

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
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May 04, 2012

William Thomas Young, III
PO Box 40
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Mary Bass Lohr
PO Box 40
Beaufort SC 29901

Thomas Allan Bendle, Jr.
PO Box 40
Beaufort SC 29901

Re: 16 Jade Street v. R Design Construction
Appellate Case No. 2009-146786

Dear Counsel:

The following order has been endorsed on your Petition for Rehearing in the above matter.

"Petition for Rehearing is granted.

s/ Jean H. Toal C.J.
For the Court

May 4, 2012."

Please be advised you will be notified at a later date when this case may be scheduled for oral argument.

Very truly yours,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

CLERK

cc: Ernest Mitchell Griffith
Michael David Freeman, Sr.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

RECEIVED
APR 19 2012
S.C. SUPREME COURT

16 Jade Street, LLC..... Respondent/Appellant,

v.

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R. Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction.....Defendants,

Of Whom, Carl R. Aten, Jr..... Appellant,

and Michael S. Catterson, Individually and in
his capacity as principal and
agent of Catterson & Sons Construction, is Respondent,

R. Design Construction Co., LLC, ...Third Party Plaintiffs,

v.

Kintz Electric,.....Third Party Defendant.

PETITION FOR REHEARING

YOU WILL PLEASE TAKE NOTICE that the Appellant, Carl Aten, Jr., by and through his undersigned Counsel, Howell, Gibson and Hughes, P.A., will Petition this Honorable Court, The South Carolina Supreme Court, for a rehearing of the matters heard on October 4, 2011, and shall petition for reconsideration and appropriate alteration and/or amendment of the Court's Opinion of April 4, 2012, Opinion No. 27107.

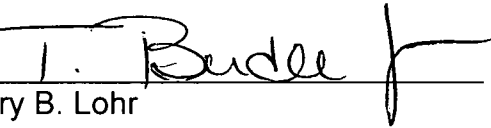
The within Petition, and memorandum with citation of authorities in support of said Petition, are made pursuant to the provisions of the statutory and common laws of the State of South Carolina and Rule 240, South Carolina Appellate Court Rules, and is based upon the grounds that:

- a. The Majority opinion errs in construing legislative intent when the language of The South Carolina Uniform Limited Liability Act is clear and unambiguous and shields a member from personal liability while acting in his capacity as a member in the ordinary course of business;
- b. Even if the Act's language is determined to be unclear or ambiguous, the Majority opinion misapplied the rules of statutory construction in finding that the General Assembly did not intend for S.C. Code Ann. §33-44-303 to shield a member from personal liability for acts that occurred in the ordinary course of business for the LLC; and
- c. Alternatively, if the Court does not change its construction of The South Carolina Uniform Limited Liability Act, public policy dictates that the Court's ruling should be applied prospectively only, given the Court's own ruling that the interpretation of the statute is a novel issue and that the language of the Act appears to support the proposition that a member is entitled to a shield from personal liability while acting in his capacity as a member in the ordinary course of business.

Based upon the foregoing, it is respectfully submitted that this Court grant a rehearing of the instant appeal, and find that Aten may not be held personally

liable for acts undertaken solely in furtherance of R Design Construction Co.,
LLC.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary B. Lohr

Bar # 16927

Thomas A. Bendle, Jr.

Bar # 69561

William T. Young, III

Bar # 75153

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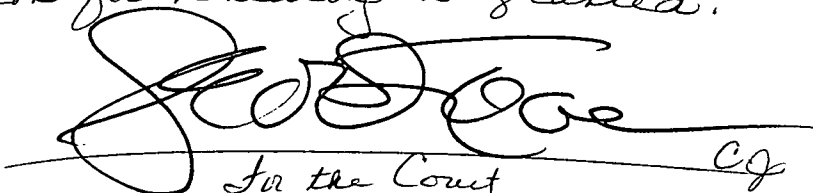
Beaufort, SC 29901

(843) 522-2400

Attorney for Carl Aten

Beaufort, South Carolina
April 18, 2012

Petition for rehearing is granted.


For the Court *CJ*

May 4, 2012

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC..... Respondent/Appellant,

v.

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R. Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction.....Defendants,

Of Whom, Carl R. Aten, Jr..... Appellant,

and Michael S. Catterson, Individually and in
his capacity as principal and
agent of Catterson & Sons Construction, is Respondent,

R. Design Construction Co., LLC, ...Third Party Plaintiffs,

v.

Kintz Electric,.....Third Party Defendant.

MEMORANDUM

The Appellant, Carl Aten, hereby petitions this Honorable Court for a rehearing of the instant action, in response to the opinion filed by this Court on April 4, 2012. The grounds for the within petition are as follows:

- a. The Majority opinion errs in construing legislative intent when the language of The South Carolina Uniform Limited Liability Act is clear and unambiguous and shields a member from personal liability while acting in his capacity as a member in the ordinary course of business.**

The Majority opinion errs as it seeks to construe legislative intent when the words of the South Carolina Uniform Limited Liability Act are clear and unambiguous. In finding that the Act does not shield a member from personal liability for torts he commits in furtherance of the LLC's business, the Court acknowledges that the language *may* be read to provide that very same protection. However, the Majority does not describe how the language is ambiguous, confusing, contradictory or even unclear, and further fails to offer an alternative reading that would support any conclusion other than finding a member is not personally liable for acts taken in furtherance of the LLC. Rather, the opinion references the "long-standing right in our legal system" to "sue one's tortfeasor" and states that the Court will only abrogate that right through "clear legislative intent." The Majority has offered no alternative reading of the statute allowing them to delve into the legislative intent.

If the language of a statute is unambiguous and conveys a clear and definite meaning, then the rules of statutory interpretation are not needed and the court has no right to impose a different meaning. State v. Gaines, 380 S.C. 23, 33, 667 S.E.2d 728, 733 (2008). "Unless there is something in the statute

requiring a different interpretation, the words used in a statute must be given their ordinary meaning.” S.C. Coastal Conservation League v. S.C. Dep’t of Health and Env’t Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” Id. at 425–26, 702 S.E.2d at 250. “A court can neither legislate nor construe a statute which is clear.” Investors Premium Corp. v. South Carolina Tax Commission 260 S.C. 13, 19, 193 S.E.2d 642, 645 (1973).

As the dissenting Justices point out, the language of S.C. Code Ann. §33-44-303 is clear and unambiguous. While the Court may not care for its meaning, the statute lends itself but to one interpretation, as evidenced by the Majority’s failure to address how the statute is ambiguous or unclear. “...[T]he debts, obligations, and liabilities of a limited liability company, whether arising in contract, **TORT**, or otherwise, are **SOLELY** the debts, obligations, and liabilities of the company.” S.C. Code Ann. §33-44-303 (2006) (emphasis added). Additionally, specific protection for members of an LLC is afforded in S.C. Code Ann. §33-44-302, which provides that an LLC is liable for loss or injury caused to a person as a result of the wrongful act or omission of a member of an LLC while acting on behalf of the LLC.

The majority opinion fails to consider consideration the language of S.C. Code Ann. §33-44-302. While reference was given to the preceding and following sections thereof, this particular section was ignored completely. When construing statutory language, the statute must be read as a whole and sections

that are part of the same general statutory law must be construed together and each one given effect. Duvall v. S.C. Budget and Control Board, 377 S.C. 36, 42, 659 S.E.2d 125, 127 (2008).

Reading these two statutes together, there can be no question that the express language provides that in the instance of tortious conduct committed by a manager or member of the LLC, in the ordinary course of business, the LLC is liable. In instances where the LLC is liable in tort, the liability is solely that of the company. Thus, upon a reading of this plain statutory language, R Design is liable for the tortious conduct of Aten, a member of the LLC, acting in the ordinary course of business for the LLC. That liability is solely the liability of R Design and it is error to assign that liability to Aten.

b. Even if the Act's language is determined to be unclear or ambiguous, the Majority opinion misapplied the rules of statutory construction in finding that the General Assembly did not intend for S.C. Code Ann. §33-44-303 to shield a member from personal liability for acts that occurred in the ordinary course of business for the LLC.

Even if the Court, upon rehearing, should determine that the language set forth above is unclear or ambiguous, it must apply the rules of statutory construction properly. As pointed out above, the Court points to no alternative reading of the language of the Act. Rather, it looks to the common law and the laws of other states in order to find that the language which plainly shields Aten from liability was not intended to do so.

In its analysis of this language, the Court notes that "a majority of the states to examine similar statutory language have concluded that a member is always liable for his own torts and cannot rely on his status as a member of an

LLC as a shield.” However, an important distinction is ignored by the Majority in relying on the cases set out as supportive of the position.; while the statutes form other jurisdictions are similar, they are not the same. None of the statutes referenced in the case citations offered by the majority provide for “sole” liability to belong to the LLC. For instance, the corresponding statute of the Georgia LLC Act provides:

- (a) A person who is a member, manager, agent, or employee of a limited liability company is not liable, solely by reason of being a member, manager, agent, or employee of the limited liability company, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company, whether arising in contract, tort, or otherwise.

G.A. Code Ann. §44-11-303 (2006).

The Georgia language is substantially the same found in the Connecticut LLC Act also referenced by the majority. See C.G.S.A. §34-133 (1997). This language differs greatly from the language in our statute in that it does not set forth sole liability belonging to the LLC, and specifically provides that a member is not liable for the acts or omissions of “any other” member, manager, agent or employee. Similarly, the Colorado LLC Act provides, “[m]embers and managers of limited liability companies are not liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company.” C.R.S.A. § 7-80-705 (1990). While this language is closer to

the language in the South Carolina Act, the key word “solely” is not present.

Likewise, the Maryland code section provides:

Except as otherwise provided by this title, no member shall be personally liable for the obligations of the limited liability company, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company.

Md. Code §4A-301 (1992).

Again, the key language setting forth “sole” liability on the part of the LLC is not present. This is also true of the New York and Utah statutes. See N.Y. Ltd. Liab. Co. Law § 609 (Gould 2006) and Utah Code Ann. § 48–2c–601 (2002).

Given the exclusion of this language in other states’ LLC Acts, and the inclusion of it in our Act, the rules of statutory construction require that the assumption be made that the Legislature intended the inclusion of the word “solely” to have meaning. See Harris v. Anderson County Sheriff’s Office , 381 S.C. 357, 363, 673 S.E.2d 423, 426 (2009) (setting forth the Court’s function in discerning legislative intent to interpret words in a statute in a way that both gives meaning to the use of the word and is logical). Moreover, the analysis by the courts in those other states, which cite to statutes with language differing from S.C. Code Ann. §33-44-303, is inapplicable to South Carolina’s Act given the key inclusion of the word “solely.” The existence of the phrase “are solely the debts, obligations, and liabilities of the company” is a distinct and important difference from the statutes referenced by the Majority as having “similar statutory language,” and is evidence of the Majority engaging in the proverbial “apples to oranges” comparison of the statutes.

Additionally, as pointed out by the Dissent in its opinion, subsection (c) of Section 33-44-303 provides further support for the notion that section 33-44-303's liability shield is more than just a protection against vicarious liability as espoused by the Majority. In particular, it states a member obligates himself to pay for such LLC debts when there is a provision so providing in the articles of organization and the member expressly has agreed to be bound by it. S.C. Code Ann. § 33-44-303(c). Because the statute expressly provides how a member can become personally liable, it therefore stands to reason that the general rule is that he is not otherwise personally liable. See also Hodges, 341 S.C. at 86, 533 S.E.2d at 582 ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting Black's Law Dictionary 602 (7th ed.1999))).

It is also important to consider the language of §33-44-201 in the context of the other sections of the Act. "...[A] limited liability company is a legal entity distinct from its members." S.C. Code Ann. §33-44-201 (2006). In its comment to this section, the Legislature states: "[M]embers are not proper parties to suits against the company **unless an object of the proceeding is to enforce members' rights against the company or to enforce their liability to the company.**" (emphasis added) The comment is an expression of intent that a member's inclusion as a party in a lawsuit against the LLC is permitted only in expressly limited circumstances. This comment taken in consideration with the provisions of §33-44-302, can lead to only one conclusion: the Legislature did not

intend for a member who commits a tort in furtherance of the LLC's business to be named as a party in a suit against the LLC. If the General Assembly did not intend for a member to be a party to a lawsuit against the LLC, the General Assembly did not intend for a member to be held personally liable for acts committed in furtherance of the LLC.

This section is also important, given the Majority's analysis with regard to the common law. The Majority opines that the statutory language at bar is in derogation of the common law right to sue one's tortfeasor. Here, the Majority assumes the tortfeasor to be Aten. However, Aten owed no individual duty to the Appellant. In order to establish a claim for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached the duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. Doe v. Marion, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007). A builder who undertakes to supervise the construction of a building has a duty to exercise reasonable care. See Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 561, 658 S.E.2d 80, 88–89 (2008). However, the "builder" in this case was the entity that contracted to supervise the construction of the project. The only evidence in this case is that the general contractor was R Design, not Aten, individually, had no obligation or duty owed to the Appellant. "...[A] limited liability company is a legal entity distinct from its members." S.C. Code Ann. §33-44-201 (2006). While Aten was present at the site, he was only there because of his role as agent to R Design. R Design is the entity that owed the "builder's

duty.” As such, only R Design can be held liable as a tortfeasor for the breach of that duty. Thus, the statute is not in derogation of the common law, as it establishes the LLC as a legal entity which can be sued and is responsible for its torts. While the majority recognizes in the opinion that “because an LLC is a fictional person it can only operate through its agents,” it fails to recognize the LLC as the actionable tortfeasor. The Majority has confused the legal fiction of the establishment of the LLC as a legal entity with the “taking away of a common law right.”

- c. **Alternatively, if the Court does not change its construction of The South Carolina Uniform Limited Liability Act, public policy dictates that the Court’s ruling should be applied prospectively only, given the Court’s own ruling that the interpretation of the statute is a novel issue and that the language of the Act appears to support the proposition that a member is entitled to a shield from personal liability while acting in his capacity as a member in the ordinary course of business.**

“The general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively.” Toth v. Square D Co., 298 S.C. 6, 8, 377 S.E.2d 584, 585 (1989). “Prospective application is required when liability is created where formerly none existed.” Id.; See also Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 85 (2007) (the holding that an adult social host who knowingly and intentionally serves an alcoholic beverage to a person between the ages of 18 and 20 created tort liability where formerly there was none, and thus, the Court’s decision should be applied prospectively); Ludwick v. This Minute of Carolina, 287 S.C. 219, 337 S.E.2d 213 (1985) (employment law case first recognizing the

tort of retaliatory discharge, thereby creating a new cause of action and a new substantive right); McCaskey v. Shaw, 295 S.C. 372, 368 S.E.2d 672 (Ct.App.1988) (the Court's recognition of a tort for the negligent infliction of emotional distress created a new cause of action and should be applied prospectively).

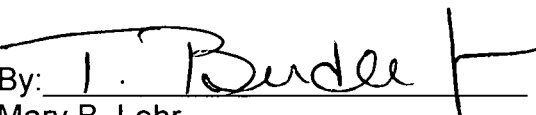
In this matter, the Majority, while ultimately holding otherwise, found the language in the statute appeared to “shield a member from personal liability for torts”. Two members of the Court dissented, finding that the language was clear and did provide a “personal liability shield” to members conducting the ordinary business of the LLC. While it is understood that this opinion is an interpretation of an existing statute, the public policy implications are staggering for those who, having read the statute's plain language, thought as the two dissenting members of the court did. That is that they were offered protection as members of an LLC conducting the LLC's ordinary business. Right or wrong, in choosing to decipher the intent of the Legislature rather than reading the express language of the statute, the Majority has exposed many individuals, not just in the construction field, but in all walks of life, to liability. Much of said liability includes uninsured liability, which puts family homes and present and future assets that belong to those individuals at risk. Given the unusual circumstances of this case and its novel nature, Aten respectfully requests that the court consider these public policy factors and apply its ruling prospectively (only) from the date of the opinion forward.

CONCLUSION

Based on the foregoing, it is respectfully requested that this Court grant a rehearing of the instant appeal inasmuch as the opinion of the Majority has ignored the plain language of the Act, offered no alternative reading for the language, and determined there to be an ambiguity when none was clear on the face of the statutory provisions because it did not care for the result. This statutory language is clear on its face and does not predicate the need to delve into speculative theories on legislative intent. However, even applying the rules of statutory construction the Majority's ruling is in error, as the cases cited from other jurisdictions to support the Court's conclusion are based on statutes that, while similar, have key differences from South Carolina's statutes. Furthermore, when reading the entire Act together, the rules of statutory construction support the position of Aten that the Act provides a "personal liability shield" for members in the conduct of the LLC's business. Alternatively, it is respectfully requested that, in consideration of the important public policy factors and the novel nature of its ruling, that the Court expressly apply its ruling only prospectively from the date of the opinion forward.

SIGNATURE PAGE TO FOLLOW

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary B. Lohr

Bar # 16927

Thomas A. Bendle, Jr.

Bar # 69561

William T. Young, III

Bar # 75153

Post Office Box 40

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Attorneys for Carl Aten

Beaufort, South Carolina
April 18, 2012

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

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S.C. SUPREME COURT

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v.

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R. Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction.....Defendants,

Of Whom, Carl R. Aten, Jr..... Appellant,

and Michael S. Catterson, Individually and in
his capacity as principal and
agent of Catterson & Sons Construction, is Respondent,

R. Design Construction Co., LLC, ...Third Party Plaintiffs,

v.

Kintz Electric,.....Third Party Defendant.

CERTIFICATE OF MAILING

The undersigned counsel hereby certifies that he has served the foregoing Petition for Rehearing upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 18th day of April, 2012 addressed to the following:

E. Mitchell Griffith, Esquire
Griffith, Sadler & Sharp, P.A.
Post Office Box 570
Beaufort, SC 29901-0570

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Clawson & Staubes, L.L.C.
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Thomas J. Finn, Esquire
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APR 19 2012

S.C. SUPREME COURT

HOWELL, GIBSON & HUGHES, P.A.

By: T. Bendle

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April 18, 2012



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MATTHEW D. CAVENDER
+ *certified mediator*
* *also admitted in NC*

April 26, 2012

The Honorable Daniel E. Shearhouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE: 16 Jade Street, LLC v. R Design Construction Co., LLC, et al.
Civil Action No. 2006-CP-07-00866
GS&S File No. 5515

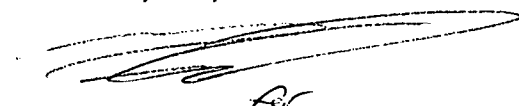
Dear Mr. Shearouse:

I represent Respondent/Appellant 16 Jade Street, LLC in the above case. On April 19, 2012, I received the Petition for Rehearing filed on behalf of Appellant Carl Aten. I do not consent to the petition. However, as the Court has not requested a return to the petition, I do not intend to file one. See Rule 240(e), SCACR ("[A] return to a petition or motion for rehearing under Rule 221 need not be filed unless requested by the court."). Of course, if the Court would like me to file a return, I would be pleased to do so.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman
MDF/mdc

cc: Mary Bass-Lohr
Thomas A. Bendle
William T. Young
Jeffery A. Ross

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APR 30 2012

S.C. SUPREME COURT

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WILLIAM T. YOUNG III
JASON F. WARD

JAMES S. GIBSON, JR. *
Of Counsel

* Certified Mediator

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APR 19 2012

S.C. SUPREME COURT

April 18, 2012

Honorable Daniel E. Sherouse
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201-3206

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No: 9965 MBL

Dear Mr. Sherouse:

Please find enclosed herewith for filing on behalf of Carl Aten an original and seven copies of the following documentation:

- 1) Petition for Rehearing
- 2) Memorandum
- 3) Certificate of Mailing

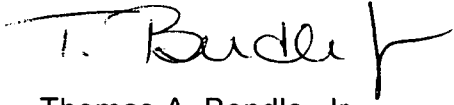
I have also enclosed our firm check in the amount of \$25.00 representing the filing fee of the Petition. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

By copy of this correspondence, I am providing all counsel of record with a copy of the stated enclosures.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

A handwritten signature in black ink, appearing to read "T. Bendle, Jr.", with a stylized flourish at the end.

Thomas A. Bendle, Jr.

TAB/bg
Enclosures

cc: Jeffrey A. Ross, Esquire
E. Mitchell Griffith, Esquire
Thomas J. Finn, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co.,
LLC, and Carl R. Aten, Jr.,
Individually and in his capacity
as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction
and Michael S. Catterson,
Individually and in his capacity
as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant,

and Michael S. Catterson,
Individually and in his capacity
as principal and agent of
Catterson & Sons Construction,
is

Respondent,

R. Design Construction Co.,
LLC,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 27107
Heard October 4, 2011 – Filed April 4, 2012

AFFIRMED AS MODIFIED

Mary Bass Lohr, Thomas A. Bendle, and William T. Young, III, all of Howell Gibson & Hughes, of Beaufort, for Appellant,

Jeffery A. Ross, of Clawson & Staubes, of Charleston, for Respondent,

E. Mitchell Griffith and Michael D. Freeman, both of Griffith, Sadler & Sharp, of Beaufort, for Respondent-Appellant.

JUSTICE HEARN: This case presents the novel question of whether a member of a limited liability company can be held personally liable for torts committed while acting in furtherance of the company's business. We hold the General Assembly did not intend the LLC act to shield a member from liability for his own torts.

FACTUAL/PROCEDURAL BACKGROUND

Carl R. Aten, Jr., and his wife are the only members of R. Design Construction Co., LLC. R. Design's primary business is building houses for

spec, and Aten holds a residential home builder's license. In this particular case, R. Design selected a lot in Beaufort, South Carolina, on which it planned to build a four-unit condominium project. When Aten could not secure the necessary financing, he approached Dennis Green about entering into a contract for R. Design to construct the building. Green ultimately formed 16 Jade Street, LLC for this purpose, and R. Design entered into an agreement with Jade Street for the construction of the condominium.

As part of the deal, Aten was to receive a \$150,000 fee to serve as the general contractor for the project, and he alone was in charge of choosing subcontractors. One of the subcontractors selected by R. Design was Catterson & Sons Construction. Michael Catterson is the sole shareholder of Catterson & Sons, and he is a specialty subcontractor with a special license for framing in addition to holding his general contractor's license. Catterson & Sons' scope of work accordingly was focused primarily on framing and AAC block¹ installation.

As the general contractor, it was Aten's job to supervise the project. Thus, whenever Catterson had a question about the work he was to perform or any issues that arose, he would ask Aten. Furthermore, Catterson & Sons was to implement the design standards set by Aten and R. Design. Catterson himself, however, did not actually perform any construction but served mainly as the liaison between the foreman and his own workers.

