

# The South Carolina Court of Appeals

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 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.

Appellate Case No. 2023-001401

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AMENDED ORDER<sup>1</sup>

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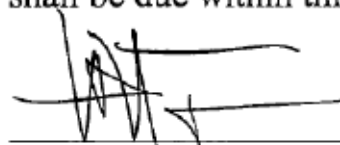
Respondents' joint motion to strike Appellant's May 13, 2024 reply brief and supplemental designation of matter is granted. The order on appeal was filed August 23, 2023. The record on appeal shall not contain transcripts of any proceedings that took place after that date, motions filed after that date, orders issued after that date, or any materials that otherwise were not presented to the lower court prior to, or in conjunction with, its issuance of the order on appeal. *See*

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<sup>1</sup> This court's August 23, 2024 order is stricken and substituted with this order, solely to correct the typo listing the incorrect date for the order on appeal. Any other requests made in Respondent Blue Ridge Building Products' "Request for Clarification" are denied. *See* Rule 221(c), SCACR ("The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.").

Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal."). Therefore, items (2) and (4)-(10) in Appellant's May 13 supplemental designation are hereby stricken.<sup>2</sup> Appellant's May 13 reply brief is stricken to the extent it references any of the stricken items. If Appellant wishes to file an amended reply brief and supplemental designation, it shall do so within fifteen days of the date of this order.

Respondent Blue Ridge Building Products' request to file a supplemental record on appeal is granted, to the extent it complies with Rule 210, SCACR. As to Blue Ridge's misstatement in its initial brief, it may include a correction in its final brief. The deadline for Respondents' final briefs was held in abeyance pending resolution of the joint motion to strike; they shall be due within thirty days of the date of this order.



FOR THE COURT

Columbia, South Carolina

cc:

Jason Michael Imhoff, Esquire  
Carl F. Muller, Esquire  
Everett Augustus Kendall, II, Esquire  
Alicia Noel Bolyard, Esquire  
Timothy J. Newton, Esquire

**FILED**  
**Oct 21 2024**

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<sup>2</sup> Any items included in Respondents' designations of matter that were not presented to the lower court shall also be excluded from the record on appeal, including the jury verdict and any portions of the trial transcript recorded after August 23, 2023.