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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeal

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas  
Hon. R. Scott Sprouse, Circuit Court Judge

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Case No. 2019-CP-04-01942  
Appellate Case No. 2023-001401

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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, Defendant,

D.R. Horton, Inc., Appellant,

v.

AJ Landscaping & Grading LLC, A/K/A AJ Landscaping & Grading, Inc; Allpro Textures, LCC; Alpha Omega Construction Group, Inc.; American Concrete and Precast, Inc., A/K/A ACP Concrete, Inc.; A&J Framing, Inc; Alpha E.M.C; A-Z, Inc.; Atlanta Floor Designs Center; A Grade Above Others, LLC; Brand-Vaughan Lumber Co., Inc.; BKF Builders, Inc; Builders Designhouse, LLC; BMC East, LLC D/B/A Coleman Floor, LLC; Builders Firstsource Southeast Group, LLC, A/K/A Builders Firstsource, Inc; Bravo Carpenters, Inc.; Caryl Mechanics II, Inc.; Caryl Mechanicals, Inc.; Cannaday Siding and Gutter, Inc; 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 BGET Floored, LLC; GBS Building Supply-Us LBM, LLC, A/K/A GBS Building Supply, Inc.; General Shale Brick Inc.; Greener Pastures, Inc. A/K/A Greener Pastures of Aiken, Inc; IBP Asset, LLC D/B/A Blue Ridge Building Products; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danler, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc.; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC. A/K/A M&L General Construction, Inc.; M&Lreyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC, NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, LLC; P&L Enterprises, LLC; Probuild Company, A/K/A Probuild Holdings, Inc.; Rite Rug Co.; Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather, Inc., Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc, A/K/A Gale Gale Contractors Service; Tucker Materials, Inc., A/K/A Gypsum; UTM Enterprises, Inc., Dupree Plumbing Company, Inc.; Willow Tree Landscaping, Inc., Third-Party Defendants,

of which Builder Services Group (f/k/a Masco Contractor Services Central Inc. f/k/a Gale

Industries, Inc. d/b/a Gale Contractors Services) and IBP Assets, LLC d/b/a Blue Ridge Building Products, are the Respondents.

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**DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

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Respondent IBP Assets, LLC d/b/a Blue Ridge Building Products (hereinafter “Blue Ridge”) designates the following matter for inclusion in the Record on Appeal:

**Orders and Decisions**

1. Order Granting Plaintiff’s Mot. for Class Certification and Denying Defendant’s Motion to Compel Arbitration filed January 27, 2021 (14 pages total).
2. Form 4 and Order filed November 3, 2022 (8 pages).
3. Amended Scheduling Order filed Feb. 15, 2023 (6 pages).
4. Order filed May 8, 2023 (4 pages).
5. Form 4 Order filed July 26, 2023 (3 pages).
6. Form 4 Order filed Aug. 18, 2023 (4 pages).
7. Order Granting Mot. for Summ. J. filed August 23, 2023 (10 pages).

**Pleadings**

1. Summons and Complaint filed September 25, 2019 (15 pages total).
2. D.R. Horton, Inc.’s Answer filed February 11, 2021 (11 pages).
3. Amended Answer and Third-Party Complaint of D.R. Horton, Inc. filed Mar. 11, 2021 (27 pages).
4. Second Amended Answer and Third-Party Complaint of D.R. Horton, Inc. filed Feb. 23, 2022 (27 pages).
5. IBP Asset, LLC d/b/a Blue Ridge Building Products’ Answer to D.R. Horton, Inc.’s Second Amended Answer and Third-Party Complaint filed Mar. 1, 2022 (10 pages).
6. IBP Asset, LLC d/b/a Blue Ridge Building Products’ Motion for Summary Judgment as to D.R. Horton, Inc.’s Third-Party Complaint filed July 26, 2022 (6 pages).

7. IBP Asset, LLC d/b/a Blue Ridge Building Products' Motion for Summary Judgment as to D.R. Horton, Inc.'s Third-Party Complaint filed Aug. 1, 2022 (6 pages).

