

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

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OCT 11 2016

SC Court of Appeals

Palmetto Construction Group, Respondent,

v.

Restoration Specialists, LLC, Appellants.
Reuben Mark Ward, and
Lynnette Pennington Ward

NOTICE OF APPEAL

Restoration Specialists, LLC, Reuben Mark Ward, and Lynnette Pennington Ward appeal the Bench and Formal Orders of the Honorable Mikell R. Scarborough dated July 14, 2016. The Court's orders: (a): Denied Appellant's Motion to Lift Entry of Default for lack of good cause; (b): Denied Appellant's Motion to Stay and Compel Arbitration on the basis of default; and (c): Set a damages hearing for October 4, 2016. Appellants received written notice of entry of these orders on July 18, 2016.

Appellants filed a Motion to Reconsider and to Alter and Amend the Court's orders pursuant to SCRCP 59(e) and applicable case law on July 27, 2016. The Court scheduled the hearing on Appellants' motion for October 11, 2016. On September 7, 2016, standing on their rights to arbitration, the Appellants requested the Court to schedule the hearing on Appellants' motion prior to the October 4, 2016 damages hearing.

On September, 7, 2016, the Court replied to Appellants' request and made the decision to switch the hearing dates, with the motions hearing to be held on October 4, 2016 and, if necessary, the damages hearing to be held on October 11, 2016. The Court asked the parties to advise if this plan was acceptable. The Appellants informed the Court that this plan was acceptable. The Respondent notified the Court that it would defer to the Court, but preferred the damages hearing to be held on October 4, 2016 and the motions hearing to be held on October 11, 2016.

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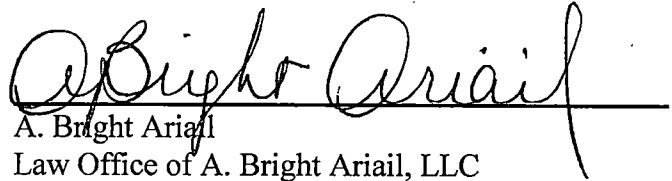
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After further consideration, the Court then rendered a decision not to switch the hearing dates and informed the parties that the damages hearing would be held on October 4, 2016 and the motions hearing would be held October 11, 2016. Appellants received written notice of the Court's decision on September 12, 2016.

The Court's decision to proceed with the damages hearing and not hear the Appellant's Rule 59(e) prior thereto effectively denies this motion and proceeding with the damages hearing under these circumstances would severely prejudice Appellants' rights to arbitration. Therefore, subject to, without waiving, and fully preserving their rights to arbitration, the Appellants hereby file the instant appeal in this matter.

September 29, 2016



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(843) 814-8805
Attorney for Appellants

Other Counsel of Record:
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Attorneys for Respondent

Formal Order
(07-14-16)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) PALMETTO CONSTRUCTION GROUP,
) LLC

) CASE NO. 2016-CP-10-1143

) Plaintiff,

) vs.

) ORDER

) RESTORATION SPECIALISTS, LLC,
) REUBEN MARK WARD, and LYNNETTE
) PENNINGTON WARD

) Defendants.

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SC Court of Appeals

THIS MATTER CAME BEFORE ME on Defendants' motion to be relieved from default;

WHEREAS based on the record and the affidavits before me, Defendants failed to show good cause such that they should be relieved from default;

WHEREAS Defendants filed, on July 11, 2016, a motion to stay and to compel arbitration;

IT IS ORDERED THAT:

- 1) Defendants' motion to be relieved from default is DENIED;
- 2) A damages hearing is set for October 4, 2016 at 2:00pm; and
- 3) ~~No ruling is made on~~ Defendants' motion to stay and to compel arbitration

*is denied RS
as Δ is in default.*

[Signature]
The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

On this 14 day of July 2016
Charleston, SC

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U.S. COURT OF APPEALS

Bench Order
(07-14-16)