A couple months into construction, problems arose concerning the AAC block construction and the framing. Green called Kern-Coleman, the structural engineer of record, to perform an inspection of the property. The initial inspection identified four defects, but Green pressed on following Aten's assurances that these problems would be addressed. However, the problems did not abate. Following a progress payment dispute, Catterson & Sons left the job site and did not return. In the ensuing months, Aten's relationship with Green deteriorated as Aten tarried in fixing the defects, and the construction eventually ground to a halt. R. Design subsequently left the

¹ AAC block stands for aerated autoclave concrete block. These blocks are preformed concrete blocks with cavities that, when stacked, permit rebar and grouting mortar to be poured in and provide structural support.

project, never replacing Catterson & Sons nor adequately addressing the defects.

The day after R. Design left the project, Kern-Coleman conducted another inspection of the property. This time, it identified thirty-four defects in addition to the original four, which had not yet been remedied, for a total of thirty-eight. Anchor Construction was retained as the new general contractor, and its own inspection revealed sixty defects in the original construction. After Anchor began working on the project, more defects surfaced.

Jade Street subsequently sued R. Design, Aten, Catterson & Sons, and Catterson for negligence² and breach of implied warranties. Jade Street also filed a breach of contract claim against R. Design and Aten.³ Following a bench trial, the circuit court found in favor of Jade Street as follows: (1) against R. Design for breach of contract, negligence, and breach of implied warranties; (2) against Catterson & Sons for negligence and breach of contract; and (3) against Aten personally for negligence. As to Aten personally, the circuit court concluded that despite the fact he was a member of an LLC, he is personally liable because he holds a residential home builder's license. In particular, the court concluded the statutes pertaining to the license create civil liability for the licensee. The court imposed no liability against Catterson himself. The court ultimately awarded Jade Street \$925,556 in damages for its claims. This appeal followed.

ISSUES PRESENTED

- I. Did the circuit court err in finding Aten can be held personally liable for negligent acts he committed while working for an LLC of which he was a member?

² The negligence claim against Aten and R. Design was an ordinary construction defect claim coupled with negligent supervision.

³ R. Design brought cross-claims against Catterson and Catterson & Sons for equitable indemnity and breach of contract. Aten also filed a third-party complaint against Kintz Electric, an electrical subcontractor. Issues relating to these claims are not raised on appeal.

- II. Did the circuit court err in not finding Catterson personally liable for the tort obligations incurred by Catterson & Sons?

LAW/ANALYSIS

I. ATEN'S PERSONAL LIABILITY

Aten argues the provisions of the Uniform Limited Liability Company Act, as enacted in South Carolina, shield him from personal liability for ordinary negligence he committed while working for R. Design. While we agree the language of the LLC act appears to insulate a member from personal liability, we hold that such a sweeping liability shield was not intended by the General Assembly.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the words in the statute are clear and unambiguous, we cannot give them a different meaning. *Id.* If the statute is in derogation of a common law right, it "must be strictly construed and not extended in application beyond clear legislative intent. Therefore, a statute is not to be construed in derogation of common law rights if another interpretation is reasonable." *Doe v. Marion*, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004). However, the statute must also be read as a whole and in harmony with its purpose. *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). In that vein, "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Similarly, we are to construe a statute so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). In the end, however, we will reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it. *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575.

The statute at issue in this case is Section 33-44-303 of the South Carolina Code (2006), which reads as follows:

- (a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.
- (b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.
- (c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:
 - (1) a provision to that effect is contained in the articles of organization; and
 - (2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.⁴

The record before us does not contain the articles of organization for R. Design, so we are unable to determine whether subsection (c) would impose liability on Aten. The question thus becomes whether the General Assembly intended subsection (a) to generally shield members from personal liability for acts they commit in furtherance of the company's business.

⁴ Prior to the adoption of the Uniform Limited Liability Act in 1996, South Carolina had a statutory scheme governing LLCs which specifically preserved the personal liability of individual members who committed tortious conduct pursuant to a professional licensing statute. *See* S.C. Code Ann. § 33-43-304(B) (repealed 1996).

This is a question of first impression in this State. We note that a majority of states to examine similar statutory language have concluded that a member is always liable for his own torts and cannot rely on his status as a member of an LLC as a shield.⁵ See, e.g., *Hoang v. Arbess*, 80 P.3d 863, 867 (Colo. App. 2003); *Ventures v. Goodspeed Airport, LLC*, 881 A.2d 937, 963-64 (Conn. 2005); *Milk v. Total Pay & HR Solutions, Inc.*, 634 S.E.2d 208, 213 (Ga. Ct. App. 2006); *Allen v. Dackman*, 991 A.2d 1216, 1228-29 (Md. 2010); *Rothstein v. Equity Ventures, LLC*, 750 N.Y.S.2d 625, 627 (App. Div. 2002); *d'Elia v. Rice Dev., Inc.*, 147 P.3d 515, 525 (Utah Ct. App. 2006). Additionally, many scholars opine that LLC statutes do not insulate a member from tort liability primarily due to the common law concept that one is always liable for his torts. See Matthew G. Doré, *What, Me Worry? Tort Liability Risks for Participants in LLCs*, 11 U.C. Davis Bus. L.J. 267, 271 (2011); Karin Schwindt, *Limited Liability Companies: Issues in Member Liability*, 44 UCLA L. Rev. 1541, 1548 (1997); Jeffrey K. Vandervoot, *Piercing the Veil of Limited Liability Companies: The Need for a Better Standard*, 3 DePaul Bus. & Com. L.J. 51, 56 (2004). In their view, the liability shield erected is one against vicarious liability for non-tortfeasor members, such as Aten's wife in this case. See Doré, *supra*, at 285-86. No party in this matter contends that section 33-44-303 does not at least provide this cover.

On the other hand, a few courts appear to have concluded that their states' LLC statutes do shield a member from personal liability for at least some of his own tortious conduct. See, e.g., *Puleo v. Topel*, 856 N.E.2d 1152, 1157 (Ill. App. Ct. 2006); *Barone v. Perkins*, No. 2007-CA-000838-MR, 2008 WL 2468792, at *4 (Ky. Ct. App. 2008) (unpublished); *Curole v.*

⁵ Some courts which have found personal liability have done so based on substantially different language in their LLC statutes. For example, in *Estate of Countryman v. Farmers Cooperative Ass'n*, 679 N.W.2d 598 (Iowa 2004), the Supreme Court of Iowa held a member was personally liable for his torts. *Id.* at 605. However, Iowa's LLC statute at the time specifically stated, "Nothing in this section shall be construed to affect the liability of a member of a limited liability company to third parties for the member's participation in tortious conduct." Iowa Code § 490A.603(3) (2004) (repealed 2009).

Ochsner Clinic, L.L.C., 811 So. 2d 92, 97 (La. Ct. App. 2002); *Brew City Redev. Grp., LLC v. The Ferchill Grp.*, 714 N.W.2d 582, 590-91 (Wis. Ct. App. 2006); see also Jeffrey S. Quinn, *Allen v. Dackman: Doing Away with Limited Liability in Maryland*, 70 Md. L. Rev. 1171, 1210 (2011) (stating that the *Allen* court "mistakenly disregarded the economically important liability shield of an LLC by inappropriately making Dackman personally liable for what is essentially the tortious conduct of the LLC").

We begin our analysis by examining the plain language of section 33-44-303(a) and the intent of our General Assembly with respect to the common law right to sue one's tortfeasor. We acknowledge that the statute's language may be read to shield a member from personal liability for torts he commits in furtherance of the LLC's business. Although Section 33-44-201 of the South Carolina Code (2006) provides that an LLC and its members are separate entities, because an LLC is a fictional person it can only operate through its agents, who oftentimes are its members. Accordingly, any debt, obligation, or liability the LLC incurs can only arise from the actions of an agent. Using R. Design as an example, if it incurs a tort liability, it can only be through a tort committed by Aten or his wife, assuming the LLC has no other employees or agents. Section 33-44-303(a) states that a member or manager is not personally liable for these obligations "solely by reason of being or acting as a member or manager."⁶ This is the source of the protection against vicarious liability, meaning Aten's wife would not be personally liable for Aten's negligence—which is an LLC obligation—just because she happens to be a member of R. Design.

⁶ Some of the courts espousing the majority rule with statutes similar to ours focus on this use of the word "solely" in the statute. See, e.g., *Allen*, 991 A.2d at 1229 (citing Md. Code Ann., Corps. & Ann.'s § 4A-301). Their logic is that finding a member liable for a tort he commits while working for the company is imposing liability because he was the actual tortfeasor, not *solely* because he is a member. *Id.* Were this all the statute provided, we would be inclined to agree. However, as discussed below, the statute also makes the company (and not any member) exclusively liable for certain tort obligations. Thus, the statute on its face appears to limit a member's personal liability for torts he commits.

Additionally, section 33-44-303(a) provides that these obligations are "solely" those of the company. Because R. Design could only incur a tort obligation through a tort committed by Aten or his wife, this language suggests R. Design alone is responsible for torts committed by Aten in the course of the company's business.⁷ *Accord* S.C. Code Ann. § 33-44-301(a)(2) ("An act of a member which is not apparently for carrying on in the ordinary course of the company's business or business of the kind carried on by the company binds the company *only* if the act was authorized by the other members." (emphasis added)); *id.* § 33-44-301(b)(2) ("An act of a manager which is not apparently for carrying on in the ordinary course of the company's business or business of the kind carried on by the company binds the company *only* if the act was authorized under Section 33-44-404." (emphasis added)). Thus, section 33-44-303(a) arguably insulates a member from personal liability in these situations.

Nevertheless, the right to sue one's tortfeasor is a long-standing right in our legal system, and we will only find it abrogated by statute through "clear legislative intent." *See Doe*, 361 S.C. at 473, 605 S.E.2d at 561. Stated differently, "[s]tatutes will not be held in derogation of the common law unless the statute itself shows that such was the object and intention of the lawmakers, and the common law will not be changed by doubtful implication." 82 C.J.S. *Statutes* § 534. "Therefore, a statute is not to be construed in derogation of common law rights if another interpretation is reasonable." *Doe*, 361 S.C. at 473, 605 S.E.2d at 561. While construing

⁷ Subsection (c) provides further support for the notion that section 33-44-303's liability shield is more than just a protection against vicarious liability. In particular, it states a member obligates himself to pay for such LLC debts when there is a provision so providing in the articles of organization and the member expressly has agreed to be bound by it. S.C. Code Ann. § 33-44-303(c). Because the statute expressly provides how a member can become personally liable, it therefore stands to reason that the general rule is he is not otherwise personally liable. *See also Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting Black's Law Dictionary 602 (7th ed. 1999))).

section 33-44-303 to limit personal liability may be a permissible reading of the statute, we are not persuaded that this was the intent of the General Assembly. First, it is the interpretation afforded to similar language by a majority of courts and reflects the prevailing interpretation of an LLC's limitation of liability. *See Hoang*, 80 P.3d at 867; *Ventures*, 881 A.2d at 963-64; *Milk*, 634 S.E.2d at 213; *Allen*, 991 A.2d at 1228-29; *Rothstein*, 750 N.Y.S.2d at 627; *d'Elia*, 147 P.3d at 525; *Doré*, *supra*, at 271; *Schwindt*, *supra*, at 1548; *Vandervoot*, *supra*, at 56. Furthermore, it comports with the comments to section 33-44-303⁸ and section 33-44-303's kin in the Revised Limited Liability Company Act.⁹

More importantly, this also has long been the rule with respect to shareholders and officers of corporations, an organizational structure from which LLCs borrow heavily. *See* S.C. Code Ann. § 33-6-220(b) ("[A] shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct."); *see also Hoang*, 80 P.3d at 867 (stating parties did not dispute that corporate liability principles apply to LLCs); *Ventures*, 881

⁸ The comments provide, "A member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency. A member or manager is responsible for acts or omissions to the extent those acts or omissions would be actionable in . . . tort against the member or manager if that person were acting in an individual capacity." S.C. Code Ann. § 33-44-303 cmt. We believe this is evidence of the General Assembly's intent that he should be liable for his torts.

⁹ These comments similarly note that nothing in the current version of the provision under scrutiny in this case was intended to ameliorate the common law principle that a tortfeasor is always responsible for his own tortious conduct. Revised Unif. Lim. Liab. Co. Act § 304 cmt. ("This paragraph shields members and managers only against the debts, obligations and liabilities of the limited liability company and is irrelevant to claims seeking to hold a member or manager directly liable on account of the member's or manager's own conduct."). Importantly, this provision is nearly identical to section 33-44-303; the only substantive difference is that there is no equivalent to subsection (c).

A.2d at 964 (holding that Connecticut's LLC statute "merely codifies" established liability principles of corporate law); *Allen*, 991 A.2d at 1228 (applying general liability rule from corporations to LLCs); *d'Elia*, 147 P.3d at 525 ("We are persuaded by those authorities that hold that both limited liability members and corporate officers should be treated in a similar manner when they are engaged in tortious conduct."). Indeed, Judge Posner once observed, "You don't buy immunity from suits for your torts by being a member of a business corporation." *Hoagland ex rel. Midwest Transit, Inc. v. Sandberg, Phoenix, & von Gontard, P.C.*, 385 F.3d 737, 744 (7th Cir. 2004). We can find no evidence the General Assembly intended to abandon this rule with respect to LLCs.

At first blush, this appears to strip away one of the main reasons why a person chooses to form an LLC. *See Quinn, supra*, at 1216 ("The economic justifications and, specifically, the concept of limited liability support an interpretation of the [LLC act] that protects members from personal liability when acting in good faith service of the LLC."). Our concern with concluding section 33-44-303(a) only protects against vicarious liability for torts of others becomes particularly acute with respect to single-member LLCs which have no other employees. In one of these single-member LLCs, there simply is no one to protect from vicarious liability as one cannot be vicariously liable for his own actions. However, there are myriad other benefits available to those who choose to form an LLC, and we are not persuaded that limiting the shield of section 33-44-303(a) to just vicarious liability would undermine the core of this business entity. Accordingly, we find this interpretation reasonable and no clear intent by the General Assembly to restrict the common law. While the language of the statute may be subject to other interpretations, we believe it is highly questionable whether the General Assembly intended to limit a member's personal liability for his torts. Therefore, given the principle that we strictly construe statutes in derogation of common law rights and they only do so through clear legislative intent, we hold section 33-44-303(a) does not limit the right of a plaintiff to sue his tortfeasor.

In sum, we conclude that section 33-44-303(a) only protects non-tortfeasor members from vicarious liability and does not insulate the tortfeasor himself from personal liability for his actions. We accordingly find

the circuit court did not err in finding Aten personally liable for torts he committed in furtherance of R. Design's business. We note the circuit court did not reach Aten's argument that section 33-44-303(a) removed any personal liability on his part and instead found Aten's residential home builders' license rendered him personally liable. While we disagree with the circuit court's findings regarding Aten's license, the scope of section 33-44-303 was raised to the trial court and is an additional sustaining ground. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing the Record on Appeal.").

II. CATTERSON'S PERSONAL LIABILITY

Jade Street appeals the circuit court's conclusion that Catterson himself is not personally liable for the actions of Catterson & Sons. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: S.C. Code Ann. § 33-6-220(b) ("[A] shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his acts or conduct."); *Aaron v. Mahl*, 381 S.C. 585, 591, 674 S.E.2d 482, 485 (2009) ("In an action at law, tried by a judge without a jury, the findings of the trial court must be affirmed if there is any evidence to support them.").

CONCLUSION

For the foregoing reasons, we affirm as modified the circuit court's holding that Aten is personally liable for his negligence. We also affirm the court's finding that Catterson is not personally liable for the acts of Catterson & Sons.

PLEICONES and KITTREDGE, JJ., concur. BEATTY, J., concurring in part and dissenting in part in a separate opinion in which TOAL, C.J., concurs.

JUSTICE BEATTY: I concur in part. I concur in that part of the majority's opinion that affirms the circuit court's conclusion that Catterson is not personally liable for the actions of Catterson & Sons. However, I am compelled to dissent in that part of the majority's opinion that concludes that Aten is personally liable for torts committed in furtherance of the business of 16 Jade Street, LLC.

The conclusion reached by the majority, though appealing, cannot be reached by use of statutory construction. As the majority recognizes, it is axiomatic that the cornerstone of statutory construction is the ascertainment of the Legislature's intent. It is also axiomatic that where the words of the statute are clear and unambiguous, the court cannot assign them a new and different meaning. Section 33-44-303 states:

(a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, **tort**, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or **acting as a member or manager**.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) a provision to that effect is contained in the articles of organization; and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.

S.C. Code Ann. § 33-44-303 (2006) (emphasis added).

This statute is clear and unambiguous and, in my view, is not amenable to an interpretation that a member tortfeasor of an LLC is personally liable for torts committed in the furtherance of the LLC's business. Although we may find fault in the wisdom of the statute, we have no authority to re-write it. See State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011) (recognizing that where a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning).

Section 33-44-303 is clear and unambiguous; the common law must yield.

TOAL, C.J., concurs.

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RECEIVED

OCT 13 2011

S.C. Supreme Court

October 12, 2011

Daniel E. Sherouse
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No: 9965 MBL

Dear Mr. Sherouse:

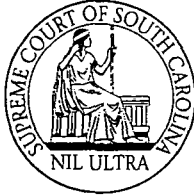
Please find enclosed herewith for filing Supplemental Record on Appeal and Trial transcript with regard to the above referenced matter. If you should have any question or comment, please feel free to contact me at your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/adk
Enclosure



The Supreme Court of South Carolina

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CLERK OF COURT

BRENDA F. SHEALY
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October 7, 2011

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Re: 16 Jade Street v. R Design Construction

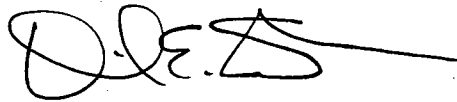
Dear Counsel:

As directed during oral arguments in this matter, it will be necessary for the parties to provide this Court with a copy of the complaint, answer and other pleadings before the circuit court.

Please be advised these documents must be received in this office within five (5) days of the date of this letter.

16 Jade Street v. R Design Construction
Page Two
October 7, 2011

Very truly yours,



CLERK

DES/dmh



The Supreme Court of South Carolina

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CLERK OF COURT

BRENDA F. SHEALY
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FAX MEMORANDUM/COVER SHEET

TO: E, Mitchell Griffith, Esquire; Michael Freeman, Esquire;
Mary Bass Lohr, Esquire; Thomas A. Bendle, Esquire;
William Young, Esquire;
Jeffrey Ross, Esquire

FAX NO.: 843-521-4247
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RE: 16 Jade Street v. R Design Construction

DATE: October 7, 2011

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William Young, Esquire;
Jeffrey Ross, Esquire

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 William Young, Esquire;
 Jeffrey Ross, Esquire

FAX NO.: 843-521-4247
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FROM: Debbie Hopkins

RE: 16 Jade Street v. R Design Construction

DATE: October 7, 2011

TOTAL NUMBER OF PAGES BEING FAXED INCLUDING MEMO: 3

MESSAGE:

The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

* * * Communication Result Report (Oct. 7. 2011 4:10PM) * * *

1)
2)

Date/Time: Oct. 7. 2011 4:09PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
3534 Memory TX	918435214247	P. 3	OK	

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection



The Supreme Court of South Carolina

DANIEL E. SHEARHOUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11339
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1888
FAX: (803) 734-1898

FAX MEMORANDUM/COVER SHEET

TO: E. Mitchell Griffith, Esquire; Michael Freeman, Esquire;
Mary Bass Lohr, Esquire; Thomas A. Bendic, Esquire;
William Young, Esquire;
Jeffrey Ross, Esquire

FAX NO.: 843-521-4247
843-522-2429
843-722-2867

FROM: Debbie Hopkins

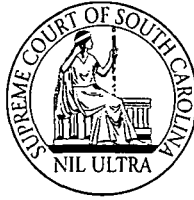
RE: 16 Jade Street v. R Design Construction

DATE: October 7, 2011

TOTAL NUMBER OF PAGES BEING FAXED INCLUDING MEMO: 3

MESSAGE:

The information contained in this facsimile message is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 30, 2011

Mary Bass Lohr, Esquire
Thomas A. Bendle, Esquire
William T. Young, III, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Re: 16 Jade Street v. R Design Construction

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

10 Minutes - Appellant Aten

10 Minutes - Respondent-Appellant 16 Jade Street

Re: 16 Jade Street v. R Design Construction
September 30, 2011
Page Two

10 Minutes - Respondent Catterson
5 Minutes – Appellant Aten in Reply

This case is scheduled for hearing at 9:30 on October 4, 2011.

Very truly yours,

A handwritten signature in black ink, appearing to be "D. E. S.", followed by a long horizontal line extending to the right.

Clerk

DES/bcs

CLAWSON AND STAUBES LLC

Jeffrey A. Ross
jross@clawsonandstaubes.com

September 26, 2011

Reply to Charleston Office
File No.: 2007-1124 jar

The Honorable Daniel E. Shearhouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

SEP 28 2011

RE: 16 Jade Street, LLC v. R Design Construction Co., LLC, et al.
Trial Court Case No.: 2006-CP-07-866

S.C. Supreme Court

Dear Mr. Shearhouse:

I represent Michael S. Catterson, Individually in the above-referenced case. In preparing for argument, I just realized that on pages 6-7 of the Respondent's brief, I have provided the incorrect citation to the Robert E. Lee & Comp. v. Comm. of Pub. Works of the City of Greenville case. I erroneously cited a later case which has the same party names and involved the same project. The correct case may be found at Robert E. Lee & Comp. v. Comm. of Pub. Works of the City of Greenville, 248 S.C. 84, 149 S.E.2d 55 (1966).

I hope that the Court will accept this as a citation to "Supplemental" authority pursuant to SCACR 208(b)(7) together with my apologies for an inconvenience or confusion this may have caused.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC



Jeffrey A. Ross

JAR/khm

cc: Mary Bass Lohr, Esquire
Thomas A. Bendle, Esquire
William T. Young, III, Esquire
E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire

www.clawsonandstaubes.com
126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492
Fax: (843) 722 - 2867 / Office: (843) 577 - 2026

CLAWSON
AND STAUBES
LLC

Jeffrey A. Ross
jross@clawsonandstaubes.com

August 26, 2011

Reply to Charleston Office
File No.: 2007-1124 jar

The Honorable Daniel E. Shearhouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: 16 Jade Street, LLC v. R Design Construction Co., LLC, et al.
Trial Court Case No.: 2006-CP-07-866

Dear Mr. Shearhouse:

Pursuant to your memorandum dated August 10, 2011, counsel for Michael S. Catterson have no scheduling conflicts that would prevent us from appearing before the Court on October 4, 5, 6, 18 or 19, 2011.

