

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

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

APPELLATE CASE NO. 2023-001853
CIVIL ACTION NO. 2021-CP-10-03090

Jared S. O’Connell and Harmony A. O’Connell,

Respondents,

versus

House Therapy Holdings, LLC; Amanda F. Dempsey; William T. Phillips;
Matthew B. Swain; Daniel Ravenel Company Sotheby’s International Realty;
Artis Construction, LLC; Oceanaire, LLC; Hero Heating & Air;
Custom Climate Heating & Air, Inc.; P.J. Sanchez Masonry, LLC;
Donnix Construction, LLC; Guillen Carpentry, LLC; Charleston Exteriors, LLC;
Ashley Oak Contracting, LLC; H20 Pro, LLC; La Roca Masonry, LLC;
Apex Contractors, LLC; South Point Hardwood Floor, LLC; Bluetape Solutions, LLC;
Carolina Climate Control, LLC; Movar, LLC; ECL Design, LLC; and
Affordable Sprayfoam Insulation of the Carolinas, LLC,

Defendants,

and

Artis Construction, LLC is

Third-Party Plaintiff/Appellant,

versus

Brian R. Wells, PE, LLC; Perryman Engineering, LLC; P.J. Sanchez
Masonry, LLC; Donnix Construction, LLC; Guillen Carpentry, LLC;
Charleston Exteriors, LLC; Ashley Oak Contracting, LLC; H20 Pro, LLC;
La Roca Masonry, LLC; Apex Contractors, LLF; and South Point Hardwood
Floor; LLC,

Third-Party Defendants,

and

House Therapy Holdings, LLC; Amanda F. Dempsey; William T. Phillips;
and Matthew B. Swain,

Respondents,

versus

Carolina Climate Control, LLC; and Bluetape Solutions, LLC,

Third-Party Defendants.

**APPELLANT ARTIS CONSTRUCTION, LLC'S RETURN TO MOTION AND
MEMORANDUM OF RESPONDENTS JARED S. O'CONNELL AND
HARMONY A. O'CONNELL TO DISMISS APPEAL**

Artis Construction, LLC, Appellant in the above-captioned appeal, submits this Return to the Motion and Memorandum of Respondents Jared S. O'Connell and Harmony A. O'Connell to dismiss the appeal. In response to the O'Connells' motion to dismiss the appeal, Artis Construction refers this Court to the arguments set forth in its Memorandum Regarding Appealability filed with this Court on December 21, 2023. By way of further response, Artis Construction also states the following in opposition to the O'Connells' motion to dismiss:

The O'Connells claim that the Trial Court issued an order denying summary judgment on their Unfair Trade Practices Act claim and decided nothing about the merits of the case. As such, the O'Connells argue that the order is not immediately appealable and the appeal should be dismissed.

Artis Construction recognizes that orders which deny a motion for summary judgment are not immediately appealable. But the Trial Court's order in this case as to the O'Connells did not merely deny a motion for summary judgment. That may have

been the label affixed to the order, but the substance of the order went far beyond the bounds of an order denying a motion for summary judgment. Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (noting appellate court should not look to how the order is styled in deciding appealability, but instead look to the effect of the interlocutory order to determine its appealability).

The order, attached hereto as Exhibit “A,” makes a number of decisive findings and conclusions that hinder Artis Construction’s ability to defend the case, including:

1. multiple findings of fact predetermining the existence of construction deficiencies which resulted in damage to the Plaintiffs, including experiencing illness which forced the Plaintiffs to move out of the home due to air quality, even though the existence of construction deficiencies, causation, and damages was and continues to be a disputed issue in the case [Id. at pp. 2-3];
2. findings of fact concluding that Artis Construction suggested underground PVC ductwork, which is dispute, and further stated that because Artis improperly installed the PVC ductwork, Coliform and E.Coli are now present at the Plaintiffs’ property, which factual findings are conclusive of liability and causation against Artis Construction [Id. at p. 3 (finding “improper installation of underground ductwork” causing ductwork to fill with water resulting in Plaintiffs’ illnesses); p. 5 (same factual finding)];
3. that the Plaintiffs proved an adverse effect on the public interest for purposes of an Unfair Trade Practices Act claim and “need not allege or prove anything further” [Id. at p. 4]; and
4. that Artis Construction committed a “fraudulent and deceptive act” by installing a PVC ductwork system that could not work in the environment for the Plaintiffs’ property resulting in damage to the Plaintiffs [Id. at p. 5].

To recover in an action under the Unfair Trade Practices Act, a “plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive

act(s).” Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). In its order, the Trial Court has already determined that Artis Construction committed a deceptive act which affected the public interest for which the Plaintiffs suffered damages as a result. There is nothing left to be decided.

At a minimum, it is improper for a trial court to make such conclusive factual findings and determinations of law in denying a motion for summary judgment. Artis Construction asked the Trial Court to remove such findings and determinations from its order denying summary judgment, but the Trial Court refused to do so. See Motion for Reconsideration, attached hereto as Exhibit “**B** ,”and Order Denying Motion for Reconsideration, attached hereto as Exhibit “**C**.” An immediate appeal is the only way to address the Trial Court’s error.

The order issued by the Trial Court which decides in favor of the Plaintiffs on every element of an Unfair Trade Practices Act claim thus “involves the merits” and “affects a substantial right” and is immediately appealable under S.C. CODE ANN. § 14-3-330.

Accordingly, Artis Construction respectfully requests this Court to determine that the order as to the Plaintiffs is immediately appealable under S.C. CODE ANN. § 14-3-330(1), (2)(a), and (2)(c) or, in the alternative, permit the issue of appealability to be further briefed in the appellate briefs on the merits.

