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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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

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

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)¹ and IBP Assets, LLC d/b/a Blue Ridge Building Products, are the Respondents.

RESPONDENTS

IBP ASSETS, LLC d/b/a BLUE RIDGE BUILDING PRODUCTS' AND BUILDER SERVICES GROUP f/k/a MASCO CONTRACTOR SERVICES CENTRAL INC. f/k/a GALE INDUSTRIES, INC. d/b/a GALE CONTRACTORS SERVICES' REPLY TO APPELLANT D.R. HORTON'S OPPOSITION TO RESPONDENTS' MOTION TO STRIKE

Respondents IBP Assets, LLC d/b/a Blue Ridge Building Products (hereinafter “Blue Ridge”) and Builder Services Group, Inc. f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractors Services (hereinafter “Gale”) (collectively “Respondents”) submit the following reply memorandum in support of their Joint Motion to Strike.

The gist of Respondents’ motion was that Appellant D.R. Horton, Inc.’s (hereinafter “DR Horton”) replies developed—and designated for the record on appeal—a line of argument that was not raised to and ruled upon by the trial court or in Appellant’s initial brief. Their motion was not a sur-reply; it was an objection to new arguments and associated designations raised in the reply.

I. Timeliness of Respondents’ Motion

Respondents acknowledge DR Horton’s argument that Respondents did not object to documents DR Horton designated in its initial brief until after DR Horton filed its replies. Respondents would point out that DR Horton did not cite the objectionable material in DR Horton’s initial designation in arguments in its initial appellant’s brief. DR Horton first cited the documents to support an argument in its replies.

The specific designations in question are as follows:

¹ Gale is improperly identified in the caption. The entity should be listed as *Builders Services Group, Inc d/b/a Gale Contractor Services*.

16. Transcript 9/15/2023, pages 20-22

35. Defendant AJ Landscaping & Grading's Notice of Motion and Motion for Summary Judgment filed August 29, 2022

36. Third-Party Defendant Rite Rug Company, Inc. A/K/A Rite Rug Co.'s Motion for Partial Summary Judgment filed August 26, 2022

(DR Horton Prop. Designation of Record on Appeal filed Feb. 8, 2024.)

There does not appear to be any citation to the record on appeal for items 35 and 36 in DR Horton's initial brief. These designations seemed to be simply irrelevant. Respondents would also point out that this appeal involves two separate claims against two separate respondents. From each respondent's perspective, DR Horton's designation 35 and 36 may relate to its appeal against the other co-respondent. Furthermore, it was unclear why motions made by AJ Landscaping and Rite Rug (Items 35 and 36) were designated when the portion of the trial transcript DR Horton designated pertains to a motion by M & M Foundations. (See ROA p. 1506.)

DR Horton quoted from item 16 in the Summary of Facts section of its initial brief. (DR Horton Init. Br. filed Feb. 8, 2024.) However, DR Horton did not make any argument based thereon.

Consequently, Blue Ridge briefly responded in its Counter-Statement of Facts. (Blue Ridge Init. Br. filed Apr. 10, 2024.) To avoid prejudice, Blue Ridge requested that the trial judge's entire ruling and the argument it addressed be designated as well. (Blue Ridge Designation filed Apr. 10, 2024, p. 5, item 7; ROA pp. 1509-15.) There was no thought of "lying in wait."²

What drew Respondents' motion was DR Horton's designation in reply of numerous pages from the subsequent trial in which neither Respondent participated—designations that concern a

² Should this Court find that objections to DR Horton's initial designations are waived, then Blue Ridge withdraws its objection to pages 713 to 715 of the transcript (ROA pages 1506-08.) DR Horton correctly recognized that Lucey's arguments were responsive to DeShields' arguments.

fourth non-party subcontractor, JLS Masonry. (DR Horton Prop. Designation filed May 13, 2024, items 4-8 (excluding item 4, pp. 713-22).) For the first time, DR Horton made substantive arguments relating to JLS. Also for the first time, DR Horton closed by contending the trial court made inconsistent rulings as between Respondents and JLS. (DR Horton Init. Reply Br. Replying to IBP, pp. 9-10; DR Horton Init. Reply Br. Replying to Gale, pp. 5-7.)

