

RECEIVED

Sep 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse
Circuit Court Judge

Appellate Case No.: 2024-000057
Circuit Court Case No.: 2019-CP-04-01942

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,

Defendants,

and

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

A&J Framing, Inc.; A-z, Inc.; AJ Landscaping & Grading, LLC, a/k/a AJ Landscaping & Grading, LLC; Allpro Textures, LLC; Alpha E.M.C.; Alpha Omega Construction Group, Inc.; American Concrete and Precast, Inc., a/k/a ACP Concrete, Inc.; Atlanta Floor Designs Center; A Grade Above Others, LLC; BFK Builders, Inc.; BMC East, LLC d/b/a Coleman Floor, LLC; Brand-Vaughn Lumber Co., Inc.; Bravo Carpenters, Inc.; Builders Designhouse, LLC; Builders FirstSource Southeast Group, LLC, a/k/a Builders FirstSource, Inc.; Builders Services Group, LLC, f/k/a Masco Contractor Services Central, Inc., f/k/a Gale Industries, Inc., d/b/a Gale Contractor Services; Cannaday Siding & Gutter, Inc.; Caryl Mechanics II, Inc., a/k/a Caryl Mechanicals, Inc.; CBU Enterprises, Inc.; Cortes Painting, LLC; CPI Security Systems, Inc.; Dom

Group, LLC; Dupree Plumbing Company, Inc.; Ferguson Enterprises, Inc.; Five Star Construction, Inc.; Five Star Foundations, LLC; Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II; GBS Building Supply – US LBM, LLC, f/k/a GBS Building Supply, Inc.; General Shale Brick, Inc.; Get Floored, LLC; Greener Pastures, Inc., a/k/a Greener Pastures of Aiken, LLC; Installed Building Products, LLC, a/k/a Installed Building Products II, LLC; IBP Asset, LLC, d/b/a/ Blue Ridge Building Products; JLS Masonry, Inc.; Kings Landscaping, LLC; L&M Products, Inc; Long Heating & Air Conditioning, Inc.; M&L General Construction, LLC; M&M Foundations, LLC; Manale Landscaping, LLC; MJ Cowboys, LLC; Nazareth Builders, LLC; NM Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&L Enterprises, LLC; P&T Construction, Inc., a/k/a P&T Construction, Inc.; ProBuild Company, LLC, a/k/a ProBuild Holdings, Inc.; Rite Rug Co.; Rodney Howard Grading, Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Silver Line Building Products Corporation; Sodfather, Inc.; Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractor Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc.; and Willow Tree Landscaping, Inc.,

Third-Party Defendants,

and

Aaron D. Peris; Harrelson Painting, LLC; Huttig Building Products,

Fourth and Fifth Party
Plaintiffs and Defendants,

Of whom

JLS Masonry, Inc., is the

Appellant,

v.

Natalie Zitek, individually, and on behalf of all others similarly situated and as assigned of the claims of Third-Party Plaintiff D.R. Horton, Inc.,

Respondents.

RESPONDENTS' DESIGNATION OF MATTER FOR THE RECORD ON APPEAL

Pursuant to the South Carolina Appellate Court Rules, Respondents designate the following material for inclusion in the record on appeal. Per Rule 209(c), SCACR, the undersigned counsel certifies that the designation contains no matter which is irrelevant to the appeal.

I. Orders and Judgments

1. January 27, 2021: Order Granting Motion to Certify the Class
2. March 16, 2022: Order Establishing Complex Case Designation
3. July 19, 2023: Order Denying Motions to Decertify the Class
4. August 17, 2023: Trial Plan Order
5. September 19, 2023: Enrolled Judgment
6. November 8, 2023: Order Denying JLS' JNOV Motion
7. December 12, 2023: Order Denying JLS' Motion to Reconsider the JNOV Denial

II. Pleadings

8. September 25, 2019: Plaintiffs' Complaint
9. March 11, 2021: D.R. Horton's Amended Answer and Third-Party Complaint
10. March 9, 2022: JLS' Answer to D.R. Horton's Third-Party Complaint
11. January 10, 2024: JLS' Notice of Appeal

III. Transcripts

12. September 5-15, 2023: Trial Transcript Volumes I and II (Including Deposition Designations Read Into Record)

IV. Motions and Memos

13. May 1, 2023: D.R. Horton's Motion for Decertification
14. June 20, 2023: Harrelson Painting's Motion for Decertification
15. June 20, 2023: NW Alex Carpet's Motion for Decertification
16. June 23, 2023: JLS' Motion for Decertification
17. June 23, 2023: JLS, M&L Reyna, and MJ Cowboys Joint Motion for Bifurcated Trial
18. June 25, 2023: Plaintiffs' Motion for Trial Plan Order
19. July 10, 2023: Harrelson Painting's Memorandum Supporting Decertification Motions
20. July 10, 2023: NW Alex Carpet's Memorandum Supporting Decertification Motions