(signature on following page)

Respectfully submitted,

/s Carmen V. Ganjehsani

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ATTORNEYS FOR APPELLANT

ARTIS CONSTRUCTION, LLC

January 2, 2024.

EXHIBIT “A”

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 JARED S. O'CONNELL AND HARMONY)
 A. O'CONNELL,)
)
 Plaintiffs,)
 vs.)
)
 HOUSE THERAPY HOLDINGS, LLC,)
 AMANDA F. DEMPSEY, WILLIAM T.)
 PHILLIPS, MATTHEW B. SWAIN, DANIEL)
 RAVENEL COMPANY SOTHEBY'S)
 INTERNATIONAL REALTY, ARTIS)
 CONSTRUCTION, LLC; OCEANAIRE, LLC;)
 HERO HEATING AND AIR, LLC; CUSTOM)
 CLIMATE HEATING & AIR, INC.; P.J.)
 SANCHEZ MASONRY, LLC; DONNIX)
 CONSTRUCTION, LLC; GUILLEN)
 CARPENTRY, LLC; CHARLESTON)
 EXTERIORS, LLC; ASHLEY OAK)
 CONTRACTING, LLC; H2O PRO, LLC; LA)
 ROCA MASONRY, LLC; APEX)
 CONTRACTORS, LLC; SOUTH POINT)
 HARDWOOD FLOOR, LLC; BLUETAPE)
 SOLUTIONS, LLC; CAROLINA CLIMATE)
 CONTROL, LLC; MOVAR, LLC; ECL)
 DESIGN, LLC; AND AFFORDABLE SPRAY)
 FOAM INSULATION OF THE)
 CAROLINA'S, LLC F/K/A AFFORDABLE)
 SPRAYFOAM INSULATION OF THE)
 CAROLINAS, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 2021-CP-10-03090
 ORDER DENYING ARTIS
 CONSTRUCTION, LLC'S MOTION FOR
 SUMMARY JUDGMENT AS TO
 PLAINTIFFS

THIS MATTER came before the Court upon Artis Construction, LLC's (hereinafter Artis) Motion for Summary Judgment against Jared S. O'Connell and Harmony A. O'Connell's (hereinafter "Plaintiffs") claim for South Carolina Unfair Trade Practices. The Court heard oral arguments regarding this matter on August 15, 2023, at the Charleston County Courthouse.

Cameron D. Berthelsen was present on behalf of Artis and Amanda M. Blundy was present on behalf of Plaintiffs. After hearing the arguments and reviewing the memorandum of Plaintiffs, the Court Denies Artis' Motion for Summary Judgment.

FINDING OF FACTS

This case arises out of the allegations of failure to disclose known defective conditions and allegations of multiple deficiencies arising out of the construction of Plaintiffs' single-family home located at 5 Palmetto Road in Charleston County, South Carolina (hereinafter the "Residence"). Defendants House Therapy Holdings, LLC, Amanda F. Dempsey, William T. Phillips, and Matthew B. Swain (hereinafter collectively "HTH") purchased the Residence on July 9, 2018. HTH entered into a Cost/Plus Construction Agreement with Artis on July 6, 2018. Artis hired subcontractors to perform various scopes of work at the Residence pursuant to the Cost/Plus Construction Agreement.

Plaintiffs discovered the various construction deficiencies upon observations made by a licensed professional engineer, Russell T. Mease, P.E. on September 3, 2021. Mr. Mease's Construction Deficiencies report dated October 5, 2021, sets forth the various deficiencies. Plaintiffs also hired a licensed mechanical engineer, Warren E. Maddox, P.E., F.NSPE, to evaluate the mechanical system of the Residence. Mr. Maddox's Preliminary Report dated December 14, 2021, sets forth the various deficiencies with the mechanical system including the improper installation of the PVC ductwork installed below the slab.

Artis holds an active Residential Builders license with the South Carolina Department of Labor and Licensing Regulations, which was issued on October 16, 2019. Artis has an active website which advertises new construction and "historic preservation." Artis continues to operate as a general contractor in South Carolina at the time of this Order.

The improper installation of the underground ductwork has resulted in the PVC ductwork filling with water. Plaintiffs had environmental testing performed of the water present in the PVC ductwork, which revealed that the ductwork contains 100ML of Coliform and that E.Coli is also present. These conditions have resulted in Plaintiffs experiencing illness due to quality of the air blowing from the PVC ductwork, such that they have had to move out of the Residence.

CONCLUSIONS OF LAW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. Summary judgment is proper when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCF. On summary judgment, the court's task is not to try issues of fact but to determine if genuine issues of material fact exist. Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 408, 563 S.E.2d 109, 112 (Ct. App. 2002). "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999).

The South Carolina Unfair Trade Practices Act (hereinafter "SCUTPA") provides, "Unfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. Code Ann. § 39-5-20(a) (1985). "To recover in an action under the [Act], the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected

public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

To be actionable under the SCUTPA, an unfair or deceptive practice or act must adversely affect the public interest. Florence Paper Co. v. Orphan, 298 S.C. 210, 379 S.E.2d 289 (1989); Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). Therefore, conduct which only affects the parties to the transaction provides no basis for a SCUTPA claim. See Key Co. v. Fameco Distribs., Inc., 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987). This adverse effect on the public must be proved by specific facts. "Without proof of specific facts disclosing that . . . members of the public were adversely affected by [the unfair conduct] or that they were likely to be, all we are left with is a 'speculative [claim] of adverse public impact' and that will not suffice for a recovery under the SCUTPA." Daisy Outdoor Advertising Co. v. Abbott, Op. No. 2224 (S.C. Ct. App. filed Sept. 6, 1994) (Davis Adv. Sh. No. 20, at 47, 51) (quoting Omni Outdoor Advertising, Inc. v. Columbia Outdoor Advertising, Inc., 974 F.2d 502, 507 (4th Cir. 1992)).