With kindest regards, I remain

Very truly yours,

CLAWSON AND STAUBES, LLC



Jeffrey A. Ross

JAR/khm

cc: Counsel of Record via email only

RECEIVED

AUG 29 2011

S.C. SUPREME COURT

www.clawsonandstaubes.com

126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492

Fax: (843) 722 - 2867 / Office: (843) 577 - 2026

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIPPERT, III
MICHAEL D. FREEMAN
KELLY DENNIS DEAN
MARSHALL H. WALDRON, JR.
MATTHEW D. CAVENDER

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: emg@gandspa.com

*Also Admitted in N.C.

August 18, 2011

RECEIVED

AUG 22 2011

The Honorable Daniel E. Shearhouse
Clerk of Court
The South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

S.C. SUPREME COURT

Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and
Carl R. Aten, Jr., Catterson & Sons Construction and Michael
S. Catterson
GS&S 5515

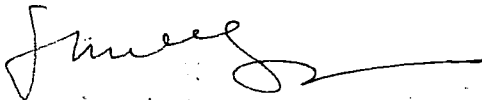
Dear Mr. Shearhouse:

I am in receipt of your memorandum dated August 10, 2011. We have no scheduling conflicts that would keep us from appearing before the South Carolina Supreme Court on any of the dates mentioned in your memorandum.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



E. Mitchell Griffith
EMG/lds
cc: Counsel of Record



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire
From: Daniel E. Shearouse
Date: August 10, 2011
RE: October Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the October 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of October 4, 5, 6, 18 and 19. Please notify this office in writing prior to August 17, 2011 as to any scheduling conflicts for the October term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

16 Jade Street v. R Design Construction



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Jeffery A. Ross, Esquire
From: Daniel E. Shearouse
Date: August 10, 2011
RE: October Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the October 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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16 Jade Street v. R Design Construction



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To: Mary Bass Lohr, Esquire
Thomas A. Bendle, Esquire
William T. Young, III, Esquire
From: Daniel E. Shearouse
Date: August 10, 2011
RE: October Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the October 2011 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of October 4, 5, 6, 18 and 19. Please notify this office in writing prior to August 17, 2011 as to any scheduling conflicts for the October term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

16 Jade Street v. R Design Construction

The Supreme Court of South Carolina

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co.,
LLC, and Carl R. Aten, Jr.,
Individually and in his capacity
as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction
and Michael S. Catterson,
Individually and in his capacity
as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant,

and Michael S. Catterson,
Individually and in his capacity
as principal and agent of
Catterson & Sons Construction,
is

Respondent,

R. Design Construction Co.,
LLC,

Third Party Plaintiffs,

v.

Kintz Electric,

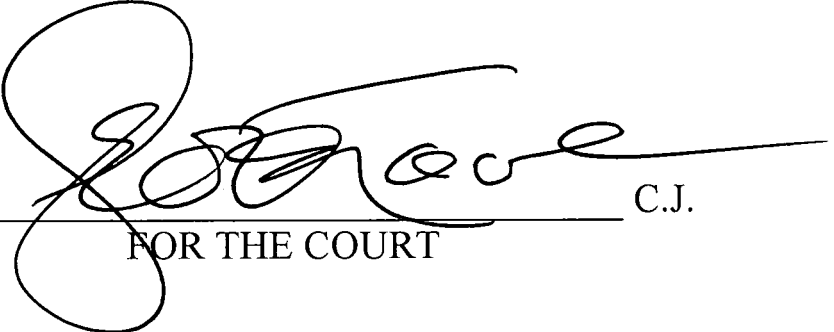
Third Party Defendant.

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2006-CP-07-00866

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court. Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court.

IT IS SO ORDERED.



C.J.
FOR THE COURT

Columbia, South Carolina

July 26, 2011

cc: Mary Bass Lohr, Esquire
Thomas A. Bendle, Esquire
William T. Young, Esquire
E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 18, 2011

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
311 Carteret St.
Beaufort, SC 29902

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Re: 16 Jade Street v. R Design Construction
2009146786

Dear Counsel:

The following Order has been endorsed on Ms. Lohr's Motion to Amend the Caption in the above entitled case on appeal.

"Granted.

in Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

January 18, 2011.”

The caption should read as follows:

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and Carl
R. Aten, Jr., Individually and in his capacity
as principal and agent of R. Design
Construction Co., LLC, Catterson & Sons
Construction and Michael S. Catterson,
Individually and in his capacity as principal
and agent of Catterson & Sons
Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant,

and Michael S. Catterson, Individually and in
his capacity as principal and agent of
Catterson & Sons Construction, is

Respondent,

R. Design Construction Co., LLC,

Third Party Plaintiffs,

v.

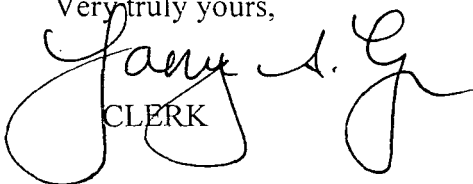
Kintz Electric,

Third Party Defendant.

Please be advised that all Final Briefs and the Record on Appeal must feature the above caption. It will be necessary that all parties come to the Court and place labels on the covers of these Briefs to show the above caption within ten (10) days of the date of this letter.

The title of the Final Briefs must also be changed in accordance with our letter of December 20, 2010.

Very truly yours,


CLERK

TAG/mpm

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

RECEIVED

DEC 29 2010

SC Court of Appeals

16 Jade Street, LLC..... Respondent/Appellant,

v.

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction.....Defendants,

Of Whom, Carl R. Aten, Jr..... Appellant/Respondent,

and Michael S. Catterson, Individually and in his
capacity as principal and agent of Catterson & Sons
Construction, is Respondent.

R. Design Construction Co., LLC, and Carl
R. Aten, Jr.,.....Third Party Plaintiffs,

v.

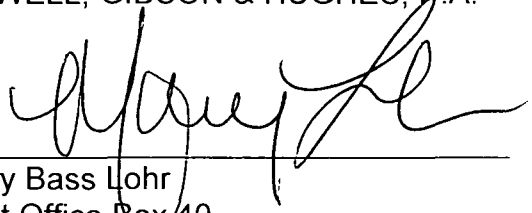
Kintz Electric,.....Third Party Defendant.

MOTION TO AMEND THE CAPTION

The Appellant/Respondent, above named, by and through his undersigned counsel, Howell, Gibson and Hughes, P.A., move the Court for an Order authorizing a correction to the Caption to reflect Carl R. Aten's correct role in this case as the Appellant and not the Appellant/Respondent. The within motion, is made upon the following grounds: the caption sets forth Carl R. Aten, as Appellant/Respondent. Carl R. Aten is appealing only and is not the Respondent in any appeal before this Court, as the only other Order being appealed from is the Appeal of 16 Jade Street, which relates only to Defendant Catterson.

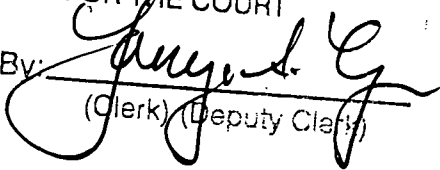
a. The Appellant is informed and believes that the requested amendment will not prejudice any of the remaining parties, and that such amendment is in the interest of justice.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Appellant/Respondent

Beaufort, South Carolina

December 23, 2010

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT
By: 
(Clerk) (Deputy Clerk)

FILED



THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr. is..... Appellant/Respondent,

and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction is Respondent,

R. Design Construction Co, LLC and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

CERTIFICATE OF MAILING

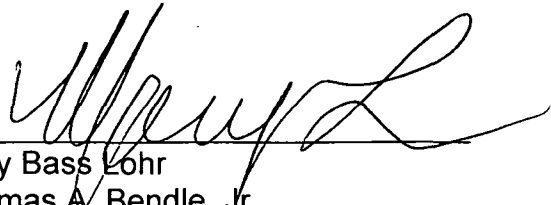
The undersigned counsel hereby certifies that she has served the foregoing Motion to Amend the Caption upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on the 23rd day of December, 2010 addressed to the following:

E. Mitchell Griffith, Esquire;
Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
Post Office Drawer 570
Beaufort, SC 29901-0570

Jeffrey A. Ross, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Thomas Justin Finn, Esquire
Finn Law Firm, PC
Post Office Box 6003
Hilton Head, SC 29938-6003

HOWELL, GIBSON & HUGHES, P.A.

By: 
Mary Bass Lohr
Thomas A. Bendle, Jr.
William T. Young III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Appellant/Respondent
Carl R. Aten, Jr.

Beaufort, South Carolina

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040
www.hghpa.com

STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK
MARY BASS LOHR

THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

JAMES S. GIBSON, JR.
Of Counsel

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429

E-Mail: hghpa@earthlink.net
WILLIAM T. YOUNG III 843 - 522-2428

RECEIVED

DEC 29 2010

SC Court of Appeals

December 23, 2010

The Honorable Tanya Gee
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No.: 9965 MBL

Dear Ms. Gee:

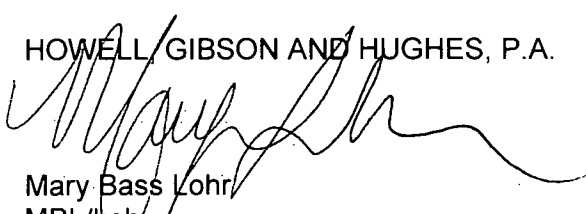
Please find enclosed herewith for filing, the original and one (1) copy of the Appellant's Motion to Amend the Caption and Certificate of Mailing with regard to the above referenced matter.

By copy of this letter, I hereby serve opposing counsel with a copy of the same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/kah
Enclosure

cc: Michael D. Freeman, Esquire and E. Mitchell Griffith, Esquire
Jeffrey A. Ross, Esquire
Thomas J. Finn, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890

FAX: (803) 734-1839

www.sccourts.org

December 20, 2010

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
311 Carteret St.
Beaufort, SC 29902

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Re: 16 Jade Street v. R Design Construction

Dear Counsel:

I recently spoke with Ms. Lohr on the telephone regarding the letter that was sent to the parties on December 10, 2010, which asked that changes be made to the captions of the final briefs submitted by 16 Jade Street, Carl Aten, and Michael Catterson. I write this letter in hopes of explaining more clearly the changes that need to be made.

On January 29, 2010, we sent a letter setting the caption and asking you use the caption as set on all future filings. The caption we established was as follows:

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent,

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson & Sons
Construction, is

Respondent,

R. Design Construction Co., LLC, and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

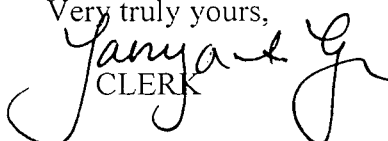
v.

Kintz Electric,

Third Party Defendant.

Additionally, because this is a cross-appeal, it is extremely important that each brief filed clearly indicates the party filing the brief, and the type of brief being filed. For instance, while in other appeals, a brief titled "Final Brief of Appellant" might sufficiently identify the brief, in a cross-appeal with multiple parties, the title should reflect exactly which party is filing the brief. For instance, 16 Jade Street's Appellant's Brief should be titled "Final Appellant's Brief of Respondent/Appellant 16 Jade Street." To the extent your briefs do not list the caption as it appears above and do not specifically identify the type of brief filed and the exact party filing it, I ask that you correct your covers accordingly. This can be accomplished using labels. **Please make these changes within ten days of the date of this letter.**

Finally, Ms. Lohr indicated that Carl R. Aten, who is listed as an Appellant/Respondent, did not file a Respondent's Initial Brief, and therefore might be better identified as merely an Appellant. Because the caption of this appeal has already been set, if the parties believe a change to the caption is warranted, the amendment should be requested in a motion.

Very truly yours,

CLERK



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 10, 2010

E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
311 Carteret St.
Beaufort, SC 29902

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Re: 16 Jade Street v. R Design Construction
2009146786

Dear Counsel:

The following Order has been endorsed on Mr. Griffith's Motion for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

December 10, 2010."

Please be advised that the Appellant's Final Brief and the Respondent's Final Brief of Respondent/Appellant were filed with the incorrect title.

Furthermore, the Appellant's Final Brief of the Appellant/Respondent was filed with the incorrect title and caption.

The Respondent's Final Brief of Respondent was filed with the incorrect caption. The caption should read as follows:

16 Jade Street, LLC,

v.

Respondent/Appellant,

R. Design Construction Co., LLC, and Carl
R. Aten, Jr., Individually and in his capacity
as principal and agent of R. Design
Construction Co., LLC, Catterson & Sons
Construction and Michael S. Catterson,
Individually and in his capacity as principal
and agent of Catterson & Sons
Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent,

and Michael S. Catterson, Individually and in
his capacity as principal and agent of
Catterson & Sons Construction, is

Respondent,

R. Design Construction Co., LLC, and Carl
R. Aten, Jr.,

v.

Third Party Plaintiffs,

Kintz Electric,

Third Party Defendant.

The Appellant/Respondent must come to the Court to place labels on the covers of the Appellant's Final Brief to show the correct caption and title within ten (10) days of the date of this letter.

The respondent/Appellant must come to the Court to place labels on the covers of the Appellant's Final Brief and the Respondent's Final Brief to show the correct title within ten (10) days of the date of this letter.

The Respondent must come to the Court to place labels on the covers of the Respondent's Final Brief to show the correct caption within ten (10) of the date of this letter.

Very truly yours,

S. Claire Allen, Deputy
CLERK

TAG/mpm

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIIPFERT, III
KELLY DENNIS DEAN
MARSHALL H. WALDRON, JR.
MATTHEW D. CAVENDER

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

RECEIVED
DEC 02 2010
SC Court of Appeals

December 1, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and Carl R. Aten, Jr., Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786

Dear Hon. Gee:

Enclosed please find the original and fifteen (15) copies of the following:

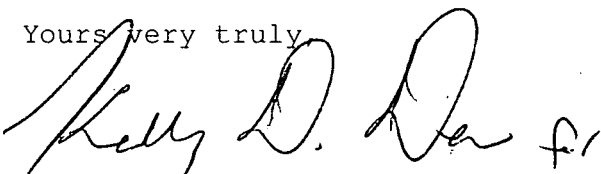
1. Final Brief of Appellant;
2. Certificate of Counsel; and
3. Proof of Service

Please file these documents and return a filed copy to me in the envelope provided.

By copy of this letter, I herewith serve all counsel of record with three copies of the above.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman
MDF/sch
Enclosures

cc: Counsel of Record (w/enc.)

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
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RECEIVED

DEC 02 2010

SC Court of Appeal

*Also Admitted in N.C.

December 1, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and Carl R. Aten, Jr., Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

Dear Hon. Gee:

Enclosed please find the original and fifteen (15) copies of the following:

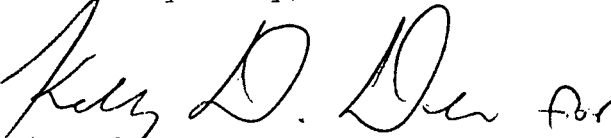
1. Final Brief of Respondent;
2. Certificate of Counsel; and
3. Proof of Service

Please file these documents and return a filed copy to me in the envelope provided.

By copy of this letter, I herewith serve all counsel of record with three copies of the above.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman

MDF/sch

Enclosures

cc: Counsel of Record (w/enc.)

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

JEFFREY A. ROSS
jross@clawsonandstaubes.com

November 24, 2010

Reply to Charleston Office
File No.: 2007-1124jar

The Honorable Jeanette F. Barber
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: 16 Jade Street, LLC v. Michael S. Catterson, et al.
Case No.: 06-CP-07-866

Dear Ms. Barber:

Enclosed please find the original and sixteen (16) copies of the following:

1. Final Brief of Respondent;
2. Certificate of Counsel; and
3. Proof of Service.

Kindly file these pleadings and return a filed copy to me in the envelope provided for your convenience.

By copy of this letter, I hereby serve all counsel of record with a copy of the above, as evidenced on the enclosed Proof of Service.

Yours truly,

RECEIVED

NOV 29 2010

SC Court of Appeals

JAR/khm

Enclosures

cc: Michael D. Freeman, Esquire (w/enclosures)
Thomas J. Finn, Esquire (w/enclosures)
Mary Bass Lohr, Esquire (w/enclosures)
James J. Wegmann, Esquire (w/enclosures)

CLAWSON & STAUBES, LLC


Jeffrey A. Ross

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW
Post Office Box 40
Beaufort, South Carolina 29901-0040
www.hghpa.com

STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK
MARY BASS LOHR

THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

JAMES S. GIBSON, JR.
Of Counsel

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

November 23, 2010

The Honorable Tanya Gee
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
NOV 29 2010
SC Court of Appeals

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No.: 9965 MBL

Dear Ms. Gee:

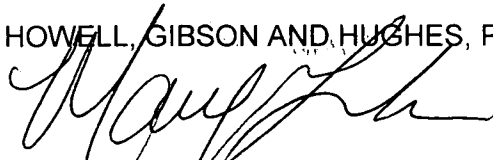
Please find enclosed herewith for filing, the original and fifteen (15) copies of the Appellant's Final Brief and Certificate of Mailing with regard to the above referenced matter.

By copy of this letter, I hereby serve opposing counsel with three (3) copies of the same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.



Mary Bass Lohr
MBL/kan
Enclosure

cc: Michael D. Freeman, Esquire and E. Mitchell Griffith, Esquire
Jeffrey A. Ross, Esquire
Thomas J. Finn, Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED
NOV 29 2010

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of R.
Design Construction Co., LLC; Catterson & Sons Construction
and Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr.,.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons
Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

MOTION FOR EXTENSION

11/24/10 1st motion
12/6/10

The Respondent/Appellant, 16 Jade Street, respectfully moves for a ten day extension of time within which to serve and file its Final Brief of Respondent/Appellant. The original due date for this Brief was November 24, 2010. This would make the new due date December 6, 2010.

GRIFFITH, SADLER & SHARP, P.A.


E. Mitchell Griffith
Michael D. Freeman
Post Office Box 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for Respondent/
Appellant 16 Jade Street, LLC

Beaufort, South Carolina

November 24, 2010

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

FILED

12/10/10 

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

NOV 29 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case Number 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of R.
Design Construction Co., LLC; Catterson & Sons Construction
and Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons
Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Sally C. Hitchcock, hereby avers that I am a Legal Assistant of GRIFFITH, SADLER & SHARP, P.A., Attorneys for Respondents, 16 Jade Street, LLC, and do hereby certify that on November 24, 2010, I served a copy of a Motion for Extension of Time to File Final Brief of Respondent/Appellant, upon all counsel of record listed below, via first-class mail, postage pre-paid to the following addresses:

Attorneys for Carl R. Aten, Jr.

Mary Bass Lohr
Howell Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901

**Attorneys for Carl R. Aten, Jr and
R. Design Construction Co. LLC**

Thomas A. Bendle, Jr.
Howell Gibson & Hughes, PA
PO Box 40
Beaufort, SC 59901

Attorneys for Michael Catterson

Jeffrey A. Ross
Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

Karl D. Twenge
Twenge & Twombly, LLC
311 Carteret Street
Beaufort, SC 29902

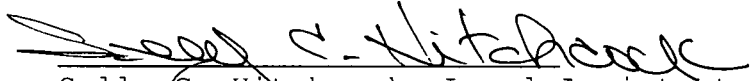
Attorneys for Catterson & Sons Construction

Thomas J. Finn
Finn Law Firm, PC
PO Box 6003
Hilton Head Island, SC 29938-6033

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, LLC
6 Professional Village Circle
Beaufort, SC 29907

GRIFFITH, SADLER, & SHARP, P.A.

A handwritten signature in black ink, appearing to read "Sally C. Hitchcock", written over a horizontal line.

Sally C. Hitchcock, Legal Assistant
600 Monson Street
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

November 24, 2010

Beaufort, South Carolina

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIPPERT, III
KELLY DENNIS DEAN
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

November 24, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
NOV 29 2010
SC Court of Appeals

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and Carl R. Aten, Jr., Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

Dear Hon. Gee:

Enclosed please find the original and six (6) copies of the Motion for Extension within which to file the Respondent/Appellant's Final Brief, along with the proof of service. I have enclosed our firm's check in the amount of \$25.00 for the filing fee. Please file the original and return a filed copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter and enclosures, counsel of record are herewith served with same.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman
MDF/sch
Enclosures
cc: Counsel of Record

11/24/10 1st motion
12/6/10

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040
www.hghpa.com

STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK
MARY BASS LOHR

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

JAMES S. GIBSON, JR.
Of Counsel

RECEIVED

NOV 05 2010

SC Court of Appeals

November 4, 2010

The Honorable Tanya Gee
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No.: 9965 MBL

Dear Ms. Gee:

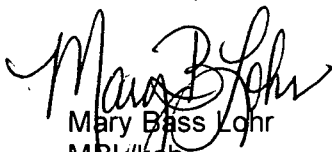
Please find enclosed herewith for filing, the original and fifteen (15) copies of the Appellant/Respondent's Record on Appeal and Certificate of Mailing with regard to the above referenced matter.

By copy of this letter, I hereby serve opposing counsel with three (3) copies of the same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/kah
Enclosure

cc: Michael D. Freeman, Esquire and E. Mitchell Griffith, Esquire
Jeffrey A. Ross, Esquire
Thomas J. Finn, Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

RECEIVED

OCT 14 2010

SC Court of Appeals

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent
of R. Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson &
Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons Construction,
is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party
Plaintiffs,

Kintz Electric.....Third Party-
Defendant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent/Appellant, 16 Jade Street, LLC,
proposes the following be included in the Record on
Appeal:

1. Contract between 16 Jade Street, LLC and R Design,
dated July 27, 2004;
2. Proposal of Catterson & Sons Construction, Inc.,
dated August 6, 2004;
3. Trial transcript of the bench trial held October
13, 2008 through October 16, 2008, Vol. 1, pp. 64,
66-68, 70-71, 73-74, 76-77, 98, 151, 153, 155-158,
166-167;
4. Trial transcript of bench trial held October 13,
2008 through October 16, 2008, Vol. 2, p. 223;
5. Trial transcript of bench trial held October 13,
2008 through October 16, 2008, Vol. 3, pp. 7, 10,
52, 56, 58-59;
6. Final Order & Judgment dated October 14, 2009.
7. Notice of Appeal of 16 Jade Street, LLC, dated
December 4, 2009.

I certify that this designation contains no matter
which is irrelevant to this appeal.

