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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

**RECEIVED**  
JAN 30 2026  
SC Court of Appeals

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.

**RESPONDENT'S MOTION  
TO ACCEPT RETURN OUT OF TIME**

Pursuant to Rules 240 and 263(b), SCACR, Respondent Mark W. McGilton respectfully requests that the Court accept Respondent's Return and Objection filed out of time. The basis for this motion is as follows:

1. Appellant D.R. Horton filed its Motion to Strike on January 5, 2026;

2. Any Return was due January 15, 2026, pursuant to Rule 240(e), SCACR;
3. Respondent overlooked the date due to a calendaring error;
4. Respondent filed a Return on January 21, 2026, or merely 6 days after the due date;
5. The Return was required because:
  - A. Several representations in the Motion to Strike that are not borne out by the matters that were actually presented to any one of the four separate circuit court judges before whom this case arose and who dealt with Appellant's recalcitrance with respect to discovery;
  - B. Any one of those four circuit court judges heard and rejected the very contention Appellant included in its Reply (that "Respondent's misstatements have improperly led the circuit judge to strike Appellant's answer", (Reply p. 1));
  - C. The assertion that Respondents are continuing to attempt to include matter that was not before any one of the four circuit court judges who heard this case (Reply, p. 2), an assertion that is not borne out by the extensive record below;
  - D. The Respondent agreed to remove items and argument that, while argued to any one of the four circuit court judges who heard these matters, were not presented as filed documents with the court (Reply, p. 3);
  - E. The Respondent agreed to remove corresponding argument from the brief with those matters averred to in D, above (Reply, pp. 3-4);
  - F. The Respondent objected, however, to Appellant's attempt to have this Court strike matters that were argument or that were, in fact, attached to various filings before any one of the four circuit court judges who dealt with Appellant's repeated discovery abuse.

6. Respondent has prepared an amended Initial Brief and Designation of Additional Matter that corresponds with the Motion and the Return and will file those documents as instructed by this Court.

7. Appellant has not alleged nor demonstrated it suffered any prejudice from the Return being filed out of time.

Accordingly, Respondent respectfully request that the Court accept the Return out of time and permit Respondent to then file an amended Designation and corresponding Initial Brief.

Respectfully submitted,

/s/ John S. Nichols

John S. Nichols

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Attorneys for Respondent

January 30, 2026

THE STATE OF SOUTH CAROLINA  
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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.

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**PROOF OF SERVICE**

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I certify that I have served a copy of the *Motion to Accept out of Time* for the Respondent on all counsel by emailing a copy of the same on January 30, 2026, by address as follows:

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*Attorneys for Kenneth Scott Builders, LLC*



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Meredith Brown

Legal Assistant to John S. Nichols  
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[meredith@bluesteinattorneys.com](mailto:meredith@bluesteinattorneys.com)

January 30, 2026

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

January 30, 2026

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SC Court of Appeals

**VIA EMAIL ONLY- 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

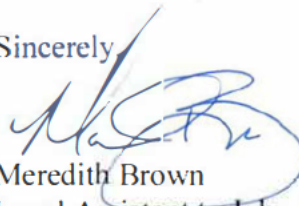
Dear Ms. Kitchings,

Please find enclosed for filing the original *Motion to Accept out of Time* for the Respondent, in reference to the above matter. I have enclosed the proof of service of this document on all counsel.

The filing fee check for this Motion will be hand delivered to the South Carolina Court of Appeals Clerk of Court along with the original documents of this filing.

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))  
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## Meredith Brown

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**Cc:** John Nichols; Benjamin Shelton; Brooklyn Valentine  
**Subject:** Case No: 2025-001116 McGilton v DR Horton  
**Attachments:** 2026.01.30- Respondent's Motion to Accept Return Out of Time.pdf

Dear Counsel,

Please find attached for filing the Respondent's Motion to Accept Return Out of Time, in the above referenced matter.

Thank you,  
Meredith



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

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SC Court of Appeals

The Honorable Jenny A. Kitchings  
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