

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

CASE NO. 2019-CP-04-01942

Natalie Zitek, individually, and on behalf of others
similarly situated.....Plaintiff,

v.

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

D.R. Horton, Inc.,Third-Party Plaintiff,

vs

- A&J Framing, Inc.;
- A-Z, Inc.;
- AJ Landscaping & Grading, LLC, A/K/A AJ Landscaping & Grading, LLC;
- Allpro Textures, LLC;
- Alpha E.M.C.;
- Alpha Omega Construction Group, Inc.;
- American Concrete And precast, Inc.; A/K/A ACP Concrete, Inc.;
- Atlanta Floor Designs Center;
- A Grade Above Others, LLC;
- BFK Builders, Inc.;
- BMC East LLC D/B/A Coleman Floor, LLC;
- Brand-Vaughn Lumber Co, Inc.;
- Bravo Carpenters, Inc.;
- Builders Designhouse, LLC;
- Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.;
- Builders Services Group, LLC F/K/A Masco Contractor Services Central Inc. F/K/A Gale Industries, Inc. D/B/A Gale Contractor Services;
- Cannaday Siding & Gutter, Inc.;
- Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.;

CBU Enterprises, Inc.;
 Cortes Painting, LLC;
 CPI Security Systems, Inc.;
 Dom Group, LLC;
 Dupree Plumbing Company, Inc.;
 Ferguson Enterprises, Inc.;
 Five Star Construction Inc.;
 Five Star Foundations, LLC;
 Galloway-Bell, Inc. A/K/A Galloway-Bell Inc. II;
 GBS Building Supply – Us LBM, LLC, F/K/A/GBS Building Supply, Inc.;
 General Shale Brick Inc.;
 Get Floored, LLC;
 Greener Pastures, Inc., A/K/A Greener Pastures of Aiken, LLC;
 Installed Building Products, LLC A/K/A Installed Building Products II, LLC;
 IBP Asset, LLC D/B/A Blue Ridge Building Products;
 JLS Masonry, Inc.;
 Kings Landscaping, LLC;
 L&M Electric, Inc.;
 Lade-Danlar, Inc.;
 Landshapers, LLC;
 Lansing Building Products, Inc.;
 Long Heating & Air Conditioning, Inc.;
 M&L General Construction, LLC, A/K/A M&L General Construction, Inc.;
 M&L Reyna Construction, LLC;
 M&M Foundations, LLC;
 Manale Landscaping, LLC;
 MJ Cowboys, LLC;
 Nazareth Builders, LLC;
 NB Contractors, LLC;
 Poinsett Development, LLC;
 Poinsett Homes, LLC;
 P&L Enterprises, LLC;
 P&T Construction, Inc., A/K/A P&T Construction, Inc.;
 Probuild Company, LLC A/K/A Probuild Holdings, Inc.;
 Rite Rug Co.;
 Rodney Howard Grading, Inc. A/K/A Rodney Howard Grading Co.;
 Sandlapper Concrete, LLC;
 Silver Line Building Products Corporation;
 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;
 and
 Willow Tree Landscaping, IncThird-Party Defendants,

and

Aaron D. Peris;
Harrelson Painting, LLC;
Huttig Building Products; et al Fourth and Fifth-Party
Defendants and Plaintiffs,

D.R. HORTON, INC..... Appellant/Petitioner.

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

Jane Doe #1-10; and John Doe #1-50;

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A-Z, Inc.;;
AJ Landscaping & Grading, LLC, A/K/A AJ Landscaping & Grading, LLC;
Allpro Textures, LLC;
Alpha E.M.C.;;
Alpha Omega Construction Group, Inc.;;
American Concrete And precast, Inc.; A/K/A ACP Concrete, Inc.;;
Atlanta Floor Designs Center;
A Grade Above Others, LLC;
BFK Builders, Inc.;;
BMC East LLC D/B/A Coleman Floor, LLC;
Brand-Vaughn Lumber Co, Inc.;;
Bravo Carpenters, Inc.;;
Builders Designhouse, LLC;
Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.;;
Builders Services Group, LLC F/K/A Masco Contractor Services Central Inc. F/K/A Gale
Industries, Inc. D/B/A Gale Contractor Services;
Cannaday Siding & Gutter, Inc.;;
Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.;;
CBU Enterprises, Inc.;;
Cortes Painting, LLC;
CPI Security Systems, Inc.;;
Dom Group, LLC;
Dupree Plumbing Company, Inc.;;
Ferguson Enterprises, Inc.;;
Five Star Construction Inc.;;
Five Star Foundations, LLC;
Galloway-Bell, Inc. A/K/A Galloway-Bell Inc. II;
GBS Building Supply – Us LBM, LLC, F/K/A/GBS Building Supply, Inc.;;
General Shale Brick Inc.;;

Get Floored, LLC;
Greener Pastures, Inc., A/K/A Greener Pastures of Aiken, LLC;
Installed Building Products, LLC A/K/A Installed Building Products II, LLC;
IBP Asset, LLC D/B/A Blue Ridge Building Products;
JLS Masonry, Inc.;
Kings Landscaping, LLC;
L&M Electric, Inc.;
Lade-Danlar, Inc.;
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Lansing Building Products, Inc.;
Long Heating & Air Conditioning, Inc.;
M&L General Construction, LLC, A/K/A M&L General Construction, Inc.;
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M&M Foundations, LLC;
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Poinsett Development, LLC;
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P&L Enterprises, LLC;
P&T Construction, Inc., A/K/A P&T Construction, Inc.;
Probuild Company, LLC A/K/A Probuild Holdings, Inc.;
Rite Rug Co.;
Rodney Howard Grading, Inc. A/K/A Rodney Howard Grading Co.;
Sandlapper Concrete, LLC;
Silver Line Building Products Corporation;
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;
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Willow Tree Landscaping, Inc;

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NM Alex Carpet, Inc.;
Promesa Flooring; and
Vinny’s Perfection Flooring, LLC;

Jesus Jimenez; and
Jesus Robles Montez A/K/A Robles Construction ;

Toribio Islas; and
Alejandro Soto..... Respondents.

