

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY JUN 25 2015  
Court of Common Pleas

SC Court of Appeals

R. Markley Dennis, Circuit Judge

Appellate Case No. 2014-002765

Circuit Court Case No. 2012-CP-10-3858

Oscar Mendiondo, Individually and as a 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Lowcountry 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.....Defendants.

Of Which, Carolina Concrete Systems, Inc. are Respondents.

GLASGOW ROOFING, INC.'S REPLY TO APPELLANT'S RETURN OF GLASGOW  
ROOFING, INC'S MOTION TO DISMISS APPEAL, MOTION TO STRIKE, &  
MOTION TO FILE OUT OF TIME

Pursuant to Rule 240, SCACR, Glasgow Roofing, Inc. (hereinafter referred to as "Movant") replies to the Appellant's return of the Movant's motion to dismiss this appeal as to Movant and to strike the Movant from the caption as a respondent on the ground that they have been improperly named as parties to this appeal.

## MEMORANDUM IN SUPPORT

### Motion to Dismiss and Strike

The Appellant asserts that Movants motion is unsupported by the South Carolina Appellate Court Rules or case law citing but a single rule and no caselaw. The crux of the Appellant's argument is that the term 'adverse' is mere guidance as to the "proper nomenclature of the parties in an appeal" and that "a plain reading of the hearing transcript indicates that the lower court denied the Appellant's right to assert any claims for work performed at the Shipwatch project prior to 2010."

SCACR 202(a) states: "The party appealing shall be known as the appellant and the adverse party as the respondent." Black's Law Dictionary defines 'Adverse' as "opposed; contrary; in resistance or opposition to a claim, application, or proceeding." Thus, to be designated as a respondent a party must be in resistance or opposition to an appeal. The question here is whether Glasgow can stand in opposition to the Appellant's appeal before this Honorable Court.

Rule 201(b), SCACR, provides that "[o]nly a party aggrieved by an order, judgment, or sentence may appeal." This court has stated and reiterated that "[a] party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." *Shaw v. City of Charleston*, 351 S.C. 32 (Ct. App.2002) (citing *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct.App.2001)). "The word 'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." *Id.*; see *Parker v. Brown*, 195 S.C. 35, 44-45, 10 S.E.2d 625, 629 (1940)

“An aggrieved party or person is one who is injured in a legal sense; one who has suffered an injury to person or property.”). “A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person’s rights and interests.” *Shaw*, 351 at 37, *citing Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589-590; *First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct.App.1998).

In this case, the court below has not yet directly denied the Appellant’s right to assert any claims for work performed at the Shipwatch prior to 2010. The Appellant appealed a Form 4 order indicating that a formal order was to follow without waiting for the issuance of the formal order. Thus, not only is this appeal premature, but we are also forced to rely solely on the transcript of the hearing below to infer the substance of the order. The lower court stated on the record, “Well, I’m helping **him**. Granted. You are entitled to sue **him** for anything you can relate to things that **he** did in 2010. Okay? Thank you, sir.” (Transcript of Motion Hearing October 27, 2014, at p 6; R. p. 467 (Emphasis added.)). Of course, ‘he’ and ‘him’ are commonly understood in the English language to be singular pronouns indicating a single person or party; in this case, Respondent Carolina Concrete Systems. The Appellants’ legal rights against the movant it would seem are, at present, unaffected by the order below. It is true, of course, that the issue litigated and decided below has strong bearing on the Appellant’s case against the Movant. However, it is not necessarily or officially dispositive and at present the order does not “operate[] on [the appellant’s] rights of property or bear[] directly on his or her interest” against the Movant. *Shaw* 351 S.C. at 37 (*citing Beaufort Realty Co.* 346 S.C. at

301, 551 S.E.2d at 589). The Movant cannot stand in opposition to this Appeal because the lower court's ruling and order did not apply to the Movant.

