

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Sep 24 2025

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Martha M. Rivers

SC Court of Appeals

Circuit Court Case No. 2024-CP-40-03510
Appellate Case No. 2024-001963

Sherman and Claudia Howell,Respondents,

v.

D.R. Horton, Inc.,Appellant.

AND

D.R. Horton, Inc.,Third-Party Plaintiff,

v.

Jenkins Plumbing Company, LLC, Caryl
Mechanicals II, Inc., L&M Electric, Inc.,
Unique Stone Creations, M&L General
Construction, Inc., Alpha Omega Construction
Group, Inc., and ASC Services and Supply, Inc.,Third-Party Defendants.

REPLY IN SUPPORT OF MOTION TO AMEND FINAL BRIEF AND SUPPLEMENT
RECORD ON APPEAL

Appellant D.R. Horton submits this reply in support of its Motion to Amend Appellant's Final Brief and to Supplement the Record on Appeal to address a recent federal district court decision, *Vriens v. Tip-Top Roofing & Construction, LLC*, No. 2:23-cv-06797-DCN (D.S.C. Sept.

4, 2025). Respondents argue that the South Carolina Appellate Court Rules do not permit a party to amend a final brief to include discussion of a newly decided case or to supplement the record on appeal with that case. Respondents also dispute the significance of the supplemental citation and challenge the sufficiency of D.R. Horton's notification to the Court.

Respondents' objections to Appellant's motion to amend its brief are without merit. Appellant's motion is allowed by, and consistent with, the appellate court rules. Respondents note that Rule 211 permits a party only to correct spelling and typographical errors in its initial briefs. (Resp'ts' Opp'n Appellant's Mot. Amend Final Br. at 2.) Those restrictions are irrelevant, as Appellant does not move to amend its final brief under Rule 211. Appellant moves under Rule 240, which contains a non-exhaustive list of motions but applies to "*all* motions or petitions filed in the appellate court, including but *not limited to*" those motions. Rule 240(a), SCACR (emphasis added). Respondents themselves previously moved, without objection from D.R. Horton, to amend their initial brief. (Resp'ts' Mot. Amend Initial Br., May 23, 2025.) Moreover, in a separate appeal involving D.R. Horton, the Court explicitly directed a respondent that submitted a supplemental citation to file a motion if she wished to amend her final brief. (*Harley v. D.R. Horton, Inc.*, No. 2024-002137, Letter to Counsel (S.C. Ct. App. Aug. 15, 2025), attached hereto as **Exhibit A**.) The present motion is therefore consistent with court rules, the Court's instructions, and Respondents' previous conduct.

Respondents also complain that D.R. Horton did not "specifically propos[e] the additional language that [D.R. Horton] seeks to add" to its final brief. (Resp'ts' Opp'n Appellant's Mot. Amend Final Br. at 3.) Once again, Respondents attempt to impose a requirement nowhere to be found in the rules. Nonetheless, D.R. Horton outlined the arguments it will make when it summarized the district court's opinion. (Motion Amend Final Br. & Supplement R. Appeal at 2–

3.) D.R. Horton’s additions will hardly come as a surprise to Respondents or the Court. Moreover, there is nothing unfair about Appellant’s request, as Respondents will have the opportunity to respond and supplement with additional authorities of their own.

Respondents also argue that the order in *Vriens* is not pertinent or significant enough to supplement in this case.¹ (Resp’ts’ Opp’n Appellant’s Mot. Amend Final Br. at 4.) Respondents suggest that Rule 208(b)(7) applies only to rulings that are binding on this Court. (*See id.*) Again, Respondents offer no authority for this narrow construction. Moreover, although South Carolina courts are not required to, they frequently defer to lower federal courts’ interpretation of federal laws, particularly where there is no conflict in the federal decisions. *See Limehouse v. Hulsey*, 404 S.C. 93, 108–09, 744 S.E.2d 566, 575 (2013); *cf. Biales v. Young*, 315 S.C. 166, 169, 432 S.E.2d 482, 484 (1993) (recognizing that “federal precedent, although not binding, may be applied as guidance in interpretation” of a state statute that is “substantially similar to” a federal law).

Vriens is the first *federal* court to analyze the arbitration provision in D.R. Horton’s South Carolina homeowner contracts. The court determined that the parties’ transaction involved interstate commerce and was subject to *federal* law and the *Federal* Arbitration Act (the “FAA”). The federal court’s application of federal law is significant in this case, where the lower court held that the FAA did not apply. The federal court’s analysis is also crucial, as Respondents rely heavily on state court opinions that misinterpret the FAA to allow outside terms to invalidate an arbitration provision. *Vriens* therefore fills a significant gap in the relevant case law, without which this Court’s analysis would be incomplete.

¹ Respondents even claim that D.R. Horton failed to show how *Vriens* is *applicable* to this case. (Resp’ts’ Opp’n Appellant’s Mot. Amend Final Br. at 3 n.1.) Respondents address these perceived deficiencies in more detail in a letter to the Court responding to the supplemental citation. (*See id.*) Appellant follows suit and replies to these arguments separately via letter.

The significance and relevance of *Vriens* is self-evident, and Appellant has complied with the procedural requirements needed to amend and supplement its brief. The issues before the Court have been hotly contested and intensely litigated, and the Court’s decision should be informed by a complete understanding of the legal landscape. A discussion of the only federal court decision that is on-point is crucial to that understanding. Therefore, D.R. Horton’s motion should be granted, and it should be allowed to amend its brief to address this recent ruling.

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Unique Stone Creations, M&L General
Construction, Inc., Alpha Omega Construction
Group, Inc., and ASC Services and Supply, Inc.,Third-Party Defendants.

PROOF OF SERVICE

The undersigned does hereby certify that on September 24, 2025, Appellant’s Reply in Support of Motion to Amend Final Brief and Supplement Record on Appeal was served by email on all counsel of record as follows. A copy of the sent email is enclosed as **Exhibit 1** with this Proof of Service.

The undersigned certifies that Appellant's Reply in Support of Motion to Amend Final Brief and Supplement Record on Appeal was served by U.S. Mail on the Third-Party Defendants L&M Electric, Inc. and Unique Stone Creations, addressed as follows:

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EXHIBIT 1



Sherman and Claudia Howell v. D.R. Horton (Appellate Case No.: 2024-001963)

From Angelia Shaw <shaw@conlaw.com>

Date Wed 2025-09-24 4:11 PM

To Katie Minton <katieminton@callisontighe.com>; matthew.laney@mgclaw.com <matthew.laney@mgclaw.com>; jrogers@wardfirm.com <jrogers@wardfirm.com>; lan T. Duggan <ianduggan@callisontighe.com>; fhgrimball@richardsonplowden.com <fhgrimball@richardsonplowden.com>; jclark@wardfirm.com <jclark@wardfirm.com>; harrydixon@callisontighe.com <harrydixon@callisontighe.com>; acampbell@rclawsc.com <acampbell@rclawsc.com>; harrydixon@callisontighe.com <harrydixon@callisontighe.com>; will@richardsonthomas.com <will@richardsonthomas.com>; grace@richardsonthomas.com <grace@richardsonthomas.com>; trippett.boineau@mgclaw.com <trippett.boineau@mgclaw.com>; terry@richardsonthomas.com <terry@richardsonthomas.com>; rwylye@mullenwylie.com <rwylye@mullenwylie.com>; aethompson@mullenwylie.com <aethompson@mullenwylie.com>; jhills@mullenwylie.com <jhills@mullenwylie.com>; dean@bestlawsc.com <dean@bestlawsc.com>; jenkins@bestlawsc.com <jenkins@bestlawsc.com>; pcrystalidi@rclawsc.com <pcrystalidi@rclawsc.com>

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3 attachments (1 MB)

25.09.24 DRH Reply ISO Motion to Amend Final Brief_FINAL.pdf; Exhibit A to Reply ISO Motion to Amend Final Brief.pdf; 25.09.24 DRH Reply Letter to Court re Supplemental Authority.pdf;

Counsel:

Please find attached Appellant's Reply In Support of Motion to Amend Final Brief and Supplement Record on Appeal, Exhibit A, as well as our letter to the Court of Appeals as it relates to *Sherman and Claudia Howell v. D.R. Horton, et al* (Appellate Case No.: 2024-001963). These will be filed with the Court momentarily.

Sincerely,



Angelia Shaw

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