





STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE CIRCUIT COURT OF THE  
TENTH JUDICIAL CIRCUIT  
CASE NO: 2019-CP-04-1942

Natalie Zitek, individually, and on  
behalf of all others similarly situated,

PLAINTIFF

vs

D.R. Horton, Inc., Jane Doe #1-10; and,  
John Doe #1-50

DEFENDANTS

TRIAL PLAN ORDER

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DR Horton, Inc.,

THIRD-PARTY PLAINTIFF

vs

AJ Landscaping & Grading, LLC a/k/a  
AJ Landscaping & Grading, Inc;  
AllPro Textures, LCC; Alpha Omega  
Construction Group, Inc; American  
Concrete And Precast, Inc., a/k/a ACP  
Concrete, Inc.; A&J Framing, Inc;  
Alpha EMC; A-Z, Inc; Atlanta Floor  
Designs Center; A Grade Above Others,  
LLC; Brand-Vaughan Lumber Co.,  
Inc. BKF Builders, Inc.; Builders  
Designhouse, LLC; BMC East,  
LLC D/B/A Coleman Floor, LLC;  
Builders Firstsource  
Southeast Group, LLC, a/k/a Builders  
Firstsource, Inc;  
Bravo Carpenters, Inc.; Caryl  
Mechanics II, Inc.; Caryl  
Mechanicals, Inc.; Cannaday  
Siding and Gutter, Inc.; Cores Painting,  
LLC; CBU Enterprises Inc.; CPI  
Security Systems, Inc.; DOM Group,  
LLC; Ferguson Enterprises, Inc.; Five  
Star Construction, Inc.; Five Star

Foundations, LLC; Galloway Bell Inc.;  
a/k/a Galloway-Bell, Inc. II; BGET  
Floored, LLC; GBS  
Building Supply-US LBM, LLC, a/k/a  
GBS Building Supply, Inc. General Shale  
Brick, Inc.;  
Greener Pastures, Inc., a/k/a Greener  
Pastures of Aiken, Inc; IBP Asset, LLC  
D/B/A Blue Ridge Building Products; JLS  
Masonry, Inc.; Kings Landscaping, LLC;  
Landscapers, LLC; Lade-Danler, Inc.;  
Lansing Building Products Inc.; Long  
Heating & Air  
Conditioning, Inc.; L&M  
Electric, Inc.; Manale Landscaping,  
LLC; MJ Cowboys, LLC; M&L General  
Construction, LLC. a/k/a M&L General  
Construction, Inc.; M&L Reyna  
Construction, LLC; M&M Foundations,  
LLC; Nazareth Builders, LLC, NB  
Contractors, LLC; Poinsett Development,  
LLC; Poinsett Homes, LLC; P&T  
Construction, LLC; P&L Enterprises,  
LLC; Probuild Company, a/k/a Probuild  
Holdings, Inc.; Rite Rug Co.; Rodney  
Howard Grading Co.; Sandlapper  
Concrete, LLC; Sodfather, Inc.,  
Landscape Contractors; Stock Building  
Supply, LLC; Topbuild Home Services,  
Inc., a/k/a Gale Contractors Service;  
Tucker Materials, Inc., a/k/a Gypsum  
UTM Enterprises, Inc.; Dupree Plumbing  
Company, Inc.; Willow Tree  
Landscaping, Inc.

THIRD-PARTY DEFENDANTS

This case involves complex issues and presents a significant challenge to the Court to ensure that the issues are presented to the jury in an organized and understandable manner. The Court heard from the parties at the July 21, 2023 hearing regarding a trial plan. Opportunity for the submission of additional trial plans was given to the parties. The following parties moved for bifurcation and/or submitted/joined in the submission of trial plans:

The Plaintiff Natalie Zitek, et al

The Defendant D.R. Horton

Third Party Defendants      P&L Enterprises  
    M&L Reyna Construction LLC  
    Aaron D. Peris  
    Installed Building Products LLC  
    JLS Masonry Inc.  
    Topbuild Home Services, Inc.

The Court received correspondence from the parties requesting that the Court not issue a final trial plan order until August 17, 2023, given that the parties were actively involved in settlement negotiations. The Court granted that request.