**Petitioner’s Response to Plaintiff’s Opposition to
Petitioner’s Petition for Writ of Supersedeas**

Plaintiff’s response to the writ of supersedeas suffers from four principal defects. (1) It confuses the stay of a specific *order* under Rule 241, SCACR with the jurisdictional limits on the circuit courts for *actions* (i.e. the underlying case) under Rule 205, SCACR. (2) It fails to address the substantive and fundamental issues D.R. Horton raised in the petition. (3) It subverts Horton’s rights under the law to the plaintiff’s convenience. (4) It misstates or misconstrues several of the facts and law. Much of this probably results from a fundamental

misunderstanding of the relationship between Rule 205 and Rule 241, which Justice Few explained in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct.App.2012).

For example, on page 8 its opposition, plaintiff states that Horton could only be entitled to such a writ if it can show that it falls under one of the exceptions in Rule 241(b), SCACR. That misconstrues Rules 241(a), 241(b), and 205, SCACR and how they address different issues.

Rule 241 (a) provides an automatic stay of the *order* being appeal *unless* 241(b) provides an *exception* to the automatic stay of the *order* being appealed. When 241(b) applies, it means that a litigant does not have an automatic stay of an *order* under 241(a) but must instead ask the circuit court for a stay. Horton's appeal falls squarely within 241(a), which means an automatic stay of the *order* occurred when Horton served the notice of appeal on September 1, 2023. The circuit court may lift the automatic stay, which it did when the plaintiff made the request. That is all that happened under Rule 241(a). Rule 241(b) does not apply, nor has 241(b) been applied to this case.¹ Because the circuit court lifted the 241(a) automatic stay of the appealed orders, the court currently is applying and enforcing those orders each day it proceeds with trial. It is proceeding with and enforcing a bifurcation scheme that has been appealed. It is proceeding with and enforcing a class certification order that has been appealed. It is proceeding with and enforcing a limited discovery plan that has been appealed. It is proceeding with and enforcing its summary judgment orders that have been appealed and that have resulted in a trial absent two litigants and effectively striking Horton's third-party plaintiff claims for contractual indemnity, equitable indemnity, attorney's fees, and defense costs. All of the foregoing is due to the circuit court lifting the 241(a) automatic stay while simultaneously failing to comply with Rule 205, SCACR.

¹ Had 241(b) applied to this case, plaintiff would not have needed to ask the circuit court to lift the stay, because there would not have been an automatic stay.

Plaintiff further confuses the issues when she asserts that Horton was required to file for a writ in the trial court before seeking a writ of supersedeas in the appeals court. That is not the case. Horton's writ is to request that the appeals court respond to the trial court's grant of plaintiff's motion to lift the 241(a) automatic stay and to proceed to trial despite Rule 205, SCACR. Horton also asked the trial court to reconsider its decision to lift the automatic stay and to delay the trial pending Horton's appeal. The court denied that motion in a verbal order. Horton has followed the correct procedure and asked the trial court repeatedly for the relief Horton now asks the appeals court to provide. Moreover, the rules do not require Horton to seek a writ in the trial court prior to filing its writ of supersedeas. Plaintiff confused Rules 241(a), (b), and 205, SCACR.

Rule 205 is the heart of Horton's petition for writ of supersedeas because the circuit court has proceeded to start the jury selection and first couple of days of a month-long trial over Horton's objection and while Horton's appeal is pending. Horton asked the court to delay the trial in accordance with Rule 205, SCACR, the week before the trial started. As Horton discussed in its petition for writ of supersedeas, there are immediately appealable orders within the appeals court jurisdiction and interlocutory appealable issues. Plaintiff misconstrues or misunderstands that Rule 205 precludes the circuit court from proceeding with any *action* that the appeal may affect. In this appeal there are many ways in which the trial will be affected by the orders on appeal. Litigants are absent due to the summary judgment orders. Third-party plaintiff claims have been eliminated. Third-party contributions have been impacted. Discovery has led to injustice when only 10 class members plus the class representative were subject to Horton's discovery requests out of more than 200 homes at issue. The bifurcation scheme has multiple liability phases and the first one leaves Horton as the only litigant potentially liable

despite all the other third, fourth and fifth-parties defendant. Class certification includes a subclass that did not even purchase their homes from Horton. Class member commonality is questionable, and statute of limitations issues are outstanding, among other issues. Plaintiff has not addressed these issues. She has simply asserted over and over again that Horton's claims are not "derivative," which is not even the legal standard for analyzing a request for supersedeas.

There are further issues and nuances that will be presented in Horton's brief on appeal, but it is clear from the depth, breadth, and intertwined issues, that Rule 205 should have been honored by the circuit court. Horton requests the writ of supersedeas to preserve its substantive and trial rights pending its appeal.²

Plaintiff's opposition to the writ of supersedeas misconstrues some issues and some of the "facts" it references are incorrect. Most of these are related to procedure. The plaintiff's resort to procedure highlights that it has no substantive arguments against the merits of Horton's petition. Its procedural arguments fail on both the law and the facts.

The notice of appeal was generally served on September 1, 2023, and plaintiff's counsel was served that day. Horton's appeal was served in the trial court via electronic means on September 1, and plaintiff's counsel is aware of this fact because plaintiff's counsel served a motion to lift the stay and continue with the trial that same day, which was heard that same day.³ Technical difficulties with the circuit court filing system in Anderson County prevented *posting*, but Horton did timely file.⁴ Also, pursuant to Rule 203(d)(B), SCACR Horton has 10 days to *file*

² Plaintiff states that Horton has somehow benefitted from the unfair class certification that it is being forced to litigate. That is an untrue characterization. Horton has objected to the class certification at every juncture. Forcing settlement by imposing unfair class certification is no benefit to Horton. The benefit is to the plaintiff and other parties. That is one of the reasons that Horton has appealed and that the appellate court should impose a supersedeas.

³ It is in response to the circuit court's decision on plaintiff's motion to lift the stay and proceed with trial that Horton's writ of supersedeas was filed, after asking the circuit court to reconsider its decision.

⁴ The notice of appeal was sent to the trial court using the technical difficulties method because the Anderson County system for filing was overwhelmed in this case and the technical difficulties means of filing is used in those

the previously served notice of appeal with the trial court, which has not yet expired. The appeal is properly before the appeals court.

