

**RECEIVED**

**Jan 21 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM JASPER COUNTY  
Court of Common Pleas  
Maite Murphy, Circuit Court Judge

Civil Action No. 2021CP2700069  
Appellate Case No. 2025-001116

Mark W. McGilton,.....Respondent,

v.

1223 May River Road, LLC, D.R. Horton, Inc., and  
Lotty Trucking, LLC f/k/a Ramos Trucking, LLC,.....Defendants,

of which D.R. Horton is.....Appellant,

AND

1223 May River Road, LLC,.....Third-Party Plaintiffs,

v.

Kenneth Scott Builders, Inc.,.....Third-Party Defendants.

NOTICE OF OBJECTION TO AND RETURN TO APPELLANT’S MOTION TO STRIKE

Benjamin T. Shelton  
SC Bar No. 77207  
Shelton Law Firm, LLC  
P.O. Box 21069  
Hilton Head Island, South Carolina 29925  
(843) 802-0087  
[ben@sheltonlawsc.com](mailto:ben@sheltonlawsc.com)

John S. Nichols  
SC Bar No. 4210  
Bluestein, Thompson, Sullivan, LLC  
1614 Taylor Street  
Columbia, South Carolina 29201  
(803) 779-7599  
[john@bluesteinattorneys.com](mailto:john@bluesteinattorneys.com)  
Attorneys for Respondent

Pursuant to Rule 240(e), SCACR, Respondent Mark W. McGilton files the following Notice of Objection and Return to the Motion to Strike portions of the Respondent's Brief and Designation of Additional Matter. As set forth in Respondent's Amended Designation of Additional Matter, Respondent identifies all references to material to be included on record of appeal, references each item, and submits that the nature of all material designated was *presented* to the trial court by way of reference in pleadings, memoranda or argument to the court whether the material was filed with the court. Respondent included the additional material for the record to provide this Court with a full and complete record. However, Respondent agrees to withdraw certain items which were not filed with the court. Other items are clearly included in the record below, and included in the Respondents' Designation of Additional Matter and Amended Designation of Additional Matter and should remain in the Record on Appeal. Therefore, Respondent consents to and agrees to file an amended initial brief, striking only certain portions of the brief as set forth herein.

Appellants take issue with a number of specific statements in Respondent's Initial Brief. Respondent addresses each item as follows:

1. Appellant seeks to strike the following material from Respondent's Brief:

The deposition testimony of the owner of Kenneth Scott Builders, Inc. revealed that the dump truck driver had worked nearly exclusively at Appellant's Cypress Ridge development on a nearly daily basis for well over a year prior to the collision. (R p. \_\_). Respondent also discovered that the dump truck was removing dirt from Appellant's development without a permit during this period. (R. p. \_\_).

(Initial Brief of Respondent p. 2). These statements are supported by the excerpt of the deposition of Theodore “Andy” Rowland, which was attached as an exhibit to Respondent’s Memorandum in Support of Motion for Rule to Show Cause and in Opposition to Defendant’s Motion for Costs and Sanctions filed October 14, 2024. They are also supported by the affidavit of Alfredo Uriostegui filed May 30, 2024. Further, Respondent included pinpoint deposition references supporting this material on page 5 of his Memorandum in Opposition to Appellant’s Motion for Summary Judgment filed on May 29, 2024. Finally, the entire transcript of the deposition at issue is filed as Exh. 4 of Appellant’s Motion to Reconsider filed June 13, 2024.

2. Appellant seeks to strike the following material from Respondent’s Brief:

On September 30, 2021, Appellant’s counsel’s office reached out to Respondent’s counsel and stated that they were still attempting to obtain the project file from the Appellant. No discovery was produced. (R. p. \_\_).

(Initial Brief of Respondent p. 3). This email is included as Exhibit 6 (found on page 235 of 239) of Respondent’s Memorandum in Support of his Motion to Compel, and also specifically referenced on page four of Respondent’s Memorandum in Support of his Motion to Compel and for Sanctions, filed on August 16, 2022.

