

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

69709

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

Appellate Case No.: 2012-213237

Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bettie J. Taylor, and Robert White, Individually, and on behalf of all others similarly situated, Plaintiffs

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates, Bradford D. Seckinger, John Ludwig,, William Cox, Larry D. Lollis, Rick Thoennes, M Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Upstate Utilities, Inc., Southern Basement, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberito Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, and Miller/Player & Associates, Defendants,

Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

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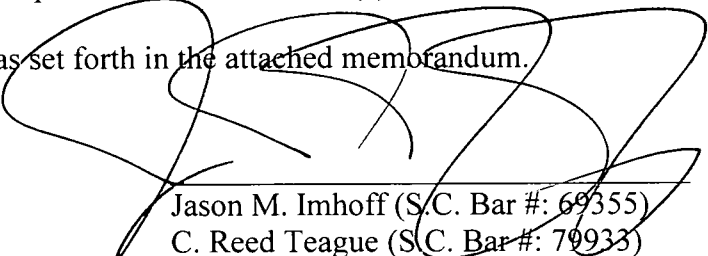
SEP 10 2013

SC Court of Appeals

Of Whom Hutch N Son Construction, Inc., and Upstate Utilities, Inc. are the Respondents.

**RETURN TO MOTION TO STRIKE TO ENFORCE THE COURT'S JULY 10,
2013 ORDER**

I, Jason M. Imhoff, counsel for Marick Home Builders, LLC and Rick Thoennes hereby move the Court in compliance with Rule 240(e) SCACR for dismissal of Respondent's Motion to Strike as set forth in the attached memorandum.



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ATTORNEYS FOR THE APPELLANTS

September 6, 2013

RESPONDENTS' COUNSEL OF RECORD:

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Attorney for Respondent Upstate Utilities, Inc.

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Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants.

And

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Of Whom Hutch N Son Construction, Inc., and Upstate Utilities, Inc. are the Respondents.

**MEMORANDUM IN SUPPORT OF RETURN TO RESPONDENTS' MOTION
TO STRIKE AND TO ENFORCE THE COURT'S JULY 10, 2013 ORDER**

Respondents Motion to Strike should be denied because all material cited in the Amended Initial Brief and Record on Appeal comply with the Court's Order and are allowed by this Court. Specifically the Court Ordered "no portions of the deposition of Randy Still shall be included in the record on Appeal." In compliance with that Order, Appellant deleted any reference to the deposition of Randy Still and instead referenced the Brief in Opposition to Respondents' Motion for Summary Judgment and the transcript of hearing, both of which are allowed by Order of this Court. The brief filed with the Court and the transcript contained arguments made at the Trial Court both of which contained deposition testimony of Randy Still.

In their original Motion to Strike, Respondents sought to exclude both the Brief in Opposition to Respondents' Motion for Summary Judgment and the transcript of the hearings. This Court denied Respondents' Motion to Strike the transcript of the hearings and the brief. Because this Court denied both of those Motions, the transcript and brief are properly cited in the Amended Initial Brief and the Record on Appeal. Any reading of this Court's Order allowing the brief and transcript to be included in the Record on Appeal, but denying their citation would be inconsistent. This does not appear to be the Order of the Court and would not make sense as it would require deletion of information,

which this Court has ruled was before the trial Court. As such, Appellant requests that Respondents' Motion to Strike to Enforce the Court's July 10, 2013 Order be denied.

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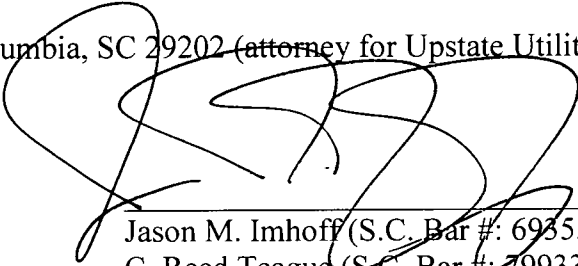
Of Whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And

Of Whom Hutch N Son Construction, Inc., and Upstate Utilities, Inc. are the Respondents.

PROOF OF SERVICE

I certify that I have served the Return to Motion to Strike to Enforce the Court's July 10, 2013 and Memorandum in Support of Return to Respondents' Motion to Strike and to Enforce the Court's July 10, 2013 Order by depositing a copy of it in the United States Mail, First Class postage prepaid, on September 6, 2013, addressed to Respondents' attorneys of record, Shelley S. Montague, Esquire, P.O. Box 7368 Columbia, SC 29202 (attorney for Hutch N Son Construction, Inc.), and S. Markey Stubbs, Esquire P.O. Box 8057 Columbia, SC 29202 (attorney for Upstate Utilities, Inc.).



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*ALSO MEMBER NORTH CAROLINA BAR

September 6, 2013

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11639
Columbia, SC 29211

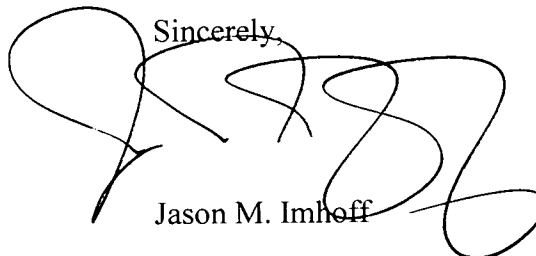
**Re: Stoneledge at Lake Keowee Owners' Association, Inc., et al. vs. IMK
Development Co., LLC, et al. vs. Michael Franz, et al.
Appellate Case No.: 2012-213237**

Dear Ms. Kitchings,

Enclosed for filing is the original and seven (7) copies of the Return to Motion to Strike to Enforce the Court's July 10, 2013 and Memorandum in Support of Return to Respondents' Motion to Strike and to Enforce the Court's July 10, 2013 Order in the above referenced matter. Also enclosed is our firm check in the amount of \$25.00 to cover the filing fee for the motion and the original and one copy of the Proof of Service upon opposing counsel.

Please file-stamp and return the extra copies in the envelope provided for your convenience. Opposing counsel is being served the same by copy of this letter.

Sincerely,



Jason M. Imhoff

JMI/ads
Enclosure

Cc: Shelley S. Montague, Esquire
S. Markey Stubbs, Esquire

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SC Court of Appeals