The motion for reconsideration of the grant of summary judgment to Builders Services Group (number 1 in the notice of appeal) was timely filed on August 7, 2023, several hours after the expanded order was filed by the court. Horton's motion to reconsider was timely and Horton was not required to file a motion to reconsider the Form 4 order when the court had indicated an expanded order was forthcoming. Plaintiff's counsel was served. The order is on page 9 in the appendix for the writ of supersedeas and shows a filed date stamp and time of August 7, 2023 at 3:39 pm and the motion for reconsideration shows a filed date stamp and time of August 7, 2023 at 7:24 p.m. The motion for reconsideration is attached hereto as Exhibit 2.

The motions for reconsideration of the grant of summary judgment to IBP Assets (number 2 in the notice of appeal) were filed within 10 days of the Form 4 order and within 10 days of the expanded order. While Plaintiff's counsel is technically correct that the trial court did not formally rule on the second motion to reconsider, it did deny the motion to reconsider the Form 4 order on August 18, 2023, and it commenced trial without third-party defendant IBP Assets being put back into the case, thereby effectively denying the second motion to reconsider. The issues raised in the Form 4 motion to reconsider cover the expanded order, which was denied by the court on August 18, 2023. Had Horton not appealed, undoubtedly plaintiff would then argue that it was foreclosed from a later appeal because it had not appealed at this time.

The motion for reconsideration of the trial plan order was also timely served and filed electronically, as plaintiff's counsel is aware. This was through the court's technical issues filing procedure due to its technical issues, which have been not infrequent in this case due to the

circumstances. Plaintiff's counsel was served with the technical difficulties email, which is attached hereto as Exhibit 1.

volume of documents and the number of people being served in this voluminous case. Filing the technical issues email with the document tolls the date of filing, thus the motion was filed for date purposes on August 28, 2023, within 10 days of the order. The email filing of the motion with the court under the technical difficulties process the court has set up for this case shows the motion for reconsideration was timely filed.

Phase 1 of the trial has commenced, and it has barely begun – *only now two days of trial completed after the jury selection in a month-long trial*. Moreover, Horton served its appeal the week before trial started and asked the circuit court not to commence the trial. Every phase of this improperly bifurcated trial impacts Horton’s rights on appeal and the summary judgment motions on appeal.⁵ Horton’s claims are intertwined with every aspect of the plaintiff’s case – including who is present at the defense table during each phase and who testifies in this contorted “class action.” The court’s decision in the summary judgment orders pervade the entire case as to liability, defenses, indemnities, contribution, and attorney fees. Plaintiff has not addressed any of these substantive issues.

Plaintiff’s counsel makes much of the fact that trial has commenced and for that reason the writ should not be issued. But such a contention serves to punish the litigant who has repeatedly tried to have its voice heard only to be denied. Horton did not decide that the trial should proceed. Horton asked the court to delay the trial because it is clear from the issues in the notice of appeal that the current iteration of the trial forfeits Horton’s appellate rights and is manifestly unjust. In fact, plaintiff was the only litigant who wanted to proceed to trial at this time. The trial court could have delayed the trial at no cost to any litigant and no burden to any

⁵ Plaintiff’s counsel states that Horton has appealed the denial of a motion for summary judgment. No such order is included in the notice of appeal.

juror. Horton's rights should not be usurped because a civic center was rented for part of one day for jury selection. Trial could have been easily postponed.

Horton's appeal is proper. The grant of summary judgment is immediately appealable and must be appealed to preserve the appellant's rights. The trial court granted summary judgment to two third-party defendants on the eve of trial. Horton had to respond to those orders or lose its rights. Those two summary judgments go to the heart of Horton's case as discussed in the petition for the writ of supersedeas. The other orders call into question grave concerns about how the trial court's orders harm Horton's ability to have a fair and just trial. Deciding the issues in the notice of appeal now will preserve judicial resources and provide clarity for the case going forward. Accordingly, Horton respectfully request the Court of Appeals to issue the requested supersedeas.

SIGNATURES TO FOLLOW

September 8, 2023
Greenville, SC

Respectfully Submitted,

s/ Carl F. Muller

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Subject: Zitek v. D.R. Horton, Inc., et al.

Good Morning,

Please accept this Certificate of Technical Failure or Technical Difficulties Form as well as:

- **Notice of Appearance for Carl Muller;**
- **DR Horton, Inc's Notice of Appeal; and**
- **Proof of Service**

Each of these need to be filed effective today's date, but we have been unable to file through the E-Filing system.

By copy of this email, I am advising all counsel of record and Judge Sprouse of this communication.

Thank you,



Kelly Nix

Paralegal

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Greenville, SC 29601

Email: nix@conlaw.com

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SIDING & GUTTER, INC.; CORTES)
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; GET FLOORED, LLC; GBS)
BUILDING SUPPLY – US LBM, LLC,)
F/K/A GBS BUILDING SUPPLY, INC.;)
GENERAL SHALE BRICK INC.;)
GREENER PASTURES, INC. A/K/A)
GREENER PASTURES OF AIKEN, LLC;)
IBP ASSET, LLC D/B/A BLUE RIDGE)
BUILDING PRODUCTS; JLS MASONRY,)
INC.; KINGS LANDSCAPING, LLC;)
LANDSHAPERS, LLC; LADE-DANLAR,)
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, INC., A/K/A P&T)
CONSTRUCTION, INC.; P&L)
ENTERPRISES, LLC; PROBUILD)
COMPANY, LLC A/K/A PROBUILD)
HOLDINGS, INC.; RITE RUG CO.;)
RODNEY HOWARD GRADING, INC.)
A/K/A 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. AND)
 WILLOW TREE LANDSCAPING, INC;)
)
) Third-Party Defendants

Defendant, D.R. Horton, Inc. (“D.R. Horton”) moves pursuant to Rule 59(e), SCRCP, and the Court’s inherent authority, for the Court to reconsider its Order Granting Third-Party Defendant Builders Services Group, Inc. d/b/a Gale Contractor Services’ (“TopBuild”) Motion for Summary Judgment (the “Order”).¹ (This Motion is made in an abundance of caution as the final proposed Order has not been signed or filed.)

The Court received motions, briefs, and heard oral arguments on TopBuild’s Motion for Summary Judgment. The Court Ordered as follows:

The Court considered the filings of the parties, arguments of counsel and the applicable law. The Court considered the evidence in a light most favorable to the non-moving party and finds that no genuine issue of material fact exists. With the Plaintiff’s stipulations, there are no allegations of defective work by Topbuild in the record. The Court finds that the contractual indemnity cause of action is not supported by a clear and unequivocal contract and that it should be dismissed. Accordingly, the Motion for Summary Judgment by 3rd Party Defendant Topbuild Home Services, Inc. is GRANTED.

