

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

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2019-CP-04-01942

Natalie Zitek, et al
PLAINTIFF(S)

DR Horton, et al
DEFENDANT(S)

Submitted By: the Court Address:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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RECEIVED

Sep 06 2023

SC Court of Appeals

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.
- x **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. See Page 2 for additional information.
- 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
- 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:

The Court took the Motions to Decertify under advisement after hearing arguments from counsel on Monday, July 17, 2023. The Court considered the arguments of counsel, the thorough briefing of the matter, the exhibits and the applicable law.

This Court previously has certified the class. Significant discovery has taken place since the issuance of the Honorable Cordell Maddox’s order on January 27, 2021. The Defendant, along with several other parties, have moved that the class be decertified due to new evidence that they allege shows that the Plaintiff’s home is distinct from the other members of the class and that the conditions necessary for classification under Rule 23 of the SC Rules of Civil Procedure are not present.

Extensive analysis of the various homes was presented to the Court both in the presentations and the various briefs filed. While the Court notes that there are many variances between the homes in the subdivisions, there are some common issues. Aside from the issues expressed at the hearing regarding whether a decertification in this case would in essence be in violation of the long-established rule that one circuit judge cannot overrule another, I find that there is sufficient commonality and typicality present in the case for a class action under Rule 23 to be appropriate. I find that the issues are sufficiently similar that the class action as ordered is a more efficient means of trying the case. Extensive evidence showing commonality in brickwork, stonework, landscaping, windows, doors and other areas was presented. The Court notes that there is evidence of commonality even in the evidence from some defense experts. There also is sufficient evidence of the typicality of the Plaintiff’s home to maintain the class. The long-established law is that every issue need not be identical with each class member. The individual differences in the homes, along with the sufficiency and accuracy of expert opinions are factual questions for trial.

Accordingly, the Defendant and Third/Fourth Party Defendants’ Motions to Decertify are DENIED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court for judgment details.**

Circuit Court Judge

2752

Judge Code

Date



Anderson Common Pleas

Case Caption: Natalie Zitek , plaintiff, et al VS Jane Doe 1 , defendant, et al

Case Number: 2019CP0401942

Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit