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Sep 06 2024

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. 2019CP041942  
Appellant 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.

A&J Landscaping & Grading LLC, A/K/A AJ Landscaping  
& Grading, Inc; Allpro Textures, LLC; 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-Vaughn  
Lumber Co., Inc.; BFK 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 Buildings 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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APPELLANT’S RESPONSE TO RESPONDENT IBP ASSETS, LLC D/B/A BLUE RIDGE BUILDING PRODUCTS REQUEST FOR CLARIFICATION

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Appellant D.R. Horton provides this response to Respondent IBP’s Request for clarification of the Court’s August 23, 2024 Order.

Appellant D.R. Horton is not confused by the Court’s Order and understands that the Court may have simply made a scrivener’s error. D.R. Horton suggests that the Court simply

change “August 17, 2024” to “August 23, 2023” in the body of the Order and in the footnote.

The Order needs no other change.

The Record on Appeal will not result in any pagination changes other than adding to the end of the Record on Appeal any additional pages that need to be added. The deleted pages will be marked as intentionally deleted. The current pagination will not change. This is how it is typically done. The revised Record on Appeal is in progress and is anticipated to be completed next week. It will not impact any previously filed final briefs except to the extent any new pages need to be addressed in any briefs.

Everything else that Respondent’s Counsel seeks are substantive changes to the Order that go far beyond a technical change based on a typo. The typo serves as a gateway to a motion to seek something more than clarity as to a date and should be dismissed.

The undersigned was out of town for his mother’s funeral the day the Court’s Order was issued. That was Friday, August 23, 2024. She was buried the next day and counsel returned to his office the following Monday. He had left the previous Thursday. Respondent’s Counsel sent an email about the Order after hours Friday night. That email is attached. I missed it in the backlog. Nonetheless, there would not have been agreement as to the substantive changes IBP seeks to make to the Order.

IBP opened the door and started this whole thing when it put the jury verdict that occurred almost a month after the summary judgment orders into its Brief and into the Record on Appeal in an attempt to impugn Appellant. Everything else flowed from that first inappropriate

and rule-flaunting act. Everything else was a response to that because such an attack could not be ignored and left to linger. IBP is now unhappy with the consequence of its actions.

September 6, 2024

Respectfully,

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**Natalie Zitek v. D.R. Horton, Inc. (1) (2023-001401)**

Tim J. Newton <tnewton@murphygrantland.com>

Fri, Aug 23, 2024 at 5:46 PM

To: "imhoff@conlaw.com" <imhoff@conlaw.com>, "carl@carlmullerlaw.com" <carl@carlmullerlaw.com>, "abolyard@rlattorneys.com" <abolyard@rlattorneys.com>, Rett Kendall <rkendall@murphygrantland.com>

Carl,

This Order leaves some questions unanswered (partially due to the posture of the motion it addressed).

One issue is what to do about the Appellant's and Respondent's brief. The Order allows DRH to amend its Reply brief (as to the issues addressed in the Order only) and IBP to correct our Final Respondent's brief as to the issues we raised in the June 28 motion. It doesn't say anything about the Appellant's brief. I'm assuming that the Appellant's and Respondent's briefs (other than the minor issues in our June 28 motion) are to be left as-is.

We may want to discuss what to do about that. Both of us referenced transcripts of subsequent proceedings and/or the jury verdict. I guess we just leave the passages in the briefs but without references. But I think there were some quotations in the briefs—what about that? We may want to talk about whether to file a joint motion for clarification. Or maybe just try to reach an understanding amongst the parties so we don't bog ourselves down with more motion practice.

Tim N.



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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 Buildings 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,  
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**PROOF OF SERVICE**

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The undersigned does hereby certify that on September 6, 2024, a copy of Appellant D.R. Horton, Inc.’s Appellant’s Response To Respondent IBP Assets, LLC D/B/A Blue Ridge Building Products Request For Clarification was served by email on all counsel of record by copy of this email and filed by electronic mail with the Clerk of Court for the South Carolina Court of Appeals.

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