Motion to File out of Time

The Appellant opposes the Movant's Motion in the Alternative to File out of Time in essence on the grounds that the Movant has slumbered on its rights and that the Record on Appeal has been already been completed, and Final Briefs are being filed. This assertion by the Appellant is inaccurate. SCACR 240(b) **Stay of Time Limits** states:

Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. **A motion to dismiss an appeal** or a motion to relieve counsel shall, however, **automatically stay the time limits for perfecting the appeal until the motion is decided.** (Emphasis added).

Thus, this Appeal was automatically stayed when Respondents' Glasstec, Inc. and Acrocrete, Inc. filed their Motion to Dismiss. SCACR 262(a) **Filing** states:

(a) Except for petitions for rehearing (Rule 221) and motions for reinstatement (Rule 260), filing may be accomplished by:

- (1) Delivering the document to the clerk of the appellate court. Whenever a document is filed with the appellate court, at least one copy of the document must contain an original signature as set forth in Rule 267(b); or
- (2) By depositing the document in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached. The date of filing shall be the date of delivery or the date of mailing.

Glasstec and Acrocrete's Joint Motion to Dismiss was mailed, per the Certificate of Service attached thereto, on April 1, 2015. Thus, per operation of SCACR 262(a), the Motion was filed April 1, 2015. April 1, 2015 was the same day that the Respondents Initial Brief was due per SCACR 208(a)(2) because the Appellant's Initial Brief was filed and served on 30 days prior on March 2. Thus, every action taken in this appeal, not related to the pending motions, has been during an "automatic stay of the time limits for perfecting the appeal". SCACR

240(b). If the Court denies the pending Motions to Dismiss, then it would be an abrogation of the rights of all parties to the appeal who have properly abided by the automatic stay to do anything but restart the clock at the Initial Brief stage of this Appeal.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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COMPANY, INC.

June 19, 2015

Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. Markley Dennis, Circuit Judge

Appellate Case No. 2014-002765

Circuit Court Case No. 2012-CP-10-3858

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

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Of Which, Carolina Concrete Systems, Inc. are Respondents.

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED Respondent Glasgow Roofing, Inc.'s *Glasgow Roofing, Inc.'s Reply To Appellant's Return Of Glasgow Roofing, Inc's Motion To Dismiss Appeal, Motion To Strike, & Motion To File Out Of Time* by depositing a copy in the U.S. mail, postage paid, on June 19, 2015, and via electronic mail addressed to counsel of record as set forth below:

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ATTORNEYS FOR GLASGOW ROOFING  
COMPANY, INC.

June 19, 2015

Charleston, South Carolina

June 19, 2015

Court of Appeals  
Hon. Jenny Abbott Kitchings  
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Columbia, SC 29211

RECEIVED  
JUN 25 2015  
SC Court of Appeals

Re: *Shipwatch Condominium Association, Inc. vs. First Exteriors, et al*  
Appellate Case No. 2014-002766  
Case No. 2012-CP-10-3857  
*Oscar Mendiondo, et al. vs. First Exteriors, et al*  
Appellate Case No. 2014-002765  
Case No. 2012-CP-10-3858

Dear Madam Clerk:

Please find enclosed an original and seven copies of each of the following:

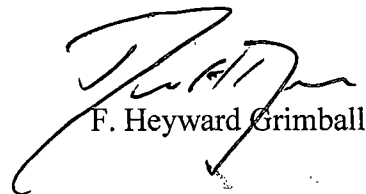
*Glasgow Roofing, Inc.'s Glasgow Roofing, Inc.'s Reply To Appellant's Return Of Glasgow Roofing, Inc's Motion To Dismiss Appeal, Motion To Strike, & Motion To File Out Of Time* in Case No. 2014-002765

*Glasgow Roofing, Inc.'s Glasgow Roofing, Inc.'s Reply To Appellant's Return Of Glasgow Roofing, Inc's Motion To Dismiss Appeal, Motion To Strike, & Motion To File Out Of Time* in Case No. 2014-002766

Please file the original documents and return a clocked copy to me in the self-addressed, stamped envelope which is provided herein.

Thank you for your kind assistance in this matter.

Sincerely,

  
F. Heyward Grimball

FHG/ksw  
Enclosures

cc: Counsel of Record (w/ enclosures)