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Sep 23 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2019-CP-04-01942
Appellate 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.

AJ Landscaping & Grading LLC, A/K/A AJ Landscaping & Grading, Inc;
Allpro Textures, LCC; 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-Vaughan Lumber Co., Inc.; BKF 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 Building 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 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.

**SUPPLEMENTAL
RECORD ON APPEAL**

September 23, 2024

MURPHY & GRANTLAND, P.A.
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Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/ Timothy J. Newton

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Blue Ridge Building Products

Columbia, South Carolina
September 23, 2024

1 THE COURT: Okay.

2 MR. KENDALL: Your Honor, this is Everett Kendall for
3 Blue Ridge again. I don't have a motion that appears on this
4 docket. I just want to remind the Court I've written a letter
5 to this effect. We presented a motion at the September 8th
6 hearing that was a motion to dismiss the third-party claims
7 against my client. It was factually -- it was we argued on a
8 different basis than other third-party contractors had argued.

9 Somehow, I believe that motion has gotten lost in terms
10 of being ruled upon. And so if I just -- I don't know what
11 else I might need to do and just asking for that direction
12 from the Court in order to get -- to know where we are with
13 that motion.

14 THE COURT: I'll go back and look at that.

15 MR. KENDALL: Thank you, Your Honor.

16 THE COURT: I'll go back and look at your filing to say
17 to make sure that it was something that was considered.

18 MR. KENDALL: It was filed and argued --

19 THE COURT: Okay.

20 MR. KENDALL: -- at the September 8th docket, but it
21 was -- again, it was -- it had a similar title to the other
22 motions you heard, but it was being argued on a very different
23 theory. And so I'm just -- I'm afraid it just might have
24 gotten buried.

25 THE COURT: I'll go back and look at that. Thank you for

1 calling that (indiscernible), Mr. Kendall.

2 MR. KENDALL: Thank you, Your Honor. Thank you.

3 THE COURT: Okay. Anyone else? Okay.

4 MR. IMHOFF: Does that mean it's back to me, Your Honor?

5 THE COURT: All right. I'll listen. And then I'll give
6 Mr. Imhoff and then Mr. Lucey last opportunity here. So go
7 ahead, Mr. Imhoff.

8 MR. IMHOFF: Your Honor, I'm going to try to be brief. I
9 have to put some things on the record. I'm not going to keep
10 us here forever, but I have to put some things on the record.

11 THE COURT: Okay.

12 MR. IMHOFF: Everyone on this -- in this case is in a
13 little bit different position. And D.R. Horton, my client,
14 obviously, is in a position where it is defending 221 homes in
15 a class action lawsuit, and all aspects of them, and also
16 prosecuting the third-party claims against all of the
17 subcontractors.

18 And so what we're asking you to do is extend this. And I
19 think Emily Sheets and a couple other people said it. We're
20 concerned -- and we're trying to do it as quickly as we can.
21 We're concerned that the current scheduling order and even
22 future ones may not make it there. And I want to point out to
23 Your Honor -- and I can put it up on the screen -- the
24 plaintiffs have had four years to talk to their homeowners,
25 inspect these houses, do destructive testing on all of these

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all of the material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/ Timothy J. Newton

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