An impact on the public interest may be shown if the acts or practices have the potential for repetition. Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998). The potential for repetition may be shown by (1) proving that the same kind of actions occurred in the past or (2) by showing that the procedures employed by the defendant create a potential for repetition of the deceptive practices. *Id.* at 388, 496 S.E.2d at 23. After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the Plaintiff has proven an adverse effect on the public interest. Daisy Outdoor Advertising v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996). The Plaintiff need not allege or prove anything further.

Based on the evidence in this case, there is a genuine issue of material fact as to whether Artis defectively constructed and renovated the Residence in violation of the South Carolina Residential Code and as to whether Artis violated SCUPTA. Artis is in the business of renovating homes, which they advertise to the public they are experts in doing.

Artis held themselves out to HTH as knowledgeable in the installation of underground PVC ductwork and suggested that HTH install underground PVC ductwork at the Residence. Artis and their subcontractors installed the PVC ductwork at the Residence. As a result of Artis' suggestion and improper installation of the PVC ductwork at the Residence, Coliform and E.Coli are now present at the Residence. Artis' fraudulent and deceptive act of installing a PVC ductwork system that could not work in the environment present at the Residence, has resulted in the presence of water damage, microbial growth, Coliform, and E.Coli, which has uprooted Plaintiffs and their children from their home.

Artis is still in operation and still advertising their expertise to the public. Evidence shows that there is a reasonable inference in Plaintiffs favor that Artis is still in the business of renovating homes and is actively advertising their expertise to the public without knowledge of the necessary building code requirements.

Therefore, the Court finds that there is evidence that Artis engaged in an unfair or deceptive act in the conduct of trade or commerce; the unfair or deceptive act affected public interest; and the Plaintiffs suffered monetary or property loss as a result of the defendant's unfair or deceptive acts.

WHEREFORE, based on the foregoing, Artis Construction, LLC's Motion for Summary Judgment as to Plaintiffs' claims under the South Carolina Unfair Trade Practices Act is DENIED.

IT IS SO ORDERED.

The Honorable Bentley Price
The Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Jared S O'Connell , plaintiff, et al VS Amanda F Dempsey , defendant,
et al
Case Number: 2021CP1003090
Type: Order/Summary Judgment

IT IS SO ORDERED!

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

EXHIBIT “B”

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL CASE NO.: 2021-CP-10-03090

Jared S. O’Connell and Harmony A.
O’Connell,

Plaintiffs,

Vs.

**ARTIS CONSTRUCTION, LLC’S
MOTION TO RECONSIDER, ALTER,
AND/OR AMEND AND
MEMORANDUM IN SUPPORT**

House Therapy Holdings, LLC;
Amanda F. Dempsey;
William T. Phillips;
Matthew B. Swain;
Daniel Ravenel Company Sotheby’s
International Realty;
Artis Construction, LLC;
Oceanaire, LLC;
Hero Heating & Air;
Custom Climate Heating & Air, Inc.;
P.J. Sanchez Masonry, LLC;
Donnix Construction, LLC;
Guillen Carpentry, LLC;
Charleston Exteriors, LLC
Ashley Oak Contracting, LLC;
H20 Pro, LLC;
La Roca Masonry, LLC;
Apex Contractors, LLC;
South Point Hardwood Floor, LLC;
Bluetape Solutions, LLC;
Carolina Climate Control, LLC;
Movar, LLC; and
ECL Design, LLC

Defendants.

Artis Construction, LLC

Third-Party Plaintiff,

Vs.

Brian R. Wells, PE, LLC;
Perryman Engineering, LLC;
PJ Sanchez Masonry, LLC;

Donnix Construction, LLC;
Guillen Carpentry, LLC;
Charleston Exteriors, LLC;
Ashley Oak Contracting, LLC;
H2O Pro, LLC;
La Roca Masonry, LLC;
Apex Contractors, LLC; and
South Point Hardwood Floor, LLC;

Third-Party Defendants.

House Therapy Holdings, LLC, Amanda F.
Dempsey, William T. Phillips, and Matthew
B. Swain,

Third-Party Plaintiffs,

Vs.

Carolina Climate Control, LLC and Bluetape
Solutions, LLC

Third-Party Defendants.

PLEASE TAKE NOTICE that Defendant Artis Construction, LLC (“Artis”), by and through its undersigned attorneys, ten (10) days hence, or as soon thereafter as counsel may be heard, will move before this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for an Order granting Artis’ Motion to Reconsider, Alter, and/or Amend the Order entitled “Order Denying Artis Construction, LLC’s Motion for Summary Judgment as to Plaintiffs”, filed into the Court’s record on September 1, 2023 at 10:58 AM, denying Artis’ Motion for Summary Judgment as to Plaintiffs’ Claims Against Artis for Unfair Trade Practices in the above captioned matter (hereinafter referred to as the “Order”).

As the Court will recall, this matter arises out of alleged construction defects in Plaintiffs’ residence. Plaintiffs purchased the property from Defendant House Therapy Holdings, LLC

(“HTH”). Prior to their purchase, HTH contracted with Artis to renovate the property. During the renovation project, HTH requested the installation of a subterranean HVAC ductwork system on the first floor, which required PVC ducts to run within and beneath the concrete foundation. Plaintiffs bring this lawsuit because, among other things, water intrudes the HVAC ductwork during heavy rain events.