GRIFFITH, SADLER, & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

Beaufort, South Carolina
October 11, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Muller

RECEIVED

OCT 14 2010

Case Number 06-CP-07-0866

SC Court of Appeals

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of R.
Design Construction Co., LLC; Catterson & Sons Construction
and Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons
Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Sally C. Hitchcock, hereby avers that I am a Legal Assistant of GRIFFITH, SADLER & SHARP, P.A., Attorneys for Respondent/Appellant, 16 Jade Street, LLC, and do hereby certify that on October 11, 2010, I served a copy of a the Amended Designation of Matter of Respondent/Appellant, upon all counsel of record listed below, via first-class mail, postage pre-paid to the following addresses:

Attorneys for Carl R. Aten, Jr.

Mary Bass Lohr
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

Attorneys for Michael Catterson

Jeffrey A. Ross
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

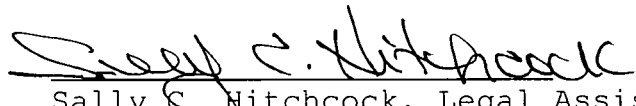
Attorneys for Catterson & Sons Construction

Thomas J. Finn
Finn Law Firm, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938-6033

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, L.L.C.
6 Professional Village Circle
Beaufort, SC 29907

GRIFFITH, SADLER, & SHARP, P.A.



Sally C. Hitchcock, Legal Assistant
600 Monson Street
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

October 11, 2010
Beaufort, South Carolina

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIPFERT, III
MICHAEL D. FREEMAN
KELLY DENNIS DEAN
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

October 11, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED

OCT 14 2010

SC Court of Appeals

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and
Carl R. Aten, Jr., Catterson & Sons Construction and Michael
S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

Dear Hon. Gee:

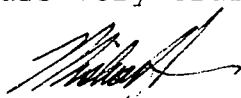
Enclosed please find the original and one (1) copy of the Appellant's Amended Designation of Matter, along with the Proof of Service. Please file the original and return a filed copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter and enclosures, counsel of record are herewith served with same.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman
MDF/sch
Enclosures
cc: Counsel of Record

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

RECEIVED

OCT 07 2010

SC Court of Appeals

16 Jade Street, LLC.....Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr. is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction is.....Respondent,

R. Design Construction Co, LLC and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, proposes the following be included in the Record on Appeal:

1. Final Order & Judgment of October 14, 2009;
2. Trial transcript of the bench trial held October 13, 2008 through October 16, 2008, Vol 1, pp. 56-57, 61-62, 67-68, 70-71, 73-74, 88, 98, 154, 156-160, 166-167;
3. Trial transcript of the bench trial held October 13, 2008 through October 16, 2008, Vol 2, pp. 223, 254-255, 291;
4. Trial transcript of the bench trial held October 13, 2008 through October 16, 2008, Vol 3, pp. 7, 12, 14, 17, 22-23, 32, 53, 58;
5. Contract between 16 Jade Street, LLC and R Design dated July 27, 2004; and
6. Proposal of Catterson & Sons Construction dated August 6, 2004.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 6, 2010



JEFFREY A. ROSS
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

IN THE STATE COURT OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

RECEIVED
OCT 07 2010
SC Court of Appeals

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson and Sons Construction, is

Respondent,

R. Design Construction Co., LLC and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

PROOF OF SERVICE

I, Jeffrey A. Ross, with the law firm of Clawson & Staubes, LLC, Attorneys for Respondent Michael S. Catterson, hereby certify that on October 6, 2010, I served a copy of the Amended Designation of Matter To Be Included In the Record On Appeal upon all counsel of record listed below, via first class mail, postage prepaid, to the following addresses:

Attorneys for 16 Jade Street, LLC

Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, P.A.
P.O. Drawer 570
Beaufort, SC 29901

Attorneys for Carl A. Aten, Jr. and R. Design Construction Co. LLC

Mary Bass Lohr, Esquire
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901

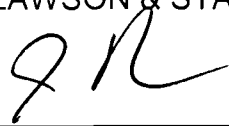
Attorneys for Catterson & Sons Construction

Thomas J. Finn, Esquire
Finn Law Firm, P.C.
P.O. Box 6003
Hilton Head Island, SC 29938

Attorneys for Kintz Electric

James J. Wegmann, Esquire
Weidner & Wegmann, LLC
6 Professional Village Circle
Beaufort, SC 29907

CLAWSON & STAUBES, LLC



Jeffrey A. Ross
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

October 6, 2010

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

JEFFREY A. ROSS
jross@clawsonandstaubes.com

October 6, 2010

Reply to Charleston Office
File No.: 2007-1124jar

The Honorable Jeanette F. Barber
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: 16 Jade Street, LLC v. Michael S. Catterson, et al.
Case No.: 06-CP-07-866

Dear Ms. Barber:

Enclosed please find the original and one (1) copy of Respondent's Amended Designation of Matter, to be Included in the Record on Appeal. Please file the original and return a filed copy in the enclosed envelope.

By copy of this letter, I hereby serve all counsel of record with a copy of the above, as evidenced on the enclosed Proof of Service.

Yours truly,

CLAWSON & STAUBES, LLC


Jeffrey A. Ross

JAR/lcs
Enclosures

cc: Michael D. Freeman, Esquire (w/enclosures)
Thomas J. Finn, Esquire (w/enclosures)
Mary Bass Lohr, Esquire (w/enclosures)
James J. Wegmann, Esquire (w/enclosures)

RECEIVED
OCT 07 2010
SC Court of Appeals

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 29, 2010

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Re: 16 Jade Street v. R Design Construction
Case Tracking #: 2009146786

Dear Counsel:

The following Order has been endorsed on your Motion for Amending Designation of Matter in the above entitled case on appeal.

“GRANTED.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 28, 2010.”

The following Order has been endorsed on your Motion for Amendment of Matter in the above entitled case on appeal.

“GRANTED.

John Cannon Few, C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 28, 2010.”

Please be advised Respondent/Appellant's Amended Designation of Matter has been accepted as filed. The Respondent's Amended Designation of Matter should be filed on or before October 11, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/khh

cc: Mary Bass Lohr, Esquire
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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SEP 13 2010

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC.....Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr. is.....Appellant/Respondent,

And

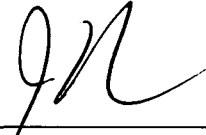
Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction is.....Respondent,

R. Design Construction Co, LLC and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

**MOTION FOR AMENDING
DESIGNATION OF MATTER**

The Respondent, Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, respectfully moves to amend the Designation of Matter to be included in the Record on Appeal of Respondent because there was not enough detail provided as to trial transcripts cited in the initial Designation of Matter.



JEFFREY A. ROSS
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

Attorney for Respondent Michael S.
Catterson, Individually and in his
capacity as principal and agent of
Catterson & Sons Construction

Charleston, South Carolina
September 10, 2010

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC.....Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr. is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction is.....Respondent,

R. Design Construction Co, LLC and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, proposes the following be included in the Record on Appeal:

1. Final Order & Judgment of October 14, 2009;
2. Trial transcript of the bench trial held October 13, 2008 through October 16, 2008, Vol 1, pp. 56-57, 61-62, 67-68, 70-71, 73-74, 88, 98, 154, 156-160, 166-167;
3. Trial transcript of the bench trial held October 13, 2008 through October 16, 2008, Vol 2, pp. 223, 254-255, 291;
4. Trial transcript of the bench trial held October 13, 2008 through October 16, 2008, Vol 3, pp. 7, 12, 14, 17, 22-23, 32, 53, 58;
5. Contract between 16 Jade Street, LLC and R Design dated July 27, 2004; and
6. Proposal of Catterson & Sons Construction dated August 6, 2004.

I certify that this designation contains no matter which is irrelevant to this appeal.

September 10, 2010



JEFFREY A. ROSS
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

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SEP 13 2010

SC Court of Appeals

IN THE STATE COURT OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson and Sons Construction, is

Respondent,

R. Design Construction Co., LLC and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

PROOF OF SERVICE

I, Jeffrey A. Ross, with the law firm of Clawson & Staubes, LLC, Attorneys for Respondent Michael S. Catterson, hereby certify that on September 10, 2010, I served a copy of the Motion for Amending Designation of Matter and the Amended Designation of Matter to be Included in the Record on Appeal upon all counsel of record listed below, via first class mail, postage prepaid, to the following addresses:

Attorneys for 16 Jade Street, LLC

Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, P.A.
P.O. Drawer 570
Beaufort, SC 29901

Attorneys for Carl A. Aten, Jr. and R. Design Construction Co. LLC

Mary Bass Lohr, Esquire
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901

Attorneys for Catterson & Sons Construction

Thomas J. Finn, Esquire
Finn Law Firm, P.C.
P.O. Box 6003
Hilton Head Island, SC 29938

Attorneys for Kintz Electric

James J. Wegmann, Esquire
Weidner & Wegmann, LLC
6 Professional Village Circle
Beaufort, SC 29907

CLAWSON & STAUBES, LLC



Jeffrey A. Ross
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

September 10, 2010

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

JEFFREY A. ROSS
jross@clawsonandstaubes.com

September 10, 2010

Reply to Charleston Office
File No.: 2007-1124jar

The Honorable Jeanette F. Barber
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

SEP 13 2010

SC Court of Appeals

Re: 16 Jade Street, LLC v. Michael S. Catterson, et al.
Case No.: 06-CP-07-866

Dear Ms. Barber:

Enclosed please find the original and six (6) copies of the Motion to Amend the Designation of Matter, along with the proof of service and proposed Designation of Matter to be Included in the Record on Appeal. I have enclosed our firm's check in the amount of \$25.00 for the filing fee. Please file the originals and returned a filed copy of each in the enclosed envelope.

By copy of this letter, I hereby serve all counsel of record with a copy of the above, as evidenced on the enclosed Proof of Service.

Yours truly,

CLAWSON & STAUBES, LLC


Jeffrey A. Ross

JAR/lcs
Enclosures

cc: Michael D. Freeman, Esquire (w/enclosures)
Thomas J. Finn, Esquire (w/enclosures)
Mary Bass Lohr, Esquire (w/enclosures)
James J. Wegmann, Esquire (w/enclosures)

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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SEP 02 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent
of R. Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson &
Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons Construction,
is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party
Plaintiffs,

Kintz Electric.....Third Party
Defendant.

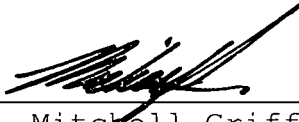
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent/Appellant, 16 Jade Street, LLC,
proposes the following be included in the Record on
Appeal:

1. Contract between 16 Jade Street, LLC and R Design,
dated July 27, 2004;
2. Proposal of Catterson & Sons Construction, Inc.,
dated August 6, 2004;
3. Trial transcript of the bench trial held October
13, 2008 through October 16, 2008, Vol. 1, pp. 64,
66-68, 70-71, 73-74, 76-77, 98, 151, 153, 155-158,
166-167;
4. Trial transcript of bench trial held October 13,
2008 through October 16, 2008, Vol. 2, p. 223;
5. Trial transcript of bench trial held October 13,
2008 through October 16, 2008, Vol. 3, pp. 7, 10,
52, 56, 58-59;
6. Final Order & Judgment dated October 14, 2009.
7. Notice of Appeal of 16 Jade Street, LLC, dated
December 4, 2009.

I certify that this designation contains no matter
which is irrelevant to this appeal.

GRIFFITH, SADLER, & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

Beaufort, South Carolina
August 31, 2010

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case Number 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually
and in his capacity as principal and agent of R. Design
Construction Co., LLC; Catterson & Sons Construction and Michael S.
Catterson, Individually and in his capacity as principal and agent
of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and
in his capacity as principal and
agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Sally C. Hitchcock, hereby aver that I am a legal assistant of
GRIFFITH, SADLER & SHARP, P.A., Attorneys for Respondents, 16 Jade
Street, LLC, and does hereby certify that on August 30, 2010, I

served a copy of the Motion for Amending Designation of Matter and the Amended Designation of Matter to be Included in the Record on Appeal upon all counsel of record listed below, via first-class mail, postage pre-paid to the following addresses:

Attorneys for Carl R. Aten, Jr.

Mary Bass Lohr
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

**Attorneys for Carl R. Aten, Jr and
R. Design Construction Co. LLC**

Thomas A. Bendle, Jr.
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 59901

Attorneys for Michael Catterson

Jeffrey A. Ross
Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

Karl D. Twenge
Twenge & Twombly, LLC
Post Office Box 549
Port Royal, South Carolina 29935

Attorneys for Catterson & Sons Construction

Thomas Justin Finn
Finn Law Firm, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938-6033

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, L.L.C.
6 Professional Village Circle
Beaufort, SC 29907

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

GRIFFITH, SADLER, & SHARP, P.A.

A handwritten signature in black ink, appearing to read "Sally C. Hitchcock", written over a horizontal line.

Sally C. Hitchcock, Legal Assistant
600 Monson Street
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

August 31, 2010

Beaufort, South Carolina

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIPPFERT, III
KELLY DENNIS DEAN
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

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SEP 02 2010

SC Court of Appeals

August 30, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and
Carl R. Aten, Jr., Catterson & Sons Construction and Michael
S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

Dear Hon. Gee:

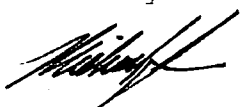
Enclosed please find the original and six (6) copies of the Motion to Amend the Designation of Matter, along with the proof of service and the proposed Designation of Matter to be Included in the Record on Appeal. I have enclosed our firm's check in the amount of \$25.00 for the filing fee. Please file the originals and return a filed copy of each to me in the enclosed self-addressed, stamped envelope.

By copy of this letter and enclosures, counsel of record are herewith served with same.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,


Michael D. Freeman
MDF/sch
Enclosures
cc: Counsel of Record

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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SEP 02 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of R.
Design Construction Co., LLC; Catterson & Sons Construction
and Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr.,.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as
principal and agent of Catterson & Sons
Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

MOTION FOR AMENDING
DESIGNATION OF MATTER

The Respondent/Appellant, 16 Jade Street, respectfully moves to amend the Designation of Matter to be included in the Record on Appeal of Respondent/Appellant because there was not enough detail provided as to trial transcripts cited in the initial Designation of Matter.

GRIFFITH, SADLER & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Post Office Box 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for Respondent/
Appellant 16 Jade Street, LLC

Beaufort, South Carolina

August 31, 2010

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: *V. Claire Allen*
(Clerk) (Deputy Clerk)

*Give 10 days
for amended
DOM.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 02 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case Number 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually
and in his capacity as principal and agent of R. Design
Construction Co., LLC; Catterson & Sons Construction and Michael S.
Catterson, Individually and in his capacity as principal and agent
of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and
in his capacity as principal and
agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Sally C. Hitchcock, hereby aver that I am a legal assistant of
GRIFFITH, SADLER & SHARP, P.A., Attorneys for Respondents, 16 Jade
Street, LLC, and does hereby certify that on August 30, 2010, I

served a copy of the Motion for Amending Designation of Matter and the Amended Designation of Matter to be Included in the Record on Appeal upon all counsel of record listed below, via first-class mail, postage pre-paid to the following addresses:

Attorneys for Carl R. Aten, Jr.

Mary Bass Lohr
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

**Attorneys for Carl R. Aten, Jr and
R. Design Construction Co. LLC**

Thomas A. Bendle, Jr.
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

Attorneys for Michael Catterson

Jeffrey A. Ross
Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

Karl D. Twenge
Twenge & Twombly, LLC
Post Office Box 549
Port Royal, South Carolina 29935

Attorneys for Catterson & Sons Construction

Thomas Justin Finn
Finn Law Firm, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938-6033

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, L.L.C.
6 Professional Village Circle
Beaufort, SC 29907

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

Sally C. Hitchcock
Sally C. Hitchcock, Legal Assist

August 31, 2010

ii



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 31, 2010

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
311 Carteret St.
Beaufort, SC 29902

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Re: 16 Jade Street v. R Design Construction
2009146786

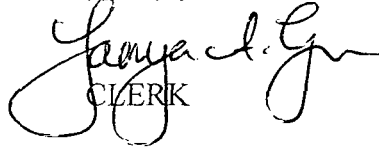
Dear Counsel:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on

appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,


CLERK

TAG/mpm

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

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AUG 10 2010

SC Court of Appeals

16 Jade Street, LLC.....Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr. is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction is.....Respondent,

R. Design Construction Co, LLC and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, proposes the following be included in the Record on Appeal:

1. Final Order & Judgment of October 14, 2009;
2. Trial transcript of bench trial held October 13, 2008 through October 16, 2008 (Three Volumes);
3. Contract between 16 Jade Street, LLC and R Design dated July 27, 2004; and
4. Proposal of Catterson & Sons Construction dated August 6, 2004.

I certify that this designation contains no matter which is irrelevant to this appeal.

August 9, 2010



JEFFREY A. ROSS
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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AUG 10 2010
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC.....Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr. is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction is.....Respondent,

R. Design Construction Co, LLC and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Jeffrey A. Ross, with the law firm of Clawson & Staubes, LLC, Attorneys for Respondent Michael S. Catterson, hereby certify that on August 9, 2010, I served a copy of the Initial Brief of Respondent and Designation of Matter To Be Included In the Record On Appeal upon all counsel of record listed below, via first class mail, postage prepaid, to the following addresses:

Attorneys for 16 Jade Street, LLC

Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, P.A.
P.O. Drawer 570
Beaufort, SC 29901

Attorneys for Carl A. Aten, Jr. and R. Design Construction Co. LLC

Mary Bass Lohr, Esquire
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901

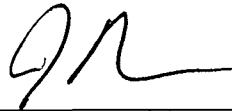
Attorneys for Catterson & Sons Construction

Thomas J. Finn, Esquire
Finn Law Firm, P.C.
P.O. Box 6003
Hilton Head Island, SC 29938

Attorneys for Kintz Electric

James J. Wegmann, Esquire
Weidner & Wegmann, LLC
6 Professional Village Circle
Beaufort, SC 29907

CLAWSON & STAUBES, LLC



Jeffrey A. Ross
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

August 9, 2010

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

JEFFREY A. ROSS
jross@clawsonandstaubes.com

August 9, 2010

Reply to Charleston Office
File No.: 2007-1124jar

The Honorable Jeanette F. Barber
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
AUG 10 2010
SC Court of Appeals

Re: 16 Jade Street, LLC v. Michael S. Catterson, et al.
Case No.: 06-CP-07-866

Dear Ms. Barber:

Enclosed please find the original and one (1) copy of the following:

1. Initial Brief of Respondent;
2. Designation of Matter to be Included in the Record On Appeal; and
3. Proof of Service.

Kindly file these pleadings and return a filed copy to me in the envelope provided for your convenience.

By copy of this letter, I hereby serve all counsel of record with a copy of the above, as evidenced on the enclosed Proof of Service.

Yours truly,

CLAWSON & STAUBES, LLC



Jeffrey A. Ross

JAR/khm
Enclosures`

cc: Michael D. Freeman, Esquire (w/enclosures)
Thomas J. Finn, Esquire (w/enclosures)
Mary Bass Lohr, Esquire (w/enclosures)
James J. Wegmann, Esquire (w/enclosures)

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 8, 2010

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Re: 16 Jade Street v. R Design Construction
2009146786

Dear Counsel:

The following Order has been endorsed on your Motion for Extension in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

July 08, 2010."

Please be advised that the respondent's Initial Brief and Designation of Matter of Respondent Michael Catterson must be served and filed no later than August 9, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: Mary Bass Lohr, Esquire
E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire

IN THE STATE COURT OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED

JUL 06 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson and Sons Construction, is

Respondent,

R. Design Construction Co., LLC and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

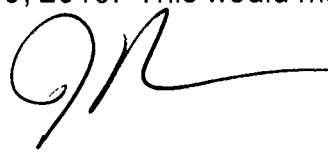
Kintz Electric,

Third Party Defendant.

07/09/10 182
08/09/10

MOTION FOR EXTENSION

The Respondent, Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, respectfully moves for a thirty day extension of time within which to serve and file its Initial Respondent's Brief of Respondent Catterson. The original due date for this Brief was July 9, 2010. This would make the new due date, August 9, 2010.



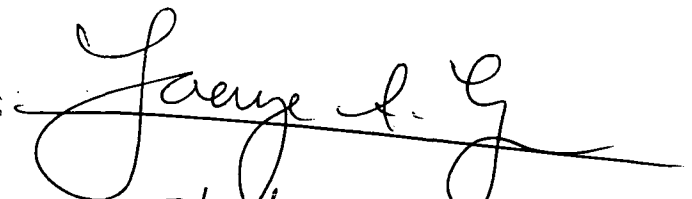
JEFFREY A. ROSS
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

Attorney for Appellant
Michael S. Catterson, Individually and in his
capacity as principal and agent of
Catterson & Sons Construction

Charleston, South Carolina
July 2, 2010

GRANTED.

John Cannon Dew, C.J.
FOR THE COURT

By 
7/8/10

FILED

7/8/10 

IN THE STATE COURT OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

RECEIVED

JUL 06 2010

SC Court of Appeals

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson and Sons Construction, is

Respondent,

R. Design Construction Co., LLC and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

PROOF OF SERVICE

I, Kathryn Mixson, Legal Assistant with the firm of Clawson & Staubes, LLC, Attorneys for Respondent Michael S. Catterson, hereby certify that on July 2, 2010, I served a copy of the Motion for Extension upon all counsel of record listed below, via first class mail, postage prepaid, to the following addresses:

Attorneys for 16 Jade Street, LLC

Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, P.A.
P.O. Drawer 570
Beaufort, SC 29901

Attorneys for Carl A. Aten, Jr. and R. Design Construction Co. LLC

Mary Bass Lohr, Esquire
Howell, Gibson & Hughes, P.A.
P.O. Box 40
Beaufort, SC 29901

Attorneys for Michael Catterson

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
P.O. Box 549
Port Royal, SC 29935

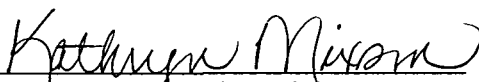
Attorneys for Catterson & Sons Construction

Thomas J. Finn, Esquire
Finn Law Firm, P.C.
P.O. Box 6003
Hilton Head Island, SC 29938

Attorneys for Kintz Electric

James J. Wegmann, Esquire
Weidner & Wegmann, LLC
6 Professional Village Circle
Beaufort, SC 29907

CLAWSON & STAUBES, LLC


Kathryn Mixson, Legal Assistant
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

July 2, 2010
Charleston, SC

CLAWSON & STAUBES, LLC
ATTORNEYS AT LAW

JEFFREY A. ROSS
jross@clawsonandstaubes.com

July 2, 2010

Reply to Charleston Office
File No.: 2007-1124jar

Honorable Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: 16 Jade Street, LLC v. Michael S. Catterson, et al.
Case No.: 06-CP-07-866

RECEIVED

JUL 06 2010

Dear Ms. Barber:

SC Court of Appeals

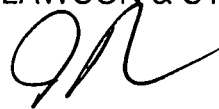
Enclosed please find the original and six (6) copies of Respondent's Motion for Extension within which to file the Respondent's Initial Brief. I have enclosed our firm's check in the amount of \$25.00 for the filing fee. Kindly file the Motion and return a filed copy to me in the envelope provided for your convenience.