21. July 11, 2023: M&L Reyna’s Memorandum Supporting Decertification Motions
22. July 11, 2023: JLS Joinder to M&L Reyna’s Motion for Decertification
23. July 12, 2023: Plaintiffs’ Memorandum Supporting Trial Plan Order
24. July 13, 2023: Plaintiffs’ Memorandum Opposing Decertification
25. August 11, 2023: Plaintiffs’ Supplemental Memorandum Supporting Bifurcation
26. September 14, 2023: JLS’ Written DV Motion as to “the Statute of Limitations, the Statute of Repose and the Issue of Indemnification”
27. September 14, 2023: JLS’ Memorandum Supporting its DV Motion on only Statute of Limitations and Statute of Repose Grounds
28. September 22, 2023: JLS’ JNOV Motion and Supporting Memorandum
29. November 2, 2023: Plaintiffs’ Memorandum Opposing JLS’ JNOV Motion
30. November 20, 2023: JLS’ Rule 59(e) Motion and Supporting Memorandum

V. Exhibits

31. Pl. Ex. 1.8, JLS Subcontract
32. Pl. Ex. 1.9, JLS Purchase Agreement
33. Pl. Ex. 4.3, JLS Purchase Orders
34. Pl. Ex. 11.16, JLS Warranty Service Work Orders
35. Pl. Ex. 15.3/Def. Ex. 38, D.R. Horton Standard Details
36. Pl. Ex. 19.1, 2006 IRC for Brick
37. Pl. Ex. 20.1, 2012 IRC for Brick
38. Pl. Ex. 21.1, 2015 IRC for Brick
39. Pl. Ex. 24.16, Dr. Whitlock Repair Cost Estimate
40. Pl. Ex. 24.20 (C), Brick Photo Collection
41. Pl. Ex. 24.20 (D), Stone Photo Collection
42. Pl. Ex. 24.20 (F), Stone Clearance Photo Collection
43. Pl. Ex. 25.20 (G), Brick Clad Window Photo Collection
44. Pl. Ex. 25.1, Brick Crack Photos
45. Pl. Ex. 25.3, 207 Buxton: Insufficient Base of Wall Flashing Photos
46. Pl. Ex. 25.4, 8 Duxbury: Insufficient Base of Wall Flashing Photos
47. Pl. Ex. 25.5, 206 Buxton: Insufficient Lintel Bearing Photo
48. Pl. Ex. 25.6, 17 Kettering: Lintel Separate Above Garage Photo
49. Pl. Ex. 25.7, 8 Kettering: Lintel Separate Above Garage Photo
50. Pl. Ex. 25.8, 209 Buxton: Corroded Lintel Photo
51. Pl. Ex. 25.16, 104 Sturbridge: Brick Crack Photos
52. Pl. Ex. 25.17, Garage Crack Photos
53. Pl. Ex. 25.19, Foundation Crack Photos
54. Pl. Ex. 25.27, Dr. Whitlock Supplemental Brick Photos
55. Pl. Ex. 25.28, Dr. Whitlock Supplemental Concrete Photos
56. Pl. Ex. 25.31, Dr. Whitlock Supplemental Sone Photos

- 57. Pl. Ex. 25.34, Dr. Whitlock's Entire Photo Collection and Contact Sheets
- 58. Pl. Ex. 32.14, D.R. Horton Email Regarding 104 Sturbridge Brick Defects and Proposed Repair
- 59. Pl. Ex. 32.15, D.R. Horton to Subcontractors Regarding 104 Sturbridge Repair
- 60. Pl. Ex. 51, 104 Sturbridge (Zitek) D.R. Horton Warranty Submission
- 61. Pl. Ex. 52, 104 Sturbridge (Zitek) RWC Warranty Submission
- 62. Pl. Ex. 53, 104 Sturbridge (Zitek) Emails with D.R. Horton and Engineer Regarding Defective Repairs
- 63. Pl. Ex. 54, 104 Sturbridge (Zitek) Emails with D.R. Horton and Engineer Regarding Defective Repairs
- 64. Pl. Ex. 55, 104 Sturbridge (Zitek) 2017 Repair Photos
- 65. Pl. Ex. 56, 104 Sturbridge (Zitek) 2018 1st Repair Photos
- 66. Pl. Ex. 57, 104 Sturbridge (Zitek) 2018 2nd Repair Photos
- 67. Pl. Ex. 58, 104 Sturbridge (Zitek) 2018-2019 Post Repair Photos
- 68. Pl. Ex. 91, Rose Hill Neighborhood Mapp
- 69. Pl. Ex. 116, 104 Sturbridge (Zitek) Emails with D.R. Horton Regarding Repairs
- 70. Pl. Ex. 233(A)-(B), Dr. Whitlock Loss of Use
- 71. Pl. Ex. 246, Rose Hill Neighborhood Map
- 72. Pl. Ex. 247, Vendor Spend
- 73. Def. Ex. 215, Engineer Letter Regarding 104 Sturbridge

