

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

OCT 26 2015

SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2012-CP-10-3857 and 2012-CP-10-3858

Appellate Case No.: 2015-001644

Shipwatch Condominium Association, Inc., Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, 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 Defendants,

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.

and

Oscar Mendiando, 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.; Spectech 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.; 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.; and Gary Freeman, individually; are Respondents.

APPELLANTS' RETURN TO ACROCRETE, INC.'S MOTION TO DISMISS APPEAL

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Acrocrete, Inc. contends that it should be dismissed from this appeal because it is not an “adverse party” to the Appellant. That position is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and thus its Motion must be denied.

Acrocrete 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 not disputed that Acrocrete is a defendant in the underlying cases now on appeal. Additionally, Acrocrete does not dispute in its Motion that it performed work on the Shipwatch project, as alleged in the Complaint. Appellant asserted that Acrocrete was negligent in the performance of its work at Shipwatch, among other causes of action. Acrocrete denied those allegations, thus taking an adverse position to Appellant in this matter.

Acrocrete cites to McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) in support of its position. However, as Acrocrete admits, the McGill case is distinguishable for several reasons. In McGill, the respondent attempted to have the entire appeal dismissed because the appellant failed to name all opposing parties as respondents – notably the guardian. The Court held that because the guardian was only a party to the partition claim, and that claim was not being appealed, the guardian was not a required respondent and the appeal could proceed.

In this case, Appellant has asserted the same claims of negligence and breach of warranty against both Carolina Concrete Systems and Acrocrete. Acrocrete claims that it has “no stake in the order being appealed or the issues involved in the order.” On the contrary, if the partial summary

judgment is upheld in favor of Carolina Concrete Systems, one may expect Acrocrete to be among the first to argue that it should benefit from the same logic in support of its own motion for summary judgment - which has already been filed in the case below.

Acrocrete claims it is being required to participate in the appeal of an order that does not apply to it. While Acrocrete is free to participate to the extent it sees fit, the Appellate Court Rules do not require Acrocrete to do anything. 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." Furthermore, while the appeal would be dismissed if Appellant failed to submit a brief, no similar penalty applies to a respondent. "Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Rule 208(a)(4).

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 motion by Acrocrete must be denied, as it is an adverse party to Appellant and is properly included as a Respondent in this Appeal.

Respectfully submitted,

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