### **Motions, Memoranda, and Exhibits**

1. Defendant D.R. Horton, Inc.'s Notice of Mot. and Mot. to Stay filed Feb. 28, 2020 (22 pages total, including exhibits)
2. Pl's. Mem. Supporting her Mot. for Class Certification and Opposing D.R. Horton's Mot. for a Continuance and Stay filed May 27, 2020 (20 pages); Exh. H (NOC ltr (5 pages)).
3. Def. D.R. Horton, Inc.'s Mem. in Opp'n to Pl's. Mot. to Certify Class filed May 27, 2020 (25 pages).
4. Notice of Mot. and Mot. for Class Certification filed Oct. 20, 2020 (2 pages).
5. Pl's. Mem. Supporting her Mot. for Class Certification filed Nov. 23, 2020 (13 pages).
6. Aff. of A. Rhett Whitlock, Ph.D., P.E. filed Nov. 23, 2020 (5 pages).
7. Reply Aff. of A. Rhett Whitlock, Ph.D., P.E. filed Nov. 23, 2020 (16 pages).
8. Suppl. Aff. of A. Rhett Whitlock, Ph.D., P.E. filed Nov. 23, 2020 (2 pages).
9. Defendant D.R. Horton, Inc.'s Mem. in Opp'n to Pl's Mot. to Certify Class filed Nov. 23, 2020 (27 pages).
10. Pl's. Suppl. Designation of Record filed Dec. 2, 2020 (2 pages); Exh. 1 ("Debunking" chart (4 pages)); Exh. 2 (Chronology (2 pages)); Exh. 3 (Offers to Cure, pp. 73-77 of 142 (6 pages)).
11. Pl's. Reply to D.R. Horton, Inc.'s Mem. Opposing Class Certification filed Dec. 8, 2020 (12 pages).
12. Motion to Make a More Definite Statement filed July 21, 2021 (3 pages).
13. Pl's. Notice of Mot. and Mot. to Sever filed Dec. 22, 2021 (2 pages).
14. Pl's. Mot. to Partially Bifurcate Discovery filed Feb. 3, 2022 (3 pages).
15. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed July 26, 2022 (6 pages).
16. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed Aug. 1, 2022 (6 pages).
17. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed July 26, 2022 (6 pages).

18. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mem. in Support of its Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed Sept. 2, 2022 (14 pages); Exh. 1 (Vendor Spend (47 pages)); Exh. 2 (Zitek Aff. (2 pages)); Exh. 20 (Blue Ridge subcontract (8 pages)) (71 pages total).
19. Defendant D.R. Horton, Inc.'s Mem. in Opp'n to certain defendants' Mot. for Summ. J. filed Sept. 7, 2022 (22 pages total).
20. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mot. to Reconsider filed Feb. 22, 2023 (4 pages).
21. IBP Asset, LLC d/b/a Blue Ridge Building Products' Supplemental Mem. in Support of its Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed Apr. 19, 2023 (2 pages).
22. IBP Asset, LLC d/b/a Blue Ridge Building Products' Supplemental Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed May 1, 2023 (4 pages).
23. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mem. in Support of its Supplemental Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed July 11, 2023 (7 pages).
24. Defendant D.R. Horton, Inc.'s Mem. in Opp'n to all Third-party Def's. Mot. for Summ. J. filed July 11, 2023 (23 pages total).
25. Defendant D.R. Horton, Inc.'s Suppl. Mem. in Opp'n to Third-party Def's. Mot. for Summ. J. filed July 19, 2023 (20 pages total).
26. Plaintiff's Stipulation as to Limitation of Claims filed July 20, 2023 (3 pages).
27. Defendant D.R. Horton, Inc.'s Mot. to Reconsider and/or Alter or Amend the Order Granting Third-party Def. IBP Asset, LLC d/b/a Blue Ridge Building Products' Mot. for Summ. J. as to D.R. Horton, Inc.'s Third-Party Complaint filed Aug. 8, 2023 (22 pages).

## **Transcripts**

1. Transcript of Record of hearing before The Honorable Cordell Maddox, Judge on Dec. 9, 2020 (13 pages). (p. 1-6, 46-50, 56-57)
2. Transcript of Record of hearing before The Honorable R. Scott Sprouse, Judge on Sept. 22, 2021, pp. 1-10 (10 pages).
3. Transcript of Record of hearing before The Honorable R. Scott Sprouse, Judge on Sept. 8, 2022, pp. 1-53 (53 pages).
4. Transcript of Record of hearing before The Honorable R. Scott Sprouse, Judge on Feb. 8, 2023, pp. 1-41, 71-73 (44 pages).
5. Transcript of Record of hearing before The Honorable R. Scott Sprouse, Judge on Apr. 21, 2023, pp. 1-5, 47-66 (25 pages).

6. Transcript of Record of hearing before The Honorable R. Scott Sprouse, Judge on July 20 & 21, 2023, pp. 1-5, 108-120 (18 pages).
7. Transcript of Record of trial before The Honorable R. Scott Sprouse, Judge on Sept. 11 to Sept. 15, pp. 1-9, 716-722 (16 pages).

**Other Materials or Documents**

1. Notice of Appeal filed Sept. 6, 2023 (58 pages).
2. Verdict filed Sept. 19, 2023 (2 pages).

CERTIFICATION OF COUNSEL

The undersigned certifies that this designation contains no matter which is irrelevant to this appeal.

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Columbia, South Carolina  
April 10, 2024