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**Oct 28 2024**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENTLEY D. PRICE  
CIRCUIT COURT JUDGE

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APPELLATE CASE NO. 2022-000469  
CASE NO. 2019-CP-07-02629

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Margaret A. Eberly and Barbara J. Pavelik,

**PLAINTIFFS,**

versus

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC,

**DEFENDANTS,**

Of whom

D.R. Horton, Inc. is

**APPELLANT,**

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.

**RESPONDENTS.**

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**RESPONDENTS' RETURN TO APPELLANT D.R. HORTON, INC.'S MOTION  
TO HOLD FURTHER BRIEFING IN ABEYANCE UNTIL AFTER THE COURT  
RULES IN RELATED APPELLATE CASE NO. 2022-000016**

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Respondents in the above-referenced matter object to Appellant D.R. Horton, Inc.’s request to delay further briefing in this appeal until the Court issues its decision in Appellate Case No. 2022-000016, *Shafi v. D.R. Horton, Inc.* The issue of the enforceability of the indemnification provision is a matter of law, and D.R. Horton’s argument regarding its enforceability should not significantly differ from its argument in *Shafi* to require additional time to file a reply brief on the issue. D.R. Horton has also already briefed the issues in its Initial Appellant’s Brief and cannot raise new argument in its reply brief *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277, 437 S.E.2d 168, 171 (Ct. App. 1993) (“[A]n appellant cannot make new arguments for reversal in a reply brief.”) (citation omitted). Finally, if any opinion by the Court is issued which may have any bearing upon the issues in this appeal, D.R. Horton may submit a supplemental citation to this Court pursuant to Rule 208(b)(7), SCACR.

In additional, the appeal in this case involves additional issues beyond the enforceability of the indemnification provision which are not present in the *Shafi* appeal and in which the outcome of the *Shafi* appeal will have no bearing. For this additional reason, the appeal of this case does not need to be further delayed.

Accordingly, for the reasons set forth herein, Respondents respectfully request that this Court deny D.R. Horton’s Motion to Hold Further Briefing in Abeyance Until After the Court Rules in Related Appellate Case No. 2022-000016.

*[signatures on following page]*

Respectfully submitted,

/s Carmen V. Ganjehsani

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**ATTORNEYS FOR LATHER  
CONSTRUCTION, INC. AND LATHER  
CONSTRUCTION SC, INC.**

October 28, 2024.

**Oct 28 2024****CERTIFICATE OF SERVICE**

I, the undersigned, attorney for Respondent Hutton's Landscapes, Inc., do hereby certify that I have this date served the foregoing Respondents' Return to D.R. Horton's Motion to Hold Further Briefing in Abeyance Until After the Court Rules in Related Appellate Case No. 2022-000016, dated October 28, 2024, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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A copy of the sent email is enclosed with this Certificate of Service.

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Dated: October 28, 2024

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**Subject:** 2022-000469 Eberly v. D.R. Horton  
**Date:** Monday, October 28, 2024 11:27:00 AM  
**Attachments:** [2022-000469 Eberly v. D.R. Horton et al. \(Respondents' Return to Motion to Hold Appeal in Abeyance\) \(3540314\).pdf](#)

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Pursuant to the Supreme Court's Order dated April 24, 2024, please find served upon you the Respondents' Return to D.R. Horton, Inc.'s Motion to Hold Further Briefing in Abeyance Until After the Court Rules in Related Appellate Case No. 2022-000016

Thank you,  
Carmen Ganjehsani

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