DR Horton filed its reply briefs and reply designation on May 13, 2024. Respondents filed their Joint Motion to Strike on June 12, 2024. Respondents' objections to DR Horton's replies were timely raised. Respondents' objections to DR Horton's initial designations were raised also because they relate to DR Horton's improper arguments developed in its replies. In other words, what before was simply irrelevant now related to DR Horton's new arguments in reply.

II. Propriety of motions to strike

Motions to strike are not unheard of in appellate practice. See Order filed Mar. 14, 2023, Appellate Case No. 2022-001070 (granting a motion to strike based on Rule 210(c), SCACR). Without such motions, this Court could not enforce Appellate Court Rules 209(b) and 210(c).

Striking matter that is irrelevant or that was not presented to the trial court does not raise the specter of endless litigation. Without the ability to move to strike, respondents would have no way of defending against what DR Horton did here—raise an entirely new argument and supporting documentation in its reply briefs and designations.

Motions to strike in appellate practice are not analogous to motions to strike a pleading at the trial court level. Respondents are not seeking to strike a pleading or defense. See Rule 12(f), SCRCF. This motion does not attempt to strike matters from DR Horton's Notice of Appeal.

But even if doubts are resolved in DR Horton's favor, the ground for Respondents' motion remains. Rules 209(b) and 210(c) do not permit a party to designate and include in the record

motions and orders concerning other non-parties to this appeal that were not brought to the attention of the trial court in arguing the motions subject to this appeal.³

A. Designation of the jury verdict

DR Horton now objects (after counter-designating it in reply) to the designation of the jury verdict. (DRH Prop. Designation filed May 13, 2024, Item 9.) Respondents recognize that the jury verdict followed the trial court rulings on appeal. However, the jury verdict and judgment against DR Horton are public records. The jury verdict was not cited to show the trial court ruled correctly. It was cited to avoid what otherwise could mislead the court.

DR Horton argued that it was not negligent: “After the Stipulation in this case, there was no concurrent or sole negligence by the indemnitee concerning the Respondents’ work, nor are the Respondents being asked to provide relief for any such concurrent or sole negligence.” (DR Horton Init. Br., p. 15.) This representation is false for two reasons. First, DR Horton is seeking indemnity for legal expenses incurred during *the entire case*, not merely the defense of claims relating to Respondents’ work. (DR Horton Init. Reply Br. to IBP, p. 4; DR Horton Init. Reply Br. to Gale, pp. 3-5.) Second, the jury found DR Horton negligent with respect to work Respondents did not perform, as reflected in the verdict and ensuing judgment. Without the jury verdict, DR Horton’s misleading representation that it was not negligent with respect to the indemnity it seeks would stand unchecked.

Moreover, DR Horton anticipated Respondents’ argument. In its Petition for Writ of Supersedeas, DR Horton argued the following against bifurcation:

³ Respondents discovered two more trial court orders that DR Horton inserted into the Record on Appeal. (See ROA pp. 37-41, 63-65.) Both concern only non-party subcontractors. (*Id.*) DR Horton designated only one order for each date. (DRH Prop. Designation filed Feb. 8, 2024, items 4 and 6.) The designated orders are those on appeal. (DRH Init. Br., pp. 8-9 n.2, ¶¶ 1 and 7.) Accordingly, Respondents request that the referenced extraneous orders included on pages 37-41 and 63-65 of the Record on Appeal also be stricken. Rules 209(b) and 210(c), SCACR.

[If the jury renders a verdict against DR Horton], the third-party defendants that caused the harm will then escape equitable indemnification of Horton on the theory that the jury found Horton at fault.

(Pet. filed Sept. 6, 2023, p. 9.) DR Horton understood the effect the verdict would have on its indemnity claims. DR Horton settled with the plaintiff, but apparently only after enough of the trial took place to allow the case to go to a verdict. (ROA p. 90.) DR Horton then argued in its initial appellant’s brief that it was not negligent and now seeks to exclude the verdict from consideration. (DRH Init. Br., p. 15.)

Judicial economy favors allowing this Court to consider the verdict. Suppose the verdict is excluded from the record in this appeal and this Court reverses? Respondents would raise the verdict in defense on remand, leading to a second appeal.

The jury verdict is a public record. It is law of the case. See Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (Ct. App. 2009) (holding that unappealed rulings become law of the case); Johnson v. Bd. of Comm’rs of Police Ins. & Annuity Fund of State, 221 S.C. 23, 32, 68 S.E.2d 629, 633 (1952) (holding that a judgment from which no appeal was taken “is binding on all parties before the Court, constitutes the law of the case, and, when questioned, is *res judicata*”). DR Horton should not be permitted to argue it was not negligent by excluding the negligence verdict from consideration.

