



The South Carolina Court of Appeals

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V. CLAIRE ALLEN
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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 22, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Oscar Mendiondo v. Carolina Concrete
Lower Court Case No. 2012CP1003858
Appellate Case No. 2014-002765

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Erin DuBose Dean, Esquire
Stacey Patterson Canaday, Esquire
Paul Eliot Sperry, Esquire

Tyler Paul Winton, Esquire
James H. Elliott, Jr., Esquire
Jonathan J. Anderson, Esquire
Danielle Beck Wegener, Esquire
David Starr Cobb, Esquire
Jennie Marie Smith, Esquire
David A. Root, Esquire
Russell Britton Kelly, Esquire
Kenneth Michael Barfield, Esquire
Samia Hanafi Nettles, Esquire
Amanda R. Maybank, Esquire
Marshall Andrew Earhart, Esquire
Lewis Gregory Cook Horton, Esquire
Ryan Daniel Gilsenan, Esquire
Adriane Malanos Belton, Esquire
R. Patrick Flynn, Esquire
Christopher Michael Ramsey, Esquire
L. Dean Best, Esquire
Terrence J. McKelvey

The South Carolina Court of Appeals

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, Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, 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; Defendants,

Of Which Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, 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.; and Gary Freeman, individually; are the Respondents.

Appellate Case No. 2014-002765

ORDER

The notices of appeal in this case and in 2014-002766 were filed on December 30, 2014. After Appellants in both cases filed their initial briefs, the Appellant in 2014-002766 (Shipwatch Condominium Association, Inc.) filed a motion to

consolidate the two appeals. Also during briefing, several Respondents filed motions in both cases asking that they be dismissed from the appeals. After careful consideration of these motions, we have determined the orders on appeal are not immediately appealable, and we dismiss both appeals.

On October 30, 2014, the trial court entered a Form 4 order granting partial summary judgment. The form order stated a formal order was to follow; however, prior to the trial court's entry of a formal order, Mendiondo filed a "motion for rehearing and/or reconsideration of order granting summary judgment in part." On December 1, 2014, the trial court entered an order denying the motion to reconsider in which it stated, "The Order Granting in Part Defendant Carolina Concrete Systems, Inc's Motion for Summary Judgment . . . stands." Mendiondo subsequently served and filed a notice of appeal from "the order granting summary judgment in part."

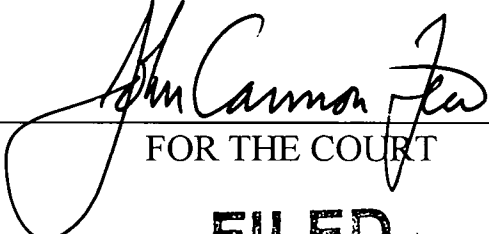
In the motions to dismiss, Respondents Acrocrete, Inc.; GlassTec, Inc.; and Glasgow Roofing, Inc. ask the court to dismiss them as parties to the appeal, arguing they did not join in Carolina Concrete's motion for summary judgment or participate at the motion hearing, the trial court's form order does not grant any relief, and they are not "adverse parties" under Rule 202(a), SCACR. Glasgow Roofing also moved to file its initial brief out of time should this court deny its motion to dismiss.

This appeal is dismissed because the order from which appeal was taken was not a final judgment.¹ *See Culbertson v. Clemens*, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996) ("As a general rule, only final judgments are appealable."). The trial court's form order was not final because it stated a formal order was to follow. *See id.* ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory [and not final]." (internal quotation marks omitted) (alteration by court)); *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009) ("The Form 4 order . . . specifically indicated a formal order would follow. Therefore, this form order was not . . . final.").

Moreover, the trial court's order denying Mendiondo's motion to reconsider did not render its prior non-final order final. In fact, Mendiondo's motion and the trial court's December 1, 2014 order were premature because the form order was not a "judgment" under our rules of civil procedure. *See* Rule 54(a), SCRPC

¹ Because this entire appeal is dismissed, the parties' motions are moot and we decline to consider them.

("Judgment" as used in these rules includes any decree or order which dismisses the action as to any party or finally determines the rights of any party."); Rule 59(a), SCRCP ("On a motion for a new trial in an action tried without a jury, the court may open *the judgment* if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a *new judgment*." (emphasis added)); Rule 59(e), SCRCP ("A motion to alter or amend *the judgment* shall be served not later than 10 days after receipt of written notice of the entry of the order." (emphasis added)). Similarly, the trial court's oral ruling at the summary judgment hearing did not constitute a judgment. See Rule 58(a), SCRCP ("Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record."); *Brailsford v. Brailsford*, 380 S.C. 443, 452, 669 S.E.2d 342, 346 (Ct. App. 2008) ("An oral order of the court is not final and binding until reduced to writing, signed by the judge, and delivered for recordation."); *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) ("[A] judgment is effective only when reduced to writing and entered into the record."). We interpret the trial court's statement in its December 1, 2014 order that its prior order "stands" to mean a formal order granting partial summary judgment is still forthcoming.


C.J.
FOR THE COURT

FILED

7-2-15

Columbia, South Carolina

cc: The Honorable R. Markley Dennis, Jr.
Erin DuBose Dean, Esquire
Stacey Patterson Canaday, Esquire
Paul Eliot Sperry, Esquire
Tyler Paul Winton, Esquire
James H. Elliott, Jr., Esquire
Jonathan J. Anderson, Esquire
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