### I. Trial Bifurcation

The Court finds that the most judicially economical method of presenting this case will be by bifurcating the trial. The Court previously denied the Plaintiffs motion to bifurcate the entire case, in that a complete bifurcation would require a new jury and new trial. The Court finds that the same jury should hear all of the issues in this case. However, the claims of the Defendant against the Third-Party Defendants (and the claims against the Fourth-Party/Fifth-Party Defendants that flow from those) are affected by any liability attributed to the Defendant by the jury. Accordingly, Phase I of the trial shall be that of liability of the Defendant to the Plaintiff. The issue of punitive damages shall be heard by the jury immediately after Phase I should the jury have found the Defendant liable to the Plaintiff and if the Defendant has elected bifurcation of that issue. The jury shall render a verdict on the issues of liability and punitive damages. Should the jury find for the Plaintiff on any issue of liability and/or punitive damages, Phase II of the trial shall consist of the Defendant proceeding with its claims against the Third-Party Defendants (and any Fourth/Fifth Party claims).

### II. Pretrial Submissions

The parties shall make the following pre-trial submissions by the end of business on **Friday, August 25, 2023:**

- A. Witness lists.
- B. Proposed deposition designations under S.C.R.C.P Rule 32.

The parties shall make the following pre-trial submissions by the end of business on **Monday, August 28, 2023:**

- A. Notice by the Defendant of election of punitive damages bifurcation. Should the Defendant file no notice in this regard, punitive damages will not be bifurcated.
- B. Proposed voir dire questions.
- C. Exhibit lists.
- D. Motions in limine.
- E. Proposed verdict forms.

- F. Counter designations and objections to any deposition designations. Counter designations must clearly specify which designations are supplemental to the portions designated to be published to the jury (and need to be incorporated by original designating party) and which portions are simply counter-publications (to be published by the counter party at the conclusion of the original publication in the nature of rebuttal information). The parties are encouraged to make an earnest effort to reach an agreement on publication of deposition summaries in lieu of verbatim reading given the limited amount of time for the trial.

The parties shall file any objections to witness or exhibit lists by the end of business on **Tuesday, August 29, 2023.**

Service of any of these materials shall be by electronic transmission.

The parties shall confer before submissions of the above-listed items and determine where disagreements exist. The Court will hear arguments surrounding any of these items at the Pre-Trial Hearing.

### **III. Pre-Trial Hearing**

The attorneys in the case shall appear at an in-person Pre-Trial Hearing on Friday, September 1, 2023 at 9:30 AM. The Court will rule on any disputes regarding the Pre-Trial submissions and announce the voir dire questions that will be used. The attorneys shall bring hard copies of any documents in dispute to the hearing, unless excused from this requirement by the Court. The parties are expected to have their exhibits ready to be marked by the Court reporter. All exhibits shall be marked. The parties shall be prepared to enter any stipulated exhibits and inform the Court which exhibits will require foundation testimony and a ruling on admissibility. No attorney shall exit the courthouse until all of his or her exhibits have been marked. The parties also should be prepared to notify the Court of whether or not they would be willing to accept a verdict of fewer than twelve jurors should issues arise where it is impossible for a full jury to finish the case. This will not be an option if any party objects.

The parties also shall bring any multimedia presentations and/or demonstrative exhibits requiring use of the courtroom's electrical system/outlets with them to this hearing. The courtroom shall be available to the parties after the hearing. Should a party plan on using a technician to operate their presentation, that person shall attend the Pre-Trial Hearing so that all of that party's technological equipment can be tested in the courtroom.

### **IV. Jury Selection**

Due to the nature of the case, the Court has directed the Clerk of Court to summon a very large jury pool, making the facilities at the Anderson County Courthouse insufficient to house all of the persons in attendance. Therefore, the Court has directed jury qualification and selection to take place at the Anderson Civic Center, which is located at 3027 Martin Luther King, Jr. Blvd. Anderson, SC 29625, on Tuesday, September 5, 2023 at 9:30 AM.

The Plaintiff and Defendant shall have the customary four (4) strikes. The Third-Party Defendants shall be grouped according to trade, not to exceed five (5). The Third-Party Defendants shall submit proposed groups to the Court by the end of business on Monday, August 28, 2023 along with the other items in Paragraph II above. The Court will make a final decision on which group each party is assigned to at the Pre-Trial Hearing. Each group shall have four (4) strikes. The group shall elect one attorney to announce that group's strikes.

