

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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AUG 20 2014

APPEAL FROM THE OCONEE COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Alexander S. Macaulay

**Appellate Case No. 2013-01401**

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

And Builders First Source Southeast Group, Carl Catoe Construction, Inc., and Catoe's Subcontractors T.G. Construction, LLC, Martin Hernandez-Aviles, Ester Moran Mentado, Herberto Arcos Hernandez, Francisco Javier Zarate, d/b/a Zarate Construction ("Zarate Construction"), Alejandro Avalos Cruz, Francisco Villalobos Lopez, and Socorro Castillo Montel are the .....Respondents.

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

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**RESPONDENTS' REPLY TO APPELLANTS MARICK HOME BUILDER AND  
THEONNES'S MOTION TO STRIKE**

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Appellants, Marick Home Builders LLC and Rick Theonnes (hereinafter "Marick") move to strike two aspects of Respondent's Brief and Designation of Matter. First, Marick moves to strike certain deposition excerpts which Marick contends were not submitted to the lower court. Second, Marick moves to strike references to it's brief from Appellate Case No. 2013-01403.

A review of the record before the lower court reveals that some of the deposition excerpts that are the subject of Marick's Motion to Strike were submitted to the lower court. These excerpts, and the references in the record, are as follows:

Hornaday deposition testimony:

61:2-8 – Located in MHC/PORRAS' Brief in Support of their Motion for Summary Judgment, dated January 11, 2013 and Judge Macauley Order, dated January 14, 2013 referencing Defendants' Catoe, Builder's First Source and Subcontractors' Motion for Summary Judgment.

97:8-13 – Located in Plaintiff's brief in Opposition to Defendants' Marick Home Builders, LLC and Rick Theonnes' Motion for Summary Judgment dated September 22, 2013.

113-9-12 – Located in MHC/PORRAS' Brief in Support of their Motion for Summary Judgment, dated January 11, 2013 and Judge Macauley Order, dated January 14, 2013 referencing Defendants' Catoe, Builder's First Source and Subcontractors' Motion for Summary Judgment.

With respect to the references contained in Respondent's Brief to Marick's Brief in Appellate Case No. 2013-01403, Respondents admit that that brief was erroneously cited. Currently pending are three appeals involving Marick's cross claims against various subs in the same underlying case. These appeals are referred as Appellate Case No 2013-01401, Appellate Case No. 2013-01403 and Appellate Case No. 2013-01404. Marick's briefs in these appeals contain many of the same arguments and citations and Respondent incorrectly cited to pages 11-13 of Marick's brief in Appellate Case No. 2013-01403, when the proper cite should have been to pages 10-11 of Marick's Brief in Appellate Case No. 2013-01401. The citations are, of course, merely a reference to Marick's arguments, included to frame Respondents arguments for ease of the Court of Appeals.

Respectfully submitted,

**LYLES & LYLES, LLC**

By: 

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***COUNSEL FOR RESPONDENTS***

August 18, 2014

Charleston, South Carolina

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**SC Court of Appeals**

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August 18, 2014

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re. *Stoneledge vs. IMK Development (Marick v Builders-First Source, et al)*  
Appellate Case Number: 2013-01401

Dear Clerk:

Enclosed please find the original and seven (7) copies of Respondents' Reply to Appellants Marick Home Builder and Rick Theonnes's Motion to Strike. Please cause the original and six (6) copies to be filed with the court, and return the extra stamped clocked copy to me in the enclosed, self-addressed, and stamped envelope provided for your convenience.

By copy of this letter I am providing the enclosure to all counsel of record by email and/or mail as set forth in the Proof of Service included with the Reply.

Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T. Lyles, Jr

RTL/kl

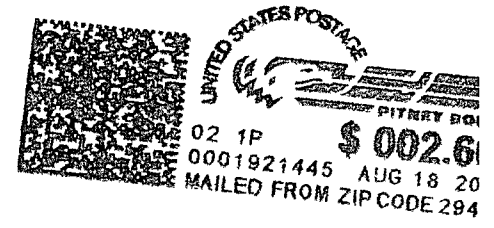
Enclosures

cc: Counsel of Record(Via Email)

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**TO:**  
 The Honorable Jenny Abbott Kitchings  
 Clerk, South Carolina Court of Appeals  
 1015 Sumter Street  
 Columbia, SC 29201

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