The grounds for this Motion include, but are not limited to:

1. Whether the last minute, self-serving, tardy stipulation by Plaintiff should have been considered by the Court and whether there were facts in the record prior to the execution of that document to create a genuine issue of material fact preventing summary judgment;

2. Whether there were facts in the record at any time such that any indemnity requirement would be triggered at any time prior to and during the litigation precluding summary judgment;

¹ D.R. Horton fully incorporates herein its Brief in Opposition to Motion for Summary Judgment filed July 11, 2023, and Supplemental Brief in Opposition to Motion for Summary Judgment filed July 19, 2023, as **Exhibits 1 and 2**.

3. Whether D.R. Horton's entire Independent Contractor Agreement is unenforceable;

4. Whether any section of D.R. Horton's Independent Contractor Agreement is enforceable;

5. Whether the review of D.R. Horton's Independent Contractor Agreement was made in the light most favorable to D.R. Horton ;

6. Whether clear and unequivocal is the correct standard to review D.R. Horton's entire Independent Contractor Agreement and the basis for the Court's finding;

7. Whether any causes of action remain and were not dismissed by the Court against this Defendant and any Third-Party Defendants;

8. The basis for the Court's dismissal of D.R. Horton's claims for equitable indemnity, breach of contract, breach of express warranties, and breach of implied warranties;

9. The Court found that D.R. Horton's contractual indemnity indemnification cause of action is not supported by a clear and unequivocal contract; however, that decision is not supported by the law or facts. The contract complies with South Carolina law and the parties to contract should have the benefit of bargain that they agreed to when they executed the contract; and

10. While the Plaintiff volunteered that it does not have any evidence to present that the work performed by TopBuild was defective, such a declaration against interest by the Plaintiff cannot serve to foreclose D.R. Horton's contractual rights to seek redress from any subcontractor for deficient work product that results in a cost to or judgment against D.R. Horton. To the extent Plaintiff alleges any defect in workmanship as to the body of work for which TopBuild was wholly or partly responsible, TopBuild would be liable to D.R. Horton pursuant to and consistent with the indemnity obligations and the duty to defend obligations contained in the parties' contract. D.R. Horton should have an opportunity to present its case at trial.

I. INTRODUCTION

On January 27, 2021, the Court conditionally certified this class action for 234 homes in the Rose Hill subdivision in Easley, South Carolina, and the class is currently 221 homes (collectively, the "Rose Hill Homes," or the "Homes", or, individually, "Home"). Builders Service Group, Inc. d/b/a Gale Contractor Services ("TopBuild" and "Gale") installed garage doors, gutters, downspouts, and batt and blown insulation. Plaintiff brought the following claims against Defendants: negligence and gross negligence, breach of implied warranties, and unfair trade practices. However, D.R. Horton did not self-perform any of the work in the construction of the Subject Properties.

After filing the subject lawsuit, Plaintiff provided a Notice and Opportunity to Cure to D.R. Horton listing 13 categories of issues that were alleged to have been experienced by Plaintiff and similarly situated individuals. Only those subcontractors whose work was implicated by that notice have been named in the lawsuit. D.R. Horton brought claims against the entities and individuals with whom it contracted with to provide labor and/or supply materials for the construction of the Subject Properties including the Third-Party Defendants. D.R. Horton brought the following claims against the Third-Party Defendants: contractual indemnification, equitable indemnification, breach of contract, breach of express warranties, breach of implied warranties, and negligence/gross negligence/recklessness.

D.R. Horton entered into agreements with subcontractors, including the Third-Party Defendants, to perform the work (collectively hereinafter referred to as the “ICAs”).¹ Each of the

ICAs included indemnity provisions (collectively hereinafter referred to as the “Indemnity Provisions”). Throughout the years D.R. Horton constructed homes in Rose Hill with various subcontractors, it had six slight variations of the ICA. (ICA’s attached as **Exhibits 3-8; Exhibit 9** (listing of ICA’s for each subcontractor). Generally, these all incorporate the following applicable provisions:

Subcontractor Standards:

2. Independent Contractor Status. Contractor, in performing the Work, shall do so as an independent contractor and shall have the sole right and obligation to control the manner, means, methods and performance of the Work. Contractor shall ensure that the results achieved satisfy the requirements of this Agreement. Contractor shall be responsible, and liable, for all acts and omissions of its employees, agents, subcontractors and other persons performing any portion of the Work, and shall ensure that

¹ D.R. Horton fully incorporates its Memorandum in Opposition to Third-Party Motions for Summary Judgments

all personnel performing the Work are qualified and competent to perform the assigned tasks and have all necessary licenses.

6.1 Applicable Standards. Contractor shall perform all Work in accordance with any plans or specifications of Owner, in a good and workmanlike manner, and in accordance with all industry standards and practices. The Work shall meet or exceed FHA minimum property standards, VA requirements, all manufacturers' or suppliers' standards or specifications for use and installation, and all laws (statutory and common), ordinances, rules (governmental and private agency), and regulations (including but not limited to any applicable building code requirements).

6.6 Work of Others. Contractor shall be responsible for inspecting any work of another contractor that may affect Contractor's own Work in any way, and shall report in writing to Owner any defects in the work of any other contractor prior to commencement of any work, or Contractor shall be deemed to have accepted all other contractors' work for inclusion into Contractor's Work.

