

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

JUN 13 2014

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

172482

Appellate Case No. 2013-001404

Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessie B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated, Plaintiffs,

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bradford D. Seckinger, John Ludwig, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, M Group Construction and Development, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders First Source-Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Heriberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., Southern Basements, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC, Inc., d/b/a KMAC North Carolina, Eufacio Garcia, Everado Jarmamillio, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, Miller/Player & Associates, Defendants,

Of whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And Builders First Source-Southeast Group, Southern Concrete Specialties, Inc., Clear View Construction, LLC and Michael Franz are the Respondents,

Bostic Construction, Inc., Third Party Plaintiffs,

v.

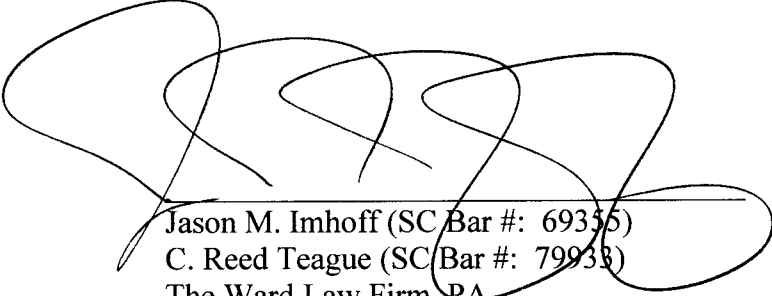
Southern Stone, Inc., and Buck Smith Construction, Third Party Defendants

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**MOTION TO STRIKE**

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I, Jason M. Imhoff, counsel for the Appellants Marick Home Builders, LLC and Rick Thoennes move to strike from Respondents' Designation of Matter and within the brief any reference to: a) Verdict Form, Filed November 9, 2013, in accordance with Rule 210 (c) SCACR and Rule 209(b) SCACR. The grounds and exhibits in support of this motion are more fully set forth in the attached Memorandum.



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*Attorneys for Appellants Marick Home Builders, LLC and Rick Thoennes*

June 10, 2014

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*Attorneys for Respondents Stoneledge at Lake  
Keowee Owners' Association, Inc. (Plaintiffs)*

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Of whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And Builders First Source-Southeast Group, Southern Concrete Specialties, Inc., Clear View Construction, LLC and Michael Franz are the Respondents,

Bostic Construction, Inc., Third Party Plaintiffs,

v.

Southern Stone, Inc., and Buck Smith Construction, Third Party Defendants

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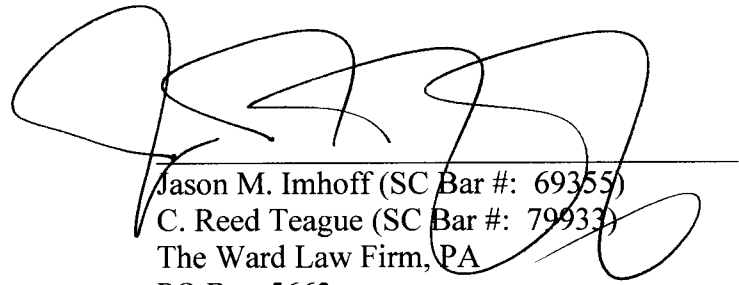
**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE**

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In this action, the Respondents have presented Designation of Matters to be included in the Record on Appeal, attached hereto as Exhibit "A". Within the attached Designation, Respondents seek to include within the record on appeal, the following document which was not submitted to the lower court: a) Verdict Form, Filed November 8, 2013. The above mentioned designation did not exist at the time the final order at issue in this appeal was entered. Further, the noted information was not argued to the lower court during oral arguments. It is an axiomatic rule of law that issues may not be raised for the first time on appeal. *Tally v. South Carolina Higher Education Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986). Appellants in this action should not be required to brief or respond to matters not previously argued or submitted to the lower court.

Thus, pursuant to South Carolina jurisprudence and Rule 210(c) SCACR, the record shall not include matters which were not presented to the lower court or tribunal.

Appellants pray that this item be stricken from the proposed record and that any reference or arguments surrounding this item stricken from the record be removed from Respondents' Designation of Matter.



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*Attorneys for Appellants Marick Home  
Builders, LLC and Rick Thoennes*

June 10, 2014

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*Attorneys for Respondents Builders FirstSource*

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Lyles & Lyles, LLC

P. O. Box 773

Charleston, SC 29401

*Attorneys for Respondents Stoneledge at Lake  
Keowee Owners' Association, Inc. (Plaintiffs)*

# **Exhibit A**

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM THE OCONEE COUNTY  
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**SC Court of Appeals**

The Honorable Alexander S. Macaulay,  
Presiding Judge Seventh Judicial Circuit

**Appellate Case No. 2013-001404**

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED.....PLAINTIFFS,

V.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC, INC., D/B/A KMCA NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY .....DEFENDANTS,

OF DEFENDANTS MARICK HOME BUILDERS, LLC AND RICK THOENNES..... APPELLANTS,

OF DEFENDANTS, BUILDERS FIRST SOURCE-SOUTHEAST GROUP, LLC, SOUTHERN CONCRETE SPECIALTIES, INC., CLEAR VIEW CONSTRUCTION, LLC AND MICHAEL FRANZ ..... RESPONDENTS.

