

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 02 2013

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

SC Court of Appeals

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

Appellate Case No.: 2012-213237

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, and Robert White, Individually, and on behalf of all others similarly situated, Plaintiffs,

v.

IMK Development, Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bostic Brothers Construction, Inc., Miller/Players & Associates, Bradford D. Seckinger, John Ludwig, William Cox, Larry D. Lollis, Rick Thoennes, M Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc. T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo, Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, and Miller/Player & Associates, Defendants,

Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents.

**RESPONDENT HUTCH N SON CONSTRUCTION, INC.'S
RETURN TO MOTION TO CONSOLIDATE**

This case is not appropriate for consolidation with the three appeals identified by Appellants in their Motion to Consolidate. Rule 214 permits this Court discretion to consolidate appeals under narrow circumstances: (1) when the appeals arise from the same order, judgment, decision, or decree; or (2) when appeals in different cases involve the “same question.” Rule 214, SCACR. Neither scenario exists here.

Appellants recognize that the four identified appeals do not arise from the same order and premise their request for consolidation solely on the assertion that the identified appeals “include the same question of law.” (Appellants’ Motion for Consolidation). Yet, Appellants’ motion fails to identify the purported common “question of law” presented by the four identified appeals. Indeed, aside from the appellate case numbers, Appellants’ motion provides no identifying information for the cases they seek to consolidate. Appellants have failed to provide even one meaningful reason for this Court to consolidate four cases proceeding on different appellate timetables.

This appeal is both factually and legally distinct from the other three appeals identified by Appellants. It arises out of an order granting summary judgment for Respondents Hutch N Son Construction and Upstate Utilities on the equitable indemnity claims asserted by Appellants against Respondents. (*See* Notice of Appeal (referencing Order Granting Summary Judgment)). Indemnity claims are necessarily fact-driven and legally distinguishable depending upon the source of the indemnity obligation. For example, an appeal that involves contractual indemnity does not involve the “same

question” as an appeal that involves equitable indemnity. Each contractual indemnity claim requires a case-specific analysis of the contract language and scope.

Further, equitable indemnity claims cannot be presumed to involve the “same question.” For example, Appellants may be at fault for the allegedly deficient work of the grading sub-contractors and thus barred from equitable recovery against them, yet not be at fault or barred from equitable recovery against a sub-contractor of a different trade.

Moreover, the posture of this appeal presents unique preservation issues (raised by Respondents in their appellate filings). Because the preservation issues are specific to the hearing and order on Respondents’ motions for summary judgment, they are not at issue in the other identified appeals.

Finally, consolidation of these cases is not practical nor would it promote judicial efficiency. Briefing is well underway in this appeal but, upon information and belief, has not yet commenced in the other three appeals. Given the divergent timetables, Appellants would not benefit from combined briefing if this case were consolidated with the other three cases.


Consolidation would also unnecessarily complicate the Record on Appeal. This Court has already prohibited Appellants in this case from relying on deposition testimony that was not presented to the circuit court in the first instance. (*See* July 10, 2013 Order). It is probable, however, that Appellants submitted different evidence to the circuit court in the other identified cases such that the permissible scope of the Record on Appeal in this case differs from the permissible scope of the Record on Appeal in the other three cases.

For all of these reasons, HNS respectfully requests that this Court deny Appellants' Motion to Consolidate because this case is not appropriate for consolidation with the other three identified cases under the provisions of Rule 214, SCACR and because consolidation would not be practical or efficient.

Respectfully Submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY:



Shelley S. Montague (SC Bar # 68019)
Laura W. Jordan (SC Bar # 100374)

Post Office Box 7368

Columbia, South Carolina 29202

TEL: (803) 779-1833

FAX: (803) 779-1767

smontague@gwblawfirm.com

ljordan@gwblawfirm.com

ATTORNEYS FOR RESPONDENT

HUTCH N SON CONSTRUCTION, INC.

Columbia, South Carolina

August 7th, 2013.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

RECEIVED

AUG 02 2013

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

SC Court of Appeals

Appellate Case No.: 2012-213237

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, and Robert White, Individually, and on behalf of all others similarly situated, Plaintiffs,

v.

IMK Development, Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bostic Brothers Construction, Inc., Miller/Players & Associates, Bradford D. Seckinger, John Ludwig, William Cox, Larry D. Lollis, Rick Thoennes, M Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc. T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo, Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, and Miller/Player & Associates, Defendants,

Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

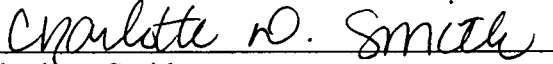
Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents.

PROOF OF SERVICE

I, Charlotte Smith, the undersigned employee of Gallivan, White & Boyd, P.A., attorneys for Respondent Hutch N Son Construction, Inc., do hereby certify that I have served a copy of the foregoing **Respondent Hutch N Son Construction, Inc.'s Return to Appellants' Motion to Consolidate** in the above-referenced matter upon counsel for Appellants and Respondent Upstate Utilities, Inc. via United States Mail, postage prepaid, on this the 2 day of August, 2013, to the following addresses:

Jason M. Imhoff
C. Reed Teague
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304
Counsel for Appellant Marick Homebuilders, LLC and Rick Thoennes

S. Markey Stubbs
Baker Ravenel & Bender, LLP
P.O. Box 8057
Columbia, SC 29202
Counsel for Respondent Upstate Utilities, Inc.


Charlotte Smith
Assistant to Shelley S. Montague

Columbia, South Carolina

LAURA W. JORDAN
DIRECT DIAL: 803.724.1710
LJORDAN@GWBLAWFIRM.COM



Gallivan, White & Boyd, P.A.
ATTORNEYS AT LAW

1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, South Carolina 29201
Telephone 803.779.1833
Facsimile 803.779.1767
www.GWBlawfirm.com

August 2, 2013

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk
Post Office Box 11639
Columbia, SC 29211

RECEIVED

AUG 02 2013

SC Court of Appeals

Re: Stoneledge at Lake Keowee Owners' Association, Inc., et al. v. IMK Development Co., LLC, et al., Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants, and Of Whom Hutch N Son Construction, Inc. and Upstate Utilities, Inc. are the Respondents
Appellate Case No.: 2012-213237

Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced matter, please find the original and seven (7) copies of Respondent Hutch N Son Construction, Inc.'s Return to Appellants' Motion to Consolidate and Proof of Service.

Please file the originals and return the clocked copy to me in the enclosed envelope.

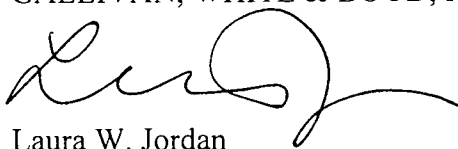
By copy of this letter I am serving the same upon counsel for Appellants and counsel for Respondent Upstate Utilities, Inc.

Please do not hesitate to contact me if you have any questions or concerns.

With kind regards, I am

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.


Laura W. Jordan

RECEIVED

AUG 02 2013

LWJ/cds
Enclosures

SC Court of Appeals

The Honorable Jenny Abbott Kitchings

August 2, 2013

Page 2

cc: Jason M. Imhoff
C. Reed Teague
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304
Counsel for Appellants Marick Home Builders, LLC and Rick Thoennes

S. Markey Stubbs
Baker Ravenel & Bender, LLP
P.O. Box 8057
Columbia, SC 29202
Counsel for Respondent Upstate Utilities, Inc.