B. Respondents’ arguments concerning equitable indemnity are not baseless.

DR Horton represented to this Court that Blue Ridge “makes a baseless argument that equitable indemnity in favor of D.R. Horton was foreclosed because of the subsequent jury verdict.” (Opp’n filed June 20, 2024, p. 5.) It is DR Horton’s representation that lacks merit.

Contrary to DR Horton’s contention that negligence and unclean hands apply to each contractor on a stand-alone basis (see id.), Plaintiff alleged that DR Horton failed to properly supervise and coordinate the work of subcontractors. (R. pp. 103-04, ¶ 67.) DR Horton argued to

the trial court that subcontractor motions for summary judgment should be denied because they could not show DR Horton had unclean hands. (ROA pp. 851-52, 1009.) The trial court order granted Respondents' motions for summary judgment as to DR Horton's cause of action for equitable indemnity. (ROA pp. 50-51, 77.) DR Horton appealed both orders. On appeal, Respondents are entitled to argue that the trial court ruling as to equitable indemnity should be affirmed because DR Horton can no longer meet the "clean hands" requirement. See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 624-26, 776 S.E.2d 426, 431-32 (Ct. App. 2015) (reversing a trial court order as to equitable indemnity because the general contractor had not yet been proven negligent).

C. Respondent Gale's Designation of Record was not hypocritical.

Respondent Gale designated discovery responses and the Appellant Dr Horton's Complaint for Declaratory Judgment filed in Greenville County. The discovery responses in general were referenced in the Memorandum in Support of Gale's Motion for Summary Judgment to which this appeal was filed. (ROA pp. 604-631.) The Complaint for Declaratory Judgment was referenced in oral arguments on the Motion for Summary to which this appeal was filed. (ROA p. 1482.) Additionally, the Complaint for Declaratory Judgment was included as the Appellant has made several arguments in this appeal related to insurance coverage and windfalls to insurance companies. Those arguments should be adjudicated in DR Horton's declaratory judgment action, not in this appeal against subcontractors whose insurance companies are not parties. Furthermore, the hypocrisy of this argument rests solely on the Appellant because all three of the documents that the Appellant asked Gale's counsel to provide were documents previously filed and/or drafted by DR Horton, itself. (See Exhibit A attached: Email correspondence with Vicki Wulf.)

D. Respondents have not waived objections to DR Horton’s replies.

DR Horton also argued that Respondents’ lack of objection to DR Horton’s initial designations waived any objections to its replies. (Opp’n filed June 20, 2024, p. 7.) The short answer to this argument is that DR Horton did not make any argument based on materials not presented to the trial court until its replies were filed. There was no need to trouble this Court with motion practice until DR Horton used what appeared to be harmless extraneous documents to formulate a substantive argument in reply.

E. Summary

The foregoing responds to DR Horton’s points one through five. Specifically, Respondents’ motion to strike was not a disguised sur-reply. The motion objected to a new argument and supporting materials raised for the first time in DR Horton’s reply. Responding to points two and three, the motion was not procedurally improper as discussed above. As to DR Horton’s point four, a motion to strike in appellate practice is not analogous to a motion to strike under Rule 12(b)(6), SCRCR. As to point five, appellants are entitled to the last word in briefing, but they are not entitled to raise new arguments for the first time in reply briefs; nor are they entitled to designate supporting documents that were not presented to the trial court. Rules 209(b) and 201(c), SCACR.

III. The alleged inconsistency in trial court rulings is a new issue in this appeal.

DR Horton asserted in point six that its “inconsistent-rulings” argument was not raised for the first time in its replies. This argument is merely a statement of DR Horton’s opinions without any supporting authority or citation to the record.

DR Horton is asking this appellate court to consider documents, rulings, and arguments that were created and/or made after Respondents’ motions for summary judgment were granted. These documents, rulings, and arguments cannot have anything to do with this appeal. The

appellate court rules provide no basis for imposing on Respondents issues in which they could play no part, and upon which the trial court had no opportunity to address.