On June 23, 2023 Artis filed its Motion for Summary Judgment as to Plaintiffs’ Claims Against Artis for Unfair Trade Practices (the “Motion”). Plaintiffs filed their opposition on August 11, 2023 (the “Opposition”), and the Motion was heard before the Court on August 15, 2023. Plaintiffs **did not** file a Cross-Motion for Summary Judgment. The full transcript from this hearing is attached as **Exhibit “A”** to this motion. The hearing at issue can be found at 31:8 through 35:4.

As shown in the attached transcript, the Court denied the Motion from the bench after limited arguments and asked the parties to submit “a short order.” **Ex. A, p. 35:1**. Despite the Court’s direction, Plaintiffs filed a proposed order copying every argument provided in their Memorandum in Opposition, many of which had not been presented to the Court during the hearing. Additionally, the proposed order included various findings of fact and conclusions of law which, if signed by the Court, would amount to a summary judgment in Plaintiffs’ favor by dismissing Artis’ claims and defenses in this matter.

Counsel for Artis raised this issue with the Court on August 25, 2023 and submitted a competing Proposed Order that complied with the Court’s direction during the hearing, simply denying Artis’ Motion without any findings of facts or conclusions of law. Because Plaintiffs failed to follow the Court’s instructions, and submitted an order granting the Plaintiffs affirmative relief, for which they had not moved, Artis was forced to submit its own order more accurately reflecting the Court’s ruling. The Court signed both the orders submitted by counsel for Plaintiffs

and the one submitted by counsel for Artis. On September 27, 2023, the Court notified the parties that it would be withdrawing the signed Order proposed by Artis and would keep the signed Order proposed by Plaintiffs, thereby rendering its final order on Artis' Motion for Summary Judgment. This motion is therefore timely as it is filed within the 10-day deadline prescribed by Rule 59(e) from the Court's final order on September 27, 2023, accounting for weekends.

STANDARD OF REVIEW AND SUMMARY OF ARGUMENT

On summary judgment, the court's task is not to try issues of fact but to determine if genuine issues of material fact exist. *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 408, 563 S.E.2d 109, 112 (Ct. App. 2002). "Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be deprived of a trial of the disputed factual issues." *Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999). Summary judgment is also inappropriate "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Jackson v. Swordfish Invs., L.L.C.*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). This is because a court considering summary judgment neither makes factual determinations nor considers the merits of conflicting evidence with respect to a disputed fact. *See, S.C. Prop & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001); *see also, Anderson v. Liber Lobby, Inc.*, 477 U.S. 242, 249 (1986) (In deciding summary judgment, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial"). Further, summary judgment should not be granted even when there is no dispute of evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. *See, Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 684 S.E.2d 756 (2009).

The Court's Order denying Artis' Motion for Summary Judgment goes beyond a mere denial and provides findings of facts and conclusions of law in favor of the non-moving party, effectively granting Plaintiffs summary judgment on their claims against Artis. The Order effectively grants Summary Judgment *sua sponte* for Plaintiffs when no evidence supporting Order were submitted at the hearing, and even finds in favor of the Plaintiffs on issues that were not before the Court.

As outlined above, it is improper for the Court to decide factual issues on summary judgment, and it is equally improper to draw conclusions of law from these facts, even if they are not in dispute. The sole purpose of the Court was to determine if genuine issues of material facts existed and if so, allow the jury to decide those facts. The Order goes well beyond this mandate to strip Artis of its main claims and defenses in this matter before discovery is closed and before the jury hears a single piece of evidence. The Order violates established Supreme Court precedent and the express language of the SC Rules of Civil Procedure and must be withdrawn. Artis is unable to proceed in this matter with this Order as the law of this case.

GROUND FOR RECONSIDERATION

A. The Court's Order Improperly Decides Contested Factual Issues

The Court's Order includes the following Findings of Fact over disputed issues that were either not before the Court at all during the hearing, or were never supported with any evidence. It is undisputed that neither party provided any evidence or witness testimony to the Court in support of their arguments on August 15, 2023.

1. **“Plaintiffs discovered the various construction deficiencies upon observations made by a licensed professional engineer, Russell T. Mease, P.E. on September 3, 2021.” (Order, pg. 2)**
2. **“Mr. Maddox’s Preliminary Report dated December 14, 2021, sets forth the various deficiencies with the mechanical system including the improper installation of the PVC ductwork installed below the slab.” *Id.***
3. **“The improper installation of the underground ductwork has resulted in the PVC ductwork filling with water.” (Order, pg. 3).**
4. **“These conditions have resulted in Plaintiffs experiencing illness due to quality of the air blowing from the PVC ductwork, such that they have had to move out of the Residence.” *Id.***

The statements above assume the presence of construction deficiencies at the property without any presentation of evidence or testimony, or consideration of contradictory evidence from Artis that would have been presented if Plaintiffs had moved of Summary Judgment. These statements are vigorously contested by Artis, its counsel, and its experts as evidenced by its arguments at the hearing, the testimony of both Artis representatives at their respective depositions, and the expert opinions provided by Artis’ experts. By predetermining the existence of construction deficiencies before this case reaches a jury, the Court has effectively stripped Artis of its defenses against Plaintiffs’ claims of negligence, breach of warranties, etc. and violated Artis’ due process rights to have these issues presented to a jury for a decision.