Subcontractor Indemnity and Insurance Requirements:

10.1 GENERALLY. To the fullest extent permitted by law, contractor hereby agrees to hold harmless, indemnify, protect and

(Sep. 7, 2022) and all exhibits of representative ICAs attached thereto as **Exhibit 10.**

defend owner, its parent corporation, subsidiaries, affiliates, successors and assigns, and each of the aforementioned entities' respective officers, directors, partners, employees, agents and insurers (individually or collectively hereinafter, "indemnatee") from and against any and all demands, claims, actions, causes of action, proceedings, lawsuits, settlements, judgments, fines, penalties, losses, attorneys fees, litigation costs, interest, and expenses of any kind (individually or collectively hereinafter, "losses") for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/ or the materials supplied under this contract, regardless of whether or not caused in part by indemnatee. Such losses specifically include, but are in no way limited to losses arising out of or attributable to: (1) a breach of any warranties, representations, covenants or obligations of contractor set forth herein; (2) the work performed or to be

performed or materially supplied by contractor, contractor's agents or employees, suppliers or subcontractors and their respective agents and employees, and/or all other entities over whom the contractor may exercise control (individually or collectively hereinafter, "contractor's agents"); (3) any negligent, grossly negligent, and/or intentional act and/or omission of contractor and/or contractor's agents; or (4) any negligent, grossly negligent, and/or intentional act and/or omission of the indemnitee related in any way to the work. Notwithstanding the foregoing, nothing herein shall require indemnity for losses caused solely by fault or negligence of the indemnitee. The losses described herein shall include, but are not limited to, demands, claims, or actions asserted by (1) any present or future owner of the house incorporating the work; and (2) any owner, contractor or any third party (including, but not limited to, personnel furnished by contractor and/or contractor's agents). The indemnification obligation under this contract shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for contractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The indemnity provisions contained herein are intended to be as broad and inclusive as permitted by law.

10.4 Subcontractor's and Supplier's Indemnity Obligations.

...For all purposes, including the purposes of this Agreement, Contractor shall be fully responsible for all of the actions of any subcontractor engaged by Contractor whether in written agreement or otherwise or who performs any part of the Work, and all obligations of Contractor under this Agreement shall be deemed to be the obligation of the subcontractors to Owner, for which Contractor shall be fully responsible to Owner.

11.3 General Requirements Applicable to All Required Insurance. Contractor shall add Owner as an Additional Insured on the CGL Policy or policies required above covering both ongoing operations and completed operations (equivalent to form CG20101185 or form CG2037). Coverage obtained by Contractor naming Owner as an Additional Insured shall be primary with any insurance of Owner being excess coverage. The insurance coverage will be carried continuously during the term of this Agreement and thereafter is requested by this Agreement with insurance companies acceptable to Owner in its sole and absolute discretion.

II. ARGUMENT

A. The Indemnity Provisions are not Illegal and Unenforceable

The Third-Party Defendants rely heavily on *DRH, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 148, 810 S.E.2d 41, 45 (Ct. App. 2018) and contend that the Indemnity Provisions included in the ICAs are illegal and unenforceable because they are barred by S.C. Code § 32-2-10, *et. seq.* (the “Anti-Indemnity Statute”).

This perfunctory analysis is insufficient, as the South Carolina Court of Appeal’s decision in *Builders* made specific reference to the concealment and unreasonable award of damages, which impacted D.R. Horton’s ability to recover under the indemnification agreement.² In *Builders*, Patricia Clark (hereinafter “Clark”) filed a suit against D.R. Horton for negligence, breach of contract, multiple breaches of warranty and a violation of the South Carolina Unfair Trade Practice Act. *Id.* at 148. The lawsuit alleged various defects in the Clark home, including but not limited to, the work performed by Builders FirstSource. Clark and D.R. Horton participated in arbitration, where Clark was awarded \$150,000.00. *Id.* However, the arbitration award did not indicate what damages the arbitrator found compensable. *Id.* Further, the arbitrator noted that “(c)ounsel for the parties have requested an order containing a monetary award only.”

Id.

Following the arbitration award, D.R. Horton filed a complaint seeking contractual indemnification and contribution from Builders FirstSource for recovery of the arbitration award and attorney’s fees that D.R. Horton incurred as a result of the Clark suit. *Id.* Subsequently,

² *Id.* at 153. “D.R. Horton cannot ask the arbitrator to conceal its reasons for an award, which may have included damages caused by its own negligence, then ask the circuit court to award it damages that would be barred by the statute.”

Builders FirstSource filed a motion for summary judgement alleging D.R. Horton's claim for contractual indemnification failed as the agreement required D.R. Horton to be indemnified from its own negligence. *Id.* at 148-49. Upon the request via multiple motions, the trial court granted Builders FirstSource's motion for Summary Judgment. *Id.* at 149. D.R. Horton then appealed the trial court's decision, asserting that the trial court erred by reading additional terms into the agreement and failed to require Builders FirstSource to pay the entire arbitration award and attorney's fees. *Id.* at 150.

The Indemnity Provisions in this matter specifically exclude losses caused by the sole negligence of D.R. Horton.

The Anti-Indemnity Statute provides, in pertinent part, as follows:

Notwithstanding any other provision of law, a promise or agreement in connection with the design, planning, construction, alteration, repair or maintenance of a building ... purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury or property damage proximately caused by or resulting ***from the sole negligence of the promisee***, its independent contractors, agents, employees, or indemnitees is against public policy and unenforceable. Nothing contained in this section shall affect a promise or agreement whereby the promisor shall indemnify or hold harmless the promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the negligence, in whole or in part, of the promisor, its agents or employees.

(Emphasis added).

In *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, the South Carolina Court of Appeals found that a prior version of D.R. Horton's ICA violated S.C. Code § 32-2-10. The former ICA required the indemnitee to indemnify D.R. Horton for claims "related in any way to the work, even when the loss is caused by the fault or negligence of the indemnitee." 422 S.C.

144, 148, 810 S.E.2d 41, 45 (Ct. App. 2018). As explained by the Court,

[The Anti-Indemnity Statute] allows D.R. Horton and [the ThirdParty Defendants] to agree that [the Third-Party Defendants] will indemnify D.R. Horton for damages caused by [Third-Party Defendants] or its subcontractors. To the extent the trial court found that aspect of the agreement to be against public policy, we disagree. However, we agree that the indemnification clause is void as against public policy to the extent it purports to require [Third-Party Defendants] to indemnify D.R. Horton for damage caused by [D.R. Horton's] negligence or the negligence of its subcontractors.

