

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 17 2015
SC 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 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.

**APPELLANT’S RETURN TO GLASGOW ROOFING, INC.’S MOTION TO DISMISS
APPEAL, MOTION TO STRIKE, AND MOTION TO FILE OUT OF TIME**

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Attorneys for Appellant

Procedural Background

Appellant filed its Notice of Appeal on December 30, 2014 and named Glasgow Roofing, Inc. as a Respondent. The notice was properly served on all parties to this appeal. On March 2, 2015, Appellant filed and served its Initial Brief. Under Rule 208(a)(2), SCACR, any Respondent who wished to file an Initial Brief was required to serve the same on all parties no later than April 1, 2015. On that day, Respondents Acrocrete, Inc. and Glasstec, Inc. filed a joint motion to dismiss the appeal as to them because they contended they were not “adverse parties.” Appellant filed a return, and Acrocrete and Glasstec filed a reply brief. The Court has not ruled on that motion.

Meanwhile, several Respondents filed Initial Briefs, in some cases after requesting and being granted additional time by the Court. Appellant filed a Reply Brief, and then served the Record on Appeal on all parties on May 26, 2015.

On June 3, 2015, Glasgow Roofing, Inc. filed a Motion to Dismiss and to Strike it as a Respondent from this appeal. In the alternative, Glasgow moved for leave to file its Initial Brief out of time. Glasgow’s excuse for not filing an Initial Brief when it was due two months ago is that it had a good faith belief it was improperly included in the appeal. Glasgow does not explain why it has waited until now to raise the issue of whether it is properly a party to this appeal.

Argument and Citation of Authority

Glasgow’s position that it is not an “adverse party” to the Appellant is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and therefore its Motion to Dismiss and to Strike must be denied. Glasgow relies on 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 beyond dispute that Glasgow is a defendant in the underlying cases now on appeal. In its Complaint, Appellant asserted that Glasgow was negligent in the performance of its work at Shipwatch, among other causes of action. Glasgow 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 denied 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; R. p. 467) Appellant alleges in the Complaint that Glasgow performed work at the project before 2010, thus making the substance of this appeal applicable to the claims and defenses relating to this Respondent, which fully justifies its inclusion as a Respondent which is affected by the matter in this appeal.

Glasgow asserts that the Court should grant it additional time to submit an Initial Brief because it held a good faith belief that it was improperly included in the appeal, and thus did not file one sooner. Even if this were the case, it would not explain why Glasgow slept on its rights for weeks while another party filed a Motion to Dismiss on identical grounds. The Record on Appeal has already been completed, and Final Briefs are being filed. To permit Glasgow to file its Initial Brief at this late juncture would push back the schedule for resolution of this appeal by at least three (3) months.¹ If Glasgow genuinely believes that it is not an “adverse party” and has no interest in this appeal, then it should not be heard to complain when the other parties proceed without its active

¹The delay would likely be much greater because Glasgow has not yet proffered an Initial Brief to be filed in the event the Court grants its Motion.

participation.


Conclusion

For the foregoing reasons, Glasgow's Motion to Dismiss and to Strike, and its alternative Motion to File Out of Time should be denied.

Respectfully submitted,

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By:


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Charleston, South Carolina

June 15, 2015

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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 document(s) via U.S. Mail and Electronic Mail as follows:

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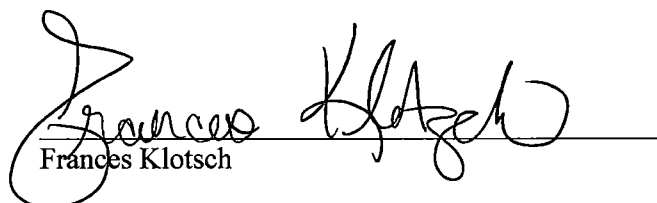
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South Carolina Court of Appeals
Clerk of Court
Attn: Diane Greene
1015 Sumter Street
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Re: Oscar Mendiondo, individually and as representative of a class of similar situated owners of Condominiums units in the horizontal property regime known as Shipwatch Condominiums vs. Carolina Concrete Systems, *et al*
Appellate Case No. 2014-002765

Dear Ms. Greene:

I enclose herewith for filing the original and one (1) copy of the Appellant's Return to Glasgow Roofing, Inc.'s Motion to Dismiss Appeal, Motion to Strike, and Motion to File Out of Time in the above referenced matter:

By copy of this letter, I am serving the same upon all counsel of record.

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

RPF/fak
Enclosures

cc: All Counsel of Record (via Email)

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