Due to the anticipated length of the trial, it is the Court's intention for four (4) alternates to be selected, departing from normal procedure. In the event a party has an objection to this unusual number of alternates, it must file that objection with the other materials set forth in Paragraph II above.

The Court's intention is that the jury be selected and sworn before lunch, with the trial to begin at 2 PM on the same day.

#### **V. Trial Commencement and Opening Statements.**

The Plaintiff and Defendant shall make opening statements at the commencement of Phase I of the trial. Then, one attorney from each trade group (to be elected by the group) shall be allowed to make an opening statement. Should the group be unable to agree on an attorney to make an opening statement, the Court will select one from the group randomly. The Plaintiff should be prepared to call the first witness at the conclusion of the opening statements on September 5, as time permits.

#### **VI. Trial Procedure.**

Court shall commence each day at 9 AM, unless the Court instructs otherwise. The attorneys should anticipate, and communicate to their witnesses, that the trial will extend past 5 PM on some days in order for a witness' testimony to be concluded. The time allotted to this case is limited given the large number of parties. Requests have been made for the Court to either set specific days for each party or to limit examination/cross-examination of witnesses by hours. The Court hesitates to set arbitrary time limits for each witness given the highly technical nature of this case and the need for counsel to make tactical decisions regarding witnesses in the prosecution and defense of this case. However, the Court recognizes the potential of the case bogging down in minutiae and the need for guidelines. The guidelines will be followed and counsel should prepare to complete their portion of the case inside the days allotted. Accordingly, the following schedule shall govern the trial:

September

5	Tuesday	Jury Selection, Opening Statements, First Witness (if time permits).
6	Wednesday	Plaintiffs Case.
7	Thursday	Plaintiffs Case.
8	Friday	Plaintiffs Case.

11	Monday		Plaintiff's Case.
12	Tuesday	AM	Plaintiff's Case.
		PM	Defendant's Case.
13	Wednesday		Defendant's Case.
14	Thursday		Defendant's Case.
15	Friday		Defendant's Case.
18	Monday		Defendant's Case.
19	Tuesday	AM	Plaintiffs Reply.
		PM	(Time available for site visit should the Court order such).
20	Wednesday		Closing Arguments/Jury Verdict on Phase I.
21	Thursday		Punitive Damages Phase (should the Defendant elect bifurcation).
22	Friday		Phase II Opening Statements/ Defendant/Third-Party Plaintiffs Case.
25	Monday		Defendant/Third-Party Plaintiffs Case.
26	Tuesday	AM	Defendant/Third-Party Plaintiffs Case.
		PM	Third-Party Defendants' Case.
27	Wednesday	AM	Third-Party Defendants' Case.
		PM	Fourth/Fifth-Party Defendants' Case.
28	Thursday		Defendant/Third-Party Plaintiff Reply. Third-Party Defendants/Fourth-Party Plaintiff Reply.
29	Friday		Phase II Closing Arguments/Submission to Jury

While the Court does not put specific hourly limits on any examination, the Court reserves the right to terminate the questioning of a particular witness by any attorney if the questions being asked are repetitive, unduly argumentative or merely for the purpose of slowing the pace of the trial. In Phase I, the Plaintiff and Defendant shall be allowed to fully examine each witness. One attorney representing each group shall be allowed to cross examine any witness regarding matters not covered in the direct or cross examination by the Plaintiff or Defendant. The attorney representing a party may participate in full if their client or expert is called as a witness by the Plaintiff or Defendant. In that case, that particular attorney will represent his client's group.

Should a part of the trial finish early, the next part of the trial will proceed at that time. For instance, should the Plaintiff rest a day early, the Defendant should be prepared to immediately move forward with its case.

**VII. Post-Trial Motions**

The parties shall have ten (10) days from the conclusion of the trial in which to file any post-trial motions.

The Court reserves the right to modify this plan. The parties should notify the Court immediately should any settlements be reached which removes parties and simplifies the case.

AND IT IS SO ORDERED!

This 17<sup>th</sup> day of August, 2023

Walhalla, South Carolina

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R. Scott Sprouse, Judge

Tenth Judicial Circuit



Anderson Common Pleas

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

**Case Number:** 2019CP0401942

**Type:** Order/Jury Trial

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit