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Oct 08 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2019CP041942
Appellant Case No. 2023-001401

Natalie Zitek, individually, and on behalf of
all others similarly situated; Plaintiff,

v.

D. R. Horton, Inc., Jane Doe#1-10; and,
John Doe #1-50, Defendant

D.R. Horton, Inc., Appellant,

v.

A&J Landscaping & Grading LLC, A/K/A AJ Landscaping
& Grading, Inc; Allpro Textures, LLC; Alpha Omega
Construction Group, Inc.; American Concrete and
Precast, Inc., A/K/A ACP Concrete, Inc.; A&J Framing,
Inc; Alpha E.M.C; A-Z, Inc.; Atlanta Floor Designs
Center; A Grade Above Others, LLC; Brand-Vaughn
Lumber Co., Inc.; BFK Builders, Inc; Builders
Designhouse, LLC; BMC EAST, LLC D/B/A Coleman
Floor, LLC; Builders Firstsource Southeast Group,
LLC, A/K/A Builders Firstsource Inc.; Bravo Carpenters,
Inc.; Caryl Mechanics II, Inc.; Caryl Mechanicals, Inc.;
Cannaday Siding and Gutter, Inc; Cortes Painting, LLC;
CBU Enterprises, Inc.; CPI Security Systems, Inc.; Dom
Group, LLC; Ferguson Enterprises, Inc.; Five Star
Construction Inc.; Five Star Foundations, LLC;

Galloway-Bell, Inc.; A/K/A Galloway-Bell, Inc. II BGET Floored, LLC; GBS Buildings Supply-Us LBM, LLC, A/K/A GBS Building Supply, Inc.; General Shale Brick Inc.; Greener Pastures, Inc. A/K/A Greener Pastures of Aiken, Inc; IBP Asset, LLC D/B/A Blue Ridge Building Products; JLS Masonry, Inc.; Kings Landscaping, LLC; Landshapers, LLC; Lade-Danler, Inc.; Lansing Building Products, Inc.; Long Heating & Air Conditioning, Inc.; L&M Electric, Inc.; Manale Landscaping, LLC; MJ Cowboys, LLC; M&L General Construction, LLC. A/K/A M&L General Construction, Inc.; M&Lreyna Construction, LLC; M&M Foundations, LLC; Nazareth Builders, LLC, NB Contractors, LLC; Poinsett Development, LLC; Poinsett Homes, LLC; P&T Construction, LLC; P&L Enterprises, LLC; Probuild Company, A/K/A Probuild Holdings, Inc.; Rite Rug Co.; Rodney Howard Grading Co.; Sandlapper Concrete, LLC; Sodfather, Inc.; Landscape Contractors; Stock Building Supply, LLC; Topbuild Home Services, Inc, A/K/A Gale Gale Contractors Service; Tucker Materials, Inc., A/K/A Gypsum; UTM Enterprises, Inc.; Dupree Plumbing Company, Inc.; Willow Tree Landscaping, Inc., Third-Party Defendants,

of which Builder Services Group (f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractors Services) and IBP Assets, LLC d/b/a Blue Ridge Building Products are the Respondents.

APPELLANT’S MOTION TO STRIKE THE SUR-REPLY BRIEF
OF RESPONDENTS IBP ASSETS, LLC D/B/A BLUE RIDGE
BUILDING PRODUCTS AND GALE INDUSTRIES, INC.

Appellant D.R. Horton moves to strike Respondent IBP Assets, LLC D/B/A Blue Ridge Building Products’ and Gale Industries, Inc.’s Joint Sur-Reply Brief because Respondents exceeded the July 8, 2025 Court Order when they submitted an 18-page wholesale re-writing of their briefs, rather than a brief on the single issue that the Court allowed.

The Court’s order limited the sur-reply brief to “Appellant’s arguments raised for the first time in its reply briefs.” July 8, 2025 Order at p. 2. There were none. The only issue submitted by the Respondents for sur-reply was “inconsistent rulings by the trial court.” Yet that was raised by the Appellant in its principal brief. Appellants Final Brief pp. 3; 9-10. It was not raised for the first time in its reply briefs.

Respondents undertook wholesale re-writing after they explicitly assured the Court “**that they did not “seek wholesale re-writing of their briefs, as DR Horton hyperventilates.”** Respondents’ Reply Memorandum in Support of Their Cross-Motion to Strike or, in the Alternative, Motion to Allow Supplemental Briefing “(Reply Memo”), filed November 21, 2024, p. 9. Respondents’ sur-reply brief should be struck without leave for them to file any additional briefing.