3. Appellant seeks to strike the following material from page 3 of Respondent’s Brief (in italics):

On July 11, 2022, Appellant received notice that Respondent’s Motion to Compel was scheduled to be argued on August 17, 2022. *Six (6) days later, on July 16, 2022, Appellant provided initial answers to Respondent’s discovery.* (R. p. \_\_). This was a week short of a year since Respondent had served the discovery on Appellant.

(Initial Brief of Respondent p. 3). These statements are supported by Respondent’s Memorandum in Support of Motion to Compel and Sanctions filed on August 16, 2022. (Memo. p. 2, p. 4). These statements are also supported by Respondent’s Memorandum in Support of Motion for Rule to Show Cause filed October 14, 2024. (Memo, p. 3).

4. Appellant seeks to strike the following material from Respondent’s Brief:

After the hearing, Respondent continued to reach out to Appellant’s attorneys regarding discovery deficiencies. (R. p. \_\_). What followed was a nine-month process of back and forth emails and phone calls, whereby Appellant first requested search terms, then rejected the search terms Respondent proposed. (R. p. \_\_). *Respondent then proposed a Rule 30(b)(6), SCRCF, deposition, eventually sending a blind notice having been unable to obtain proposed dates from Appellant. Appellant eventually convinced Respondent to take a single witness’s deposition instead of applying search terms requested by Respondent, the deposition was finally scheduled on June 13, 2023. (R. p. \_\_).*

(Initial Brief of Respondent p. 5; italicized sentences). These statements are supported by the Memorandum in Support of Motion for Rule to Show Cause filed October 14, 2024. (Memo, p. 4) (“February 14, 2023: After being unable to get any response from D.R. Horton as to the results of its search with the proposed search terms that D.R. Horton requested, Plaintiff issues a notice for the Rule 30(b)(6), SCRCF deposition of D.R. Horton”). Respondent would volunteer to replace the italicized language, above, with the quoted language.

5. Appellant seeks to strike the following material from Respondent’s Brief:

The time-line below demonstrates the extensive time and effort it took Respondent to obtain a single fact discovery deposition from Appellant:

September 16, 2022	Appellant sent an email stating to let them know “what else you believe to be lacking in our and copy Kathryn Harden and Amanda Hammond as they are working on getting any outstanding discovery to you.” Respondent replied back, “...still working on search term proposals. should have them to you early next week.” (R. p. __)
December 6, 2022	Respondent sent Appellant a follow-up email requesting the phone conference. (R. p. __)
December 16, 2022	Appellant emailed Respondent to check their availability that day. Respondent replied back “available after 3:30 pm.” Appellant responded, stating, “Do you have a list of ESI terms you could shoot me? This is my last note:...” (R. p. __)
January 7, 2023	Respondent emailed Appellant with the notes of the last conversation he had with Appellant and with additional search terms and pulling all “Phase 7b” and scheduling depositions. (R. p. __)
January 24, 2023	Respondent followed up with the 01/07/2023 email. (R. p. __)
January 28, 2023	Appellant replied to Respondent’s 01/24/2023 email, responding back asking to talk on Monday or Tuesday due to Covid. Respondent replied with his times of availability on Monday and Tuesday. (R. p. __)
February 2, 2023	Respondent followed up with his 01/28/2023 email. (R. p. __)
February 3, 2023	Appellant emailed Respondent stating that he tried calling Respondent, left a message and said maybe we should send this back and forth via email. Respondent replied, agreeing with the email correspondence and that “the ball is in” Appellant’s court, and to refer back to the 01/07/2023 email. (R. p. __)
February 13, 2023	Respondent sent another follow-up email and stated he is sending a 30(b)(6) notice the next day, adding “If that date doesn’t work, please confer with me with one that does asap.” (R. p. __)
February 14, 2023	Respondent sent the 30(b)(6) Deposition Notice of Appellant. The deposition was to be held on March 15, 2023. (R. p. __)
March 10, 2023	Respondent emailed Appellant confirming the 30(b)(6) deposition of Appellant. Appellant responded back, “Jason is not available as he has trial in Horry County and to circulate dates in late March and April.” (R. p. __)

