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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Appellate Case No.: 2024-001424

Fenwick Commons Homeowners Association, Inc., Respondent,

v.

D.R. Horton, Inc., JJA Construction, Inc., d/b/a JJA Framing, JJA Construction, Inc. d/b/a JJA Framing Company, Jose Castillo d/b/a JJA Framing, Jose Castillo d/b/a JJA Framing Company, United Siding Specialists, Inc., Heritage Construction Consultants, Inc., Robert H. Yarnall d/b/a Heritage Construction Consultants, Inc., Built Right Construction, LLC, Alfonso Villavicencio d/b/a Alfonso's Painting, Alfonso Painting & Drywall, Inc., Diria Tawi Painting, Inc., 84 Lumber Company, Builders FirstSource - Southeast Group, LLC, Americo Roofing Concepts f/k/a Americo Roofing Concepts Enterprises, Inc., Americo Roofing Concepts, Inc. f/k/a American Roofing Concepts, Archer Exteriors, Inc. and Professional Exteriors, LLC, Luciano Dias Gomes d/b/a Prestige Home Construction, Geraldo Da Cunha, Pablo Rojas Franco, Charles Gunter, Henry A. Palmer, Julio C. Crespo, Brasilican Contracting, LLC, Charles Bowser d/b/a CWB Services, Jose Geraldo Dos Reis, Leandro De Paulo Araujo, Helio A. De Rezende, Vinicius Araujo De Freitas a/k/a Vinicius Araujo, Robert M. Huges d/b/a Robert's Vinyl Siding, Lucas Rodrigues Barcelos a/k/a Lucas Rodriguez Barcelos, Karla Bezerra, Rodrigo B. Vasconcelos, Rondinelly G. Da Silva, Marcio Nunes Da Silva, W&M Vinyl Siding, LLC, and Donald Lee d/b/a Vinyl Siding Specialists, Defendants,

of which Builders FirstSource - Southeast Group, LLC is the Appellant.

**RESPONDENT FENWICK COMMONS HOMEOWNERS ASSOCIATION, INC.'S
REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS
APPEAL**

Appellant in their Return advances no arguments which would cause this Court to overturn longstanding South Carolina law. As pointed out by Appellant, this case is six (6) years old. On the eve of a date-certain two-week trial, Appellant filed this appeal. Contrary to Appellant's assertion, the Orders it appeals do not involve the merits or affect substantial rights of Appellant. The townhome units wherein Appellant only installed window screens, rather than window flashings, were dismissed from the lawsuit pursuant to the portion of the Order that was granted as to Appellant's Motion for Summary Judgment. Respondent will not be bringing claims for those select units at the trial. Therefore, there is no substantial right of Appellant affected as to those units as those units are no longer a part of the case, and therefore, need not be defended by Appellant. By not granting Appellant's Motion for Summary Judgment in its entirety, the Special Referee determined that there were genuine issues of material fact for trial as to the remaining units wherein Appellant installed the windows and window flashings. It is well established law that an order denying summary judgment is not appealable. *Ballenger v. Brown*, 313 S.C. 476, 443 S.E.2d 379 (1994) (citations omitted). "A denial of a motion for summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial." *Id.* at 477, 443 S.E.2d at 380.

As to Appellant's argument regarding standing, it is undisputed that Respondent is bringing claims as it pertains to the installation of the windows and related window flashings – not the window glass itself as is the basis of Appellant contesting standing. Appellant was not the only window installer at this project, and in fact other installer(s) installed many more windows than Appellant. This lack of standing argument was not advanced by any other party that had any responsibility for installation of the windows at the project including the original developer Portrait Homes who was the drafter of the governing documents delineating HOA versus individual unit

owner maintenance responsibility within the community. Irrespective, “the denial of summary judgment . . . does not have the effect of striking any defense since that defense may be raised again later in the proceedings.” *Id.*

Respondent respectfully asks this Court to dismiss BFS’s appeal and award the Respondent attorney’s fees and costs.

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of which Builders FirstSource - Southeast Group, LLC is the Appellant.

CERTIFICATE OF SERVICE

I, Alicia D. Pullano, certify that I have served *Respondent Fenwick Commons Homeowners Association, Inc.'s Reply to Appellant's Return to Respondent's Motion to Dismiss Appeal*, by electronic mail, on December 20, 2024, addressed to all attorneys of record, as follows:

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