

September 17, 2024

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**SC Court of Appeals**

**Sent Via Email**

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

Dear Ms. Kitchings:

I am writing on behalf of Respondent Builder Services Group, Inc d/b/a Gale Contractor Services' (hereinafter "Gale") 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. This response filed by DR Horton is essentially not a response at all but instead a motion that requests affirmative relief from not only Blue Ridge but also Gale.

On September 4, 2024, Respondent Blue Ridge filed a request for clarification of certain matters concerning compliance with this Court's Order granting Respondents' Joint Motion to Strike. Gale chose not to file an additional motion requesting the same as Blue Ridge had already covered all the points needed for clarification. DR Horton filed a response to Blue Ridge's Request for Clarification on September 6, 2024. On that same date, DR Horton filed its 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. DR Horton's supplemental designation includes additional similar documents regarding another subcontractor JLS Masonry that has already been the subject of the Respondent's Joint Motion to Strike and the Court's subsequent order granting said motion.

Blue Ridge timely 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, without leave from the Court DR Horton filed a second response to Blue Ridge's request for clarification, essentially a sur-reply. 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. Additionally, DR Horton is now making new representations in this second response related to Gale even though Gale did not file a Motion for Clarification. These arguments appear to be responsive to Blue Ridge's request for clarification and also Respondents' June 12, 2024 Joint Motion to Strike, which this Court has already granted.

DR Horton's September 16, 2024 filing requests affirmative relief, including an order allowing DR Horton to designate another 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. This comes ten days after DR Horton filed its Supplemental Designation of Matter.

DR Horton also seeks to strike portions of both 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. Additionally, it appears that DR Horton is attempting to make arguments related to the Respondents' Joint Motion to Strike that the Court has already granted. Furthermore, DR Horton used this response to make arguments about inconsistent summary judgment rulings that D.R. Horton didn't argue in its Initial Brief, but only referenced in the summary of facts.

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 exactly Respondent Gale's final brief should contain. Mindful of Rule 240(b), SCACR, Respondent Gale 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 reply (or sur-reply) to Blue Ridge's motion. DR Horton is requesting portions of Gale's brief be stricken in response to a motion for clarification filed by Blue Ridge. Gale has not had the opportunity to respond to said motion as it was not the party that filed the motion originally. Because DR Horton requests affirmative relief, Gale respectfully submits that DR Horton's September 16, 2024 response is in fact a motion. Therefore, Gale requests that this Court treat it as such and grant Respondents an opportunity to respond to the new issues and arguments that DR Horton has raised according to the deadlines provided in Rule 240, SCACR.

Should you have any questions or require anything further, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,

*s/ Alicia N. Bolyard*

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Alicia N. Bolyard, Esquire  
For the Firm

ANB/kbs