

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Hon. R. Scott Sprouse, Circuit Court Judge

Case No. 2019-CP-04-01942
Appellate 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.

AJ Landscaping & Grading LLC, A/K/A AJ Landscaping & Grading, Inc;
Allpro Textures, LCC; 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-Vaughan Lumber Co., Inc.; BKF 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 Building 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 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)¹ and IBP Assets, LLC d/b/a Blue Ridge Building Products, are the Respondents.

**RESPONSE TO APPELLANT’S
MOTION TO STRIKE**

Respondents IBP Assets, LLC d/b/a Blue Ridge Building Products (hereinafter “Blue Ridge”) and Builder Services Group, Inc. f/k/a Masco Contractor Services Central Inc. f/k/a Gale Industries, Inc. d/b/a Gale Contractors Services (hereinafter “Gale”) (collectively “Respondents”) submit the following response to Appellant D.R. Horton, Inc.’s (hereinafter “DR Horton) Motion to Strike the Sur-Reply Brief filed October 8, 2025.

BACKGROUND

In this appeal, DR Horton seeks to overturn orders granting summary judgment in favor of Respondents as to DR Horton’s cross-claims against them. Respondents were subcontractors who performed some work in the Rose Hill subdivision. The trial court found that the Zitek class claims did not implicate Respondents’ scopes of work.

In its initial brief, DR Horton quoted from a portion of the transcript of the trial that occurred after Respondents’ motions for summary judgment were granted. (DRH Init. Br., p. 14.) The quoted portion concerned the trial court’s denial of a directed verdict motion made by another subcontractor at trial. However, DR Horton did not properly raise an argument that the trial court

¹ This is in improper name identification the entity should be listed as *Builder Services Group, Inc d/b/a Gale Contractor Services*.

ruled inconsistently as between Respondents' motions and other subcontractor motions to the trial court or in this appeal. Blue Ridge responded to that issue in its brief.

DR Horton's primary argument on appeal was that the "negligence rule" imposing the "clear and unequivocal" standard should not apply because DR Horton was not negligent. (DRH Init. Br., p. 14.) See Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018). Respondents countered in their initial briefs that DR Horton's argument was moot because DR Horton was subsequently found negligent at trial. In other words, the question whether the trial court erred in applying the "negligence rule" was no longer available to DR Horton to argue because, as a matter of law of the case, DR Horton had been found negligent by the time it filed its initial brief.

In its reply briefs, DR Horton designated for the record motions and orders concerning other subcontractor motions, some of which occurred after Respondents' dispositive motions were granted. Respondents objected in a Joint Motion to Strike filed June 12, 2024. This Court granted that motion on August 23, 2024 (as amended October 21, 2024). That Order ruled that materials submitted to the trial court after the trial court rulings on appeal were issued cannot be included in the record on appeal.

DR Horton then filed a motion to strike (filed Oct. 29, 2024). That motion sought to strike references to the jury verdict and the trial transcript. DR Horton also moved to strike portions of Respondents' final briefs. Meanwhile, DR Horton filed amended versions of its reply briefs and designated additional materials for the record. With each filing, DR Horton expanded the scope of the appeal and raised new arguments.

Respondents opposed DR Horton's motion to strike and filed a cross-motion. An examination of those filings demonstrates that there were several issues in dispute. Respondents

requested an opportunity to correct their briefs should this Court rule in DR Horton’s favor. (Resp. to Appellant’s Mot. to Strike filed Nov. 8, 2024, pp. 2, 5.) Specifically, they requested an opportunity to make changes as they deemed fit rather than accepting DR Horton’s “line item veto” of their briefs. (Id. at p. 5.) Respondents also requested an opportunity to respond to new arguments DR Horton raised in its reply briefs. (Respondents’ Cross-Mot. to Strike, pp. 5, 12,13.)

This Court granted DR Horton’s motion to strike. (Order filed July 8, 2025.) That Order also granted Respondents’ motion to file sur-reply briefs. (Id.) Respondents’ Sur-Reply Brief does not exceed the scope of this Court’s Order.

ARGUMENT

I. Respondents requested supplemental briefing on more than one issue.

DR Horton’s Motion to Strike the Sur-reply Brief only quoted from Respondents’ reply brief in support of their cross-motion. (See Respondents’ Reply Memorandum filed Nov. 21, 2024.) That brief only concerned Respondents’ request for supplemental briefing if their cross-motion to strike portions of DR Horton’s brief was denied. That was not the only issue in play.

