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Jan 11 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Case No. 2019-CP-04-01942

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

Plaintiff,

v.

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

Defendants,

and

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

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, Inc.,

Third-Party Defendants,

and

Aaron D. Peris; Harrelson Painting, LLC;
Huttig Building Products; et al.,

Fourth- and Fifth-Party
Plaintiffs and Defendants,

Of whom

JLS Masonry, Inc., is the

APPELLANT,

v.

Natalie Zitek, individually, and on behalf of all
others similarly situated and as assignee of the
claims of Third-Party Plaintiff D.R. Horton,
Inc.,

RESPONDENT.

NOTICE OF APPEAL

Third-party Defendant/Appellant JLS Masonry, Inc. (“JLS”) appeals the following matters from the Honorable R. Scott Sprouse:

1. The Order denying Third-party Defendant/Appellant JLS’ written Motion to Decertify dated July 19, 2023. Counsel for Appellant received written notice of the entry of this Order on July 19, 2023.
2. All Orders denying all oral motions made during and after trial, dated September 1 through September 15, 2023, including, without limitation arguments made during pre-trial, during trial, and those incorporated therein including generally but not limited to the following:
 - a. The Order denying Third-party Defendant/Appellant JLS’ Motion for Decertification and Motion for Directed Verdict on the basis of Statute of Limitations/Statute of Repose, all made following the testimony of Plaintiff Natalie Zitek;
 - b. The Order denying Third-party Defendant/Appellant JLS’ Motion for Decertification made following Plaintiff’s Motion for Directed Verdict;
 - c. The Order denying Third-party Defendant/Appellant JLS’ Motion to disclose the settlement agreement and/or enter the settlement agreement into evidence between Plaintiff and D.R. Horton, made following the on-the-record settlement between Plaintiff and D.R. Horton;
 - d. The Order denying Third-party Defendant/Appellant JLS’ Motion for Decertification and Motion for Directed Verdict, made immediately prior to the on-the-record settlement between Plaintiff and M&M Foundations, LLC, including, without limitation, JLS’ arguments for the contractual

indemnity provision to be invalidated; the arguments that the claims brought by D.R. Horton are barred as disguised indemnity claims; for the disclosure of the settlement amount between Plaintiff and D.R. Horton and/or entry of the settlement agreement into evidence; as well as for the dismissal of the claims under the statute of limitations and/or statute of repose; and the failure of Plaintiff to establish D.R. Horton's claims against Third-party Defendant/Appellant JLS as the assignee of D.R. Horton's claims;

- e. The Order denying Third-party Defendant/Appellant JLS' Renewal of JLS' prior Motions and arguments and the Order denying Third-party Defendant/Appellant JLS' Motion for Directed Verdict, made following Plaintiff's Motion for Directed Verdict, including, without limitation, arguments under the statute of limitations and/or statute of repose; the arguments that the claims brought by D.R. Horton are barred as disguised indemnity claims; that the failure of Plaintiff to establish D.R. Horton's claims against Third-party Defendant/Appellant JLS as the assignee of D.R. Horton's claims; and for the disclosure of the settlement amount between Plaintiff and D.R. Horton and/or entry of the settlement agreement into evidence.
3. The denial of Third-party Defendant/Appellant JLS' written Motion for Directed Verdict dated September 14, 2023, and incorporated into JLS' oral motions.
4. Judgment rendered against Third-party Defendant/Appellant JLS on September 19, 2023, as to D.R. Horton's claims against JLS, assigned to Plaintiff.
5. Form 4 Order denying Third-party Defendant/Appellant JLS' Motion for Judgment Notwithstanding the Verdict dated November 8, 2023. Counsel for the Appellant received written notice of the entry of this Order on November 8, 2023.
6. Form 4 Order denying Third-party Defendant/Appellant JLS' Rule 59(e), SCRCF, Motion dated December 12, 2023. Counsel for the Appellant received written notice of the entry of this Order on December 12, 2023.

(Signature Page to Follow)

Respectfully submitted,
ROSS & CRISTALDI, LLC

s/ Brenten H. DeShields
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Other Counsel of Record:

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*Attorneys for Respondent Natalie Zitek,
individually, and on behalf of all others
similarly situated and as assignee of the claims
of Third-Party Plaintiff D.R. Horton, Inc.*

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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, Inc.,

Third-Party Defendants,

and

Aaron D. Peris; Harrelson Painting, LLC;
Huttig Building Products; et al.,

Fourth- and Fifth-Party
Plaintiffs and Defendants,

Of whom

JLS Masonry, Inc.,

v.

Natalie Zitek, individually, and on behalf of all
others similarly situated and as assignee of the
claims of Third-Party Plaintiff D.R. Horton,
Inc.,

APPELLANT,

RESPONDENT.

PROOF OF SERVICE

The undersigned does hereby certify that on January 10, 2024, a copy of JLS Masonry, Inc.'s Notice of Appeal as served by email on all counsel of record as follows and filed with the Clerk of Court for Anderson County Court of Common Pleas via electronic filing. A copy of the sent email is enclosed as Exhibit 1 with this Proof of Service.

ROSS & CRISTALDI, LLC

s/ Brenten H. DeShields

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***Attorneys for Respondent Natalie Zitek,
individually, and on behalf of all others
similarly situated and as assignee of the claims of
Third-Party Plaintiff D.R. Horton, Inc.***

EXHIBIT

1

From: [Bobbi Myers](#)
To: [Justin O. Lucey, Esq.](#); dlynn@lucey-law.com; [Annette Mixson](#); [Mandee Funai](#); [Charlotte Winckler](#)
Cc: [Brenten DeShields](#); [Jeff Ross](#); [Daniel Hutchinson](#)
Subject: Zitek v. JLS Masonry, Inc., et al - Notice of Appeal
Date: Wednesday, January 10, 2024 5:52:00 PM
Attachments: [2024.01.10 JLS Notice of Appeal w Orders1.pdf](#)

Counselors,

Attached for service please find JLS Masonry, Inc.'s Notice of Appeal in connection with the above-referenced matter.

Thank you,

Bobbi Myers
Paralegal/Office Manager
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Mt. Pleasant, SC 29464
(843) 329-4040
bmyers@rclawsc.com

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

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

ROSS & CRISTALDI^{LLC}
ATTORNEYS AT LAW

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January 11, 2024

VIA ELECTRONIC MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
ctappfilings@sccourts.org

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SC Court of Appeals

Re: Natalie Zitek v. DR Horton, et al.
Case No.: 2019-CP-04-01942

Dear Ms. Kitchings:

Pursuant to Section (b)(2) the Supreme Court's Oder Methods of Electronic filing and Service under Rule 262 of the South Carolina Appellate Court Rules (as amended May 6, 2022), please find enclosed for filing JLS Masonry, Inc.'s Notice of Appeal with regard to the above referenced matter. By copy of this letter, I am serving on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order. A check for \$250.00 has been placed in the mail for the filing fee.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you very much for your attention to the above.

Very truly yours,


Brenten DeShields

BHD/bm

Enclosures as stated.

cc: *All Counsel of Record (via email only, with enclosures)*