

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SEP 03 2015

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

SC Court of Appeals

Alexander S. Macaulay, Presiding Judge Seventh Judicial Circuit

Appellate Case No. 2013-001404

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,

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bradford D. Seckinger, John Ludwig, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, M Group Construction and Development, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Mel Morris, Joe Bostic, Jeff Bostic, 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 Jarmamillio, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, Miller/Player & Associates, Defendants,

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

And Builders First Source-Southeast Group, Southern Concrete Specialties, Inc., Clear View Construction, LLC and Michael Franz are the Respondents,

Bostic Construction, Inc., Third Party Plaintiffs,

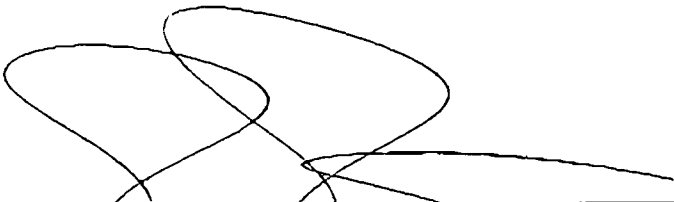
v.

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

PETITION FOR REHEARING

Pursuant to Rule 221 of South Carolina Appellate Court Rules, the Appellant, Marick Home Builders, LLC and Rick Thoennes, hereby move for a petition for rehearing. This petition is based upon the following reasons:

1. There is a question of whether the pleadings set forth allegations of Marick suffering its own damages.
2. A warranty cause of action and a breach of contract cause of action are separate from equitable indemnity.
3. There is a question of fact whether a contract existed.
4. There are questions of whether a subcontractor owes a general contractor a duty under the implied warranty of workmanlike service independent of any claims of the property owner.



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Attorneys for Appellants Marick Home Builders, LLC and Rick Thoennes

September 2, 2015

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IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Bradford D. Seckinger, John Ludwig, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, M Group Construction and Development, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Mel Morris, Joe Bostic, Jeff Bostic, 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 Jarmamillio, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, Miller/Player & Associates, Defendants,

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

And Builders First Source-Southeast Group, Southern Concrete Specialties, Inc., Clear View Construction, LLC and Michael Franz are the Respondents,

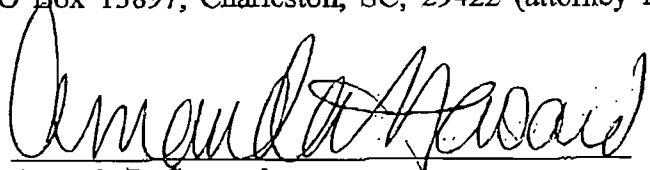
Bostic Construction, Inc., Third Party Plaintiffs,

v.

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

PROOF OF SERVICE

I, Amanda D. Steward, certify that I have served Appellants Marick Home Builders, LLC and Rick Thoennes' Petition for Rehearing by depositing a copy of it in the United States Mail, First Class postage prepaid, on September 2, 2015, addressed to Respondents' attorneys of record, Michael B.T. Wilkes, Esquire and Ellen S. Cheek, Esquire, 127 Dunbar Street, Suite 200 Spartanburg, SC 29306 (attorney for Clear View Construction, LLC and Michael Franz), Mason A. Goldsmith, Esquire, PO Box 1887, Greenville, SC, 29602 (attorney for Southern Concrete Specialties), Robert T. Lyles, Jr., Esquire, PO Box 773, Charleston, SC, 29401 (attorneys for Plaintiffs) and David A. Root, Esquire, PO Box 13897, Charleston, SC, 29422 (attorney for Builders FirstSource)



Amanda D. Steward
Paralegal to Jason M Imhoff

September 2, 2015

RESPONDENTS' COUNSEL OF RECORD:

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

*Re Stoneledge at Lake Keowee Owners' Association, Inc., et al. vs. IMK
Development Co., LLC, et al. vs. Michael Franz, et al.
Appellate Case No. 2013-001404*

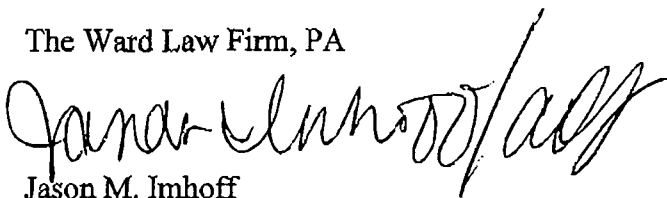
Dear Ms. Kitchings,

Please find enclosed an original and six (6) copies of Appellate Marick Home Builders, LLC and Rick Thoennes' Petition for Rehearing in the above referenced matter. By a copy of hereof, I am serving the same upon the Respondents' counsel also. If you need anything further, please feel free to give me a call.

Thank you for your assistance in this matter.

Sincerely,

The Ward Law Firm, PA



Jason M. Imhoff

JMI/ads
Enclosure

cc: Michael B.T. Wilkes, Esquire
David A. Root, Esquire
Ellen S. Cheek, Esquire

Mason A. Goldsmith, Esquire
Robert T. Lyles, Jr., Esquire

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Fax

**From: Amanda D. Steward, Paralegal to
Jason M. Imhoff**

DATE: September 2, 2015

TO: South Carolina Court of Appeals

FAX: 803-734-1496

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ATTN: Amelia

SEP 03 2015

PAGES: (including cover page) __8__

SC Court of Appeals

Comment:

Please find attached Appellants' Petition for Rehearing for Case No: 2013-001404. The original will go out in the mail today. If you have any questions or concerns, please feel free to give me a call. Thank you for your assistance in this matter.

PLEASE CALL 864-327-3044, IF THERE IS A PROBLEM WITH THE TRANSMISSION OF THIS FAX.

This facsimile message is privileged and confidential. It is intended solely for the use of the individual named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution or copying of this communication is prohibited. **If you have received this facsimile message in error, please notify the sender by telephone and return the original message to the sender by United States Mail.**