II. Respondents’ Sur-reply brief corrected arguments affected by DR Horton’s motion to strike and addressed issues raised in Respondents’ cross-motion.

DR Horton moved to strike portions from numerous sections of Blue Ridge’s brief. These included the Counter-Statement of Facts, arguments III, IV, VII, VIII, IX, and the Conclusion. DR Horton also moved to strike material from Gale’s Statement of the Case and two of its three arguments on appeal. (Exhibits to DRH Mot. to Strike.) The requested briefing and stricken material concerned not only DR Horton’s “inconsistent rulings” argument raised in reply briefs, but also references to the jury verdict, a separate action addressing insurance coverage, and other issues raised for the first time in reply briefs.

The striking of portions of Respondents' briefs left them in a garbled and incomplete condition. As DR Horton notes, Blue Ridge withdrew portions of its argument rather than allowing them, in their truncated condition, to misrepresent Blue Ridge's position. This is a simple constitutional issue. A litigant has no right to control an opponent's speech. The First Amendment protection of freedom of speech does not allow a court to require a litigant to endorse an opponent's selectively edited version of his or her message.

Moreover, the ruling that any reference to the jury verdict and the separate insurance coverage action must be stricken deprived Respondents of certain defenses. Primarily, it prevented Respondents from contending that DR Horton's key argument in this appeal was mooted and barred by the law-of-the-case doctrine. The Order also undercut Respondents' position that insurance issues are being addressed in a separate action. It required Respondents to make more complicated arguments to support their remaining positions. DR Horton made numerous new arguments after Respondents filed their initial briefs over a year and a half ago to which Respondents had never had an opportunity to meaningfully respond.

Respondents' Sur-reply brief developed their arguments that were left in tatters by the granting of DR Horton's motion to strike. Each section clarified arguments from portions of Respondents' briefs from which material was stricken. Respondents addressed new arguments DR Horton made in its reply briefs primarily in sections II and IV of their Sur-reply brief. This was within the scope of this Court's Order.

Additionally, as Respondents discussed in their sur-reply brief, DR Horton limited the scope of the relief it requested in this appeal while the cross-motions were pending. That shifted the focus of Respondents' arguments in response.

This Court allowed DR Horton to file amended reply briefs when it granted Respondents' motion to strike. DR Horton made its arguments in its amended briefs as it so chose. DR Horton should not be heard to object when Respondents did the same.

III. Respondents do not “challenge the Court’s intrinsic authority to strike anything.”

Finally, Respondents do not contend that this Court lacks authority to grant motions to strike. Their Joint Motion to Strike was based on violations of applicable rules and case law, as well as appellate court precedent. (Joint Mot. to Strike filed June 12, 2024.)

Respondents' Sur-reply brief re-stated their objections solely for purposes of issue preservation. (Sur-reply Brief, p. 1.) They were not pursued in the arguments.

DR Horton's argument misses the mark. A court's inherent authority to address rules violations is grounded in precedent. (See Respondents' Reply in support of Mot. to Strike filed June 25, 2024, pp. 4-5.)

DR Horton's invocation of this court's authority to strike for the purpose of muzzling Respondents from making valid arguments and tailoring Respondents' speech to suit DR Horton's purposes is quite another matter. DR Horton cited no authority to support those positions, and Respondents know of none. (See DRH Mot. to Strike filed Oct. 29, 2024, p. 2.) The sole basis for DR Horton's motion to strike was this Court's prior ruling that no documents post-dating the granting of Respondents' dispositive motions could be included in the record on appeal. Respondents acknowledged this Court's authority to make that ruling, but sought to preserve arguments that they were prejudiced thereby.

DR Horton has repeatedly blamed Respondents for the briefing disputes in this appeal and has suggested that they and their counsel engaged in misconduct. (DRH Mot. to Strike the Sur-Reply, pp. 3-4.) DR Horton infers that Respondents should be punished by restraining them from a full and fair opportunity to defend themselves. In fact, it was DR Horton that first injected

improper materials into both the record and its initial brief and continually expanded its arguments on appeal. Moreover, the fact that this Court ruled against Respondents on certain issues does not mean that Respondents were wrong to raise them. Respondents requested and were granted the right to re-state their position in light of this Court's guidance in its ruling on the cross-motions.

CONCLUSION

For the reasons set forth above, DR Horton's Motion to Strike the Sur-Reply Brief should be denied.

Respectfully submitted,

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October 16, 2025

Charleston, South Carolina