March 17, 2023	Respondent sent their dates of availability for the 30(b)(6) deposition of Appellant. (R. p. __)
March 22, 2023	Respondent sent a follow-up email to the 03/17/2023 email. (R. p. __)
April 4, 2023	There is a call between the Respondent and the Appellant. (R. p. __)
April 5, 2023	Respondent sent the dates of his availability to take Jared O'Saka's deposition. Appellant responded that they would check with Appellant's counsel Jason Imhoff and O'Saka to see if any of the dates work. (R. p. __)
May 3, 2023	Appellant sent an email with Jason and O'Saka's dates of availability. (R. p. __)
May 4, 2023	Respondent sent a reply email to Appellant, narrowing down the dates. Appellant replied that they are available on June 13, 2023. (R. p. __)
May 4, 2023	Respondent sent a Deposition Notice of Jared O'Saka (as an individual), which was scheduled for June 13, 2023. (R. p. __)

(Initial Brief of Respondent pp. 6-7). The nature of these emails was referenced in Respondent's Renewed Motion to Compel D.R. Horton, Inc. filed October 17, 2023 (Mot. p. 2) ("Respondent coordinated with Defendant for months in effort to take the first deposition of the Defendant") and also in the timeline set forth in Respondent's Memorandum in Support of Motion for Rule to Show Cause filed October 14, 2024. (Memo, pp. 8-10). As the specific emails were not filed with the court and Respondent voluntarily withdraws this section of timeline and reference to these emails and remove them from the initial brief.

6. Appellant seeks to strike the following material from Respondent's Brief:

This deposition thus took nearly nine (9) months to schedule.

(Initial Brief of Respondent p. 7). This statement is supported by Respondent's Renewed Motion to Compel D.R. Horton, Inc. filed October 17, 2023 (Mot. p. 2) and Respondent's Memorandum

in Support of Motion for Rule to Show Cause filed October 14, 2024. (Memo, pp. 8-10). It also constitutes argument and is also supported by looking at a calendar.

7. Appellant seeks to strike the following material from Respondent's Brief:

Given the short time-frame to take Defendant's expert's depositions, Respondent's attorney's office emailed Appellant's attorney's office on June 17, 2024 asking whether it was authorized to accept service of subpoenas to its experts. (R. p. \_\_) Respondent received no response and followed-up on June 18, 2024, and twice on June 21, 2024. (R. \_\_) Respondent still did not receive a response to any of these emails.

(Initial Brief of Respondent p. 13). Respondent did not file these specific emails with the court below and will file an amended brief removing the referenced language from his initial brief.

8. Appellant seeks to strike the following material from Respondent's Brief:

In response to this correspondence, Appellant provided four possible deposition dates for one expert, Charles Alford, for August 28, September 4, September 9, or September 11, and provided no dates for any other expert. (June 26, 2024 Email, R. \_\_). Meanwhile, Respondent provided several dates for its experts and Defendant noticed three depositions of Respondents' experts on June 26, 2024.

(Initial Brief of Respondent p. 14). Respondent did not file these specific emails with the court below and will file an amended brief removing the referenced language from his initial brief.

9. Appellant seeks to strike the following material from Respondent's Brief:

In response to the FOIA request, the Town of Bluffton produced:

3. Volumes of communications (hundreds if not thousands of pages) between D.R. Horton's 30(b)(6) deponents, the Town of Bluffton concerning the control, methods, permitting, and means of the development of Cypress Ridge, and scores of communications between Kenneth Scott Builders, Inc. and D.R. Horton's employees; and

4. Several notices of inspection and notices of violations relating to grading, surface and wastewater rules and regulations from the Town of Bluffton.

(Initial Brief of Respondent p. 17) This material is referenced and presented to the court within Respondent's Motion for Rule to Show Cause (Mot., p. 7) filed August 19, 2024 as well as Respondent's Memorandum in Support of his Motion for Rule to Show Cause filed October 14, 2024 (Memo, p. 26). Further, Appellant did not contest the substance of this material in its Rule 59(e), Motion to Reconsider.