Id. The Court held that the contract at issue “purport[ed] to require [subcontractor] to indemnify D.R. Horton for its own negligence in violation of section 32-3-10.” *Id.*

In the present case, the Indemnity Provisions specifically exclude claims arising out of the sole negligence of D.R. Horton by providing:

- “**10.1 GENERALLY.** ...nothing herein shall require indemnity for losses caused solely by fault or negligence of the indemnitee [DRH]” (See Exhibit 3);
- “**10.1 GENERALLY.** ...nothing herein shall require contractor to indemnify indemnitee against liability for damages arising out of bodily injury or property damage proximately caused by or resulting from the sole negligence or sole intentional act or omission of indemnitee [DRH]” (See Exhibits 4, 5, 6, 7);
- “**10.1 GENERALLY.** ...It is the express intent of the parties in agreeing to this Section 10 that Contractor shall indemnify Indemnitee for the negligence of Contractor, its subcontractors, employees and anyone over whom Contractor exercises control as well as for Owner's and/or indemnitee's concurrent or joint negligence arising from a failure to properly supervise Contractor.” (See Exhibit 8).

Because the ICAs with the Third-Party Defendants exclude claims arising out of D.R. Horton's sole negligence, the Indemnity Provisions do not violate Section 32-3-10 and are distinguishable from the agreement in *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*. (See Exhibits 3-8, the ICAs and Exhibit 9, listing of ICA's for each subcontractor).

B. The Indemnity Provisions Comply with The Requirements Set Forth in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*

The Third-Party Defendants contend that the Indemnity Provisions do not comply with the requirements laid out in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018) and are therefore unenforceable. The Court in *Concord* held that when a party seeks indemnification for its own concurrent negligence, the clear and unequivocal standard applies. *Id.* at 649, 172. Additionally, “when an indemnity clause purports ‘to relieve an indemnitee from the consequences of its own negligence,’ [South Carolina] case law requires strict construction of the clause.” *Id.* at 650, 172 (quoting *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 111 S.E.2d 375, 378-379 (2003)).

There were two indemnity agreements entered at issue in *Concord*. For the first agreement, the court found that the phrase “to the extent caused or alleged to be caused in whole or in part by any negligent act or omission of the [Muhler]” specifically limited Muhler’s obligation to indemnify to damages and losses caused by the negligence of the Muhler and its subcontractors.³ *Id.* at 654, 174. Additionally, the phrase “regardless of whether it is caused in

part by a party indemnified hereunder” did not alter the limiting language. *Id.* Therefore, the general contractor was not entitled to indemnification from the subcontractor, Muhler, for the general contractor’s concurrent negligence pursuant to the first agreement.

With regard to the second agreement, the court found that although the language was broader and excluded the limiting “to the extent caused” language from the first agreement, it still

³ The first indemnity agreement in *Concord* stated, in relevant part, as follows:

failed to include any reference to indemnification for the general contractor’s concurrent negligence.⁵ *Id.* at 656-657, 176. While “there is no verbatim phrase that must be used to meet the clear and unequivocal standard, there must be some language in an indemnity clause that clearly shows the parties’ intent to absolve the indemnitee of the consequences of its own concurrent negligence.” *Id.* at 657, 176 (citation omitted). Further, the Court indicated that the following language may be sufficient to meet the clear and unequivocal standard: “[subcontractor] agrees to indemnify for all damages, regardless of whether the damages are caused in part by a party indemnified hereunder[.]” *Id.* at 656-657, 176.

the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor ... and other contractors and subcontractors ... from and against all claims, damages, loss and expenses, including but not limited to attorney’s fees, arising out of or resulting from the performance of the Subcontractor’s Work ...

(a) ... to the extent cause or alleged to be caused in whole or in part by any negligent act or omission of the Subcontractor ... regardless of whether it is caused in part by a party indemnified hereunder.

Id. at 643, 168-169.

⁵ The second indemnity provision provided, in pertinent part,

In the event either Superior or Concord and Cumberland, LLC are sued hereafter ... alleging that one or more of the windows and/or doors do not comply with the original or amended contract documents, or are defectively installed, Muhler agrees to unconditionally indemnify both Superior and Concord and Cumberland, LLC ... and will pay all damages ... incurred by either or both[.]

Id. at 644, 169.

The indemnity provision in Version 1 of the ICA provides in relevant part (See Exhibit

3):

10.1 GENERALLY. ...[Subcontractor] hereby agrees to hold harmless, indemnify, protect and defend [DRH]...from and against any and all demands, claims, actions, causes of action,

proceedings, lawsuits...and expenses of any kind... for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm, arising out of, or resulting from, or related in any way to the work performed and/ or the materials supplied under this contract, **regardless of whether or not caused in part by indemnitee [DRH].**" (*Emphasis added*).

The indemnity provision in Versions 2, 3, and 4 of the ICA provides in relevant part (See Exhibits 4, 5, and 6):

"10.1 Generally. ... [Subcontractor] shall protect, defend, indemnify, and hold [DRH].... harmless from and against any and all claims, demands, lawsuits or other litigation...including all costs thereof, attorneys' fees and interest... on account of bodily or personal injury, death, or damage to or loss of tangible or intangible property... arising out of, or in connection with: (1) a breach of any warranties, representations, covenants, or other obligations of [subcontractor] set forth in this Agreement; (2) the work...performed or material supplied by [subcontractor]...(3) any negligent or intentional act or omission...of [subcontractor]...**regardless of whether caused in part by [DRH]; or (4) any negligent or intentional act or omission... of [DRH] related in any way to the work.**" (*Emphasis added*).

The indemnity provision in Version 5 of the ICA provides in relevant part (See Exhibit 7):

10.1 GENERALLY....[Subcontractor] shall protect, defend, indemnify, and hold [DRH]....harmless from and against any and all claims, demands, lawsuits or other litigation... including all costs thereof, reasonable settlement amounts, attorneys' fees and interest... on account of bodily or personal injury, death, or damage to or loss of tangible or intangible property...arising out of, or in connection with: (a) a breach of any warranties, representations, covenants, or other obligations of [subcontractor] set forth in this agreement; (b) the work...performed or material supplied by [subcontractor]... (c) any negligent or intentional act or omission of [subcontractor] **regardless of whether caused in part by [DRH]; or (d) any negligent or intentional act or omission... of [DRH] related in any way to the work...**" (*Emphasis added*).