1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON COURT OF COMMON PLEAS
 3 Palmetto Construction Group,
 4 Plaintiff,
 5 vs. CASE NO. 2016-CP-10-1143
 6 Restoration Specialists, LLC,
 7 Reuben Mark Ward, and Lynnette
 8 Pennington Ward,
 9 Defendants.
 10
 11
 12 Hearing before the Honorable Mikell R.
 13 Scarborough, reported by Christine A. Smith, Court
 14 Reporter and Notary Public, at 10:57 a.m. on July
 15 14, 2016 at 100 Broad Street, Charleston,
 16 South Carolina.
 17
 18
 19
 20
 21 Christine A. Smith, Court Reporter
 22 Master-In-Equity
 23 P.O. Box 30276
 24 Charleston, South Carolina, 29417
 25 (843) 958-3079
 csmith@charlestoncounty.org

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 1 PROCEEDINGS
 2
 3 THE COURT: Palmetto Construction Group versus
 4 Restoration Specialists, LLC. For the Plaintiffs is
 5 Mr. Drew Epting and Ms. Michelle Endemann. For the
 6 Defendants is Ms. Bright Ariail. Good morning,
 7 Ms. Ariail. I believe we are here on your motion,
 8 are we? Is that what got us here?
 9 MS. ENDEMANN: Judge, I think we are here on a
 10 couple of different things that were noticed. I
 11 think you set it for sort of a general status after
 12 we were here before you about a month ago. Also,
 13 there is a Motion to be Relieved from Default that
 14 Ms. Ariail has filed, as well as a Motion to Compel
 15 Arbitration.
 16 I can give you a little bit of an overview of
 17 sort of where we are from last time. I think it
 18 would be helpful.
 19 THE COURT: Sure.
 20 MS. ENDEMANN: If you recall, Judge, this is a
 21 case where my client, Palmetto Construction has sued
 22 a business associate of theirs on a project for the
 23 V.A. The agreement between Restoration Specialist
 24 and the other Defendants which are the principals of
 25 that company and Palmetto was essentially that they

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 1 APPEARANCES OF COUNSEL:
 2 ATTORNEYS FOR THE PLAINTIFF:
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 21
 22
 23
 24
 25

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 1 would work together on a job with the V.A.
 2 Restoration was to be the general contractor.
 3 Palmetto was to aid Restoration in this job, provide
 4 their expertise on a job of this size, provide the
 5 bonds that were required in order to complete the
 6 project. There would be a split of the profits, and
 7 Mr. Ward was the one who had the contracts with the
 8 V.A., and then all the subcontractors below.
 9 Unfortunately what happened is Mr. Ward
 10 stopped paying his subcontractors. He stopped paying
 11 them it looks like all together. We started
 12 receiving bond claims coming in toward the end of the
 13 job. We didn't know what was going on because we
 14 weren't a party to those agreements. We weren't the
 15 ones that were paying them. We weren't the ones that
 16 were receiving money from the V.A.
 17 So Mr. Ward is getting money from the V.A.
 18 He's diverting the funds. His subcontractors filed
 19 claims on the bond for which Palmetto was liable, and
 20 personally liable, all of its principals, their
 21 wives, and now Hanover, the bonding company with
 22 surety is looking to us to pay over a million dollars
 23 in bond claims.
 24 We were here before you last time for a
 25 damages hearing because we had served discovery with

