** 2022-04-11 13:15:27.133  
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Case Number: 2019CP0702629  
Case Type: (100) Constructions  
Document Type: Appeal/Notice of Appeal to Court of Appeals  
Document Type: Exhibit/Filing of Exhibits  
Document Type: Exhibit/Filing of Exhibits

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18

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
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Other Counsel of Record:

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Attorneys for Respondent

RECEIVED

Apr 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Payelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and
Lather Construction, Inc.;.....Respondents.

AMENDED NOTICE OF APPEAL

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022, as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)
John T. Crawford, Jr. (S.C. Bar No. 69682)
Thomas E. Dudley, III (S.C. Bar No. 66154)
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Other Counsel of Record:

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*Attorneys for Respondents Lather
Construction, Inc. and Lather Construction
SC, Inc.*

Margaret A Eberly et al
PLAINTIFF(S)

Lather Construction Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .

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APR 13 2022

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629



Beaufort Common Pleas

Case Caption: Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design
Division Of Isi Llc , defendant, et al
Case Number: 2019CP0702629
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

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