By copy of this letter, I hereby serve all counsel of record with a copy of the same, as evidenced on the enclosed Proof of Service.

Kind regards,

Yours truly,

CLAWSON & STAUBES, LLC



Jeffrey A. Ross

JAR/lcs

Enclosures

cc: Michael D. Freeman, Esquire (w/enclosure)
Karl D. Twenge, Esquire (w/enclosure)
Thomas J. Finn, Esquire (w/enclosure)
Mary Bass Lohr, Esquire (w/enclosure)
James J. Wegmann, Esquire (w/enclosure)

Charleston Office:
126 Seven Farms Dr., Suite 200
Charleston, SC 29492-8144
(o) 843.577.2026
(f) 843.722.2867

Charlotte Office:
756 Tyvola Rd., Suite 130
Charlotte, NC 28217-3535
(o) 704.940.9128
(f) 704.522.9033

clawsonandstaubes.com



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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June 18, 2010

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire;
Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
1001 Paris Ave.
Port Royal, SC 29935

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Re: 16 Jade Street v. R Design Construction

Dear Counsel:

I am writing all counsel to clarify the letter of June 1, 2010.

An appellant's initial brief on behalf of Carl Aten was filed by Ms. Lohr. Carl Aten was designated as the Appellant/Respondent.

Mr. Griffith filed two briefs. One is the initial respondent's brief in response to Ms. Lohr's brief. 16 Jade Street, LLC, has been designated the Respondent/Appellant. The second brief of the Respondent/Appellant is an initial appellant's brief addressing the individual liability of Mr. Catterson.

According to Chief Judge Few's order dated March 9, 2010, once the initial appellant's brief of 16 Jade Street (the Respondent/Appellant) was filed, then the Respondent, Catterson, had forty-five days to file a respondent's initial brief.

Mr. Griffith's brief was served on April 26, 2010. Forty-five days from that date was June 10, 2010. I believe confusion arose because no initial respondent's brief was received on behalf of the Respondent, Catterson.

Our letter of June 1, 2010, was inaccurate. The letter extended the deadline for the initial respondent's brief of Respondent Catterson until July 9, 2010. No extension had been requested. However, since the letter may have led to confusion, the deadline of July 9, 2010, will be set as the due date for filing and service of a respondent's initial brief of Respondent Catterson. According to Chief Judge Few's order, all reply briefs are due thirty days after the Respondent Catterson's initial brief is filed and served.

Therefore, the next brief this office expects to receive is the initial respondent's brief of Respondent Catterson.

I apologize for the confusion.

Very truly yours,

V. Claire Allan, Deputy

DEPUTY CLERK

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIIPFERT, III
KELLY A. DENNIS
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

RECEIVED

JUN 01 2010

SC Court of Appeals

May 26, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and
Carl R. Aten, Jr., Catterson & Sons Construction and Michael
S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

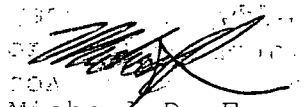
Dear Hon. Gee:

As per your letter dated May 20, 2010, enclosed please find amended covers showing the correct title for the Respondent's Initial Brief of Respondent/Appellant and Appellant's Initial Brief of Respondent/Appellant.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,


Michael D. Freeman

MDF/mlq
Enclosures
cc: Counsel of Record



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 1, 2010

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
1001 Paris Ave.
Port Royal, SC 29935

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Re: 16 Jade Street v. R Design Construction
2009146786

Dear Counsel:

John
Please be advised that Appellant/Respondent and Respondents may serve and file a Respondent's Initial Brief and Designation of Matter no later than July 9, 2010.

The Brief of Appellant/Respondent should be titled Respondent's Initial Brief and Designation of Matter of Appellant/Respondent.

The Brief of any of the Respondents should be titled Respondent's Initial Brief and Designation of Matter of Respondent, followed by the name of the Respondent.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 25, 2010

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Re: 16 Jade Street v. R Design Construction
2009146786

Dear Counsel:

The following Order has been endorsed on your Motion for Reinstatement of Appeal in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

May 24, 2010."

Please be advised that your Appeal has been reinstated and the remittitur has been recalled by order of the Court of May 20, 2010.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire
Thomas A. Bendle, Jr., Esquire

RECEIVED

MAY 17 2010

IN THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals **SC Court of Appeals**

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R. Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and in
his capacity as principal and agent of Catterson & Sons
Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and
in his capacity as principal and agent
of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

MOTION FOR REINSTATEMENT OF APPEAL

16 Jade Street hereby petitions this court for reinstatement of this appeal which has been dismissed by Order of the Clerk of Court dated May 7, 2010. The grounds for this motion are as follows:

1. The petitioner, pursuant to Rule 233 deposited the Reply Brief of Respondent/Appellant, Initial Brief of Respondent/Appellant and Designation of Matter to be Included in the Record on Appeal in the U.S. mail, properly addressed to the Clerk of Court for the Court of Appeals, with sufficient first class postage attached on April 26, 2010. The documents were accompanied by proof of service to all parties.
2. Upon information and belief, despite the timely transmittal of these documents, the Reply Brief of Respondent/Appellant, Initial Brief of Respondent/Appellant and Designation of Matter to be Included in the Record on Appeal were not received via U.S. mail by the Clerk of Court for the Court of Appeals within the deadline specified by the court.
3. The petitioner has consulted with all parties and all parties with the exception of Thomas Justin Finn, attorney for Catterson & Sons Construction, have indicated that they are in receipt of the Reply Brief of Respondent/Appellant, Initial Brief of

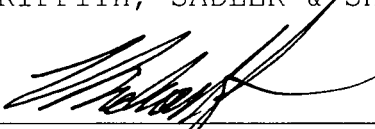
Respondent/Appellant and Designation of Matter to be Included in the Record on Appeal that were placed with the U.S. mail on April 26, 2010.

4. All parties, with the exception of Jeffery A. Ross, attorney for Michael Catterson, have consented to the filing of this Motion for Reinstatement of Appeal.

WHEREFORE, for all the reasons set forth above:

1. This appeal should be reinstated.
2. Upon reinstatement of the appeal, the petitioner shall file their Reply Brief of Respondent/Appellant, Initial Brief of Respondent/Appellant and Designation of Matter to be Included in the Record on Appeal and insure that it is received by the clerk.

GRIFFITH, SADLER & SHARP, P.A.



E. Mitchell Griffith
Michael B. Freeman
Post Office Box 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for 16 Jade Street, LLC

Beaufort, South Carolina

May 14, 2010.

FILED
5/25/10 

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)
5/24/10

RECEIVED

MAY 17 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case Number 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Monica L. Queen, hereby avers that she is the Paralegal of GRIFFITH, SADLER & SHARP, P.A., Attorneys for Respondents, 16 Jade Street, LLC, and does hereby certify that on May 14th, 2010, I

served a copy of the Motion for Reinstatement of Appeal upon all counsel of record listed below, via first-class mail, postage prepaid to the following addresses:

Attorneys for Carl R. Aten, Jr.

Mary Bass Lohr
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

**Attorneys for Carl R. Aten, Jr and
R. Design Construction Co. LLC**

Thomas A. Bendle, Jr.
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 59901

Attorneys for Michael Catterson

Jeffrey A. Ross
Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

Karl D. Twenge
Twenge & Twombly, LLC
Post Office Box 549
Port Royal, South Carolina 29935

Attorneys for Catterson & Sons Construction

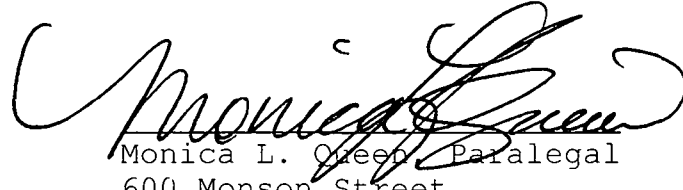
Thomas Justin Finn
Finn Law Firm, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938-6033

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, L.L.C.
6 Professional Village Circle
Beaufort, SC 29907

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

GRIFFITH, SADLER, & SHARP, P.A.

A large, stylized handwritten signature in black ink, appearing to read "Monica L. Queen".

Monica L. Queen, Paralegal
600 Monson Street
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

May 14th 2010

Beaufort, South Carolina

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIHPFERT, III
KELLY A. DENNIS
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

May 14, 2010

Hon. Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
MAY 17 2010
SC Court of Appeals

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and
Carl R. Aten, Jr., Catterson & Sons Construction and Michael
S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

Dear Hon. Gee:

Enclosed please find the original and one (1) copy of the Motion for Reinstatement of Appeal, along with the proof of service. Please file the original and return the clocked copy to me in the enclosed self-addressed, stamped envelope. By copy of this letter and enclosures, counsel of record are herewith served with same.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman

MDF/mlq
Enclosures
cc: Counsel of Record

The South Carolina Court of Appeals

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent,

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson & Sons
Construction, is

Respondent,

R. Design Construction Co., LLC, and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2006-CP-07-00866

ORDER

The above referenced appeal was remitted in error. The Initial Briefs were filed timely and the original Remittitur is hereby recalled from the Clerk of Court for Beaufort County.

IT IS SO ORDERED.

V. Claire Allen

CLERK

For the Court

Columbia, South Carolina

5/20/2010

cc: Mary Bass Lohr, Esquire
E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire
Thomas A. Bendle, Jr., Esquire
The Honorable Jerri Roseneau

FILED

5/20/10 



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 20, 2010

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Re: 16 Jade Street v. R Design Construction
2009146786

Dear Counsel:

We have received your Initial Briefs in the above matter. However, these Briefs are not titled correctly. The Initial Brief of Respondent/Appellant should be titled Appellant's Initial Brief of Respondent/Appellant and the Reply Brief of Respondent/Appellant should be titled Respondent's Initial Brief of Respondent/Appellant. Please provide this Court with Amended covers showing the correct title for these Briefs within ten (10) days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/mpm

cc: Mary Bass Lohr, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire
Thomas A. Bendle, Jr., Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED
APR 29 2010
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually
and in his capacity as principal and agent of R. Design
Construction Co., LLC; Catterson & Sons Construction and Michael S.
Catterson, Individually and in his capacity as principal and agent
of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and
in his capacity as principal and
agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

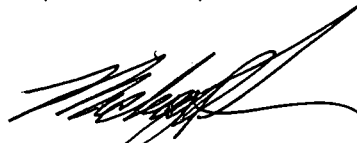
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent/Appellant, 16 Jade Street, LLC, proposes the
following be included in the Record on Appeal:

1. Final Order & Judgment of October 14, 2009;
2. Trial transcript of bench trial held October 13, 2008 through October 16, 2008, (Three Volumes);
3. Contract between 16 Jade Street, LLC and R Design, dated July 27, 2004;
4. Proposal of Catterson & Sons Construction, Inc., dated August 6, 2004;
5. Notice of Appeal of 16 Jade Street, LLC.

I certify that this designation contains no matter which is irrelevant to this appeal.

GRIFFITH, SADLER, & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Griffith, Sadler & Sharp, P.A.
Post Office Drawer 570
Beaufort , SC 29901-0570
(843) 521-4242

Beaufort, South Carolina
April 26, 2010

RECEIVED
APR 29 2010
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case Number 06-CP-07-0866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

PROOF OF SERVICE

I, Monica L. Queen, hereby avers that she is the Paralegal of GRIFFITH, SADLER & SHARP, P.A., Attorneys for Respondents, 16 Jade Street, LLC, and does hereby certify that on April 26, 2010, I

served a copy of the Initial Brief of Respondent/Appellant, Reply Brief of Respondant/Appellant and Designation of Matter to be Included in the Record on Appeal upon all counsel of record listed below, via first-class mail, postage pre-paid to the following addresses:

Attorneys for Carl R. Aten, Jr.

Mary Bass Lohr
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901

**Attorneys for Carl R. Aten, Jr and
R. Design Construction Co. LLC**

Thomas A. Bendle, Jr.
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 59901

Attorneys for Michael Catterson

Jeffrey A. Ross
Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

Karl D. Twenge
Twenge & Twombly, LLC
Post Office Box 549
Port Royal, South Carolina 29935

Attorneys for Catterson & Sons Construction

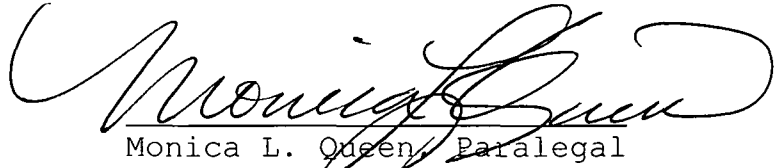
Thomas Justin Finn
Finn Law Firm, P.C.
Post Office Box 6003
Hilton Head Island, South Carolina 29938-6033

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, L.L.C.
6 Professional Village Circle
Beaufort, SC 29907

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

7 4 4
GRIFFITH, SADLER, & SHARP, P.A.

A large, stylized handwritten signature in cursive script, appearing to read "Monica L. Queen".

Monica L. Queen, Paralegal
600 Monson Street
Post Office Drawer 570
Beaufort, SC 29901-0570
(843) 521-4242

April 26, 2010

Beaufort, South Carolina

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LHPFERT, III
KELLY A. DENNIS
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

RECEIVED

APR 29 2010

SC Court of Appeals

*Also Admitted in N.C.

April 26, 2010

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and
Carl R. Aten, Jr., Catterson & Sons Construction and Michael
S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

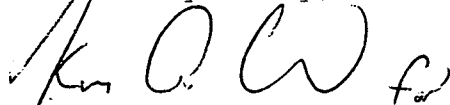
Dear Hon. Barber:

Enclosed please find the original and one (1) copy of the Reply Brief of Respondent/Appellant, Initial Brief of Respondent/Appellant, Designation of matter to be Included in the Record on Appeal and proof of service. Please file the originals and return the clocked copies to me in the enclosed self-addressed, stamped envelope. By copy of this letter and enclosures, counsel of record are herewith served with same.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,



Michael D. Freeman

MDF/mlq
Enclosures
cc: Counsel of Record

The South Carolina Court of Appeals

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent,

and Michael S. Catterson, Individually
and in his capacity as principal and
agent of Catterson & Sons
Construction, is

Respondent,

R. Design Construction Co., LLC, and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2006-CP-07-00866

ORDER of PARTIAL DISMISSAL

The above entitled case is pending on appeal in this Court. Due to the failure of Respondent/Appellant 16 Jade Street, LLC to serve and file the Appellant's Initial Brief and Designation of Matter and the Respondent's Initial Brief and Designation of Matter in the above matter, as provided for in Rule 208 of the South Carolina Appellate Court Rules,

IT IS ORDERED that the above captioned appeal on behalf of 16 Jade Street, LLC be and hereby is dismissed. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in the case will be sent to the Clerk of Court for Beaufort after fifteen (15) days, exclusive of the date of filing this Order.

V. Claire Allen, Deputy CLERK
For the Court

Columbia, South Carolina

5/7/2010

cc: Mary Bass Lohr, Esquire
E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire
Thomas A. Bendle, Jr., Esquire
The Honorable Jerri Roseneau

FILED
5/7/10 MAN

The South Carolina Court of Appeals

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent,

and Michael S. Catterson, Individually
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agent of Catterson & Sons
Construction, is

Respondent,

R. Design Construction Co., LLC, and
Carl R. Aten, Jr.,

Third Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2006-CP-07-00866

ORDER

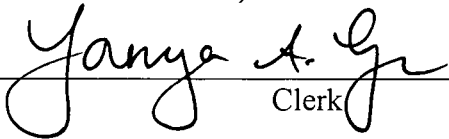
Pursuant to a telephone conference with the parties, the time for filing and serving the
Respondent/Appellant's Initial Appellant's Brief and Initial Respondent's Brief and Designation

of Matter has been extended until April 27, 2010. Once the Respondent/Appellant's Initial Appellant's Brief is filed, Respondent Catterson shall have forty-five days to file the Respondent's Initial Brief. All reply briefs are due thirty days after Respondent Catterson's initial brief is filed and served.

AND IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE

BY


Clerk

Columbia, South Carolina

3/9/2010

cc: Mary Bass Lohr, Esquire
E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire
Thomas A. Bendle, Jr., Esquire



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

JOHN C. CALHOUN BUILDING
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1278
FAX: (803) 734-2373
E-MAIL: jfew@sccourts.org

February 22, 2010

Mary Bass Lohr; Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Jeffery A. Ross, Esquire; Albert A. Lacour, III
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, SC 29492-7595

Karl D. Twenge, Esquire
Twenge & Twombly, LLC
P.O. Box 549
Port Royal, SC 29935

Thomas Justin Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003

Thomas A. Bendle, Jr., Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Re: 16 Jade Street v. R Design Construction
Case Tracking Number 2009-146786

Dear Counsel:

This letter serves as an Order granting Respondent's request for an extension of time in which to serve and file the Respondent's Initial Brief and Designation of Matter.

I have extended the due date until March 16, 2010. I realize that this extension may not give you all the time you need to complete the brief. I have set a conference call for 9:15 a.m. on Tuesday, March 09, 2010 to discuss an overall approach to setting due dates for all filings in this appeal. The call should last less than ten minutes. The participants in the call will include counsel for all parties, Tanya Gee (the Clerk of the Court of Appeals), and me.

In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Thursday.

Sincerely yours,

John Cannon Few

JCF/pd

FILED

2/22/10

MOTION FOR EXTENSION

The Respondent/Appellant, 16 Jade Street, LLC, respectfully moves for a thirty day extension of time in which to file and serve its Initial Brief and Designation of Matter.

GRIFFITH, SADLER & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Post Office Box 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for Respondent/Appellant
16 Jade Street, LLC

Beaufort, South Carolina

February 17, 2010

Rec'd, 3/09/10
9:15am

RIB/Dom ①
2.22.10
3.16.10

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

RECEIVED

FEB 19 2010

SC Court of Appeals

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually
and in his capacity as principal and agent of R. Design
Construction Co., LLC; Catterson & Sons Construction and Michael S.
Catterson, Individually and in his capacity as principal and agent
of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and
in his capacity as principal and
agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

CERTIFICATE OF SERVICE

The undersigned, avers that on the _____ day of February 2010, true and accurate copies of the attached **Motion for an Extension** were placed envelopes with first class postage thereon prepaid through the United States Postal Service, and mailed to the parties as follows:

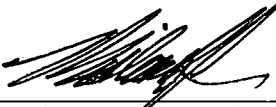
Thomas J. Finn
FINN LAW FIRM, PC
P. O. Box 6003
Hilton Head, SC 29925

Thomas A. Bendle, Jr.
HOWELL, GIBSON & HUGHES, P.A.
P.O. Box 40
Beaufort, SC 29901-0040

Jeffrey A. Ross
CLAWSON & STAUBES, LLC
126 Seven Farms Dr., Suite 200
Charleston, SC 29492

Karl D. Twenge
TWENGE & TWOMBLEY, LLC
P. O. Box 549
Port Royal, SC 29935

GRIFFITH, SADLER & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Post Office Box 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for Respondent/Appellant
16 Jade Street, LLC

Beaufort, South Carolina

February 17, 2010

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

RECEIVED

FEB 19 2010

SC Court of Appeals

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually
and in his capacity as principal and agent of R. Design
Construction Co., LLC; Catterson & Sons Construction and Michael S.
Catterson, Individually and in his capacity as principal and agent
of Catterson & Sons Construction,

Of Whom

Carl R. Aten, Jr., is.....Appellant/Respondent,

And

Michael S. Catterson, Individually and
in his capacity as principal and
agent of Catterson & Sons Construction, is..... Respondent,

R. Design Construction Co, LLC, and
Carl R. Aten, Jr.....Third Party Plaintiffs,

Kintz Electric.....Third Party Defendant.

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LIPPERT, III
KELLY A. DENNIS
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

February 17, 2010

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
FEB 19 2010
SC Court of Appeals

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and Carl R. Aten, Jr., Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-0866
Case Tracking No.: 2009-146786**

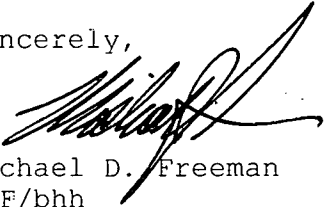
Dear Hon. Barber:

Enclosed herein, please find Appellant's Motion for an Extension of Time within which to file the Appellant's Initial Brief and Designation of Matter, as well as our firm's check in the amount of \$25.00 to satisfy the filing fee.

By copy of this letter, I hereby serve all counsel of record and the Beaufort County Clerk with copies of the same.

If you have any questions, please feel free to contact me.

Sincerely,


Michael D. Freeman
MDF/bhh
Enclosure

cc: Jerri Roseneau
Jeffrey Ross, Esq.
Karl D. Twenge, Esq.
Thomas J. Finn, Esq.
Thomas A. Bendle, Esq.
Dennis Green (w/o enclosures)



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 29, 2010

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Re: 16 Jade Street v. R Design Construction
Case Tracking Number 2009-146786

Dear Counsel:

Having reviewed the trial court order, the Notices of Appeal, and the proofs of services for the Notices of Appeal, I conclude the caption should be amended as follows:

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and Carl
R. Aten, Jr., Individually and in his capacity
as principal and agent of R. Design
Construction Co., LLC, Catterson & Sons
Construction and Michael S. Catterson,
Individually and in his capacity as principal
and agent of Catterson & Sons
Construction,

Defendants,

Of whom, Carl R. Aten, Jr., is

Appellant/Respondent,

and Michael S. Catterson, Individually and in
his capacity as principal and agent of
Catterson & Sons Construction, is

Respondent,

R. Design Construction Co., LLC, and Carl
R. Aten, Jr.,

Third-Party Plaintiffs,

v.

Kintz Electric,

Third Party Defendant.

Please use this caption on future filings.

Very truly yours,

Thomas A. Bendle, Jr.
ACTING CLERK

TAG/pd

cc: Thomas A. Bendle, Jr., Esquire
E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl D. Twenge, Esquire
Thomas Justin Finn, Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED
JAN 25 2010
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction..... Defendants,

Of Whom, Carl R. Aten, Jr..... Appellant,

Of Whom, Michael S. Catterson, Individually and in his
capacity as principal and agent of Catterson & Sons
Construction..... Respondent.