VI. Miscellaneous

- 74. January 10, 2024 JLS Filed Notice of Appeal

JUSTIN O'TOOLE LUCEY, P.A.

s/ Dabny Lynn

Justin O'Toole Lucey (SC Bar # 15438)
Dabny Lynn (SC Bar # 78703)
Charlotte B. Winckler (SC Bar # 102862)
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400
jlucey@lucey-law.com
dlynn@lucey-law.com
cwinckler@lucey-law.com
Attorneys for Plaintiff

September 12, 2024
Mount Pleasant, South Carolina

RECEIVED

Sep 12 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse
Circuit Court Judge

Appellate Case No.: 2024-000057
Circuit Court Case No.: 2019-CP-04-01942

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,

Defendants,

and

D.R. Horton, Inc.,

Third-Party Plaintiff,

v.

A&J Framing, Inc.; A-z, Inc.; AJ Landscaping & Grading, LLC, a/k/a AJ Landscaping & Grading, LLC; Allpro Textures, LLC; Alpha E.M.C.; Alpha Omega Construction Group, Inc.; American Concrete and Precast, Inc., a/k/a ACP Concrete, Inc.; Atlanta Floor Designs Center; A Grade Above Others, LLC; BFK Builders, Inc.; BMC East, LLC d/b/a Coleman Floor, LLC; Brand-Vaughn Lumber Co., Inc.; Bravo Carpenters, Inc.; Builders Designhouse, LLC; Builders FirstSource Southeast Group, LLC, a/k/a Builders FirstSource, Inc.; Builders Services Group, LLC, f/k/a Masco Contractor Services Central, Inc., f/k/a Gale Industries, Inc., d/b/a Gale Contractor Services; Cannaday Siding & Gutter, Inc.; Caryl Mechanics II, Inc., a/k/a Caryl Mechanicals, Inc.; CBU Enterprises, Inc.; Cortes Painting, LLC; CPI Security Systems, Inc.; Dom

Group, LLC; Dupree Plumbing Company, Inc.; Ferguson Enterprises, Inc.; Five Star Construction, Inc.; Five Star Foundations, LLC; Galloway-Bell, Inc., a/k/a Galloway-Bell, Inc. II; GBS Building Supply – US LBM, LLC, f/k/a GBS Building Supply, Inc.; General Shale Brick, Inc.; Get Floored, LLC; Greener Pastures, Inc., a/k/a Greener Pastures of Aiken, LLC; Installed Building Products, LLC, a/k/a Installed Building Products II, LLC; IBP Asset, LLC, d/b/a/ Blue Ridge Building Products; JLS Masonry, Inc.; Kings Landscaping, LLC; L&M Products, Inc; Long Heating & Air Conditioning, Inc.; M&L General Construction, LLC; M&M Foundations, LLC; Manale Landscaping, LLC; MJ Cowboys, LLC; Nazareth Builders, LLC; NM Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&L Enterprises, LLC; P&T Construction, Inc., a/k/a P&T Construction, Inc.; ProBuild Company, LLC, a/k/a ProBuild Holdings, Inc.; Rite Rug Co.; Rodney Howard Grading, Inc., a/k/a Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Silver Line Building Products Corporation; Sodfather, Inc.; Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc., a/k/a Gale Contractor Service; Tucker Materials, Inc., a/k/a Gypsum; UTM Enterprises, Inc.; and Willow Tree Landscaping, Inc.,

Third-Party Defendants,

and

Aaron D. Peris; Harrelson Painting, LLC; Huttig Building Products,

Fourth and Fifth Party
Plaintiffs and Defendants,

Of whom

JLS Masonry, Inc., is the

Appellant,

v.

Natalie Zitek, individually, and on behalf of all others similarly situated and as assigned of the claims of Third-Party Plaintiff D.R. Horton, Inc.,

Respondents.

PROOF OF SERVICE

I certify that on September 12, 2024, a copy of Respondents’ Designation of Matters was served on all counsel of record via email as listed below:

Nosizi Ralephata, Esquire
Julie Fekete, Esquire
Gordon Rees Scully Mansukhani
677 King Street, Suite 450
Charleston, SC 29403
nralephata@grsm.com
jfekete@grsm.com

Jeffrey A. Ross, Esquire
Ross & Cristaldi
863 Coleman Blvd., Suite B
Mt. Pleasant, SC 29464
jross@rclawsc.com

Attorneys for Appellant JLS Masonry, Inc.

JUSTIN O'TOOLE LUCEY, P.A.

s/ Dabny Lynn

Justin O'Toole Lucey (SC Bar # 15438)
Dabny Lynn (SC Bar # 78703)
Charlotte B. Winckler (SC Bar # 102862)
415 Mill Street (29464)
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400
jlucey@lucey-law.com
dlynn@lucey-law.com
cwinckler@lucey-law.com
Attorneys for Plaintiff

Mount Pleasant, South Carolina