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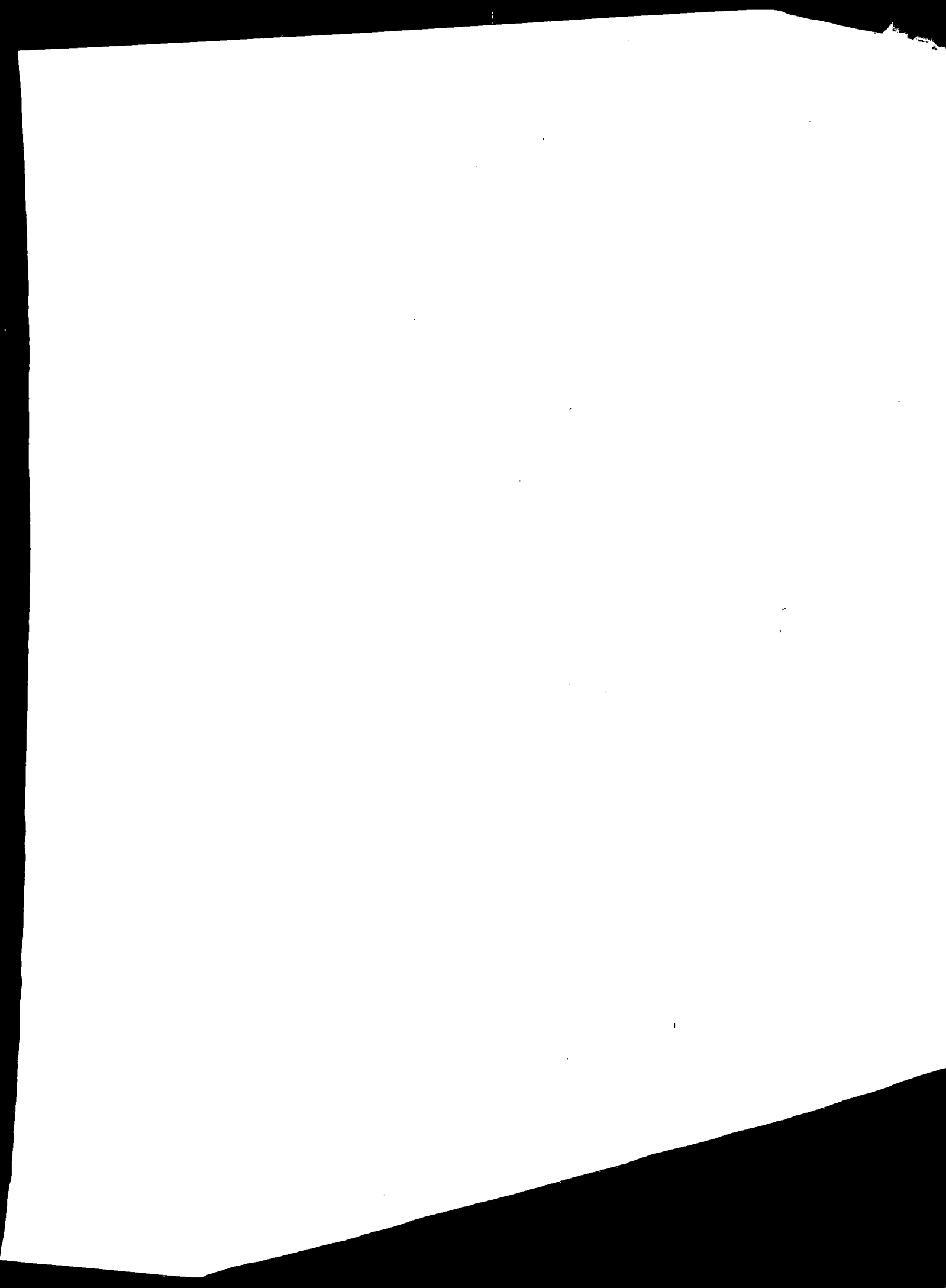
...that he had hired Mr. Ariail. We served Mr. Ward
...the Rules,
...discovery is not complete. In particular we're
...missing some pretty important things like the
...payments from the V.A. to Mr. Ward and then where

From the documents that we have received it
appears that the project was pretty profitable with
all the subcontractors being paid, and then still
some hundreds of thousands of dollars in profit. So
we're left looking at records that show there should
be a surplus of funds.
Instead we're faced with the surety coming to
us and saying, Hey, you owe us over a million
dollars. The other problem that my client has is
they do a lot of bonded work. They have a surety
that says, You owe us over a million dollars. Nobody
wants to bond any projects. So time is really,
really of the essence here because we can't get work.
If we can't get work our business goes under, and all