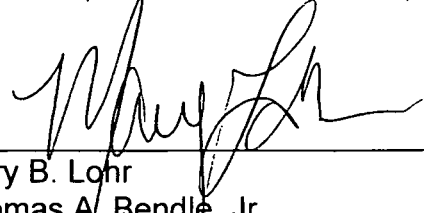
APPELLANT/RESPONDENT'S DESIGNATION OF MATTER

Appellant/Respondent proposes the following to be included in the Record on
Appeal:

1. Final Order and Judgment of the Honorable Carmen T. Mullen, filed
October 14, 2009;
2. Aten's Notice of Intent to Appeal, filed November 25, 2009;
3. Portions of Volume 2 of the Trial Transcript, to include pages 213, 214,
216, 223, 234, and 235;
4. Portions of Volume 3 of the Trial Transcript, to include pages 64-70,
77, 78, and 247-249.

I certify that this designation contains no matter which is irrelevant to this appeal.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary B. Lohr

Thomas A. Bendle, Jr.

William T. Young III

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorneys for Appellant Carl R. Aten, Jr.

Beaufort, South Carolina

January 22, 2010

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED
JAN 25 2010
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC..... Respondent/Appellant,

vs.

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R Design Construction Co., LLC; Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction..... Defendants,

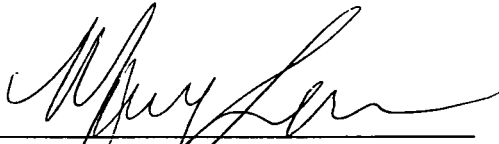
Of Whom, Carl R. Aten, Jr..... Appellant,

Of Whom, Michael S. Catterson, Individually and in his
capacity as principal and agent of Catterson & Sons
Construction..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Designation of Matter contains no
matter, which is irrelevant to the appeal.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

Bar No:
Attorney for Appellant

Beaufort, South Carolina

January 22, 2010

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED

JAN 25 2010

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC..... Respondent/Appellant,

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Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction.....Defendants,

Of Whom, Carl R. Aten, Jr..... Appellant,

Of Whom, Michael S. Catterson, Individually and in his
capacity as principal and agent of Catterson & Sons
Construction.....Respondent.

CERTIFICATE OF MAILING

The undersigned counsel hereby certifies that he has served the foregoing
Initial Brief, Designation of Matter and Certificate of Counsel upon all counsel of
record by affixing same with proper postage and placing same with the United
States Postal Service on 22nd day of January, 2010 addressed to the following:

E. Mitchell Griffith, Esquire
Griffith, Sadler & Sharp, P.A.
Post Office Box 570
Beaufort, SC 29901-0570

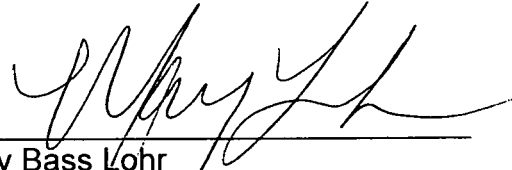
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Beaufort, SC 29901-0570

Jeffrey A. Ross, Esquire
Clawson & Staubes, L.L.C.
126 Seven Farms Drive, Suite 200
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Twenge & Twombly, LLC
Post Office Box 549
Port Royal, SC 29935

Thomas J. Finn, Esquire
Finn Law Firm, P.C.
Post Office Box 6003
Hilton Head Island, SC 29938-6003

HOWELL, GIBSON & HUGHES, P.A.

By: 
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Appellant

Beaufort, South Carolina

January 22, 2010

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK
MARY BASS LOHR

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

January 22, 2010

RECEIVED
JAN 25 2010
SC Court of Appeals

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 16 Jade Street LLC vs. R Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No.: 9965 TAB

Dear Ms. Barber:

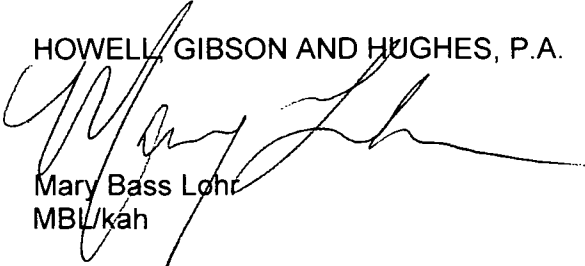
Please find enclosed herewith for filing, the original and two copies of Appellants Initial Brief, Designation of Matter To Be Included On Appeal, Certificate of Counsel and Certificate of Mailing with regard to the above referenced matter.

By copy of this letter, I hereby serve opposing counsel with copies of the same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/kah

cc: E. Mitchell Griffith, Esquire
Michael D. Freeman, Esquire
Jeffrey A. Ross, Esquire
Karl D. Twenge, Esquire
Thomas J. Finn, Esquire

The South Carolina Court of Appeals

16 Jade Street, LLC,

Respondent/Appellant,

v.

R. Design Construction Co., LLC, and
Carl R. Aten, Jr., Individually and in
his capacity as principal and agent of R.
Design Construction Co., LLC,
Catterson & Sons Construction and
Michael S. Catterson, Individually and
in his capacity as principal and agent of
Catterson & Sons Construction,

Defendants,

Of Whom, Carl R. Aten, Jr.,

Appellant,

of Whom Michael S. Catterson,
Individually and in his capacity as
principal and agent of Catterson &
Sons Construction,

Respondent.

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2006-CP-07-00866

ORDER

For good cause having been shown, the time for serving and filing Appellant Initial Brief and Designation of Matter in the above entitled matter is hereby extended until January 22, 2010.

IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE
For the Court

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina
12/23/2009

cc: Mary Bass Lohr, Esquire & Jeff Ross, Esquire
Thomas A. Bendle, Jr., Esquire
E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl Twenge, Esquire
Thomas Justin Finn, Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

RECEIVED
60613
DEC 21 2009
SC Court of Appeals

16 Jade Street, LLC....., Respondent,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

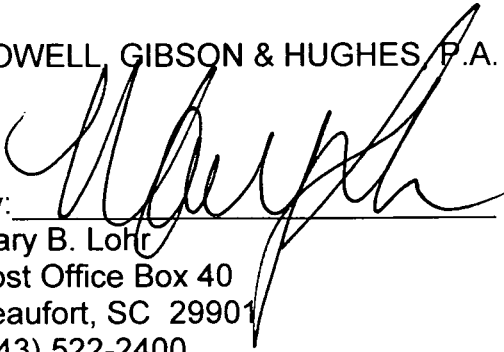
Of Whom,

Carl R. Aten, Jr....., Appellant.

MOTION FOR EXTENSION

The Respondent respectfully moves for a thirty day extension of time in which to serve and file its Initial Brief and Designation of Matter.

HOWELL GIBSON & HUGHES, P.A.

By: 

Mary B. Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Appellant

Beaufort, South Carolina
December 15, 2009

151
12-23-09
1-22-10
A118

CERTIFICATE OF MAILING

I certify that I served the foregoing Notice of Motion and Motion for Continuance upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 15th day of December, 2009.

1642

By: 

Mary Bass Lohr

RECEIVED

DEC 21 2009

SC Court of Appeals

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
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25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

December 15, 2009

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
DEC 21 2009
SC Court of Appeals

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-866

Dear Ms. Barber:

Please find enclosed the Appellant's Motion for an Extension within which to file the Respondent's Initial Brief and Designation of Matter. I have enclosed our firm check in the amount of \$25.00 for the filing fee.

By copy of this letter, I hereby serve all counsel of record with a copy of the same.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

Mary Bass Lohr
MBL/kah
Enclosure

cc: Michael D. Freeman, Esquire
Karl D. Twenge, Esquire
Jeff Ross, Esquire
Thomas J. Finn, Esquire

HR AIB/DM
1st ex
12-23-09
1-22-10



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLÉN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

December 13, 2009

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Re: 16 Jade Street v. R Design Construction
Case Tracking Number 2009146

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence (but not on records, briefs, motions, and the like) relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Sincerely,

V. Claire Allen, Deputy
CLERK

JFB/lm

cc: Mary Bass Lohr, Esquire
Thomas A. Bendle, Jr., Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl Twenge, Esquire
Thomas Justin Finn, Esquire



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 13, 2009

E. Mitchell Griffith, Esquire; Michael D. Freeman, Esquire
Griffith, Sadler & Sharp, PA
P O Drawer 570
Beaufort, SC 29901-0570

Re: 16 Jade Street v. R Design Construction
Case Number 2009146786

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5), SCACR, also, please file the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Sincerely,

V. Chris Allen, Deputy
CLERK

JFB/lm

cc: Mary Bass Lohr, Esquire
Thomas A. Bendle, Jr., Esquire
Jeffery A. Ross, Esquire; Albert A. Lacour, III
Karl Twenge, Esquire
Thomas Justin Finn, Esquire

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

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DEC 10 2009

SC Court of Appeals

December 8, 2009

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No.: 9965 TAB

Dear Ms. Barber:

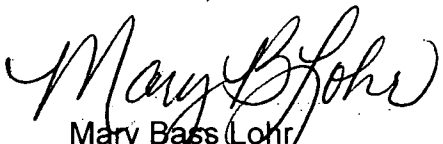
Please be advised that counsel for the Appellant is in receipt of the transcript regarding this matter.

If you should have any questions, please feel free to contact me.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/kab

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
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TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

December 8, 2009

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Case Tracking No.: 2009146786
Civil Action No.: 06-CP-07-866
Our File No.: 9965 TAB

Dear Ms. Barber:

I am writing to advise that Jeff Ross is also involved in this matter. He represents Michael S. Catterson.

Thank you for your attention to this matter.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/kah

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DEC 10 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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DEC 07 2009

SC Court of Appeals

2009146786

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

PM 12/14/09
POS 12/14/09

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-0866

16 Jade Street, LLC....., Appellant,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

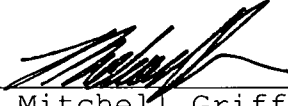
Of Whom

Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction....., Respondent.

NOTICE OF INTENT TO APPEAL

16 Jade Street, LLC, appeals the Order of the Honorable Carmen T. Mullen, dated October 14, 2009. Appellant received notice of the entry of the Order of October 14, 2009 on November 16, 2009.

GRIFFITH, SADLER & SHARP, P.A.



E. Mitchell Griffith
Michael D. Freeman
Post Office Box 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for 16 Jade Street, LLC

Beaufort, South Carolina

December 4, 2009

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

16 JADE STREET, LLC,

Plaintiff,

vs.

R DESIGN CONSTRUCTION CO., LLC
and CARL K. ATEN, JR.,
individually and in his
capacity as principal and
agent of R DESIGN CONSTRUCTION
CO., LLC; CATTERSON & SONS
CONSTRUCTION And MICHAEL S.
CATTERSON, individually and in
his capacity as principal and
agent of CATTERSON & SONS
CONSTRUCTION,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION # 06-CP-07-866

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DEC 07 2009

SC Court of Appeals

CERTIFICATE OF MAILING

The undersigned, Monica L. Queen, hereby avers that she is a Paralegal of GRIFFITH, SADLER & SHARP, P.A., Attorneys for the Plaintiff, and that on the 14th day of December 2009 true and accurate copies of the attached **Notice of Intent to Appeal** was placed envelopes with first class postage thereon prepaid through the United States Postal Service, and mailed to the attorneys of record as follows:

**Attorney for Catterson & Sons
Construction:**

Thomas J. Finn
FINN LAW FIRM, PC
P. O. Box 6003
Hilton Head, SC 29925

**Attorney for R Design and Carl
Aten:**

Thomas A. Bendle, Jr.
HOWELL, GIBSON & HUGHES, P.A.
P.O. Box 40
Beaufort, SC 29901-0040

Attorney for Kintz Electric

James J. Wegmann
WEIDNER & WEGMANN, L.L.C.
6 Professional Village Circle
Beaufort, SC 29907

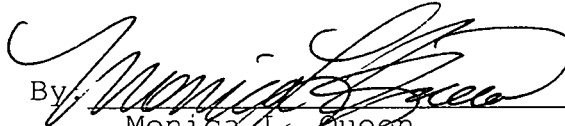
Beaufort Coutny Clerk of Court

The Honorable Jerri Ann Rosenau
102 Ribaut Road
P.O. Box 1128
Beaufort, SC 29901-1128

Attorney for Michael Catterson

Jeffrey A. Ross
Albert A. Lacour, III
CLAWSON & STAUBES, LLC
126 Seven Farms Dr., Suite 200
Charleston, SC 29492

Karl D. Twenge
TWENGE & TWOMBLEY, LLC
P. O. Box 549
Port Royal, SC 29935

By 
Monica L. Queen

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

E. MITCHELL GRIFFITH
NANCY D. SADLER
MARY E. SHARP*
O. EDWORTH LHPFERT, III
KELLY A. DENNIS
MARSHALL H. WALDRON, JR.

(843) 521-4242 Telephone
(843) 521-4247 Facsimile
Writer's E-Mail: mfreeman@gandspa.com

*Also Admitted in N.C.

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DEC 07 2009

SC Court of Appeals

December 4, 2009

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: 16 Jade Street, LLC v. R Design Construction Co., LLC, and Carl R. Aten, Jr., Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-0866**

Dear Hon. Barber:

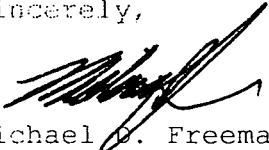
Enclosed herein, please find a Notice of Intent to Appeal, Certificate of Mailing and a check in the amount of \$100.00 to satisfy the filing fee in the above referenced case.

I would appreciate you providing me with a clocked copy of the filed Notice of Intent to Appeal in the enclosed self-addressed and stamped envelope.

By copy of this letter, I hereby serve all counsel of record and the Beaufort County Clerk with copies of the same.

If you have any questions, please feel free to contact me.

Sincerely,


Michael D. Freeman
MDF/bhh
Enclosure

cc: Jerri Roseneau
Jeffrey Ross, Esq.
Karl D. Twenge, Esq.
Thomas J. Finn, Esq.
Thomas A. Bendle, Esq.
Dehnis Green (w/o enclosures)

GRIFFITH, SADLER & SHARP, P.A.
ATTORNEYS AT LAW
600 MONSON STREET
POST OFFICE DRAWER 570
BEAUFORT, SOUTH CAROLINA 29901-0570

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL ACTION NO: 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs.

**FINAL ORDER AND
JUDGMENT**

R DESIGN CONSTRUCTION CO.,
LLC, and CARL R. ATEN, JR.,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO., LLC;
CATTERSON & SONS
CONSTRUCTION and MICHAEL S.
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants.

R DESIGN CONSTRUCTION CO.,
LLC, and CARL R. ATEN, JR.,

Third Party Plaintiffs

vs.

KINTZ ELECTRIC,

Third Party Defendant.

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

2008 OCT 14 PM 3:18

PROCEDURAL FACTS

This case came before me for a trial on the merits on October 13-16, 2008. It is a construction defect action. Plaintiff, 16 Jade Street, LLC ("Jade

Street"), brought this action against R Design Construction Co., LLC ("R Design"); Carl K. Aten, Jr. ("Aten"), individually and in his capacity as principal and agent of R Design, Catterson & Sons Construction, Inc. ("Catterson & Sons"); and Michael S. Catterson, individually and as principal and agent for Catterson & Sons, Defendant. This case arises out of the construction of a multi-family dwelling located in the Celadon development on Lady's Island, in Beaufort, South Carolina. The Complaint alleges claims for negligence and breach of implied warranties against R Design, Aten, Catterson & Sons, and Michael Catterson, as well as a claim for breach of contract against R Design and Aten. Cross-claims were instituted between R Design and the Catterson Defendants for equitable indemnity and breach of contract. Prior to trial, the court dismissed the Plaintiff's breach of contract claim asserted against Aten.

I find in favor of the Plaintiff against Defendants R Design, Aten, and Catterson & Sons, and in favor of R Design against Catterson & Sons.

FACTUAL BACKGROUND

Jade Street, through its managing partner, Dennis Green ("Green"), purchased several tracts of land on Lady's Island with the intent of developing a planned community called Celadon. The lot upon which the subject property was built was a part of this larger tract, and allowed for the construction of multi-family dwellings. Four (4) builders were approved to build within the Celadon development. One of these was R Design, owned and operated by the Defendant, Aten. Aten approached Green and requested to build the

condominium project for speculative purposes. When Aten was unable to obtain financing, 16 Jade Street, LLC was formed specifically for the purpose of developing the land, and constructing the project, and marketing the property for sale thereon.

On July 27, 2004, a contract was executed between the Plaintiff and R Design for the construction of the project, whereby the Plaintiff was to pay R Design \$150,000.00 for supervision of construction of a multi-family dwelling.

The contract provided that the construction was to be "completed in conformity with the plans and specifications attached" to the contract (Exhibit #1). Additionally, the "Contract Responsibilities" were to "supervise and direct all construction work using its best skill and attention, and was solely responsible for all construction means, methods, techniques, consequences and procedures, and for coordinating all portions of the work required under this Contract." (Exhibit #1) Construction was to be based upon plans prepared by the Architect R. Stewart, and the engineer of record was Kern Coleman of Savannah. The Jade Street project was to be constructed of light gauge metal steel framing and aerated autoclave concrete block ("AAC Block"). AAC block is a specialty building product which is essentially a preformed concrete block with an internal channel cavity. These blocks, when stacked correctly, provide a continuous channel into which supporting rebar and grouting mortar is placed to give the wall structural support.

As the AAC block is a specialty building product, some concern was expressed by the Plaintiff that the subcontractor responsible for the installation of

the AAC block have some experience with the product and its application. Based on this concern, R Design contracted with Catterson & Sons on August 6, 2004, which had represented to Carl Aten that it had experience with the AAC product and its application on previous projects. The scope of Catterson & Sons' contract included framing, roof felt installation, Tyvek installation, setting the windows and doors, construction of the decking and stairs, exterior siding and trim and installation of the AAC block and floor panels.

On September 7, 2004, building permits were issued by the Beaufort County Building Department to R Design to begin construction. Construction began, and progress continued, until issues arose with construction between the Plaintiff and R Design. In March 2005, Green called on Kern Coleman, the structural engineer of record, to perform an inspection of the as-built condition of the project, to determine its compliance with the plans and specifications, as well as the overall quality of the building construction. Kern Coleman in its initial report dated April 1, 2005, indicated four (4) defects and/or deficiencies in the construction of the project, including improper span of the garage floor framing, improper substitution of steel beams for load bearing walls, lack of a continuous bond beam, and inadequate lintels over the shearwalls.

Following Kern Coleman's inspection, there continued to be problems onsite between both the owner and the contractor, and between the contractor and the subcontractors, particularly Catterson & Sons. Problems came to a head between Catterson & Sons and R Design in July 2005, specifically involving the application for work progress payments. It is unclear whether Catterson & Sons

quit or was terminated on July 22, 2005.¹ However, it is clear that after July 22nd

Catterson & Sons did not return to the site. R Design did not subsequently retain any other subcontractor to complete the AAC block and framing work on the project. Disputes continued between the owner and R Design/Aten over the owner's concerns about the progress of construction, scheduling on the project, project costs and construction defects. Following a further deterioration of the relationship between owner and contractor, Aten and R Design either quit or were terminated on October 17, 2005.

The following day, Kern Coleman performed a second inspection on the project, and issued a report on November 16, 2005 that identified a total of thirty-eight (38) defects with the construction of the project. These defects included the original four (4) from the first report, which had not yet been addressed, as well as an additional thirty-four (34) which included generally defects with the steel and structural framing, defects with the installation of the AAC block, defects with the installation garage truss system, defects with the balloon framing, defects with the attic and roof installations, and defects with the CMU block construction. The Owner then brought in a new contractor, Anchor Construction, to remedy the existing construction and complete the structures. Anchor, prior to agreeing to undertake the project, conducted its own inspection of the buildings, and identified some sixty (60) defects, some of which were not included in those listed in the Kern Coleman report, that would need to be addressed during

¹Deciding this issue of fact is nondeterminative of any substantive issue for purposes of disposition of the Plaintiff's claims against the defendants.

renovation and construction. Jade Street signed a contract with Anchor on November 22, 2005, for repair and completion of the project on a cost plus basis.

In addition, the owner retained an engineer, Randall Still with H2L Consulting Engineers, to address the structural issues identified by Kern Coleman and to assist with the remediation.

Mr. Still is a licensed professional engineer. Mr. Still was retained on November 28, 2005. He reviewed the reports of Kern Coleman and made several site visits to prepare repair documents for the Contractor, Anchor Construction Co. On March 30, 2006, Mr. Still issued repair documents for the Jade Street Project. Mr. Still centered his repairs on reinforcing the AAC Block, structural steel framing, and LVL lumber. The traditional wood framing and repairs were left to the Contractor Anchor for their means and methods of repairs.

Shortly after Anchor started work on the project, more construction defects were identified. Anchor, with guidance from H2L, repaired and completed the building. The Plaintiffs contend that the repairs were complete at or around Pay Application #18, for a total repair cost of approximately \$979,796.69. Another \$1.2M was spent completing the project, and making some interior design changes to improve the marketability of the project. The cost to complete and design change is not being sought by the Plaintiff as part of its damages in this case. The Plaintiff also introduced engineering expenses in the amount of approximately \$28,000 as well as interest on the repair costs through the time of

trial.

The Defendants contend, alternatively, that the Plaintiff is not entitled to a recovery because the Defendants should have been allowed to complete the project, even though both abandoned the project. The Defendants argue the scope of repair was unnecessary and excessive in cost. The Defendants also characterize the repair work as actual finishing of incomplete work that was left by the original contractor when he was terminated from the project by the owner.

The General Contractor, at the close of the evidence, conceded that there were defects at the Jade Street Project. He contends that the scope of repairs and cost of repairs was not necessary. Further, he claims that his subcontractor, Catterson & Sons Construction, Inc., should indemnify him for these claims.

R Design introduced evidence that the reasonable cost of repairs was One Hundred Sixty Five Thousand Six Hundred Thirteen and NO/100 (\$165,613.00) Dollars. R Design used Patterson Residential Builders to price a cost to repair. Mr. Patterson never saw the project until after it was completely repaired by Anchor Construction for the Plaintiff. Additionally, Mr. Patterson based his estimate on the Kern Coleman report. However, Mr. Patterson had discussions with the superintendent of Anchor Construction and based on those conversations believed that there were more problems at the project than listed in the Kern Coleman report. Instead of pricing all the repairs at the project, he was instructed to give a price based solely on the Kern Coleman report. Clearly, he had no motive to price the project competitively as the work had already been

completed.