10. Appellant seeks to strike the following material from Respondent's Brief:

However, not only did Appellant admit being the developer and general contractor in their initial answers to Respondent's interrogatories (Appellant's Answer to Respondent's Interrogatory's), which took nearly a year to produce after being duly served, material Respondent discovered through the FOIA requests (and not produced by Appellant) demonstrated that Appellant was a general contractor of record for the project where the dirt was repeatedly excavated and removed from Appellant's job site by of Mr. Uriostegui. Emails received through FOIA show that Appellant was intricately involved in the majority, if not all, planning, communications and decisions involved between the Town of Bluffton and the project at issue.

(Initial Brief of Respondent p. 17). Respondent did not specifically file Appellant's Interrogatory Answers with the court below, and he agrees to remove the phrase, "However, not only did Appellant admit being the developer and general contractor in their initial answers to Respondent's interrogatories (Appellant's Answer to Respondent's Interrogatory's), which took nearly a year to produce after being duly served." The remaining language section is argument and is supported by material presented to the court in Respondent's Motion for Rule to Show Cause (p. 7) and Memo in Support of Respondent's Motion for Rule to Show Cause (p. 26).

11. Appellant seeks to strike the following material from Respondent's Brief:

The amount of material withheld and not produced by Appellant that is responsive to the Respondent's discovery requests was staggering, totaling thousands of pages, and the material was incredibly detrimental to Appellant's defenses in this case. As general contractor, it held nondelegable duties over its job site and the subcontractors it was bound to supervise, including Kenneth Scott Builders, Inc. and Jacob AU Trucking, LLC.

(Initial Brief of Respondent p. 18). This section is argument, based upon material presented to the court within Respondent's Motion for Rule to Show Cause (Mot., p. 7) filed August 19, 2024 as well as Respondent's Memorandum in Support of his Motion for Rule to Show Cause filed October 14, 2024 (Memo, p. 26). Further, Appellant did not contest the substance of this material referenced above in its Rule 59(e), and it is an argument made to the court relative to this material contained within Respondent's Motion for Rule to Show Cause and Memorandum in Support of Respondent's Motion for Rule to Show Cause.

12. Appellant seeks to strike the following, italicized material from page 18 Respondent's brief:

Importantly, before Respondent obtained this material through his FOIA request, Appellant took the deposition of the Respondent's OSHA and safety compliance expert, *insisting that it be taken before Appellant's Rule 30(b)(6) depositions.*

(Initial Brief of Respondent p. 18). These statements are supported by Respondent's Memorandum in Support of Motion for Rule to Show Cause filed October 14, 2024. (Memo, p. 8-9), which includes images of the emails referenced in these statements.

## CONCLUSION

Most of the material Appellant seeks to strike from the brief has support in the transcripts and filings below, or are argument. Respondent agrees to remove reference to items that were not presented to the trial court through filings, as noted above. Otherwise, this Court should deny the motion to strike.

Respectfully submitted,

/s/ John S. Nichols

John S. Nichols  
SC Bar No. 4210  
Bluestein, Thompson, Sullivan, LLC  
1614 Taylor Street  
Columbia, South Carolina 29201  
(803) 779-7599  
[john@bluesteinattorneys.com](mailto:john@bluesteinattorneys.com)

Benjamin T. Shelton  
SC Bar No. 77207  
Shelton Law Firm, LLC  
P.O. Box 21069  
Hilton Head Island, South Carolina 29925  
(843) 802-0087  
[ben@sheltonlawsc.com](mailto:ben@sheltonlawsc.com)

Attorneys for Respondent

January 21, 2026

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

**Jan 21 2026**

**SC Court of Appeals**

APPEAL FROM JASPER COUNTY  
Court of Common Pleas  
Maite Murphy, Circuit Court Judge

Circuit Court Case No: 2021-CP-27-00069  
Appellate Case No.: 2025-001116

Mark W. McGilton.....Respondent,

vs.