These statements also cite to “a licensed professional engineer, Russell Mease, P.E.” whose licensure was never provided to the Court and who did not provide any testimony at the hearing as to his alleged “observations.” While Mr. Mease’s deposition has been taken in this matter, Plaintiffs did not attach any portion of that testimony to their Opposition, and therefore his observations and opinions were not before the Court in any fashion whatsoever. The report is hearsay, without foundational testimony, and no exception allowing its consideration.

Similarly, one statement cites to “Mr. Maddox’s Preliminary Report dated December 14, 2021”. Not only was this report never provided to the Court, attached to any memoranda, or discussed in detail at the hearing, the report itself would constitute hearsay by its very definition as an out of court statement offered to prove the truth of the matter asserted, i.e. the presence of construction deficiencies at the Property. Therefore, it would be in violation of the South Carolina Rules of Evidence for this report to be submitted into evidence at all, much less relied upon by the Court when deciding material facts in this matter at a summary judgment hearing.

Lastly, the findings conclude that Plaintiffs have “experience[ed] illness due to the quality of air blowing from the PVC ductwork”, suggesting that they have “had to move out” because of the air quality. Throughout the two-year discovery process leading up to this hearing, Plaintiffs have never produced any evidence, medical documentation or otherwise, showing that Plaintiffs have suffered any medical conditions or illnesses. In fact, during her deposition, Plaintiff Harmony O’Connell testified that no doctor has diagnosed her with any illnesses resulting from the alleged poor air quality at the property¹ and that she was not claiming any medical damages.² In addition to there being no evidence of any illness suffered by the Plaintiffs, there is similarly no evidence that Plaintiffs have moved out of their home *because* they have suffered such illnesses, as the statement above concludes.

All of the Findings of Fact above are disputed by readily available deposition testimony and documents exchanged through discovery. Due Process requires that these issues be presented to a jury for a decision after hearing all of the relevant evidence in this matter. It is procedurally improper to decide such crucial and disputed facts in a Denial of a Motion for Summary Judgment.

¹ Ex. B, Harmony O’Connell’s April 17, 2023 deposition transcript, p. 213:20 through 214:7.

² *Id.* at 216:8-13.

5. **Plaintiffs had environmental testing performed of the water present in the PVC ductwork, which revealed that the ductwork contains 100 ML of Coliform and that E.Coli is also present.” (Order, Pg. 3)**
6. **“As a result of Artis’ suggestion and improper installation of the PVC ductwork at the Residence, Coliform and E.Coli are now present at the Residence.” (Order, pg. 5).**

While the environmental testing report was attached to Plaintiffs’ Opposition, it was never presented to the Court and therefore is improperly included in the Court’s Order. Additionally, this report would also constitute hearsay without any testimony authenticating the data or explaining the process used to arrive at the opinions contained in the report. These reports contain expert opinions that the South Carolina Rules of Civil Procedure requires opposing parties to have the opportunity to cross-examine and present expert testimony of their own. By summarily determining the truth and veracity of these tests, the Court has done away with procedural requirements and the ability of any defendant to challenge these findings through a Daubert Motion, their own environmental testing reports, or testifying experts, all while discovery is still ongoing in this matter.

Similarly, despite not presenting any evidence of defects or deficiencies in the construction of the property, Plaintiffs have similarly not provided any evidence that the alleged construction deficiencies have themselves *caused* the alleged presence of Coliform and E.Coli at the property. This far-reaching causal connection cannot be made during summary judgment, while discovery is ongoing, and especially not when the parties have requested a trial by jury.

7. **“Artis held themselves out to HTH as knowledgeable in the installation of underground PVC ductwork and suggested that HTH install underground PVC ductwork at the Residence.” (pg. 5)**
8. **“As a result of Artis’ suggestion and improper installation of the PVC ductwork at the Residence, Coliform and E.Coli are now present at the Residence.” *Id.***

This Finding of Fact that Artis “suggested” the underground HVAC system is one of the most contested facts in this case, and had the Plaintiffs sought affirmative relief, Artis, would have

presented contrary evidence. Plaintiffs provided a single excerpt from the deposition of one of the members of House Therapy Holdings, LLC, William T. Phillips, who is known simply as “T”. Had Artis been given the opportunity to present any evidence to this issue, the following testimony from Artis’ Construction Manager Guyton Ash would have been presented:

Q. Let’s talk about – I’m interested in the conversations that took place that you-all decided to put the ductwork back into the slab rather than more traditional route.

A. There was a lot of back and forth. I spent a lot of time over there trying my best to get a conventional unit in there that didn’t go under the slab. Reasons being, budget.

Q. So if you can elaborate – I mean, you’re saying to get a conventional unit in there with the ductwork in the ceiling, you were constrained due to budget?

A. Yeah. Budget and aesthetics. Essentially, I had given I think two or three different options of ways to get the ductwork in the ceiling, but it was – it was not T’s vision.

Q. What did T say about this?

A. He said, it’s going in the slab.

Q. Did you – and so you personally had this conversation with T.

A. Yeah. T and Matthew. I walked them through the property and presented my two or three options.

Q. Okay. Was one of those options to put it in the slab though?

A. Not one of the two to three options, no.

Ex. C, October 27, 2022 30(b)(6) deposition of Artis’ representative Guyton Ash, pp 39:19 through 40:19.

As shown from the excerpt above, it was HTH’s decision to put the HVAC ductwork into the slab because it was a better fit for HTH and T’s “vision.” T agreed with Guyton’s testimony in the following excerpt ignored in Plaintiffs’ Opposition:

Q. So a minisplit was presented to HTH or you as an alternative or as an option for the HVAC system in the first floor of 5 Palmetto Road?

