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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. 2019CP011942
APPEAL NO. 2023-001401

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.,Appellant,

vs

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 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 Contractor Services)¹; and IBP Asset, LLC d/b/a Blue Ridge Building Products;Respondents

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent Builder Services Group, Inc. d/b/a Gale Contractor Services proposes the following for inclusion in the Record on Appeal:

1. Plaintiffs' Complaint file September 25, 2019
2. Plaintiffs' Notice to Cure Defects letter dated December 11, 2019 to D.R. Horton
3. Plaintiffs Motion for Class Certification filed October 20, 2020
4. Order Granting Motion for Class Certification filed January 27, 2021
5. D.R. Horton's Second Amended Answer and 3rd-Party Complaint filed February 23, 2022
6. Gale's Motion for Summary Judgment filed May 1, 2023
7. Gale's Memorandum in Support of its Motion for Summary Judgment filed July 10, 2023
 - a. Exhibit 1 to Gale's Memorandum (sampling of work tickets and purchase orders)
 - b. Exhibit 25 to Gale's Memorandum (First Amendment and Master Addendum to ICA "KDC 013229-013251" collectively "Addendum Contracts")
 - c. Exhibit 26 to Gale's Memorandum (Pls' 12/11/2019 NOC letter to DRH)
 - d. Exhibit 27 to Gale's Memorandum (DRH 3/17/2023 Tender Letter to Gale)
 - e. Exhibit 28 to Gale's Memorandum (Kruglewicz 30(b)(6) D.R. Horton Dep. P. 298)
8. D.R. Horton's Amended Complaint for Declaratory Judgment filed April 14, 2023
9. April 21, 2023 Hearing transcript, P. 52.

¹ This is in improper name identification the entity should be listed as *Builder Services Group, Inc d/b/a Gale Contractors Services*.

10. Plaintiffs' Stipulation as to Limitation of Claims filed July 20, 2023
11. July 20-21, 2023 Hearing transcript, P. 157-173.
12. Form 4 Order granting summary judgment to Gale filed July 28, 2023
13. Order Granting Gale's MSJ filed August 7, 2023
14. D.R. Horton's Motion to Reconsider Order granting Gale's MSJ filed August 7, 2023
15. Form 4 Order Denying D.R. Horton's motions to reconsider filed August 18, 2023
16. Jury Verdict against D.R. Horton as to Negligence claims filed September 19, 2023
17. D.R. Horton's First Amendment to Master Addendum to Independent Contractor Agreement executed March 8, 2006 by Gale
18. D.R. Horton's Master Addendum to Independent Contractor Agreement executed on October 23, 2015 by Gale
19. D.R. Horton's Tender Letter to Gale dated March 17, 2023
20. D.R. Horton's responses to Gale's discovery dated September 8, 2021
21. Plaintiffs' answers to Gale's Requests to Admit dated June 9, 2023
22. D.R. Horton's answers to Gale's Requests to Admit dated May 24, 2023
23. D.R. Horton's Memorandum in Opposition to All 3rd-Party Defendants' MSJs filed July 11, 2023
 - a. Exhibit 7 to D.R. Horton's Memo in Opposition to 3rd-Party Defendants' MSJ (6 versions of D.R. Horton's ICA)
24. Excerpt from Kruglewicz 30(b)(6) D.R. Horton deposition, P. 298
25. D.R. Horton's ICA with IBP Asset, LLC d/b/a Blue Ridge Building Products ("IBP")
26. D.R. Horton production bates stamped "KDC 008451-008473"
27. D.R. Horton production bates stamped "KDC 013229-013251"
28. Appellant's Initial Brief

CERTIFICATION OF COUNSEL

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

Respectfully submitted,

Resnick & Louis, P.C.

s/ Alicia N. Bolyard

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Services Group, Inc. d/b/a Gale

Contractor Services

April 10, 2024

Charleston, South Carolina