Also, Catterson & Sons presented an expert, Al Schweickardt, PE, to testify. Mr. Schweickardt, like Mr. Patterson, had not seen the project prior to the repairs being completed. He did not see the damages to the project and apparently formed most of his opinions during the trial of this matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

This case was heard non-jury upon consent of all parties. The trial lasted three days. Seven (7) witnesses were called by the parties, and hundreds of pages of documents and photographs were marked and entered as exhibits. Based upon consideration of the entirety of the evidence presented, the Court reaches the following findings of fact and conclusions of law in this case:

1. The Plaintiff entered into a valid and binding contract with R Design for the construction of the project, and specifically paid a \$105,096.07 fee to R Design for the supervision of the construction of the project, and \$107,122 of a \$122,838 contract to Catterson & Sons Construction, Inc. for framing and AAC Block work;
2. Based upon the contract between the Plaintiff and R Design, the Plaintiff had the right to rely upon R Design and its subcontractors to construct the project in accordance with the plans and specifications, the applicable building code, manufacturers' specifications and industry standards;

3. Carl Aten was the residential homebuilder license holder for R Design. Because he was not a passive license holder, but was onsite daily and personally involved in construction process, he is individually liable for the negligence of his company.

The Defendant Carl Aten, argued that pursuant to S.C. Code §33-44-303(a) (2005), an LLC is solely responsible for the debts, obligations, or liabilities of that LLC, whether arising in tort, contract, or otherwise, and a member of that LLC is not personally liable for the debts, obligations, or liabilities of that LLC solely by being a member or manager of that LLC. Therefore, the Defendant Carl Aten claims he should not be held individually responsible for any alleged defects in the construction that was performed by the Defendant R Design Construction Co., LLC. However, pursuant to S.C. Code §40-59-400 et seq. (2005), the Defendant Carl Aten was the "resident licensee" for the company, as defined by the statute, not just a mere member. The Defendant Carl Aten was in "responsible charge" of the project, and the statute provides that the license holder in responsible charge "assumes professional responsibility for the building services" that the Defendant R Design Construction Co. provided to the Plaintiff. SC. Code Ann. §40-50-400 (2005). With regards to the causes of action for negligence, breach of implied warranties, and damage to property, I find that the Defendant Aten was more than a mere member manager. He

was the "resident licensee," pursuant to S.C. Code §40-59-400 (2005), and as such, he assumes professional responsibility for the project. Additionally, I find that the term "professional responsibility" is broad enough to include civil liability for negligently providing building services. Therefore, the Defendant Carl Aten is individually liable in this matter as the licensee under the theories of negligence, breach of implied warranty, for damage to the Plaintiff's property;

4. R Design and Catterson & Sons impliedly warranted that their work would be in accordance with the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
5. R Design and Catterson & Sons had a duty to the Plaintiff to build the project in accordance with the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
6. There were defects in the construction of the project prior to the termination and/or resignation of Catterson & Sons and R Design, including:
 - 1) Excessive cuts made in the bond beams throughout the project;
 - 2) Inadequate wall reinforcement in the AAC

block walls throughout the project,

3) Inadequate bearing of the lintels above window

and door penetrations in the AAC block walls

throughout the project;

4) Inadequate mortar beds in the AAC block walls

throughout the project;

5) Improper installation of the garage floor

trusses;

6) Improper installation of the Simpson

foundations straps;

7) Improper cutouts in the AAC block walls

compromising their structural integrity;

8) Improper installation of the structural steel

framing and supports throughout the project;

9) Improper installation of firewalls;

10) Improper nailing and installation of the exterior

siding;

11) Improper mechanical run cuts in the steel

beams throughout the project;

12) Improper deletion and/or substitution of load

bearing components in the project, reducing the

structural integrity and load capacity of the footings
and other load carrying components;

13) Improper construction and reinforcement of the
CMU block walls;

14) Improper installation of the AAC floor panel
system;

15) Improper installation of horizontal beam
headers at the front porches;

16) Improper balloon framing at gable end walls;

17) Improper fastening of LVL beams;

18) Improper lapping of double top plates;

19) Omission of bird mouth cuts in the roof rafters;

20) Improper penetration of the fire-rated floor
system with plastic electrical conduit in violation of the
applicable building code;

21) Improper omission of collar ties in the roof
framing;

22) Improper use of OSB sheathing as filler
material for oversized window openings;

23) Improper omission of horizontal bridging or x-

bracing at the floor trusses;

24) Improper spacing of anchor bolts at the top of AAC walls;

25) Improper seating of floor trusses on bearing walls at the support ends of the trusses;

26) Improper substitution of LVL beams for steel support beams in violation of the plans and specifications;

27) Excessive cutting of LVL beams;

28) Improper omission of hurricane clips;

29) Improper omission of shear walls;

30) Improper omission of anchor bolts;

31) Improper support of the ceiling system to meet seismic load requirements per the applicable building code;

7. The aforementioned defects were directly due to the negligence of Catterson & Sons, in failing to conform its work to the plans and specifications, applicable building codes, the Aerocon manufacturers' specifications, industry standards and good construction practices. Additionally, there was damage to the Jade Street project that occurred after the contractor left the project. The

failure to follow the plans and engineering requirements caused the framing to begin to fail. Specifically, the LVL beams that had to be replaced had already started to fail and caused the floor to sag. The negligent construction compromised the structural integrity of the building framing system, resulting in deflection of various components of the building. Additionally, water intrusion and exposure to the elements resulted in deterioration of the sheathing and framing;

8. These defects were also directly due to the negligence of the general contractor, R Design and Mr. Aten, individually, in failing to supervise the work performed by its subcontractors and failing to conform its work and the work of its subcontractors to the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
9. R Design and Catterson & Sons breached their respective duties to the Plaintiff;
10. As active license holder, Mr. Aten is individually responsible for the negligence of his company, R Design; Aten oversaw the daily construction and he interacted with the building officials;
11. R Design breached its contract with the Plaintiff by failing to adequately supervise the work performed by its subcontractors and ensure its conformance with the plans and specifications,

applicable building codes, manufacturers' specifications, industry standards and good construction practices;

12. Catterson & Sons breached its contract with R Design by failing to conform its work to the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;

13. As a result of the negligence of Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. and R Design's breach of its contract with the Plaintiff, the Plaintiff was required to expend significant monies to repair the project;

14. The scope, means and methods of repair undertaken on the project at the direction of H2L and Anchor Construction were reasonable;

15. Based upon the evidence presented, the reasonable amount attributable to the repair of the project is \$911,296.00; and,

16. Based upon the evidence presented, the Plaintiff is also entitled to reasonable engineering costs and contract administration fees, in the amount of \$14,260.00 for repairs. All other engineering fees were for litigation expense, and I conclude that is not recoverable.

CONCLUSION

For the reasons set forth above, the Court finds:

1) In favor of the Plaintiff against R Design Construction Co., LLC in

its claims for breach of contract, negligence and breach of implied warranties;

- 2) In favor of the Plaintiff against Catterson & Sons, Inc. for negligence and breach of implied warranty of workmanlike services;
- 3) In favor of the Plaintiff against Carl Aten individually, as license holder for R Design Construction for negligence;
- 4) In favor of Michael Catterson, individually, on the claims asserted by Plaintiff;
- 5) in favor of Catterson and Sons, Inc., and Michael Catterson individually on the claims asserted by R Design for equitable indemnity on the basis of the unclean hands doctrine;
- 6) In favor of R Design on its cross-claims against Catterson & Sons, Inc., for breach of contract.

Based on the foregoing, the Court awards \$911,296.00 in repair costs to the Plaintiff to be assessed jointly and severally amongst Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. In addition, the Court awards the Plaintiff \$14,260.00 in engineering costs and contract administration fees, also to be assessed jointly and severally against Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. Further, the Court awards R Design \$925,556.00 on its cross-claim against Catterson & Sons, Inc.

Therefore, judgment is entered for the Plaintiff in the amount of Nine
Hundred Twenty Five Thousand Five Hundred Fifty Six and NO/100 (\$
925,556.00) Dollars jointly and severally against defendants R Design, Carl Aten,
individually, and Catterson & Sons, Inc.; and

For R Design on its cross-claims against Catterson & Sons, Inc. in the
amount of Nine Hundred Twenty Five Thousand Five Hundred Fifty Six and
NO/100 (\$925,556.00) Dollars.

AND IT IS SO ORDERED.


Carmen T. Mullen,
Presiding Judge Fourteenth Circuit

Beaufort, South Carolina

October 14, 2009



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 1, 2009

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Re: 16 Jade Street v. Aten, Carl
Case Tracking Number 2009146786

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

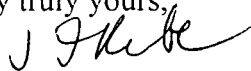
PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

7
notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,



CLERK

JFB/lm

cc: Karl Twenge, Esquire
Michael D. Freeman, Esquire
Thomas Justin Finn, Esquire



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 1, 2009

Mary Bass Lohr, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Re: 16 Jade Street v. Aten, Carl
Case Tracking Number 2009146786

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. Barber", is written over the typed name.

CLERK

JFB/lm

cc: Karl Twenge, Esquire
Michael D. Freeman, Esquire
Thomas Justin Finn, Esquire

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED

NOV 25 2009

SC Court of Appeals

POS 11/23/09
PM 11/23/09

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC....., Respondent,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom,

Carl R. Aten, Jr....., Appellant.

NOTICE OF INTENT TO APPEAL

Carl R. Aten, Jr. appeals the Order of the Honorable Carmen T. Mullen, dated October 14, 2009. Appellant received notice of the entry of the Order of October 14, 2009 on November 6, 2009.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Appellant Carl R. Aten, Jr.

Beaufort, South Carolina

November 19, 2009

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

RECEIVED

NOV 25 2009

SC Court of Appeals

APPEALL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Civil Action No.: 06-CP-07-866

16 Jade Street, LLC....., Respondent,

vs.

R. Design Construction Co., LLC and Carl R. Aten, Jr., Individually and in his capacity as principal and agent of R. Design Construction Co., LLC; Catterson & Sons Construction and Michael S. Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom,

Carl R. Aten, Jr....., Appellant.

CERTIFICATE OF MAILING

The undersigned counsel hereby certifies that she has served foregoing Notice of Intent to Appeal upon all counsel of record by affixing the same with proper postage and placing the same with the United States Postal Service on the 23 day of November, 2009 addressed to the following:

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

November 19, 2009

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
NOV 25 2009
SC Court of Appeals

Re: 16 Jade Street LLC vs. R. Design Construction Co., LLC and Carl R.
Aten, Jr.; Catterson & Sons Construction and Michael S. Catterson
Civil Action No.: 06-CP-07-866

Dear Hon. Barber:

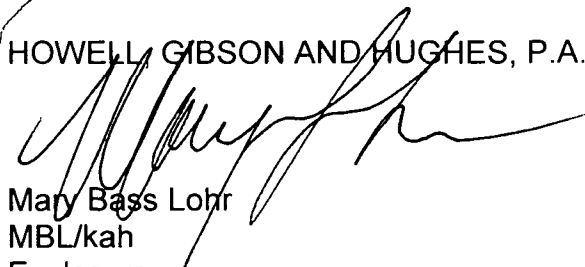
Enclosed herein for filing please find with regard to the above referenced action, a Notice of Intent to Appeal, Certificate of Mailing, and this firm's check in the amount of \$100.00 for the filing fee. I would appreciate you providing me with a filed-clocked copy of the Notice of Intent to Appeal in the self-addressed stamped envelope enclosed herewith.

By copy of this letter, I hereby serve all counsel of record and the Beaufort County Clerk of Court with copies of the same.

With kindest regards, I am

Yours truly,

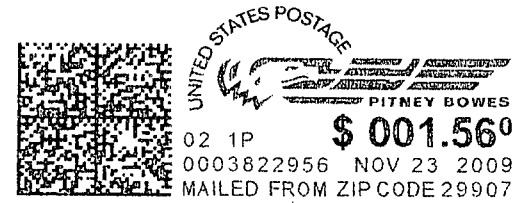
HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/kah
Enclosure

cc: Mrs. Jerri Roseneau
Michael D. Freeman, Esquire
Karl D. Twenge, Esquire
Thomas J. Finn, Esquire



UNITED WE STAND



HOWELL, GIBSON & HUGHES, P.A.
POST OFFICE BOX 40
BEAUFORT, SOUTH CAROLINA 29901

Hon. Jeanette F. Barber
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs.

R DESIGN CONSTRUCTION CO.,
LLC, and CARL R. ATEN, JR.,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO., LLC;
CATTERSON & SONS
CONSTRUCTION and MICHAEL S.
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants.

R DESIGN CONSTRUCTION CO.,
LLC, and CARL R. ATEN, JR.,

Third Party Plaintiffs

vs.

KINTZ ELECTRIC,

Third Party Defendant.

FINAL ORDER AND
JUDGMENT

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT S.C.

2008 OCT 14 PM 3:18

PROCEDURAL FACTS

This case came before me for a trial on the merits on October 13-16, 2008. It is a construction defect action. Plaintiff, 16 Jade Street, LLC ("Jade

Street"), brought this action against R Design Construction Co., LLC ("R Design"); Carl K. Aten, Jr. ("Aten"), individually and in his capacity as principal and agent of R Design, Catterson & Sons Construction, Inc. ("Catterson & Sons"); and Michael S. Catterson, individually and as principal and agent for Catterson & Sons, Defendant. This case arises out of the construction of a multi-family dwelling located in the Celadon development on Lady's Island, in Beaufort, South Carolina. The Complaint alleges claims for negligence and breach of implied warranties against R Design, Aten, Catterson & Sons, and Michael Catterson, as well as a claim for breach of contract against R Design and Aten. Cross-claims were instituted between R Design and the Catterson Defendants for equitable indemnity and breach of contract. Prior to trial, the court dismissed the Plaintiff's breach of contract claim asserted against Aten.

I find in favor of the Plaintiff against Defendants R Design, Aten, and Catterson & Sons, and in favor of R Design against Catterson & Sons.

FACTUAL BACKGROUND

Jade Street, through its managing partner, Dennis Green ("Green"), purchased several tracts of land on Lady's Island with the intent of developing a planned community called Celadon. The lot upon which the subject property was built was a part of this larger tract, and allowed for the construction of multi-family dwellings. Four (4) builders were approved to build within the Celadon development. One of these was R Design, owned and operated by the Defendant, Aten. Aten approached Green and requested to build the

condominium project for speculative purposes. When Aten was unable to obtain financing, 16 Jade Street, LLC was formed specifically for the purpose of developing the land, and constructing the project, and marketing the property for sale thereon.

On July 27, 2004, a contract was executed between the Plaintiff and R Design for the construction of the project, whereby the Plaintiff was to pay R Design \$150,000.00 for supervision of construction of a multi-family dwelling. The contract provided that the construction was to be "completed in conformity with the plans and specifications attached" to the contract (Exhibit #1). Additionally, the "Contract Responsibilities" were to "supervise and direct all construction work using its best skill and attention, and was solely responsible for all construction means, methods, techniques, consequences and procedures, and for coordinating all portions of the work required under this Contract." (Exhibit #1) Construction was to be based upon plans prepared by the Architect R. Stewart, and the engineer of record was Kern Coleman of Savannah. The Jade Street project was to be constructed of light gauge metal steel framing and aerated autoclave concrete block ("AAC Block"). AAC block is a specialty building product which is essentially a preformed concrete block with an internal channel cavity. These blocks, when stacked correctly, provide a continuous channel into which supporting rebar and grouting mortar is placed to give the wall structural support.

As the AAC block is a specialty building product, some concern was expressed by the Plaintiff that the subcontractor responsible for the installation of

the AAC block have some experience with the product and its application. Based on this concern, R Design contracted with Catterson & Sons on August 6, 2004, which had represented to Carl Aten that it had experience with the AAC product and its application on previous projects. The scope of Catterson & Sons' contract included framing, roof felt installation, Tyvek installation, setting the windows and doors, construction of the decking and stairs, exterior siding and trim and installation of the AAC block and floor panels.

On September 7, 2004, building permits were issued by the Beaufort County Building Department to R Design to begin construction. Construction began, and progress continued, until issues arose with construction between the Plaintiff and R Design. In March 2005, Green called on Kern Coleman, the structural engineer of record, to perform an inspection of the as-built condition of the project, to determine its compliance with the plans and specifications, as well as the overall quality of the building construction. Kern Coleman in its initial report dated April 1, 2005, indicated four (4) defects and/or deficiencies in the construction of the project, including improper span of the garage floor framing, improper substitution of steel beams for load bearing walls, lack of a continuous bond beam, and inadequate lintels over the shearwalls.

Following Kern Coleman's inspection, there continued to be problems onsite between both the owner and the contractor, and between the contractor and the subcontractors, particularly Catterson & Sons. Problems came to a head between Catterson & Sons and R Design in July 2005, specifically involving the application for work progress payments. It is unclear whether Catterson & Sons

quit or was terminated on July 22, 2005.¹ However, it is clear that after July 22nd Catterson & Sons did not return to the site. R Design did not subsequently retain any other subcontractor to complete the AAC block and framing work on the project. Disputes continued between the owner and R Design/Aten over the owner's concerns about the progress of construction, scheduling on the project, project costs and construction defects. Following a further deterioration of the relationship between owner and contractor, Aten and R Design either quit or were terminated on October 17, 2005.

The following day, Kern Coleman performed a second inspection on the project, and issued a report on November 16, 2005 that identified a total of thirty-eight (38) defects with the construction of the project. These defects included the original four (4) from the first report, which had not yet been addressed, as well as an additional thirty-four (34) which included generally defects with the steel and structural framing, defects with the installation of the AAC block, defects with the installation garage truss system, defects with the balloon framing, defects with the attic and roof installations, and defects with the CMU block construction. The Owner then brought in a new contractor, Anchor Construction, to remedy the existing construction and complete the structures. Anchor, prior to agreeing to undertake the project, conducted its own inspection of the buildings, and identified some sixty (60) defects, some of which were not included in those listed in the Kern Coleman report, that would need to be addressed during

¹Deciding this issue of fact is nondeterminative of any substantive issue for purposes of disposition of the Plaintiff's claims against the defendants.

renovation and construction. Jade Street signed a contract with Anchor on November 22, 2005, for repair and completion of the project on a cost plus basis. In addition, the owner retained an engineer, Randall Still with H2L Consulting Engineers, to address the structural issues identified by Kern Coleman and to assist with the remediation.

Mr. Still is a licensed professional engineer. Mr. Still was retained on November 28, 2005. He reviewed the reports of Kern Coleman and made several site visits to prepare repair documents for the Contractor, Anchor Construction Co. On March 30, 2006, Mr. Still issued repair documents for the Jade Street Project. Mr. Still centered his repairs on reinforcing the AAC Block, structural steel framing, and LVL lumber. The traditional wood framing and repairs were left to the Contractor Anchor for their means and methods of repairs.

Shortly after Anchor started work on the project, more construction defects were identified. Anchor, with guidance from H2L, repaired and completed the building. The Plaintiffs contend that the repairs were complete at or around Pay Application #18, for a total repair cost of approximately \$979,796.69. Another \$1.2M was spent completing the project, and making some interior design changes to improve the marketability of the project. The cost to complete and design change is not being sought by the Plaintiff as part of its damages in this case. The Plaintiff also introduced engineering expenses in the amount of approximately \$28,000 as well as interest on the repair costs through the time of

trial.

The Defendants contend, alternatively, that the Plaintiff is not entitled to a recovery because the Defendants should have been allowed to complete the project, even though both abandoned the project. The Defendants argue the scope of repair was unnecessary and excessive in cost. The Defendants also characterize the repair work as actual finishing of incomplete work that was left by the original contractor when he was terminated from the project by the owner. The General Contractor, at the close of the evidence, conceded that there were defects at the Jade Street Project. He contends that the scope of repairs and cost of repairs was not necessary. Further, he claims that his subcontractor, Catterson & Sons Construction, Inc., should indemnify him for these claims.

R Design introduced evidence that the reasonable cost of repairs was One Hundred Sixty Five Thousand Six Hundred Thirteen and NO/100 (\$165,613.00) Dollars. R Design used Patterson Residential Builders to price a cost to repair. Mr. Patterson never saw the project until after it was completely repaired by Anchor Construction for the Plaintiff. Additionally, Mr. Patterson based his estimate on the Kern Coleman report. However, Mr. Patterson had discussions with the superintendent of Anchor Construction and based on those conversations believed that there were more problems at the project than listed in the Kern Coleman report. Instead of pricing all the repairs at the project, he was instructed to give a price based solely on the Kern Coleman report. Clearly, he had no motive to price the project competitively as the work had already been

completed.

Also, Catterson & Sons presented an expert, Al Schweickardt, PE, to testify. Mr. Schweickardt, like Mr. Patterson, had not seen the project prior to the repairs being completed. He did not see the damages to the project and apparently formed most of his opinions during the trial of this matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

This case was heard non-jury upon consent of all parties. The trial lasted three days. Seven (7) witnesses were called by the parties, and hundreds of pages of documents and photographs were marked and entered as exhibits. Based upon consideration of the entirety of the evidence presented, the Court reaches the following findings of fact and conclusions of law in this case:

1. The Plaintiff entered into a valid and binding contract with R Design for the construction of the project, and specifically paid a \$105,096.07 fee to R Design for the supervision of the construction of the project, and \$107,122 of a \$122,838 contract to Catterson & Sons Construction, Inc. for framing and AAC Block work;
2. Based upon the contract between the Plaintiff and R Design, the Plaintiff had the right to rely upon R Design and its subcontractors to construct the project in accordance with the plans and specifications, the applicable building code, manufacturers' specifications and industry standards;

3. Carl Aten was the residential homebuilder license holder for R Design. Because he was not a passive license holder, but was onsite daily and personally involved in construction process, he is individually liable for the negligence of his company.