The indemnity provision in Version 6 of the ICA provides in relevant part (See Exhibit 8):

“10.1 GENERALLY. ...[Subcontractor] shall hold harmless, indemnify [DRH].... against all demands, claims, actions, causes of action, proceedings, lawsuits...or expenses (including attorneys’ fees and interest), for damages from bodily or personal injury, death, the destruction or loss of property (including loss of use), or any other kind of damages or harm.... arising out of, or resulting from, or related to the work performed and/ or the materials supplied under this Agreement, **including losses founded partially upon the negligent acts or omissions of [DRH] in failing to supervise contractor, attributable in whole or in part to:** (1) a breach of any warranties, representations, covenants or other obligations of contractor set forth in this Agreement; (2) the work performed.... or materials supplied by [subcontractor]...; or (3) any negligent or intentional act and/or omission of [Subcontractor] related in any way to the work...” (*Emphasis added*).

The Indemnity Provisions between D.R. Horton and the Third-Party Defendants closely track the language suggested by the court in Concord and provide that third-party defendants will indemnify DRH for certain losses regardless of whether or not the losses caused in part by D.R. Horton. The Indemnity Provisions clearly and unequivocally show that the parties intended to absolve D.R. Horton of the consequences of its own concurrent negligence. Therefore, the Indemnity Provisions meet the standard set forth in Concord and are enforceable. See Exhibits 3-8, the ICAs.

C. The Entire Contract is not Unenforceable

The entire ICA is not unenforceable if the indemnity provision is void. D.R. Horton and third parties entered into an agreement for work in exchange for payment. The contract was between sophisticated parties done at arm’s length. No argument was made or supported that the contract was somehow “forced” onto the sub-contractors such that they could not walk away, ask for explanations, negotiate, or request revisions.

Further, the contract requires the subcontractor to perform its work correctly, safely, and in compliance with certain state, building, and industry standards. No part of that requirement is unfair, onerous, or against public policy. In fact, those parts of the ICA mirror South Carolina's requirements for construction and thus cannot be void as against public policy.

The ICA also requires the subcontractor to obtain insurance for itself and for D.R. Horton. Section 10.1 of the parties' identical contracts, which describes the respondents' indemnity and defense obligations to the appellant, specifically states that these obligations are separate, distinct, and independent. The contracts specifically state that the "[c]ontractor's duty to defend is a separate, distinct, and independent obligation from its duty to indemnify..." For emphasis, the entire section is in all capital letters, bold, and font larger than the remainder of the contract. The indemnity obligation in Section 10.1 is enforceable and the duty to defend obligation in Section 10.1 is enforceable. There is no law in South Carolina that limits or prohibits enforcement of either of the obligation as they are written and were agreed to by the parties.

If either the indemnity or duty to defend obligations is determined to be unenforceable then the unenforceable obligation is severable as a separate, distinct, and independent obligation from the other obligation. The South Carolina Supreme Court has long allowed the severability of contracts.

In *Packard Field v. Byrd*, 73 S.C. 1, 51 S.E. 678 (1905), our Court previously articulated the general rule with regard to the severability of contracts: ... 'A severable contract is one in its nature and purpose susceptible of division and apportionment, having two or more parts, in respect to matters and things contemplated and embraced by it, not necessarily dependent upon each other, nor is it intended by the parties that they shall be. The entirety or severability of a contract depends primarily upon the intent of the parties rather than upon the divisibility of the

subject, although the latter aids in determining the intention.’ *Columbia Architectural Grp. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (S.C. 1980) (quoting *Packard Field v. Byrd*, 73 S.C. 1, 6, 51 S.E. 678, 679 (S.C. 1905)).

The intent of the respondents and appellant in this case is clear from their contracts. They have expressly agreed the obligation to indemnify and the duty to defend are separate, distinct, and independent obligations, therefore, they have agreed upon severability. If the entire ICA is not void, D.R. Horton requests reconsideration or clarification of the Court’s Order on the unenforceability of the ICA.

D. The Court Did Not Set Out A Basis For Dismissing D.R. Horton’s Other Causes Of Action

The Court did not specifically set out whether it dismissed D.R. Horton’s causes of action for equitable indemnity, breach of contract, breach of implied warranties, or breach of express warranties. The Order does not address D.R. Horton’s arguments on these issues.

D.R. Horton brought breach of contract causes of action for third parties’ breach of its ICA with D.R. Horton. In that contract the subcontractor agreed to perform its work in accordance with the code, installation instructions, and other requirements. Separately, D.R Horton brought suit for damages arising from third parties’ work as alleged by Plaintiff. Plaintiff sued D.R.

Horton for the work performed by the third party as set forth in its complaint and Notice and Opportunity letters. No evidence or arguments have been made that D.R. Horton either contributed to TopBuild’s alleged failures or that D.R. Horton’s ICA was invalid in requiring third parties to perform their work in accordance with these certain requirements.

Further, there has been no argument that requiring a sub-contractor to comply with code, installation instructions, or provide express warranties for their work is unfair, invalid, against public policy, or otherwise unenforceable.

D.R. Horton requests reconsideration or clarification of the court's Order related to its causes of action for breach of contract, express warranties, implied warranties, and equitable indemnity.

E. The Court Did Not Consider the Facts and Chronology of The Allegations And Evidence

The Court should consider all of the evidence in the record and the timing of Plaintiff's stipulation when considering Summary Judgment on each of D.R. Horton's causes of action. Plaintiff's late, arbitrary self-serving stipulation should not be the only piece of evidence considered when evaluating motions for summary judgment on multiple causes of action.

Specifically, Plaintiffs maintained causes of action and evidence throughout four years of this case on each area of potential defects. In fact, these same motions for summary judgment were made years ago in this case and denied because Plaintiff would not dismiss them or stipulate they did not exist. The filing of a stipulation the day before or the day of 100 motions were to be heard should not preclude D.R. Horton from continuing causes of action on all of its causes of action.

To the extent Plaintiff alleges any defect in workmanship as to the body of work for which TopBuild was wholly or partly responsible, TopBuild would be liable to D.R. Horton pursuant to and consistent with the indemnity obligations and the duty to defend obligations contained in the parties' contract. D.R. Horton should have an opportunity to present its case at trial.

IV. CONCLUSION

For the reasons set forth above, D.R. Horton requests the Court reconsider its Order granting Summary Judgment.

Respectfully submitted,

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

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Jason Imhoff (SC Bar # 69355)

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August 7, 2023

Greenville, South Carolina

RECEIVED

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

CASE NO. 2019-CP-04-01942

Natalie Zitek, individually, and on behalf of others
similarly situated.....Plaintiff,

v.