1223 May River Road, LLC, D.R. Horton, Inc, and Lotty Trucking, LLC f/k/a Ramos Trucking, LLC,.....Defendants,

of which D.R. Horton, Inc. is the..... Appellant,

AND

1223 May River Road, LLC,.....Third- Party Plaintiffs,

vs.

Kenneth Scott Builders, Inc.,.....Third- Party Defendant.

---

**PROOF OF SERVICE**

---

I certify that I have served a copy of the *Notice of Objection to and Return to Appellant's Motion to Strike* for the Respondent on all counsel by emailing a copy of the same on January 21, 2026, by address as follows:

John T. Crawford, Jr., Esq.  
[crawford@conlaw.com](mailto:crawford@conlaw.com)

Kimila L. Wooten, Esq.  
[wooten@conlaw.com](mailto:wooten@conlaw.com)  
David L. Paavola, Esq.  
[paavola@conlaw.com](mailto:paavola@conlaw.com)  
Amelia M. Farmer, Esq.  
[farmer@conlaw.com](mailto:farmer@conlaw.com)  
W. Jacob Henerey, Esq.  
[henerey@conlaw.com](mailto:henerey@conlaw.com)  
KENISON, DUDLEY & CRAWFORD, LLC  
325 West McBee Ave  
Ste 301  
Greenville, SC 29601  
(864) 242-4899  
(864) 242-4844

Carl F. Muller  
[carl@carlmullerlaw.com](mailto:carl@carlmullerlaw.com)  
Carl F. Muller, Attorney at Law, P.A.  
607 Pendleton Street  
Ste 201  
Greenville, SC 29601

*Attorneys for Appellant D.R. Horton, Inc.*

Warren P. Johnson, Esq.  
Joshua R. Fester, Esq.  
Darrell T. Johnson, Jr., Esq.  
[tdjohnson1@johnsonlawoffice.com](mailto:tdjohnson1@johnsonlawoffice.com)  
Law Office of Darrell Thomas Johnson, Jr., LLC  
300 Main Street  
Hardeeville, SC 29927  
(843) 784-2142

*Attorneys for Lotty Trucking, LLC  
f/k/a Ramos Trucking, LLC*

Ryan W. Conner, Esq.  
[rconner@lmlawllp.com](mailto:rconner@lmlawllp.com)  
Kevin W. Mims, Esq.  
[kmims@lmlawllp.com](mailto:kmims@lmlawllp.com)  
W. Chase McNair, Esq.  
[cmcnair@lmlawllp.com](mailto:cmcnair@lmlawllp.com)  
J. Hayden Grooms, Esq.

[hgrooms@lmlawllp.com](mailto:hgrooms@lmlawllp.com)  
Luzuriaga Mims, LLP  
1156 King Street  
Charleston, SC 29403  
(843) 410-4713

*Attorneys for Kenneth Scott Builders, LLC*



---

Meredith Brown  
Legal Assistant to John S. Nichols  
Bluestein Thompson Sullivan, LLC  
[meredith@bluesteinattorneys.com](mailto:meredith@bluesteinattorneys.com)

January 21, 2026

cc: John S. Nichols, Esq. ([john@bluesteinattorneys.com](mailto:john@bluesteinattorneys.com))  
Benjamin T. Shelton, Esq. ([ben@sheltonlawsc.com](mailto:ben@sheltonlawsc.com))

## Meredith Brown

---

**From:** Meredith Brown  
**Sent:** Wednesday, January 21, 2026 1:22 PM  
**To:** John Crawford; Kim Wooten; David Paavola; 'farmer@conlaw.com'; Jacob Henerey; Carl Muller; 'tdjohnson1@johnsonlawoffice.com'; Ryan Conner; 'kmims@lmlawllp.com'; 'cmcnair@lmlawllp.com'; 'hgrooms@lmlawllp.com'  
**Cc:** John Nichols; Benjamin Shelton; Brooklyn Valentine  
**Subject:** Case No.: 2025-001116- McGilton vs DR Horton- Notice of Objection to and Return to Apps Motion to Strike  
**Attachments:** 2026.01.21- Notice of Objection to and Return to App Motion to Strike.pdf

Dear Counsel,

Please find enclosed for filing the Notice of Objection to and Return to Appellant's Motion to Strike for the Respondent, in the above referenced matter.