The Defendant Carl Aten, argued that pursuant to S.C. Code §33-44-303(a) (2005), an LLC is solely responsible for the debts, obligations, or liabilities of that LLC, whether arising in tort, contract, or otherwise, and a member of that LLC is not personally liable for the debts, obligations, or liabilities of that LLC solely by being a member or manager of that LLC. Therefore, the Defendant Carl Aten claims he should not be held individually responsible for any alleged defects in the construction that was performed by the Defendant R Design Construction Co., LLC. However, pursuant to S.C. Code §40-59-400 et seq. (2005), the Defendant Carl Aten was the "resident licensee" for the company, as defined by the statute, not just a mere member. The Defendant Carl Aten was in "responsible charge" of the project, and the statute provides that the license holder in responsible charge "assumes professional responsibility for the building services" that the Defendant R Design Construction Co. provided to the Plaintiff. SC. Code Ann. §40-50-400 (2005). With regards to the causes of action for negligence, breach of implied warranties, and damage to property, I find that the Defendant Aten was more than a mere member manager. He

was the "resident licensee," pursuant to S.C. Code §40-59-400 (2005), and as such, he assumes professional responsibility for the project. Additionally, I find that the term "professional responsibility" is broad enough to include civil liability for negligently providing building services. Therefore, the Defendant Carl Aten is individually liable in this matter as the licensee under the theories of negligence, breach of implied warranty, for damage to the Plaintiff's property;

4. R Design and Catterson & Sons impliedly warranted that their work would be in accordance with the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
5. R Design and Catterson & Sons had a duty to the Plaintiff to build the project in accordance with the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
6. There were defects in the construction of the project prior to the termination and/or resignation of Catterson & Sons and R Design, including:
 - 1) Excessive cuts made in the bond beams throughout the project;
 - 2) Inadequate wall reinforcement in the AAC

block walls throughout the project;

3) Inadequate bearing of the lintels above window and door penetrations in the AAC block walls throughout the project;

4) Inadequate mortar beds in the AAC block walls throughout the project;

5) Improper installation of the garage floor trusses;

6) Improper installation of the Simpson foundations straps;

7) Improper cutouts in the AAC block walls compromising their structural integrity;

8) Improper installation of the structural steel framing and supports throughout the project;

9) Improper installation of firewalls;

10) Improper nailing and installation of the exterior siding;

11) Improper mechanical run cuts in the steel beams throughout the project;

12) Improper deletion and/or substitution of load bearing components in the project, reducing the

structural integrity and load capacity of the footings and other load carrying components;

13) Improper construction and reinforcement of the CMU block walls;

14) Improper installation of the AAC floor panel system;

15) Improper installation of horizontal beam headers at the front porches;

16) Improper balloon framing at gable end walls;

17) Improper fastening of LVL beams;

18) Improper lapping of double top plates;

19) Omission of bird mouth cuts in the roof rafters;

20) Improper penetration of the fire-rated floor system with plastic electrical conduit in violation of the applicable building code;

21) Improper omission of collar ties in the roof framing;

22) Improper use of OSB sheathing as filler material for oversized window openings;

23) Improper omission of horizontal bridging or x-

bracing at the floor trusses;

24) Improper spacing of anchor bolts at the top of AAC walls;

25) Improper seating of floor trusses on bearing walls at the support ends of the trusses;

26) Improper substitution of LVL beams for steel support beams in violation of the plans and specifications;

27) Excessive cutting of LVL beams;

28) Improper omission of hurricane clips;

29) Improper omission of shear walls;

30) Improper omission of anchor bolts;

31) Improper support of the ceiling system to meet seismic load requirements per the applicable building code;

7. The aforementioned defects were directly due to the negligence of Catterson & Sons, in failing to conform its work to the plans and specifications, applicable building codes, the Aerocon manufacturers' specifications, industry standards and good construction practices. Additionally, there was damage to the Jade Street project that occurred after the contractor left the project. The

failure to follow the plans and engineering requirements caused the framing to begin to fail. Specifically, the LVL beams that had to be replaced had already started to fail and caused the floor to sag. The negligent construction compromised the structural integrity of the building framing system, resulting in deflection of various components of the building. Additionally, water intrusion and exposure to the elements resulted in deterioration of the sheathing and framing;

8. These defects were also directly due to the negligence of the general contractor, R Design and Mr. Aten, individually, in failing to supervise the work performed by its subcontractors and failing to conform its work and the work of its subcontractors to the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
9. R Design and Catterson & Sons breached their respective duties to the Plaintiff;
10. As active license holder, Mr. Aten is individually responsible for the negligence of his company, R Design; Aten oversaw the daily construction and he interacted with the building officials;
11. R Design breached its contract with the Plaintiff by failing to adequately supervise the work performed by its subcontractors and ensure its conformance with the plans and specifications,

applicable building codes, manufacturers' specifications, industry standards and good construction practices;

12. Catterson & Sons breached its contract with R Design by failing to conform its work to the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
13. As a result of the negligence of Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. and R Design's breach of its contract with the Plaintiff, the Plaintiff was required to expend significant monies to repair the project;
14. The scope, means and methods of repair undertaken on the project at the direction of H2L and Anchor Construction were reasonable;
15. Based upon the evidence presented, the reasonable amount attributable to the repair of the project is \$911,296.00; and,
16. Based upon the evidence presented, the Plaintiff is also entitled to reasonable engineering costs and contract administration fees, in the amount of \$14,260.00 for repairs. All other engineering fees were for litigation expense, and I conclude that is not recoverable.

CONCLUSION

For the reasons set forth above, the Court finds:

- 1) In favor of the Plaintiff against R Design Construction Co., LLC in

its claims for breach of contract, negligence and breach of implied warranties;

- 2) In favor of the Plaintiff against Catterson & Sons, Inc. for negligence and breach of implied warranty of workmanlike services;
- 3) In favor of the Plaintiff against Carl Aten individually, as license holder for R Design Construction for negligence;
- 4) In favor of Michael Catterson, individually, on the claims asserted by Plaintiff;
- 5) in favor of Catterson and Sons, Inc., and Michael Catterson individually on the claims asserted by R Design for equitable indemnity on the basis of the unclean hands doctrine;
- 6) In favor of R Design on its cross-claims against Catterson & Sons, Inc., for breach of contract.

Based on the foregoing, the Court awards \$911,296.00 in repair costs to the Plaintiff to be assessed jointly and severally amongst Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. In addition, the Court awards the Plaintiff \$14,260.00 in engineering costs and contract administration fees, also to be assessed jointly and severally against Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. Further, the Court awards R Design \$925,556.00 on its cross-claim against Catterson & Sons, Inc.

Therefore, judgment is entered for the Plaintiff in the amount of Nine Hundred Twenty Five Thousand Five Hundred Fifty Six and NO/100 (\$ 925,556.00) Dollars jointly and severally against defendants R Design, Carl Aten, individually, and Catterson & Sons, Inc.; and

For R Design on its cross-claims against Catterson & Sons, Inc. in the amount of Nine Hundred Twenty Five Thousand Five Hundred Fifty Six and NO/100 (\$925,556.00) Dollars.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read 'C. Mullen', written over a horizontal line.

Carmen T. Mullen,
Presiding Judge Fourteenth Circuit

Beaufort, South Carolina

October 14, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CIVIL ACTION NO: 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs.

**FINAL ORDER AND
JUDGMENT**

R DESIGN CONSTRUCTION CO.,
LLC, and CARL R. ATEN, JR.,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO., LLC;
CATTERSON & SONS
CONSTRUCTION and MICHAEL S.
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants.

R DESIGN CONSTRUCTION CO.,
LLC, and CARL R. ATEN, JR.,

Third Party Plaintiffs

vs.

KINTZ ELECTRIC,

Third Party Defendant.

2008 OCT 14 PM 3:18
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

PROCEDURAL FACTS

This case came before me for a trial on the merits on October 13-16, 2008. It is a construction defect action. Plaintiff, 16 Jade Street, LLC ("Jade

Street"), brought this action against R Design Construction Co. LLC ("R Design"); Carl K. Aten, Jr. ("Aten"), individually and in his capacity as principal and agent of R Design, Catterson & Sons Construction, Inc. ("Catterson & Sons"); and Michael S. Catterson, individually and as principal and agent for Catterson & Sons, Defendant. This case arises out of the construction of a multi-family dwelling located in the Celadon development on Lady's Island, in Beaufort, South Carolina. The Complaint alleges claims for negligence and breach of implied warranties against R Design, Aten, Catterson & Sons, and Michael Catterson, as well as a claim for breach of contract against R Design and Aten. Cross-claims were instituted between R Design and the Catterson Defendants for equitable indemnity and breach of contract. Prior to trial, the court dismissed the Plaintiff's breach of contract claim asserted against Aten.

I find in favor of the Plaintiff against Defendants R Design, Aten, and Catterson & Sons, and in favor of R Design against Catterson & Sons.

FACTUAL BACKGROUND

Jade Street, through its managing partner, Dennis Green ("Green"), purchased several tracts of land on Lady's Island with the intent of developing a planned community called Celadon. The lot upon which the subject property was built was a part of this larger tract, and allowed for the construction of multi-family dwellings. Four (4) builders were approved to build within the Celadon development. One of these was R Design, owned and operated by the Defendant, Aten. Aten approached Green and requested to build the

condominium project for speculative purposes. When Aten was unable to obtain financing, 16 Jade Street, LLC was formed specifically for the purpose of developing the land, and constructing the project, and marketing the property for sale thereon.

On July 27, 2004, a contract was executed between the Plaintiff and R Design for the construction of the project, whereby the Plaintiff was to pay R Design \$150,000.00 for supervision of construction of a multi-family dwelling. The contract provided that the construction was to be "completed in conformity with the plans and specifications attached" to the contract (Exhibit #1). Additionally, the "Contract Responsibilities" were to "supervise and direct all construction work using its best skill and attention, and was solely responsible for all construction means, methods, techniques, consequences and procedures, and for coordinating all portions of the work required under this Contract." (Exhibit #1) Construction was to be based upon plans prepared by the Architect R. Stewart, and the engineer of record was Kern Coleman of Savannah. The Jade Street project was to be constructed of light gauge metal steel framing and aerated autoclave concrete block ("AAC Block"). AAC block is a specialty building product which is essentially a preformed concrete block with an internal channel cavity. These blocks, when stacked correctly, provide a continuous channel into which supporting rebar and grouting mortar is placed to give the wall structural support.

As the AAC block is a specialty building product, some concern was expressed by the Plaintiff that the subcontractor responsible for the installation of

the AAC block have some experience with the product and its application. Based on this concern, R Design contracted with Catterson & Sons on August 6, 2004, which had represented to Carl Aten that it had experience with the AAC product and its application on previous projects. The scope of Catterson & Sons' contract included framing, roof felt installation, Tyvek installation, setting the windows and doors, construction of the decking and stairs, exterior siding and trim and installation of the AAC block and floor panels.

On September 7, 2004, building permits were issued by the Beaufort County Building Department to R Design to begin construction. Construction began, and progress continued, until issues arose with construction between the Plaintiff and R Design. In March 2005, Green called on Kern Coleman, the structural engineer of record, to perform an inspection of the as-built condition of the project, to determine its compliance with the plans and specifications, as well as the overall quality of the building construction. Kern Coleman in its initial report dated April 1, 2005, indicated four (4) defects and/or deficiencies in the construction of the project, including improper span of the garage floor framing, improper substitution of steel beams for load bearing walls, lack of a continuous bond beam, and inadequate lintels over the shearwalls.

Following Kern Coleman's inspection, there continued to be problems onsite between both the owner and the contractor, and between the contractor and the subcontractors, particularly Catterson & Sons. Problems came to a head between Catterson & Sons and R Design in July 2005, specifically involving the application for work progress payments. It is unclear whether Catterson & Sons

quit or was terminated on July 22, 2005.¹ However, it is clear that after July 22nd

Catterson & Sons did not return to the site. R Design did not subsequently retain any other subcontractor to complete the AAC block and framing work on the project. Disputes continued between the owner and R Design/Aten over the owner's concerns about the progress of construction, scheduling on the project, project costs and construction defects. Following a further deterioration of the relationship between owner and contractor, Aten and R Design either quit or were terminated on October 17, 2005.

The following day, Kern Coleman performed a second inspection on the project, and issued a report on November 16, 2005 that identified a total of thirty-eight (38) defects with the construction of the project. These defects included the original four (4) from the first report, which had not yet been addressed, as well as an additional thirty-four (34) which included generally defects with the steel and structural framing, defects with the installation of the AAC block, defects with the installation garage truss system, defects with the balloon framing, defects with the attic and roof installations, and defects with the CMU block construction. The Owner then brought in a new contractor, Anchor Construction, to remedy the existing construction and complete the structures. Anchor, prior to agreeing to undertake the project, conducted its own inspection of the buildings, and identified some sixty (60) defects, some of which were not included in those listed in the Kern Coleman report, that would need to be addressed during

¹Deciding this issue of fact is nondeterminative of any substantive issue for purposes of disposition of the Plaintiff's claims against the defendants.

renovation and construction. Jade Street signed a contract with Anchor on November 22, 2005, for repair and completion of the project on a cost plus basis.

In addition, the owner retained an engineer, Randall Still with H2L Consulting Engineers, to address the structural issues identified by Kern Coleman and to assist with the remediation.

Mr. Still is a licensed professional engineer. Mr. Still was retained on November 28, 2005. He reviewed the reports of Kern Coleman and made several site visits to prepare repair documents for the Contractor, Anchor Construction Co. On March 30, 2006, Mr. Still issued repair documents for the Jade Street Project. Mr. Still centered his repairs on reinforcing the AAC Block, structural steel framing, and LVL lumber. The traditional wood framing and repairs were left to the Contractor Anchor for their means and methods of repairs.

Shortly after Anchor started work on the project, more construction defects were identified. Anchor, with guidance from H2L, repaired and completed the building. The Plaintiffs contend that the repairs were complete at or around Pay Application #18, for a total repair cost of approximately \$979,796.69. Another \$1.2M was spent completing the project, and making some interior design changes to improve the marketability of the project. The cost to complete and design change is not being sought by the Plaintiff as part of its damages in this case. The Plaintiff also introduced engineering expenses in the amount of approximately \$28,000 as well as interest on the repair costs through the time of

trial.

The Defendants contend, alternatively, that the Plaintiff is not entitled to a recovery because the Defendants should have been allowed to complete the project, even though both abandoned the project. The Defendants argue the scope of repair was unnecessary and excessive in cost. The Defendants also characterize the repair work as actual finishing of incomplete work that was left by the original contractor when he was terminated from the project by the owner.

The General Contractor, at the close of the evidence, conceded that there were defects at the Jade Street Project. He contends that the scope of repairs and cost of repairs was not necessary. Further, he claims that his subcontractor, Catterson & Sons Construction, Inc., should indemnify him for these claims.

R Design introduced evidence that the reasonable cost of repairs was One Hundred Sixty Five Thousand Six Hundred Thirteen and NO/100 (\$165,613.00) Dollars. R Design used Patterson Residential Builders to price a cost to repair. Mr. Patterson never saw the project until after it was completely repaired by Anchor Construction for the Plaintiff. Additionally, Mr. Patterson based his estimate on the Kern Coleman report. However, Mr. Patterson had discussions with the superintendent of Anchor Construction and based on those conversations believed that there were more problems at the project than listed in the Kern Coleman report. Instead of pricing all the repairs at the project, he was instructed to give a price based solely on the Kern Coleman report. Clearly, he had no motive to price the project competitively as the work had already been

completed.

Also, Catterson & Sons presented an expert, Al Schweickardt, PE, to testify. Mr. Schweickardt, like Mr. Patterson, had not seen the project prior to the repairs being completed. He did not see the damages to the project and apparently formed most of his opinions during the trial of this matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

This case was heard non-jury upon consent of all parties. The trial lasted three days. Seven (7) witnesses were called by the parties, and hundreds of pages of documents and photographs were marked and entered as exhibits. Based upon consideration of the entirety of the evidence presented, the Court reaches the following findings of fact and conclusions of law in this case:

1. The Plaintiff entered into a valid and binding contract with R Design for the construction of the project, and specifically paid a \$105,096.07 fee to R Design for the supervision of the construction of the project, and \$107,122 of a \$122,838 contract to Catterson & Sons Construction, Inc. for framing and AAC Block work;
2. Based upon the contract between the Plaintiff and R Design, the Plaintiff had the right to rely upon R Design and its subcontractors to construct the project in accordance with the plans and specifications, the applicable building code, manufacturers' specifications and industry standards;

3. Carl Aten was the residential homebuilder license holder for R Design. Because he was not a passive license holder, but was onsite daily and personally involved in construction process, he is individually liable for the negligence of his company.

The Defendant Carl Aten, argued that pursuant to S.C. Code §33-44-303(a) (2005), an LLC is solely responsible for the debts, obligations, or liabilities of that LLC, whether arising in tort, contract, or otherwise, and a member of that LLC is not personally liable for the debts, obligations, or liabilities of that LLC solely by being a member or manager of that LLC. Therefore, the Defendant Carl Aten claims he should not be held individually responsible for any alleged defects in the construction that was performed by the Defendant R Design Construction Co., LLC. However, pursuant to S.C. Code §40-59-400 et seq. (2005), the Defendant Carl Aten was the "resident licensee" for the company, as defined by the statute, not just a mere member. The Defendant Carl Aten was in "responsible charge" of the project, and the statute provides that the license holder in responsible charge "assumes professional responsibility for the building services" that the Defendant R Design Construction Co. provided to the Plaintiff. SC. Code Ann. §40-50-400 (2005). With regards to the causes of action for negligence, breach of implied warranties, and damage to property, I find that the Defendant Aten was more than a mere member manager. He

was the "resident licensee" pursuant to S.C. Code §40-59-400

(2005), and as such, he assumes professional responsibility for the project. Additionally, I find that the term "professional responsibility" is broad enough to include civil liability for negligently providing building services. Therefore, the Defendant Carl Aten is individually liable in this matter as the licensee under the theories of negligence, breach of implied warranty, for damage to the Plaintiff's property;

4. R Design and Catterson & Sons impliedly warranted that their work would be in accordance with the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
5. R Design and Catterson & Sons had a duty to the Plaintiff to build the project in accordance with the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
6. There were defects in the construction of the project prior to the termination and/or resignation of Catterson & Sons and R Design, including:
 - 1) Excessive cuts made in the bond beams throughout the project;
 - 2) Inadequate wall reinforcement in the AAC

block walls throughout the project;

3) Inadequate bearing of the lintels above window and door penetrations in the AAC block walls throughout the project;

4) Inadequate mortar beds in the AAC block walls throughout the project;

5) Improper installation of the garage floor trusses;

6) Improper installation of the Simpson foundations straps;

7) Improper cutouts in the AAC block walls compromising their structural integrity;

8) Improper installation of the structural steel framing and supports throughout the project;

9) Improper installation of firewalls;

10) Improper nailing and installation of the exterior siding;

11) Improper mechanical run cuts in the steel beams throughout the project;

12) Improper deletion and/or substitution of load bearing components in the project, reducing the

structural integrity and load capacity of the footings
and other load carrying components;

13) Improper construction and reinforcement of the
CMU block walls;

14) Improper installation of the AAC floor panel
system;

15) Improper installation of horizontal beam
headers at the front porches;

16) Improper balloon framing at gable end walls;

17) Improper fastening of LVL beams;

18) Improper lapping of double top plates;

19) Omission of bird mouth cuts in the roof rafters;

20) Improper penetration of the fire-rated floor
system with plastic electrical conduit in violation of the
applicable building code;

21) Improper omission of collar ties in the roof
framing;

22) Improper use of OSB sheathing as filler
material for oversized window openings;

23) Improper omission of horizontal bridging or x-

bracing at the floor trusses;

24) Improper spacing of anchor bolts at the top of AAC walls;

25) Improper seating of floor trusses on bearing walls at the support ends of the trusses;

26) Improper substitution of LVL beams for steel support beams in violation of the plans and specifications;

27) Excessive cutting of LVL beams;

28) Improper omission of hurricane clips;

29) Improper omission of shear walls;

30) Improper omission of anchor bolts;

31) Improper support of the ceiling system to meet seismic load requirements per the applicable building code;

7. The aforementioned defects were directly due to the negligence of Catterson & Sons, in failing to conform its work to the plans and specifications, applicable building codes, the Aerocon manufacturers' specifications, industry standards and good construction practices. Additionally, there was damage to the Jade Street project that occurred after the contractor left the project. The

failure to follow the plans and engineering requirements caused the

framing to begin to fail. Specifically, the LVL beams that had to be

replaced had already started to fail and caused the floor to sag.

The negligent construction compromised the structural integrity of

the building framing system, resulting in deflection of various

components of the building. Additionally, water intrusion and

exposure to the elements resulted in deterioration of the sheathing

and framing;

8. These defects were also directly due to the negligence of the general contractor, R Design and Mr. Aten, individually, in failing to supervise the work performed by its subcontractors and failing to conform its work and the work of its subcontractors to the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;
9. R Design and Catterson & Sons breached their respective duties to the Plaintiff;
10. As active license holder, Mr. Aten is individually responsible for the negligence of his company, R Design; Aten oversaw the daily construction and he interacted with the building officials;
11. R Design breached its contract with the Plaintiff by failing to adequately supervise the work performed by its subcontractors and ensure its conformance with the plans and specifications,

applicable building codes, manufacturers' specifications, industry standards and good construction practices;

12. Catterson & Sons breached its contract with R Design by failing to conform its work to the plans and specifications, applicable building codes, manufacturers' specifications, industry standards and good construction practices;

13. As a result of the negligence of Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. and R Design's breach of its contract with the Plaintiff, the Plaintiff was required to expend significant monies to repair the project;

14. The scope, means and methods of repair undertaken on the project at the direction of H2L and Anchor Construction were reasonable;

15. Based upon the evidence presented, the reasonable amount attributable to the repair of the project is \$911,296.00; and,

16. Based upon the evidence presented, the Plaintiff is also entitled to reasonable engineering costs and contract administration fees, in the amount of \$14,260.00 for repairs. All other engineering fees were for litigation expense, and I conclude that is not recoverable.

CONCLUSION

For the reasons set forth above, the Court finds:

1) In favor of the Plaintiff against R Design Construction Co., LLC in

its claims for breach of contract, negligence and breach of implied warranties;

- 2) In favor of the Plaintiff against Catterson & Sons, Inc. for negligence and breach of implied warranty of workmanlike services;
- 3) In favor of the Plaintiff against Carl Aten individually, as license holder for R Design Construction for negligence;
- 4) In favor of Michael Catterson, individually, on the claims asserted by Plaintiff;
- 5) in favor of Catterson and Sons, Inc., and Michael Catterson individually on the claims asserted by R Design for equitable indemnity on the basis of the unclean hands doctrine;
- 6) In favor of R Design on its cross-claims against Catterson & Sons, Inc., for breach of contract.

Based on the foregoing, the Court awards \$911,296.00 in repair costs to the Plaintiff to be assessed jointly and severally amongst Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. In addition, the Court awards the Plaintiff \$14,260.00 in engineering costs and contract administration fees, also to be assessed jointly and severally against Defendants R Design Construction, Carl Aten, individually, and Catterson & Sons, Inc. Further, the Court awards R Design \$925,556.00 on its cross-claim against Catterson & Sons, Inc.

Therefore, judgment is entered for the Plaintiff in the amount of Nine
Hundred Twenty Five Thousand Five Hundred Fifty Six and NO/100 (\$
925,556.00) Dollars jointly and severally against defendants R Design, Carl Aten,
individually, and Catterson & Sons, Inc.; and

For R Design on its cross-claims against Catterson & Sons, Inc. in the
amount of Nine Hundred Twenty Five Thousand Five Hundred Fifty Six and
NO/100 (\$925,556.00) Dollars.

AND IT IS SO ORDERED.


Carmen T. Mullen,
Presiding Judge Fourteenth Circuit

Beaufort, South Carolina

October 14, 2009