



September 17, 2024

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**SC Court of Appeals**

**Sent Via U.S. Mail**

Jenny A. Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29211

Re: Zitek v. IBP Asset, LLC, et al.  
Appellate Case No. 2023-001401  
Our File No.: 6035-0008

Dear Ms. Kitchings:

I am writing on behalf of Respondent IBP Assets, LLC d/b/a Blue Ridge Building Products (hereinafter “Blue Ridge”) regarding Appellant D.R. Horton, Inc.’s (hereinafter “DR Horton”) Response to Blue Ridge’s Reply and Modified Request for Clarification filed September 16, 2024.

On September 4, 2024, Blue Ridge filed a request for clarification of certain matters concerning compliance with this Court’s Order granting Respondents’ Joint Motion to Strike. DR Horton filed a response to Blue Ridge’s Request for Clarification on September 6, 2024. On that same date, DR Horton filed amended reply briefs and a supplemental designation of matter for the record on appeal. Those filings raised issues upon which Blue Ridge had sought clarification.

The Appellate Court Rules only allow five (5) days to file a reply in support of a motion. Blue Ridge filed its Reply on September 10, 2024. The Reply addressed issues raised by DR Horton’s filings while the request for clarification was pending.

On September 16, 2024, DR Horton filed a second response to Blue Ridge’s request for clarification. This filing does not appear to be responsive to Blue Ridge’s objections to the new arguments and designations as set forth in Blue Ridge’s September 10, 2024 Reply. Instead, it raises a host of new issues and seeks to designate many new materials for the record on appeal. These arguments appear to be responsive to Blue Ridge’s request for clarification filed September 16, 2024 and also Respondents’ June 12, 2024 Joint Motion to Strike, which this Court granted.

DR Horton’s September 16, 2024 filing requests affirmative relief, including an order allowing DR Horton to designate a transcript and several motions and memoranda that were not previously designated for the record. DR Horton seeks to designate a complete transcript of which only portions were previously designated.

DR Horton also seeks to strike portions of Respondents' initial briefs. This argument is responsive to Blue Ridge's request for clarification #2. DR Horton had filed a prior response on September 6, 2024, and Blue Ridge filed its reply. DR Horton's September 16, 2024 filing revisits this issue and takes a different position. In this regard, it seems to be an improper out-of-time amended response to Blue Ridge's request for clarification.

DR Horton re-filed the record on appeal on September 13, 2024. Pursuant to this Court's August 23, 2024 Order, Respondents are to re-file their final briefs within thirty days of that Order. That sets the deadline for Monday, September 23, 2024.

DR Horton's request to strike calls into question what Respondent Blue Ridge's final brief should contain. Mindful of Rule 240(b), SCACR, Respondent Blue Ridge respectfully requests that the deadline for filing its final brief be held in abeyance until this Court rules on DR Horton's request to strike.

Furthermore, DR Horton's requested relief is not appropriate for a response (or sur-reply) to Blue Ridge's motion. Because it requests affirmative relief, Blue Ridge respectfully submits that DR Horton's September 16, 2024 "response" is in fact a motion. Blue Ridge requests that this Court treat it as such and grant Respondents an opportunity to respond to the new issues DR Horton has raised according to the deadlines provided in Rule 240, SCACR.

Respectfully submitted,

*s/Timothy J. Newton*

Timothy J. Newton

TJN/