A. Yes. Right, because it would be the least structurally intrusive. It would just be the most visually intrusive.

...

Q. So that option was presented to HTH and it was decided either by you or by HTH that it was not aesthetically pleasing to have those minisplits in the first floor of 5 Palmetto, correct?

A. Correct.

Q. And instead we went – HTH wanted to go with the HVAC system in the slab because it was more aesthetically pleasing and it was more efficient than the minisplits?

A. It was high performance, yes. And we paid for it again.

Ex. D, January 18, 2023 deposition of William T. Phillips, pp. 183:25 through 184:22.

Therefore, not only is this Finding of Fact contested, it is patently false. As shown above, T went on to recant his own testimony that was excerpted in Plaintiffs’ Opposition, which was presumably relied upon by the Court when issuing this Finding of Fact. Deciding this fact in contradiction to the evidence exchanged during discovery is improper.

9. Evidence shows that there is a reasonable inference in Plaintiffs favor that Artis is still in the business of renovating homes and is actively advertising their expertise to the public without knowledge of the necessary building code requirements. (Order, p. 5).

Plaintiffs did not present any evidence of the code requirements or Artis’ alleged lack of knowledge about these code requirements. Based on the Plaintiffs’ Opposition from which this statement was copied, Plaintiffs seem to imply that the fact that water has intruded the subterranean ductwork in the past, that this is somehow a violation of the building code. In making this argument, Plaintiffs ignore the very wording of the applicable residential code which states without exception that “[t]he code does **not** require that ducts be watertight.” *See*, 2015 International Residential Code, M1601.1.2 (emphasis added). This is the very same code provision that

Plaintiffs' expert Warren Maddox relies on when he evaluated the underground ductwork system and gave his opinions. Therefore, at the very least, this fact is strongly contested by Artis, Artis' expert, and the provisions of the applicable building and residential codes themselves. As such, this Finding of Fact is improper.

10. "Artis' fraudulent and deceptive act of installing a PVC ductwork system that could not work in the environment present at the Residence, has resulted in the presence of water damage, microbial growth, Coliform, and E.Coli, which has uprooted Plaintiffs and their children from their home." (Order, p.5)

This Finding is a combination of all of the disputed Findings listed above, and Artis' arguments in regards to those statements is equally applicable here. However, this Finding goes even further by raising the bar from "construction deficiencies" to a "fraudulent and deceptive act".

First, Plaintiffs have not alleged fraud against Artis, despite their representations to the Court otherwise. **Ex. A, Transcript pp. 34:11-18.** No party to this litigation has alleged fraud against Artis. Plaintiffs have only alleged fraud against HTH and its members. Plaintiffs have not presented any evidence that Artis engaged in any fraudulent act. The Standard of Review section copy and pasted from Plaintiffs' Opposition does not lay out any of the elements of fraud or even mention fraud once. Most importantly, the Motion before the Court was Summary Judgment on Plaintiffs' Unfair Trade Practices claim, where fraud is not a necessary element to prove a party committed Unfair Trade Practices. By finding that Artis committed a fraudulent act, the Court has unilaterally created a new cause of action for Plaintiffs, without Plaintiffs filing a pleading to that effect, and decided the issue without allowing Artis the opportunity to answer. This is improper on a multitude of grounds and must be removed from the Order.

Second, Plaintiffs have not presented any evidence that the PVC ductwork "could not work in the environment present at the Residence." In fact, Artis has installed a number of subterranean

PVC ductwork systems in the Charleston area which are fully operational to this day. This finding, which was also copy and pasted from Plaintiffs' Opposition, seems to imply that the simple fact that water is getting into the ductwork system means that the ductwork system "could not work in the environment". Had Artis been allowed the opportunity to present evidence to this issue, it would have provided photos of a gaping hole found in the ductwork that is clearly the source of water intrusion. **Ex. E, photos of hole in ductwork.** The hole was not present during installation and could have been caused by a number of different reasons, including negligent acts of the three to four contractors who worked on this system after Artis left the site and prior to the initiation of this lawsuit.

Lastly, Plaintiffs have not presented any evidence of water damage to their home at the hearing, and the Order does not discuss any areas in which water has "damaged" the physical structure of the residence. While it is undisputed that water has entered the ductwork system in the past, there is no uncontested evidence that this has caused any damage to the home itself. Plaintiffs' expert Russell Mease has testified that he did not find any sign of water damage inside or outside of the home, despite removing multiple pieces of siding and trim in various areas around the exterior of the building. Therefore, not only is this statement disputed, it is disputed by Plaintiffs' own expert, and has no place in the Court's Order.

B. Instead of Denying Artis' Motion for Summary Judgment, the Court's Opinion Provides Conclusions of Law that Find in Favor of Plaintiffs' Claim for Unfair Trade Practices Without a Motion Properly Before the Court.

The Court looked at the facts in the light most favorable to the Plaintiffs, but then by signing Plaintiffs' Order denying Artis' Summary Judgment, improperly made conclusions of fact. Based on those conclusions of fact (considered in the light most favorable to the Plaintiffs), the Court

then granted Plaintiffs affirmative relief on their cause of action. The Court's Order concludes with the following:

Therefore, the Court finds that there is evidence that Artis engaged in an unfair or deceptive act in the conduct of trade or commerce; the unfair or deceptive act affected public interest; and the Plaintiffs suffered monetary or property loss as a result of the defendant's unfair or deceptive acts. **Order, pg. 5.**

These three clauses mimic the three elements necessary to prove a claim under the South Carolina Unfair Trade Practices Act. *See, Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). So, while the Court's Order is titled as a *Denial* of Motion for Summary Judgment, these conclusions affirmatively state that Plaintiffs have satisfied all three elements of their claim for Unfair Trade Practices. All three clauses are premised on disputed facts and therefore, the Court improperly entered these findings as the law of the case.