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

D.R. Horton, Inc.,Third-Party Plaintiff,

vs

A&J Framing, Inc.;;
A-Z, Inc.;;
AJ Landscaping & Grading, LLC, A/K/A AJ Landscaping & Grading, LLC;
Allpro Textures, LLC;
Alpha E.M.C.;;
Alpha Omega Construction Group, Inc.;;
American Concrete And precast, Inc.;; A/K/A ACP Concrete, Inc.;;
Atlanta Floor Designs Center;
A Grade Above Others, LLC;
BFK Builders, Inc.;;
BMC East LLC D/B/A Coleman Floor, LLC;
Brand-Vaughn Lumber Co, Inc.;;
Bravo Carpenters, Inc.;;
Builders Designhouse, LLC;
Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.;;
Builders Services Group, LLC F/K/A Masco Contractor Services Central Inc. F/K/A Gale
Industries, Inc. D/B/A Gale Contractor Services;
Cannaday Siding & Gutter, Inc.;;
Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.;;

CBU Enterprises, Inc.;
Cortes Painting, LLC;
CPI Security Systems, Inc.;
Dom Group, LLC;
Dupree Plumbing Company, Inc.;
Ferguson Enterprises, Inc.;
Five Star Construction Inc.;
Five Star Foundations, LLC;
Galloway-Bell, Inc. A/K/A Galloway-Bell Inc. II;
GBS Building Supply – Us LBM, LLC, F/K/A/GBS Building Supply, Inc.;
General Shale Brick Inc.;
Get Floored, LLC;
Greener Pastures, Inc., A/K/A Greener Pastures of Aiken, LLC;
Installed Building Products, LLC A/K/A Installed Building Products II, LLC;
IBP Asset, LLC D/B/A Blue Ridge Building Products;
JLS Masonry, Inc.;
Kings Landscaping, LLC;
L&M Electric, Inc.;
Lade-Danlar, Inc.;
Landshapers, LLC;
Lansing Building Products, Inc.;
Long Heating & Air Conditioning, Inc.;
M&L General Construction, LLC, A/K/A M&L General Construction, Inc.;
M&L Reyna Construction, LLC;
M&M Foundations, LLC;
Manale Landscaping, LLC;
MJ Cowboys, LLC;
Nazareth Builders, LLC;
NB Contractors, LLC;
Poinsett Development, LLC;
Poinsett Homes, LLC;
P&L Enterprises, LLC;
P&T Construction, Inc., A/K/A P&T Construction, Inc.;
Probuild Company, LLC A/K/A Probuild Holdings, Inc.;
Rite Rug Co.;
Rodney Howard Grading, Inc. A/K/A Rodney Howard Grading Co.;
Sandlapper Concrete, LLC;
Silver Line Building Products Corporation;
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;
and
Willow Tree Landscaping, IncThird-Party Defendants,

and

Aaron D. Peris;
Harrelson Painting, LLC;
Huttig Building Products; et al Fourth and Fifth-Party
Defendants and Plaintiffs,

D.R. HORTON, INC..... Appellant/Petitioner.

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

Jane Doe #1-10; and John Doe #1-50;

A&J Framing, Inc.;;
A-Z, Inc.;;
AJ Landscaping & Grading, LLC, A/K/A AJ Landscaping & Grading, LLC;
Allpro Textures, LLC;
Alpha E.M.C.;;
Alpha Omega Construction Group, Inc.;;
American Concrete And precast, Inc.;; A/K/A ACP Concrete, Inc.;;
Atlanta Floor Designs Center;
A Grade Above Others, LLC;
BFK Builders, Inc.;;
BMC East LLC D/B/A Coleman Floor, LLC;
Brand-Vaughn Lumber Co, Inc.;;
Bravo Carpenters, Inc.;;
Builders Designhouse, LLC;
Builders FirstSource Southeast Group, LLC, A/K/A Builders FirstSource, Inc.;;
Builders Services Group, LLC F/K/A Masco Contractor Services Central Inc. F/K/A Gale
Industries, Inc. D/B/A Gale Contractor Services;
Cannaday Siding & Gutter, Inc.;;
Caryl Mechanics II, Inc., A/K/A Caryl Mechanicals, Inc.;;
CBU Enterprises, Inc.;;
Cortes Painting, LLC;
CPI Security Systems, Inc.;;
Dom Group, LLC;
Dupree Plumbing Company, Inc.;;
Ferguson Enterprises, Inc.;;
Five Star Construction Inc.;;
Five Star Foundations, LLC;
Galloway-Bell, Inc. A/K/A Galloway-Bell Inc. II;
GBS Building Supply – Us LBM, LLC, F/K/A/GBS Building Supply, Inc.;;
General Shale Brick Inc.;;

Get Floored, LLC;
Greener Pastures, Inc., A/K/A Greener Pastures of Aiken, LLC;
Installed Building Products, LLC A/K/A Installed Building Products II, LLC;
IBP Asset, LLC D/B/A Blue Ridge Building Products;
JLS Masonry, Inc.;
Kings Landscaping, LLC;
L&M Electric, Inc.;
Lade-Danlar, Inc.;
Landshapers, LLC;
Lansing Building Products, Inc.;
Long Heating & Air Conditioning, Inc.;
M&L General Construction, LLC, A/K/A M&L General Construction, Inc.;
M&L Reyna Construction, LLC;
M&M Foundations, LLC;
Manale Landscaping, LLC;
MJ Cowboys, LLC;
Nazareth Builders, LLC;
NB Contractors, LLC;
Poinsett Development, LLC;
Poinsett Homes, LLC;
P&L Enterprises, LLC;
P&T Construction, Inc., A/K/A P&T Construction, Inc.;
Probuild Company, LLC A/K/A Probuild Holdings, Inc.;
Rite Rug Co.;
Rodney Howard Grading, Inc. A/K/A Rodney Howard Grading Co.;
Sandlapper Concrete, LLC;
Silver Line Building Products Corporation;
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;
and
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Jesus Jimenez; and
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Toribio Islas; and
Alejandro Soto..... Respondents.

PROOF OF SERVICE

I certify that I have caused Appellant D. R. Horton, Inc.’s Petitioner’s Response to Plaintiff’s Opposition to Petitioner’s Petition for Writ of Supersedeas with Exhibits to be electronically served on all counsel of record to the following email addresses on this 8th day of September 2023.

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