Besides, DR Horton's own designations demonstrate that the trial court distinguished between subcontractors whose work was implicated in Zitek's claim and those whose work was not. (ROA p. 1514; Init. Br. of Appellant, p. 14.) The trial court ruling that "Plaintiff is not pursuing a claim for work within the scope that Blue Ridge performed" is not challenged in this appeal. (ROA p. 74; Init. Br. of Appellant, p. 6.) The same is true of Gale. (ROA p. 45.) DR Horton could not even produce a written contract relating to Gale's work. (Init. Br. of Appellant, p. 16.) DR Horton raised the alleged inconsistency without ever explaining how the rulings were inconsistent.

Furthermore, the party that raised the "inconsistent rulings" issue was not DR Horton, but rather M & M Foundations—a non-party to this appeal. (ROA p. 1506.) DR Horton's assertion that "[t]he trial court was aware of its inconsistent rulings" (see Opp'n, p. 8) turns out, upon examination, to be mere subterfuge.

DR Horton's arguments regarding its motion to stay relate to another portion of this appeal that has been resolved. DR Horton appealed seven (7) different orders in this appeal. (Notice of Appeal filed Sept. 6, 2023.) Several of those orders concerned Zitek's claims against DR Horton. (See id., items 3, 4, 6, and some orders in 7.) DR Horton's Petition for a Writ of Supersedeas concerned the trial of DR Horton's own liability. (Pet. filed Sept. 6, 2023.) DR Horton attempted to bootstrap the appeal of the orders concerning Zitek's claims against DR Horton with the appeals concerning DR Horton's third-party claims against Respondents. (Id. at p. 7; Return in Opp'n filed Sept. 7, 2023, pp. 13-14.) By DR Horton's own admission, Zitek's claims against it have been settled. (Ltr. Filed Sept. 15, 2023.) These issues are no longer before this Court.

What DR Horton raised to the trial court concerning Zitek's claims against it are not relevant to what DR Horton raised concerning its third-party claims against Respondents. It would be one thing if these arguments were brought to the trial court's attention before the orders granting summary judgment were issued. But the material DR Horton seeks to inject into this appeal concerns motions and rulings relating to non-parties that all occurred after the fact. If DR Horton had something definitive, it would have raised it. DR Horton's sixth point is mere bluster.

IV. Issues concerning the transcript

DR Horton's ninth point concerns an alleged suggestion of a misdeed. No such suggestion was intended. The point made by footnote 4 in Respondent's Joint Motion was that DR Horton apparently did not even have some of the materials in its possession that it designated in reply until after Respondents' initial briefs were filed. (Joint Mot. filed June 12, 2024, p. 6.)

Rule 207(a)(1) of the South Carolina Rules of Appellate Procedure requires the appellant to order the transcript. It requires the appellant to provide copies of its correspondence with the court reporter to this Court. This Rule does not require respondents to do either. Moreover, the rule specifies that the appellant must order a transcription of the entire proceeding unless the parties agree otherwise. This implies that copies of the transcripts are to be furnished to respondents. Rule 607(b), SCACR, merely refers back to Rule 207(a). Nothing in the Rules requires respondents to separately order transcripts.

Footnote 4 of Respondents' Joint Motion highlights a problem with DR Horton's interpretation: If an appellant refuses to provide copies of the transcript to respondents, then neither can verify that both are looking at the same transcript until the record on appeal is filed.

As recounted on page 12 of DR Horton’s Opposition, Respondents never saw DR Horton’s copies of the transcripts designated until Monday, June 10, 2024.⁴ What Blue Ridge complained about is that DR Horton refused to provide copies of the transcripts it obtained and instead demanded the copy Blue Ridge obtained. To date, Respondents have not seen the transcript DR Horton designated. (Compare DRH Prop. Designation filed Feb. 8, 2024, Item 16 with ROA pp. 1506-15.) Again, this was a transcript of a trial that occurred after the granting of summary judgment to Respondents that are the subject of this appeal. By DR Horton’s own admission, Respondents were furnished with copies prior to the filing of the record on appeal only as a courtesy, and only due to Respondents’ request. (Opp’n filed June 20, 2024, p. 12.) DR Horton’s interpretation thus invited the very circumstance of which it now complains—a motion to strike after the filing of the record on appeal.

Counsel for Blue Ridge complied with DR Horton’s deadline by reviewing the proposed record and objecting to certain documents that did not appear to have been designated. (Opp’n filed June 20, 2024, Exh. C.) After DR Horton’s deadline, Blue Ridge continued reviewing the proposed record and retracted all of its objections except for one. (Id., Exh. D.) That remaining issue has been resolved.