1. Respondents Requested To Write A Sur-Reply Brief On One Issue

The Court Order upon which Respondents rely to file a sur-reply brief states that the relief Respondents sought was “an opportunity to meaningfully respond to Appellant’s arguments raised for the first time in its reply briefs.” Order, July 8, 2025, p. 2. In its reply memo, Respondents identified only *one* issue - “inconsistent rulings by the trial court” - that it asserted was raised for the first time in Appellant’s Reply Brief, filed November 4, 2024.¹ Reply Memo, filed November 21, 2024, p. 13. In their memorandum, Respondents repeatedly avowed that they would only file a sur-reply brief on *one* limited issue. Respondents stated:

¹ Notwithstanding Respondents assertions to the contrary, Respondents were aware that inconsistent rulings were before the Court and documents about the inconsistency were included in Appellant’s initial designation of matter to be included in the Record on Appeal and the concern was discussed in Appellant’s initial brief. Appellant Final Brief, pp. 3; 9-10. Respondents were on notice about the circuit court’s inconsistent rulings, and chose not to discuss it in their initial briefs.

- **“that they did not “seek wholesale re-writing of their briefs, as DR Horton hyperventilates.”** *Id.* at p. 9.
- They limited their request for a sur-reply when they requested **“leave to file supplemental briefing for the limited purpose of satisfying due process on this issue [inconsistent rulings].”** *Id.* at p. 12.
- Again, confirming that the sur-reply brief request was limited to a single issue, they affirmed, **“Respondents request leave for limited supplemental briefing to address the “inconsistent rulings” issue . . .”** *Id.* at 13.
- At least three (3) times, Respondents assured the Court that it sought to file a sur-reply brief on a single issue. *Id.* at 9, 12, 13.

Respondents asked to brief a single issue and assured the Court that was all it would do. Then Respondents filed a wholesale new brief raising new arguments for the first time in a sur-reply brief.

2. Respondents’ Wrote a Wholesale New Brief

To understand why Appellant objects to such an extensive sur-reply brief when one was requested for only a single “issue,” Appellant directs the Court to the table of contents, which lists eight arguments in an 18-page sur-reply brief. Sur-Reply Brief at iii.

As an example of the wholesale writing of a new brief, Respondents sur-reply brief adds:

- seven (7) new pages with new arguments regarding the “clear and unequivocal” standard (under two argument headers) in addition to the seven (7) pages already in their respective initial briefs. Sur-reply brief, filed September 8, 2025, pp. 1-8. Respondent IBP Amended Final Brief, filed August 11, 2025; Respondent Gale Final Brief, filed August 12, 2025.

- Respondents added new arguments regarding S.C. Code 32-2-10. Sur-reply brief, filed September 8, 2025, pp. 9-10. Both Respondents already briefed the S.C. Code 32-2-10 argument in their initial briefs. Respondent IBP Amended Final Brief, filed August 11, 2025; Respondent Gale Final Brief, filed August 12, 2025.
- Respondents' sur-reply brief adds new arguments on insurance, an issue that pervades Appellant's initial brief, is included in every Issue on Appeal, and the word insurance, insured, or insure appears at least 63 times in Appellant's initial brief. Appellant Final Brief, filed July 2, 2024. Also, Respondents had already briefed this issue in their initial briefs. Respondent IBP Amended Final Brief, filed August 11, 2025; Respondent Gale Final Brief, filed August 12, 2025.
- Respondents' sur-reply brief also includes other arguments that had already been briefed in Respondents' initial briefs, such as an argument asserting the trial court properly granted summary judgment as to all causes of action and a new argument asserting the trial court did not err in declining to sever the defense and insurance provision. Sur-reply brief, filed September 8, 2025. Respondents already briefed these issues in their initial briefs. Respondent IBP Amended Final Brief, filed August 11, 2025; Respondent Gale Final Brief, filed August 12, 2025.

Respondents filed a wholesale new brief on issues they had already briefed that goes far beyond what the Court ordered and even what Respondents requested. This prejudices Appellant's appeal, violates the Court's Order, and violates Respondents' representations to the Court that it would not do this. Respondents' Sur-Reply Brief should be struck.