The first clause of this excerpt, stating that "there is evidence that Artis engaged in an unfair or deceptive act" is a conclusion of law based on a disputed fact as outlined above. The Order cites only the act of "installing a PVC ductwork system that could not work in the environment present at the Residence" as the supposedly unfair or deceptive act.³ This Finding of Fact is disputed and involves the single-most important issue to Artis' defense in this matter. The South Carolina Supreme Court mandates that "no person will be deprived of a trial of the disputed factual issues" and that is exactly what the Court's Order has done to Artis in this matter by making this language the law of this case. There was no argument at the hearing as to how these acts are "deceptive" or "unfair". This finding is especially troublesome given that neither Plaintiff could testify to a single unfair or deceptive act or omission by Artis, and those excerpts from Plaintiffs' depositions were attached to our Motion for Summary Judgment and properly before the Court.

³ Although the Order specifically states "*fraudulent* and deceptive act" without ever alleging fraud as discussed in detail above.

The second clause stating the “unfair or deceptive act affected public interest” not only relies on the previous clause which was improper in and of itself, but seems to be based on the simple fact that “Artis is still in operation and still advertising their expertise to the public.” This statement is not contested. Artis is still in operation and they are experts in the field of construction. But the simple fact that they are still performing construction operations is not sufficient to conclude that their “unfair or deceptive act affected public interest.” By that logic, any contractor who violates a building code even once would be subject to triple damages under SCUTPA simply because they are still working in construction. Similarly here, Plaintiffs do not allege that Artis has installed defective or deficient ductwork in any other property other than their own, because that evidence does not exist. Therefore, it was improper for the Court to conclude that Artis’ unfair or deceptive act affected the public interest.

Lastly, the Court concludes that “Plaintiffs suffered monetary or property loss as a result of the defendant’s unfair or deceptive acts.” Plaintiffs did not present the court with any evidence of monetary or property loss at the hearing. Those damages are strictly for the jury’s decision and not to be made at summary judgment based on disputed facts such as these.

C. Plaintiffs’ Claims for Unfair Trade Practices Should be Dismissed as a Matter of Law

To recover in an action for unfair trade practices, the Plaintiffs must show that Artis employed unfair or deceptive acts or practices during the construction project at issue. *See*, S.C. Code Ann. § 39-5-20. Pursuant to the South Carolina Unfair Trade Practices Act (SCUTPA), an “unfair” trade practice is one that is offensive to public policy or which is immoral, unethical, or oppressive.” *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). A “deceptive” practice is one which has a tendency to deceive. *Id.* Plaintiffs have failed to provide even a scintilla of evidence that Artis performed any unfair or deceptive acts

whatsoever. Plaintiffs have also failed to allege in their Complaint any allegation that Artis' acts or omissions intended to deceive Plaintiffs or performed any action that was immoral, unethical, or oppressive. Plaintiffs simply allege construction deficiencies at their residence and therefore their claims should be dismissed based on the pleadings alone pursuant to SCRCP 12(b)(6).

Looking beyond the pleadings, the testimony given in this case further undermines Plaintiffs' claims under SCUTPA. It is uncontested from the testimony of all representatives of Artis and HTH that HTH was responsible for all site work at the Property, including grading and drainage. The site did not show any sign of having issues with drainage until HTH's landscaper re-graded the Property, according to Artis' construction manager, who was onsite more than any other fact witness in this matter. **Ex. C, 30(b)(6) deposition transcript of Artis' representative, Guyton Ash, pp. 34:14 through 36:24.** When Artis cut into the original slab, which is close to 70 years old, the ground underneath was completely dry with no sign of water intrusion into the concrete slab or the soil beneath the home. (*Id.*, pp. 40:24 through 43:21). Had they known that the site was not going to be graded properly, they never would have installed the ductwork in the slab. *Id.* It is the lack of proper grading at the Property that is causing water to enter the ductwork, not the installation of the ductwork itself. Plaintiffs' expert, Russell Mease agreed with this position in his deposition:

Well, the water has to be available so it can get in the ductwork. If we didn't have any water under the house, then we never collect water in the ductwork. So the nature of the site work and the nature of the configuration is this is helping introduce water into those areas where the ductwork is located and it gives it the opportunity to get into the ductwork.

Ex. F, Russel Mease's November 1, 2022 deposition transcript, 173:16 through 174:13.

While the cause of water infiltration into the ductwork is clearly contested, what is uncontested is that Artis did not employ any practices that were oppressive, immoral, unethical, or

intended in any way to deceive HTH or Plaintiffs in this matter. To the contrary, putting the ductwork in the slab was merely an option provided to HTH to choose from in order to fit their aesthetic vision, and Artis testified consistently that they would never have proceeded with the installation if they knew the site would not be properly graded. **Ex. C, 30(b)(6) deposition transcript of Artis’ representative, Guyton Ash, pp. 42:5 through 43:21.**

The undersigned counsel also asked each Plaintiff directly whether they could provide any evidence whatsoever that any act or omission of Artis was unfair or deceptive. The Plaintiffs responded as follows:

Jared O’Connell: “I think it’s an irrelevant question because we never – before we closed on the house, we never had an interaction with Artis...I have never had a communication in any form, I do not believe, with anyone at Artis.”