**RESPONDENTS BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC  
AND SOUTHERN CONCRETE SPECIALTIES, INC., DESIGNATION OF MATTER**

**RESPONDENTS' BUILDERS FIRSTSOURCE- SOUTHEAST GROUP, LLC  
AND SOUTHERN CONCRETE SPECIALTIES, INC.  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL  
Appellate Case No. 2013-01404**

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1. Original Complaint, dated May 29, 2009;
2. Third Amended Complaint of Stoneledge at Lake Keowee Owners' Association, Inc., dated April 3, 2012;
3. Answer to Third Amended Complaint and Cross-Claims of Marick Home Builders, LLC, dated April 5, 2012;
4. Respondents' Answer to Marick Home Builders, LLC, 's Cross-Claim;
5. Marick Home Builders, LLC's Answer to Third Amended Complaint;
6. Order Granting Builders FirstSource – Southeast Group, LLC, Carl Catoe Construction, Inc., and the Catoe Subcontractors' Motion to Dismiss and Motions for Summary Judgment;
7. Builders FirstSource – Southeast Group, LLC's Notice and Motion for Summary Judgment and/or to Dismiss;
8. Carl Catoe Construction, Inc. Motion and Motion for Summary Judgment and/or to Dismiss;
9. All Catoe Subcontractors' Motion to Dismiss and/or Summary Judgment;
10. Respondents' Motion and Memorandum in Support Motion to Dismiss and/or Summary Judgment, dated August 23, 2012;
11. Marick Home Builders, LLC and Rick Theonnes' Memorandum in Opposition to Builders FirstSource –Southeast Group, LLC, Carl Catoe Construction, Inc. and the Catoe Subcontractors' Motions for Summary Judgment and Motions to Dismiss along with all attached exhibits;
12. Builders FirstSource-Southeast Group, LLC's Memorandum in Support of Summary Judgment;

13. Carl Catoe Construciton, Inc.'s Memorandum in Support of Summary Judgment;
14. Catoe Subcontractors' Memoranda in Support of Summary Judgment and Motions to Dismiss;
15. Transcript of Proceedings dated September 5, 2012;
16. January 14, 2013 Order Granting Respondents' Motions to Dismiss and for Summary Judgment;
17. Marick Home Builders, LLC, and Rick Theonnes' Motion to Alter and Amend Judgment/ January 23, 2013 Motion for Reconsideration;
18. Marick Home Builders, LLC, and Rick Theonnes' Memorandum in Support of its Motion to Alter and Amend Judgment as to Carl Catoe Construction, Inc. and the Catoe Subcontractors, along with attached Exhibits;
19. Marick Home Builders, LLC, and Rick Theonnes' Memorandum in Support of its Motion to Alter and Amend Judgment as to Builders FirstSource—Southeast Group, LLC along with all attached Exhibits;
20. Respondents' Memoranda in Opposition to Marick Homes Builders, LLC and Rick Theonnes' Motion to Alter and Amend Judgment;
21. Order denying Marick Home Builders, LLC and Rick Theonnes' Motion to Alter and Amend Judgment, dated May 21, 2013;
22. Transcript of Proceedings dated April 10, 2013;
23. Verdict Form, filed November 8, 2013;
24. Contract between Marick Home Builders, LLC and Builders FirstSource—Southeast Group, LLC, dated October 2007.

I certify that this designation contains no matter which is irrelevant to this Appeal.

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Of whom Marick Home Builders, LLC and Rick Thoennes are the Appellants,

And Builders First Source-Southeast Group, Southern Concrete Specialties, Inc., Clear View Construction, LLC and Michael Franz are the Respondents,

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PROOF OF SERVICE

I, Amanda D. Steward, certify that I have served Appellants Marick Home Builders, LLC and Rick Thoennes' Motion to Strike and Memorandum In Support of Motion to Strike by depositing a copy of it in the United States Mail, First Class postage prepaid, on June 10, 2014, addressed to Respondents' attorneys of record, Michael B.T. Wilkes, Esquire and Ellen S. Cheek, Esquire, 127 Dunbar Street, Suite 200 Spartanburg, SC 29306 (attorney for Clear View Construction, LLC and Michael Franz), Mason A. Goldsmith, Esquire, PO Box 1887, Greenville, SC, 29602 (attorney for Southern Concrete Specialties), Robert T. Lyles, Jr., Esquire, PO Box 773, Charleston, SC, 29401 (attorneys for Plaintiffs) and David A. Root, Esquire, PO Box 13897, Charleston, SC, 29422 (attorney for Builders FirstSource)



Amanda D. Steward  
Paralegal to Jason M Imhoff

June 10, 2014

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ζCERTIFIED MEDIATOR  
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June 9, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

***Re Stoneledge at Lake Keowee Owners' Association, Inc., et al. vs. IMK  
Development Co., LLC, et al. vs. Michael Franz, et al.  
Appellate Case No. 2013-001404***

Dear Ms. Kitchings,

I am enclosing an original and a copy of Appellants Marick Home Builders, LLC and Rick Thoennes' Motion to Strike and Memorandum in Support of Motion to Strike. Also enclosed is our firm's check in the amount of \$25.00 to cover the filing fee for the motion and the original and one copy of the Proof of Service upon opposing counsel.

Please file-stamp and return the filed copy in the envelope provided for your convenience. Opposing counsel is being served the same by copy of this letter.

Thank you for your assistance in this matter.

Sincerely,

  
Jason M. Imhoff

JMI/ads  
Enclosure

cc: Michael B.T. Wilkes, Esquire  
David A. Root, Esquire

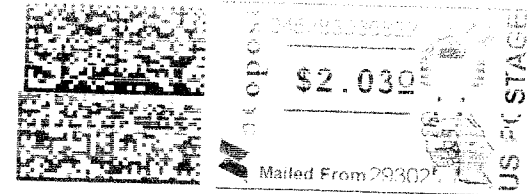
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