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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums,Appellants,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Which Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are..... Respondents.

APPELLANT'S RETURN TO ACROCRETE, INC.'S AND GLASSTEC, INC.'S JOINT MOTION TO DISMISS APPEAL

R. Patrick Flynn
Christopher M. Ramsey
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
(843) 723-6470
Attorneys for Appellant

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On April 2, 2015, Appellant received Acrocrete, Inc.'s and Glasstec, Inc.'s Joint Motion to Dismiss Appeal as to those respondents (hereinafter "the Motion"). Acrocrete and Glasstec take the position that they should be dismissed from this appeal because they are not "adverse parties" to the Appellant. That position is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and this Joint Motion must be denied.

These Respondents attempt to justify their position from the language of Rule 202(a), SCACR. However, that rule only provides guidance as to the proper nomenclature of the parties in an appeal, and does not provide any guidance as to the qualifications of either party to an appeal. Indeed, the rule only employs the term "adverse party" in order to distinguish the relative positions of the appellant and the respondent. "The party appealing shall be known as the appellant and the adverse party as the respondent." Id.

It is not disputed that Acrocrete and Glasstec are defendants in the underlying cases now on appeal. Additionally, Acrocrete and Glasstec do not dispute in their Joint Motion that they performed work on the Shipwatch project as subcontractors to Respondent Carolina Concrete Systems, as alleged in the Complaint. Appellant asserted that Acrocrete and Glasstec were negligent in the performance of their work at Shipwatch, among other causes of action. Acrocrete and Glasstec denied those allegations, thus taking an adverse position to Appellant in this matter.

A plain reading of the hearing transcript indicates that the lower court denies Appellant's right to assert any claims for work performed at the Shipwatch project prior to 2010. Transcript of Motion Hearing October 27, 2014, at p. 6. Appellant alleges in the Complaint that Acrocrete and Glasstec performed work at the project before 2010, thus making the substance of this appeal applicable to the claims and defenses relating to these two Respondents, which fully justifies their

inclusion as Respondents which are affected by the matter in this appeal.

Acrocrete and Glasstec are not, however, required to file a separate Brief of Respondent if they choose not to do so. Rule 208(b)(6), SCACR, provides: "In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another."

Moreover, it is appropriate to have all parties affected by the appeal, especially those who have taken adverse positions in the matter on appeal, included as Respondents in order to ensure that they receive copies of all filings and communications from the parties and the Court, in order to allow them the opportunity to submit briefs and participate as they deem appropriate.

Based upon the foregoing, the joint motion by Acrocrete and Glasstec must be denied, as they are adverse parties to Appellant and are properly included as Respondents in this Appeal.

Respectfully submitted,

ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting St., Suite 300
Charleston, South Carolina 29401
(843) 723-6470
(843) 853-9045 fax

By: 

R. Patrick Flynn
Christopher M. Ramsey
Attorneys for Appellant

Charleston, South Carolina

April 10, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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Of Whom, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are,..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have served parties in this action with a copy of the following document(s) via U.S. Mail and E-Mail as follows:

- Appellant's Return to Acrocrete, Inc.'s and Glasstec, Inc.'s Joint motion to Dismiss Appeal

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116
ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237

**ATTORNEYS FOR SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

AND

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
(P) 843 723-0185

ATTORNEYS FOR FIRST EXTERIORS, LLC

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800

ATTORNEYS FOR CAROLINA CONCRETE SYSTEMS, INC.

David A. Root, Esquire
Kernodle Root & Coleman
914 Golly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800

ATTORNEY FOR BASF AND SONNEBORN

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726

**ATTORNEY FOR EFCO CORP. AND W.C. JOHNSTON
ARCHITECTURAL SALES, INC.**

K. Michael Barfield, Esquire

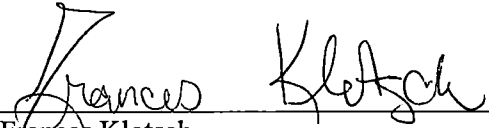
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700
**ATTORNEY FOR GARY FREEMAN, ARCHITECT AND
GARY FREEMAN, INDIVIDUALLY**

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550
and
L. Dean Best, Esquire
P.O. Box 13466
Charleston, SC 29422
(P) 843-793-4744
(F) 843-793-4278
ATTORNEYS FOR GLASGOW ROOFING

Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
(P) 843-766-8101
ATTORNEYS FOR CHARLESTON GLASS COMPANY, INC.

Greg Horton, Esquire
Ryan Gilsenan, Esquire
Adriane Belton, Esquire
Womble Carlyle
5 Exchange Street
Charleston, SC 29401
(P) 843-722-3400
ATTORNEYS FOR ACROCRETE, INC.

Terrence McKelvey
1083 Winslow Drive
Charleston, SC 29412
(P) 843-559-5074
PRO SE DEFENDANT



Frances Klotsch

April 10, 2015

ROBERTSON HOLLINGSWORTH & FLYNN

ATTORNEYS AT LAW

WELLS FARGO CENTER

177 MEETING STREET, SUITE 300
CHARLESTON, SOUTH CAROLINA 29401

(843) 723-6470 • Fax (843) 853-9045

Dunn D. Hollingsworth
R. Patrick Flynn
Theodore L. Manos
Paul R. Rahn
Robert J. Cardillo (SC, IL, MI)
Michael E. Wright
Christopher M. Ramsey (SC, GA)

Claron A. Robertson
Of Counsel

April 10, 2015

South Carolina Court of Appeals
Clerk of Court
1220 Senate St.
Columbia, South Carolina 29201

Re: Oscar Mendiondo, individually and as representative of a class of similar situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums vs. Carolina Concrete Systems, *et al*
Appellate Case No. 2014-002765

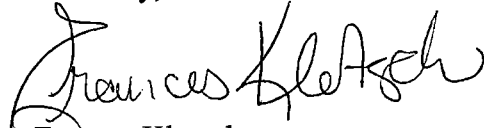
Dear Sir or Madam:

Enclosed please find the original and seven (7) copies of the Appellant's Return to Acrocrete, Inc.'s and Glasstec, Inc.'s Joint Motion to Dismiss Appeal in the above-referenced matter. By copy of this letter, I am serving the same upon all counsel of record.

I have also enclosed a self-addressed, postage-paid envelope and request that you return one file stamped copy to me at your convenience. Please also find a filing fee check in the amount of \$25.00.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,


Frances Klotsch
Legal Assistant to R. Patrick Flynn

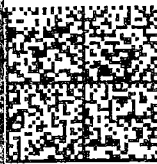
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Enclosures

cc: All Counsel of Record (via US Mail and email)

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1220 Senate St.
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