Blue Ridge’s final e-mail does not support DR Horton’s eleventh argument that the issues raised in Respondents’ Joint Motion to Strike were waived. (See id., p. 13.) The e-mail specifically says that Blue Ridge withdrew its objections “as to the ROA matching designations.” (Id., Exh. D, e-mail dated July 10, 2024 at 1:36 p.m.) Respondents did not waive arguments that DR Horton’s designations and arguments in reply were improper.

⁴ Copies of the proposed record on appeal were e-mailed to counsel for Respondents on Saturday afternoon and DR Horton demanded that any objections be lodged before 10:00 the following Monday morning.

DR Horton's tenth point seeks to bring into this appeal yet more pages of the transcript of the subsequent trial that have not hitherto been designated. (Opp'n filed June 20, 2024 at p. 12.) Respondents were not parties to the trial. Regardless of when DR Horton left the courtroom, Respondents were long gone by that point. The terms of DR Horton's subsequent settlement with the plaintiffs were never part of the proceedings below concerning Respondents. DR Horton's attempt to inject that into this appeal only generates confusion: Are DR Horton's indemnity claims against Respondents based on a sham verdict?

V. Insurance issue

DR Horton's seventh point overstates Respondents' position. DR Horton argued to the trial court that Blue Ridge failed to obtain liability coverage as per the terms of its subcontract. (ROA pp. 116, 77-78.) What Respondents objected to were certain comments that characterized Respondents as mere foils for their liability insurers.

In opposing this Motion, DR Horton went a step further. DR Horton now asserts that its rights as an additional insured under liability policies issued by non-party insurers are at issue in this appeal. (Opp'n filed June 20, 2024 at p. 10.) That issue was not raised to the trial court and is now the subject of a separate pending lawsuit.

CONCLUSION

DR Horton launched many grenades in attempting evade Respondents' Joint Motion to Strike. But the simple fact is that the Appellate Court rules do not allow reply briefs to insert new arguments and materials into appeal. For the reasons set forth above, Respondents respectfully request that this Court strike the offending materials from DR Horton's Designation and the Proposed Record on Appeal; strike the referenced arguments from DR Horton's briefs; and order that these may not be considered for purposes of the merits of this appeal.

[Signature page follows]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

/s/ Timothy J. Newton

Everett A. Kendall, II (SC Bar No. 8450)

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/s/ Alicia N. Bolyard

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Attorney for Respondent Builder Services Group,

Inc. d/b/a Gale Contractor Services

June 25, 2024

Charleston, South Carolina

From: [Alicia Bolyard](#)
To: [Veronica Myers](#)
Subject: FW: Zitek v D.R. Horton Appel
Date: Tuesday, June 25, 2024 12:56:24 PM
Attachments: [2023.04.14 Amended Summons & Complaint.pdf](#)
[2021.09.08 DRH Resp to Gale"s INT.pdf](#)
[2021.09.08 DRH Resp to Gale"s RFP.pdf](#)
[image001.png](#)

From: Alicia Bolyard
Sent: Thursday, June 6, 2024 1:20 PM
To: Vikki Wulf <chocolateincluded@msn.com>
Cc: Kaylie Stapleton <kstapleton@rlattorneys.com>; Veronica Myers <vmyers@rlattorneys.com>
Subject: RE: Zitek v D.R. Horton Appel

Vikki,

Please find attached the documents you have requested that are referenced in Gale's Designation of Matter No. 8 and No. 20. All of these documents were drafted by Attorneys for the Appellant, DR Horton.

Kindest regards,

Alicia N. Bolyard

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Partner- Admitted in WV and SC
146 Fairchild St., Suite 130
Charleston, SC 29492
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Phone (843) 410-2534



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EXHIBIT
A

From: Vikki Wulf <chocolateincluded@msn.com>
Sent: Thursday, June 6, 2024 9:17 AM
To: Alicia Bolyard <abolyard@rlattorneys.com>
Cc: Kaylie Stapleton <kstapleton@rlattorneys.com>; Veronica Myers <vmyers@rlattorneys.com>
Subject: Re: Zitek v D.R. Horton Appel

I am following up on my May 18, 2024 email regarding two documents in your designation (see below). Please send me the documents for your designations 8 and 20 that you designated to be included in the record if you continue to want these in the record. If you no longer want them in the record or if these were inadvertently designated, please let me know that. I would appreciate a response today so that we can finalize the ROA for printing.

