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Mar 18 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Case No. 2018-CP-07-00911
Appellant Case No. 2022-000016

Richard W. and Rebecca A. Dreier; Yolanda J. Dreier; Jacob R. and Carla Emerson; John B. and Lori Anne Gecy; Aaron M. and Stasha R. Grooms; AvaRae Hall; Michael B. and Cheyenne M. Johnson; Kenny Manuel Lopez and Kelsey Trudel Lopez; Dylan C. and Samantha Dawn Machado; Marvin K. and Maryalice Mamaril; Thomas R. and Melissa S. McFeely; Michael and Karen M. Rodriguez; Sarmed and Jessica M. Shafi; James J. Smith, III and Alayshia Smith and Nichole J. Verstegen

PLAINTIFFS,

v.

Advanced Flooring & Design Division of ISI, LLC f/k/a Advanced Flooring and Design, LLC; Americo Roofing Concepts, Inc.; Archer Exteriors, Inc.; Armor Building Solutions, LLC; Builders FirstSource-Southeast Group, LLC; Crossroads Enterprises, LLC; D.R. Horton, Inc.; Dean Custom Air, LLC; East Coast Construction Cleanup Corp. f/k/a S.C. Cleanup Co., Inc.; Freedom Homes, Inc. f/k/a Armor Building Solutions, Inc.; Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; Lather Construction, Inc.; Masco Cabinetry, LLC; ProBuild East, LLC; Professional Drywall & Paint Services, LLC; Professional Exteriors, II, LLC; Quality Electric of the Coastal Carolinas Incorporated; Superior Association Services, LLC; and Valim Construction, LLC,

DEFENDANTS,

Of Whom Sarmed and Jessica M. Shafi, Lather Construction, Inc., Lather Construction SC, Inc., Hutton's Landscapes, Inc., and East Coast Construction Cleanup Corp. f/k/a S.C. Cleanup Co., Inc. are the

RESPONDENTS,

And

D.R. Horton, Inc. is the

APPELLANT.

RETURN TO PETITION FOR REHEARING AND/OR
MOTION FOR CLARIFICATION

The Court of Appeals held “this court cannot reach the merits of this case because the record is not sufficient for consideration on appeal.” In the next page of its opinion it wrote, “Further, we hold Judge Price could not dismiss D. R. Horton’s contractual indemnity cross-claim based on a motion to bifurcate and motion for summary judgment, or a motion for directed verdict.” In the page after that, the Court of Appeals held that “Judge Price dismissed the cross-claims without notice to D. R. Horton” and that this violation of due process was error, too. The Respondents have not asked for reconsideration of any of these holdings. That alone is sufficient reason to deny their Petition and Motion.

Instead, in the absence of a sufficient appellate record, they want the Court of Appeals to act like a trial court. It cannot do this for two reasons. The first is that reversal of Judge Price means that Judge DeBerry’s order is now controlling. That order found factual issues and denied summary judgment to the Respondents. The second is that the enabling legislation for the Court of Appeals explicitly states that its “jurisdiction is appellate only.” S.C. Code 14-8-200(a)

The Retreat at Charleston Nat’l Country Club Home Owners Ass’n, Inc. v. Winston Carlyle Charleston Nat’l, LLC, No. 2021-001050, 2025 WL 466562 (S.C. Ct. App. Feb. 12, 2025) is of no help to the Respondents. First, it does not authorize the Court of Appeals to act like a trial court, especially to rule as a matter of law in the face of an order denying summary judgment because of factual issues. Second, the present case was decided by the Court of Appeals on procedural grounds, not present in Retreat. Third, the contracts are different. In Retreat, the

contract covers 12 pages of the Court’s opinion. In this case, it covers one page in Respondent Hutton’s brief, (p.11) and a page and a half in Respondent Lather’s brief (pp. 10-11). Fourth, in this case, the Respondents conceded that their contractual duty to indemnify did not extend to the Appellant D. R. Horton’s sole negligence. (Final Reply Brief of Appellant, p. 17). That is the opposite of the facts in Retreat, id. p. 33. Fifth, in Retreat, the Appellant supplied the building materials. In this case, it did not. Sixth, insurance and the contractual obligation of the Respondents to name D. R. Horton as an “Additional Insured” are central to the present case. They are absent in Retreat. Seventh, likewise, the Respondents’ separate obligation to defend and defense costs are central to the present case, but rest on an entirely different footing in Retreat.

Apart from these striking factual differences, Retreat does not create any new law. It simply applies existing law, which the Respondents have already argued in their briefs. Retreat is not only different on the facts, it changes nothing in the law. It is irrelevant to the Respondents’ Petition.

Ward v. West Oil Co., Inc., 387 S.C. 268, 692 S.E. 2nd 516 (2010) is no help to the Respondents, either. That case involved gambling machines that used “pull-tabs”. The question was whether a “pull-tab” was a “pull-board” in violation of S. C. Code 12-21-2710. In saying “Yes” the Supreme Court relied upon the Appellant R & B’s incriminating view of its own device. “Significantly, at no point during these proceedings has R & B disputed that the game cards at issue are pull-tabs.” Ward, id. at 277. Gambling devises are per se illegal and Section 12-21-2710 carries criminal penalties. In contrast, indemnities and defense obligations are lawful and routine in commercial transactions; and in this case, the Respondents were required by contract to name D. R. Horton as an “Additional Insured” so that there would be insurance for their obligations.

Unlike R & B in Ward, D. R. Horton has strenuously opposed any suggestion that these indemnification and defense provisions in its contracts with the Respondents violate the law.

Finally, the Respondents want the Court of Appeals to give specific instructions to the trial court designed to unjustly benefit the Respondents on remand. They cite no authority for this request because there is none. The Respondents' previous procedural maneuvers were due process violations that led to this appeal and reversal. Their present request will likely lead to another appeal and reversal. It is commonplace for motions for summary judgment to be denied, as happened here. What happens then is that the lawyers and court proceed to the next phase of the case, whatever that might be. That happens all the time. All that the Court of Appeals needs to do in this case is precisely what it has done already. When the trial court gets the case on remand, it and the lawyers will take care of the rest.

The Court of Appeals should deny the Petition for Rehearing and/or Motion for Clarification.

March 18, 2025

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RESPONDENTS,

And

D.R. Horton, Inc. is the

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing Return to Petition for Rehearing and/or Motion for Clarification was served by email on all parties of record as set forth hereinafter.

March 18, 2025

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