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of our people don't have jobs, so we're really sort
of in dire straits here.
THE COURT: Okay.
MS. ENDEMANN: We were served with this Motion
to Compel Arbitration this week, and Your Honor has
set it probably for expediency today. We don't
think, Your Honor, that we can go forward on that
motion. First, we don't think that he can bring the
motion, period, because he's in default; and second,
it's not properly before this Court as we only got
notice of it a couple of days ago.
We think that the tapat here might be to try
to get relief from default, get this motion heard,
and get it appealed if Your Honor does not rule in
their favor and ties this up for several years. If
that happens, again, my client's out of business.
What we would like to see happen here today is
have a damages hearing set because Mr. Ward is in
default. He's not provided the Court with any
reasonable explanation for being in default and is
not entitled to make this Motion for Arbitration
since he is in default. Thank you, Your Honor.
THE COURT: Ms. Ariail, let me hear from you
on that one.
MS. ARIAIL: Your Honor, I don't totally agree

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with the facts, but I think the thing that disturbs
me the most is the statement that we haven't provided
payments from the V.A. We have provided
documentation of the amount of payments that have
been made.
When we were in front of you a month or so ago
there was a -- and there still is a standing Motion
for Compelling Arbitration by the Plaintiff. They
actually filed that. The contract requires it, and
there is a motion that has not been heard that was
filed by the Plaintiff for compelling arbitration.
In the meantime, despite the requirement for
mediation and arbitration, and based on direction
from the Court at the last hearing, we have complied
with discovery. We have answered discovery. We have
been continuously providing documents as we've
compiled them, and at my direction my client has
concentrated on the financial records rather than the
voluminous information that is compiled on a
two-or-three-year construction project.
That being said, I think it's proper to hear
the Motion to Compel Mediation and Arbitration today.
We merely joined what the Plaintiff's have already
filed. For that reason I would ask that you go ahead
and hear that motion.

8
THE COURT: You want to get out of Default
first, don't you? I didn't rule on that last time I
don't think?
MS. ARIAIL: You did not.
THE COURT: You're right. Mr. Epting and
Ms. Endemann, it looks like there was a motion filed
back in March to Compel. Is it mediation or
arbitration? Is it contract specific?
MS. ENDEMANN: Your Honor, it's a standard
Form AIA contract, so there is a provision in there
having to do with mediation and arbitration. We did
file that motion assuming that we were going to get a
responsive pleading and that we would send it to
arbitration. That's not what happened in this case.
Instead we set aside that motion and asked for an
order referring this case to you for a damages
hearing which was granted by the Circuit Court.
THE COURT: I've got it. This was filed
March 7th. That motion was with those -- that was as
a result of the matter to referral. Mr. Ward was
served on the 14th of March. The Motion to Set Aside
the Entry was there. I recall we had a quick meeting
and then you-all did some discovery and I haven't
been able to resolve anything. Basically, it's a
Motion for a Continuance which we granted. And then



1 Mr. Ward's affidavit. All right. That rings a bell.
2 Well, Ms. Ariail, I think the first thing you
3 have to do is get out of default before you can bring
4 affirmative relief. It does appear that the matter
5 was referred over here. I think that took care of
6 the -- the clerk closed out the Motion to Compel the
7 Arbitration because of the fact that it was referred
8 over here. So that based some adjudication on that
9 motion is how the Court considers that.

10 I think what we were wrestling with last time
11 was whether or not you-all could resolve it. That
12 doesn't look like it's been done. I find that
13 because it was not shown by Mr. Ward in his
14 affidavits that that supported why he was in default
15 I find the Defendant in default and I so order.

16 So this will be a question of a damages
17 hearing to be set. How much time do you-all want?

18 MS. ENDEMANN: Your Honor, we probably need
19 about an hour to two hours for the hearing, and we
20 can hear it whenever the Court is available.

21 THE COURT: Okay.

22 MS. ARIAIL: Your Honor, I would ask since I
23 have in good faith participated in discovery that I
24 at least be allowed to serve some form of discovery
25 related to damages so that I can prepare properly for

1 the damages hearing.

