

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

NOV 12 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 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.; 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 GLASGOW ROOFING'S MOTION TO DISMISS
APPEAL**

R. Patrick Flynn
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Attorneys for Appellants

Glasgow Roofing, Inc. ("Glasgow") contends that it should be dismissed from this appeal because it is not an "adverse party" to the Appellants. That position is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and thus its Motion 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 not disputed that Glasgow is a defendant in the underlying cases now on appeal. Additionally, Glasgow does not dispute in its Motion that it performed work on the Shipwatch project, as alleged in the Complaint. Appellants 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 Appellants in this matter.

Appellants have asserted the same claims of negligence and breach of warranty against both Carolina Concrete Systems and Glasgow. If the partial summary judgment is upheld in favor of Carolina Concrete Systems, one may expect Glasgow 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. In fact, Glasgow filed an Initial Brief along with its Motion to Dismiss, in which it argued that it is entitled to summary judgment for the same reasons as Carolina Concrete Systems. Thus, it is disingenuous for Glasgow to argue that it is not an "adverse party" to Appellants.

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. Glasgow has already taken advantage of this opportunity in filing an Initial Brief.

Based upon the foregoing, the motion by Glasgow must be denied, as it is an adverse party to Appellants and is properly included as a Respondent in this Appeal.

Respectfully submitted,

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By: 

R. Patrick Flynn

Attorneys for Appellants

Charleston, South Carolina

November 9, 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/or Electronic mail as follows:

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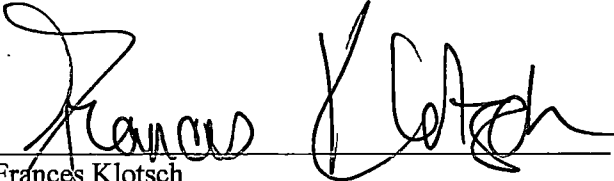
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November 9, 2015
Charleston, South Carolina

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Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

Re: Shipwatch and Mendiondo v. Carolina Concrete;
Appellate Case No. 2015-001644

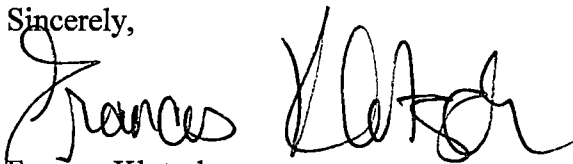
Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Appellants' Reply Brief and one original and six (6) copies of Appellants' Return to Glasgow Roofing's Motion to Dismiss Appeal in the above-referenced matter. By copy of this letter, I am serving the same upon all counsel of record.

I have also enclosed a self-addressed, postage-paid envelope and request that you return one file stamped copy to me at your convenience.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



Frances Klotsch

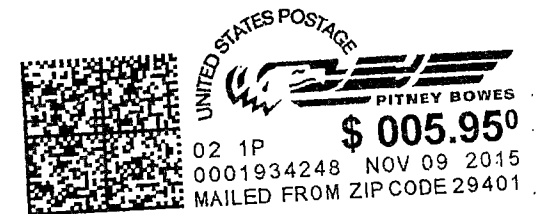
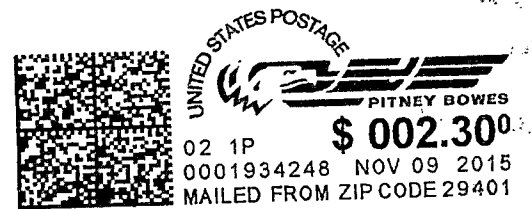
Legal Assistant to R. Patrick Flynn

RPF/fak
Enclosures

cc: All Counsel of Record (U.S. Mail)

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