Thank you,  
Meredith

 **BLUESTEIN**  
ATTORNEYS  
Listening. Lawyering. Leading.

**RECEIVED**

**Jan 21 2026**

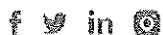
**SC Court of Appeals**

**MEREDITH BROWN OFFICE MANAGER &  
LEGAL ASSISTANT TO JOHN S. NICHOLS**

1614 TAYLOR STREET | PO BOX 7965  
COLUMBIA, SOUTH CAROLINA 29202  
O: 803.779.7599 F: 803.771.8097

[MEREDITH@BLUESTEINATTORNEYS.COM](mailto:MEREDITH@BLUESTEINATTORNEYS.COM)

[BLUESTEINATTORNEYS.COM](http://BLUESTEINATTORNEYS.COM)



**NOTICE:** This e-mail is confidential and may contain information which is legally privileged or otherwise exempt from disclosure. If you received this message in error, please notify the sender and delete this message from your device.

January 21, 2026

**RECEIVED**

**Jan 21 2026**

**SC Court of Appeals**

**VIA EMAIL ONLY- [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)**

The Honorable Jenny A. Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Mark W. McGilton, Respondent, vs. 1223 May River Road, LLC, D.R. Horton, Inc., and Lotty Trucking, LLC f/k/a Ramos Trucking, LLC, Defendants, of which D.R. Horton, Inc. is the Appellant, and 1223 May River Road, LLC, Third- Party Plaintiffs, vs. Kenneth Scott Builders, Inc., Third- Party Defendant.

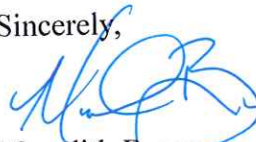
Appellate Case No.: 2025-001116

Dear Ms. Kitchings,

Please find enclosed for filing the original *Notice of Objection to and Return to Appellant's Motion to Strike* for the Respondent, in reference to the above matter. I have enclosed the proof of service of this document on all counsel.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,



Meredith Brown

Legal Assistant to John S. Nichols  
Bluestein Thompson Sullivan, LLC

/mb

Enclosures

cc: John S. Nichols, Esq. ([john@bluesteinattorneys.com](mailto:john@bluesteinattorneys.com))  
Benjamin T. Shelton, Esq. ([ben@sheltonlawsc.com](mailto:ben@sheltonlawsc.com))  
John T. Crawford, Esq. ([crawford@conlaw.com](mailto:crawford@conlaw.com))

Kimila L. Wooten, Esq. ([wooten@conlaw.com](mailto:wooten@conlaw.com))  
David L. Paavola, Esq. ([paavola@conlaw.com](mailto:paavola@conlaw.com))  
Amelia M. Farmer, Esq. ([farmer@conlaw.com](mailto:farmer@conlaw.com))  
W. Jacob Henerey, Esq. ([henerey@conlaw.com](mailto:henerey@conlaw.com))  
Warren P. Johnson, Esq. ([wpi@johnsonlawoffice.com](mailto:wpi@johnsonlawoffice.com))  
Joshua R. Fester, Esq. ([jfester@johnsonlawoffice.com](mailto:jfester@johnsonlawoffice.com))  
Darrell T. Johnson, Jr., Esq. ([tdjohnson1@johnsonlawoffice.com](mailto:tdjohnson1@johnsonlawoffice.com))  
Ryan W. Conner, Esq. ([rconner@lmlawllp.com](mailto:rconner@lmlawllp.com))  
Kevin W. Mims, Esq. ([kmims@lmlawllp.com](mailto:kmims@lmlawllp.com))  
W. Chase McNair, Esq. ([cmcnair@lmlawllp.com](mailto:cmcnair@lmlawllp.com))  
J. Hayden Grooms, Esq. ([hgrooms@lmlawllp.com](mailto:hgrooms@lmlawllp.com))  
Carl F. Muller, Esq. ([carl@carlmullerlaw.com](mailto:carl@carlmullerlaw.com))