2 THE COURT: Ms. Endemann?

3 MS. ENDEMANN: I don't think we're in a
4 position, Your Honor, to consent to that. Ms. Ariail
5 can certainly Cross the Plaintiff on any damages that
6 we present at the hearing as is allowed by the Rules,
7 but she is allowed to present her own evidence in
8 any ev

9 to try to -- most of the documents
10 support of our case are her
11 which are the bond claims
12 which Hanover is sending
13 happy to
14 he has
15 t be the

1 I've seen nothing they have. They have discussed an
2 indemnity agreement in the Complaint. I don't have
3 that. My client doesn't have that.

4 THE COURT: Well, it may expedite the matter
5 to move forward so everybody's talking with the same
6 thing. We don't have to read documents when we're
7 here. I would ask that you-all share what you can in
8 that regard. I'm not going to mandate it because I
9 don't think that's proper. If we don't get it worked
10 out we'll have a hearing in the next, what, 60 days
11 or so?

12 MS. BECK: I didn't know if this might be
13 something you might want to put on the trial term as
14 a possibility. If not, we've got some time the first
15 week in October.

16 THE COURT: I can bring you-all back -- I've
17 got some trials coming up. I've been squeezing stuff
18 in there. I've got a trial term in August and one in
19 September. The last week of September?

20 MS. BECK: Yes, sir, or if they prefer a date
21 certain we can do the first week of October.

22 MS. ARIAIL: Your Honor, I have a
23 Court-ordered mediation the last week of September,
24 so if we could move it to the first week of October
25 that would be helpful.

1 THE COURT: Okay.

2 MS. BECK: The afternoon of the 5th, after
3 those allocation hearings that you set, we can do the
4 rest in the afternoon.

5 THE COURT: What's going on on the 4th?

6 MS. BECK: Nothing. That would be fine, too.

7 THE COURT: Why don't we set this for October
8 4th at 2:00 p.m. Let's just set it up. That's a
9 Tuesday afternoon the first week of October. Okay?

10 MS. ENDEMANN: Thank you, Judge.

11 MR. EPTING: Thank you, Judge.

12 THE COURT: Very good. I'm just going to do a
13 Form 4, and I'll put that in there. If you-all want
14 to follow up with an order you can. 2:00 p.m.

15 MS. ENDEMANN: Thank you.

16 (The proceedings were concluded at 11:11 a.m.)
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2016-CP-10-1143

Palmetto Construction Group,

Respondent,

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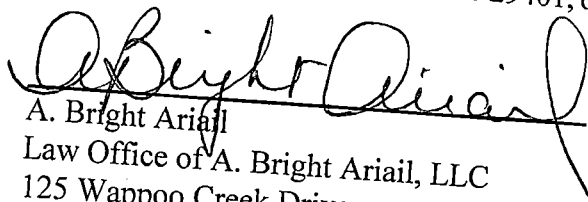
OCT 11 2016

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Construction Group by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2016, addressed to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, Andrew K. Epting, Jr., LLC, 46A State Street, Charleston, South Carolina 29401 and by delivering a copy of it to Palmetto Construction Group's attorneys of record, Andrew K. Epting, Jr. and Michelle N. Endemann, at their office at 46A State Street, Charleston, South Carolina 29401, on September 30, 2016.

September 30, 2016



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October 5, 2016

VIA FACSIMILE (803) 734-1839 & US MAIL

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

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SC Court of Appeals

RE: Palmetto Construction Group v. Restoration Specialists, LLC,
Reuben Mark Ward, and Lynette Pennington Ward
Case No. 2016-CP-10-1143

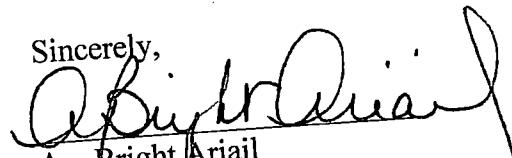
Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondent.
- (2) A copy of the order(s) which are to be challenged on appeal.
- (3) A filing fee of \$100.00.

Please file the Notice of Appeal and return the clocked copy to me in the enclosed SASE. Thank you for your assistance in this matter.

Sincerely,



A. Bright Ariail
Attorney for Appellants

Enclosures

cc: Andrew K. Epting, Jr.,
Michelle N. Endemann
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Attorneys for Respondent

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