3. Respondents Challenge The Court’s Intrinsic Authority Too Strike Anything

In the sur-reply brief, Respondents also directly challenge the Court’s intrinsic authority to have struck any material from the Record on Appeal and from the parties’ briefs. Sur-reply Brief at 1. Respondents assert that the Court had no authority to strike materials that had not been filed with the circuit court and testimony and activity in the case that occurred after the Orders on appeal were issued. *Id.* at 1. Respondents assert that the Court “lacks authority to restrain a respondent from arguing that a position taken by the appellant has been mooted by subsequent developments constituting law of the case,” and that the Court “lacks authority to restrain a respondent from any reference to a separate proceeding in responding to an appellant’s argument . . .” *Id.* at 1.

What is particularly shocking about Respondents’ challenge to the Court’s intrinsic authority is that it was Respondents who first relied on that authority when they filed a motion to strike Appellant’s Reply Brief because they did not agree with Appellant’s arguments. Now Respondents rebuff this Court by arguing the Court never had authority to do what Respondents insisted it to do in the first instance.

Respondents’ position is concerning and may explain why they decided they could write an 18-page sur-reply brief with eight arguments despite assuring the Court that they would not write a wholesale new brief. Reply Memorandum filed November 21, 2024 at 9. It seems Respondents believe that the Court has no authority to restrain them.² Sur-Reply Brief at 1.

² Respondent IBP also unilaterally deleted almost two paragraphs from its initial brief without leave of the Court to do so and filed an erroneous attorney’s certificate with its Amended Final Brief. Respondent IBP Amended Final Brief, filed August 11, p. 17. This again shows Respondents’ attitude that the Court has no authority to restrain their briefing.

Conclusion

The appellate rules that designate the order of briefing are designed to provide Appellant an opportunity to reply to Respondents' briefs, but when Respondents file a wholesale new brief in the form of a sur-reply brief with new arguments as to almost every issue they had already briefed, *Appellant is deprived of replying to the new arguments*. The Court did not grant Respondents permission to write a wholly new brief on eight issues and Respondents assured the Court they were not seeking to file a wholesale new reply brief. Respondents requested to write on only one issue. Respondents violated their own representations to the Court and the July 8, 2025 Order of the Court of Appeals.

Appellant requests that the Court strike the sur-reply brief in its entirety because Respondents misrepresented their intention to the Court, violated the Court's Order, and continue to prolong this litigation.

October 7, 2025

Respectfully,

s/Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com
Attorney for Appellant
D. R. Horton, Inc.

John T. Crawford, Jr., (S.C. Bar No. 69355)
Kenison, Dudley & Crawford, LLC
704 McBee Ave.
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com
Attorneys for Appellant
D. R. Horton, Inc.

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Third-Party Defendants,

of which Builder Services Group (f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractors Services) and IBP Assets, LLC d/b/a Blue Ridge Building Products are the

Respondents.

PROOF OF SERVICE

I hereby certify that I have served the Appellant’s Motion to Strike the Sur-Reply Brief of Respondents IBP Assets, LLC, d/b/a Blue Ridge Building Products and Gale Industries, Inc. on all parties of record by emailing a copy to each as follows:

Other Counsel of Record:

Alicia N. Bolyard, Esq.
Resnick & Louis, P.C.
146 Fairchild Street, Suite 130
Charleston, SC 29492
abolyard@rlattorneys.com
Attorneys for Respondent/Third Party Defendant Builder Services Group, LLC
f/k/a Masco Contractor Services Central, Inc., f/k/a Gale Industries, Inc., d/b/a Gale
Contractor Services

Everett A. Kendall, II, Esquire
Timothy J. Newton, Esquire
Murphy & Grantland, P.A.
44-6-B Forest Drive
Columbia, SC 29206
tnewton@murphygrantland.com
Attorneys for Respondent/Third Party Defendant Installed Building Products, LLC,
a/k/a Installed Building Products II, LLC; and IBP Asset, LLC, d/b/a Blue Ridge Building
Products, LLC

Jason Michael Imhoff, Esq.
37 Villa Road, Suite 420
Greenville, SC 29615
imhoff@conlaw.com
Attorney for Appellant D. R. Horton, Inc.

October 7, 2025

Respectfully,

s/Carl F. Muller SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com
Attorney for Appellant
D. R. Horton, Inc.

John T. Crawford, Jr., (S.C. Bar No. 69355)
Kenison, Dudley & Crawford, LLC
704 McBee Ave.
Greenville, South Carolina 29601
(864) 242-4899
(864) 242-4844 (fax)
crawford@conlaw.com
Attorneys for Appellant
D. R. Horton, Inc.