Thank You,
Vikki Wulf

Sent from my iPhone

> On May 18, 2024, at 6:03 PM, Vikki Wulf <chocolateincluded@msn.com> wrote:

>

> Thank you for the clarifications.

>

> I have two more questions. I have not located your client's designation Number 20. I understand you said it was argued at a hearing, but is there a document you intended to include? If so, on what date was it filed with the Court or was it an exhibit to a filed document?

>

> Also, I have not located your client's designation Number 8. Could you please check to confirm that is the correct name and date of the document?

>

> Thanks

> Vikki Wulf

> Sent from my iPhone

>

>> On May 9, 2024, at 3:12 PM, Alicia Bolyard <abolyard@rlattorneys.com> wrote:

>>

>> Vikki,

>>

>>

>> Please see below what have put together very quickly so as a forewarning it might contain errors. I believe the DOM that I filed on behalf of Gale states with specificity all of the documents and materials I believe to be relevant on appeal. Here is additional information that you requested:

>>

>> 2 – 7/10/23 (Exhibit 26 Gale MIS of MSJ)

>> 17 – 7/10/23 (inside of KDC 013229-013251) Exhibit 25 Gale MIS of MSJ

>> 18 – 7/10/23 (inside of KDC 013229-013251) Exhibit 25 Gale MIS of MSJ

>> 19 – 7/10/23 (Exhibit 27 Gale MIS of MSJ)

>> 20 – Discovery Responses were argued before the Court in Gale's MIS of MSJ- 7/10/23

>> 21 – 7/10/23 (Exhibit 22 Gale MIS of MSJ)

>> 22 – 7/10/23 (Exhibit 24 Gale MIS of MSJ)

>> 24 – 7/10/23 (Exhibit 28 Gale MIS of MSJ)

>> 25 – 09/02/22 (Exhibit 20 to Blue Ridge's MIS of MSJ)

>> 26 – Is a duplicate version of 27 it produced twice with two bates stamped.

>> 27 – 7/10/23 (Exhibit 25 Gale MIS of MSJ)

>>

>> If you have any questions please let me know. Please include my staff on future correspondence I have copied both of them here they are who keeps me in line I am nothing without them. Thanks!

>>

>> Kindest regards,

>>

>>

>> Alicia N. Bolyard

>> Resnick & Louis, P.C.

>> Partner- Admitted in WV and SC

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>> -----Original Message-----

>> From: Vikki Wulf <chocolateincluded@msn.com>

>> Sent: Thursday, May 9, 2024 11:04 AM

>> To: Alicia Bolyard <abolyard@rlattorneys.com>

>> Subject: Re: Zitek v D.R. Horton Appel

>>

>> I am following up for Carl Muller's office regarding the designation of record your firm filed in the Zitek v D.R. Horton appeal regarding your client Gale. I emailed you on May 1st regarding the designations (included below).

>>

>> Could you please provide the dates on which the items listed in 2, 17, 18,19, 20, 21, 22, 24, 25, 26, and 27 were filed with the trial court. I would appreciate receiving the information this afternoon as our reply briefs are due soon.

>>

>> Thank You,

>> Vikki Wulf

>> 720.284.7848

>>

>>>> On May 1, 2024, at 23:20, Vikki Wulf <chocolateincluded@msn.com> wrote:

>>>>

>>>> I am writing for Carl Muller's Office regarding the designations of matter that you filed for your client.

>>>>

>>>> Some of the items do not have the date on which they were filed with the court listed in the designation. Would you please provide the date each item was filed with the court

or if an item was not filed with the court please indicate the item was not filed.

>>>

>>> Thank You,

>>> Vikki Wulf

>>> 7203847848

>>> Sent from my iPhone

>>

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

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

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

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.

PROOF OF SERVICE

I certify that the *Respondents IBP Assets, LLC d/b/a Blue Ridge Building Products' and Builder Services Group f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractors Services' Reply to Appellant D.R. Horton's Opposition to Respondents' Motion to Strike* was served on counsel of record on June 25, 2024, via email under Paragraph (d)(1) of Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), Appellate Case No. 2020-000447.

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