Ex. 1 to Artis’ Motion, pp. 183:10 through 184:8.

Harmony O’Connell: “Since we’ve never had any contact, no, I don’t think that there’s anything they’ve done to me personally.”

Ex. 2 to Artis’ Motion, pp. 207:2 through 208:6.

Plaintiffs’ counsel argued at the hearing that there is no communication requirement to SCUTPA. This argument misses the mark entirely. The excerpts above show that not only did Plaintiffs’ have never had any communication with Artis, they could not think of a single act or omission of Artis’ that could be unfair or deceptive. Therefore, Plaintiffs have failed to satisfy the first necessary element of a proper SCUTPA claim and Artis is entitled to summary judgment as a matter of law.

CONCLUSION

Based on the foregoing, the Court improperly reviewed the facts in the light most favorable to the Plaintiffs to affirmatively grant Plaintiffs’ Summary Judgment when they did not make a

motion or even present admissible evidence for consideration. Defendant Artis Construction respectfully requests that this Court withdraw and reconsider the Order entitled “Order Denying Artis Construction, LLC’s Motion for Summary Judgment as to Plaintiffs”, filed into the Court’s record on September 1, 2023 at 10:58 AM, denying Artis’ Motion for Summary Judgment as to Plaintiffs’ Claims Against Artis for Unfair Trade Practices, and dismiss Plaintiffs’ claims for Unfair Trade Practices against Artis Construction, LLC.

Respectfully submitted this 9th day of October, 2023.

RICHARDSON PLOWDEN & ROBINSON, P.A.

s/Cameron D. Berthelsen

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Attorneys for Artis Construction, LLC

October 9, 2023

Mount Pleasant, South Carolina

EXHIBIT “C”

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jared S. O'Connell and Harmony A.
O'Connell,

Plaintiffs,

Vs.

House Therapy Holdings, LLC; Amanda F.
Dempsey; William T. Phillips; Matthew B.
Swain; Daniel Ravenel Company Sotheby's
International Realty; Artis Construction,
LLC; Oceanaire, LLC; Hero Heating & Air;
Custom Climate Heating & Air, Inc.; P.J.
Sanchez Masonry, LLC; Donnix
Construction, LLC; Guillen Carpentry, LLC;
Charleston Exteriors, LLC Ashley Oak
Contracting, LLC; H2O Pro, LLC; La Roca
Masonry, LLC; Apex Contractors, LLC;
South Point Hardwood Floor, LLC; Bluetape
Solutions, LLC; Carolina Climate Control,
LLC; Movar, LLC; and ECL Design, LLC,

Defendants.

Artis Construction, LLC,

Third-Party Plaintiff,

Vs.

Brian R. Wells, PE, LLC; Perryman
Engineering, LLC; PJ Sanchez Masonry,
LLC; Donnix Construction, LLC; Guillen
Carpentry, LLC; Charleston Exteriors, LLC;
Ashley Oak Contracting, LLC; H2O Pro,
LLC; La Roca Masonry, LLC; Apex
Contractors, LLC; and South Point Hardwood
Floor, LLC;

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-10-03090

**ORDER DENYING ARTIS
CONSTRUCTION, LLC'S MOTIONS TO
RECONSIDER, ALTER, AND/OR
AMEND**

House Therapy Holdings, LLC, Amanda F. Dempsey, William T. Phillips, and Matthew B. Swain,

Third-Party Plaintiffs,

Vs.

Carolina Climate Control, LLC and Bluetape Solutions, LLC,

Third-Party Defendants.

Artis Construction, LLC, (“Artis”) filed a Motion to Reconsider, Alter, and/or Amend the Order entitled “Order Denying Artis Construction, LLC’s Motion for Summary Judgment as to Plaintiffs,” filed into the Court’s record on September 1, 2023 at 10:58 AM, denying Artis’ Motion for Summary Judgment as to Plaintiffs’ Claims Against Artis for Unfair Trade Practices. Additionally, Artis filed a Motion to Reconsider, Alter, and/or Amend the Order entitled “Order Denying Motion for Summary Judgment,” filed into the Court’s record on September 1, 2023 at 10:54 AM, denying Artis’ Motion for Summary Judgment as to Artis’ claims against Defendants House Therapy Holdings, LLC (“HTH”), Amanda F. Dempsey, Matthew B. Swain, and William T. Phillips (collectively the “HTH Defendants”).

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

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.”).

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 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 Artis’ Motions, the Court hereby DENIES Artis’ Motion to Reconsider, Alter, and/or Amend as to Plaintiffs and the same as to HTH Defendants.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Jared S O'Connell , plaintiff, et al VS Amanda F Dempsey , defendant,
et al
Case Number: 2021CP1003090
Type: Order/Other

IT IS SO ORDERED!

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

Jan 02 2024**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant, Artis Construction, LLC, do hereby certify that I have this date served the foregoing Return to the Motion and Memorandum of Plaintiffs to Dismiss the Appeal, dated January 2, 2024 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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A copy of the sent email is enclosed with this Certificate of Service.

/s Carmen V. Ganjehsani


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Date: January 2, 2024.

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Subject: 2023-001853 O'Connell v. Artis Construction, LLC
Date: Tuesday, January 2, 2024 3:23:01 PM
Attachments: [2023-001853 O'Connell v. Artis \(Return to Mtn to Dismiss Appeal\) \(3157957\).pdf](#)

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you the Return to the Plaintiffs' Motion to Dismiss the Appeal on behalf of Appellant Artis Construction, LLC which we will be filing with the Court of Appeals today.

Thank you,
Carmen Ganjehsani

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