

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No. 2007-CP-07-1396  
Case Tracking No.: 2012-212364

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Anthony and Barbara Grazia, individually and  
on behalf of all other similarly situated Plaintiffs, ..... Respondents,

v.

South Carolina State Plastering, LLC, ..... Defendant.

South Carolina State Plastering, LLC, ..... Defendant,

v.

Del Webb Communities, Inc., Pulte Homes,  
Inc., and Kephart Architects, Inc. .... Third-Party Defendants.

Of Whom Del Webb Communities, Inc., and  
Pulte Homes, Inc. are ..... Appellants.

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**RESPONDENTS' RETURN TO DEL WEBB/PULTE'S  
PETITION FOR REHEARING AND  
MEMORANDUM IN SUPPORT OF RULE 269 SCRAP MOTION**

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**RECEIVED**  
SEP 27 2012  
SC Court of Appeals

## INTRODUCTION AND SUMMARY

This brief is filed in opposition to Pulte's Petition for Rehearing. For the reasons stated below, not only should Pulte's Petition be denied but this Court should issue an Order pursuant to SCRAP 269 finding that this Appeal and Petition is frivolous and filed solely for the purpose of delay and fashion an appropriate remedy. After receiving notice of this Court's dismissal of its Appeal of the Court's Class Certification Order, Del Webb/Pulte has now petitioned for a rehearing. In so doing, it cites nothing new but rather relies on arguments which were fully briefed by both sides prior to the Dismissal. In their Motion to Dismiss the Appeal filed on June 21, 2012, Respondents also moved this Court to conduct a Rule 269 SCRAP inquiry into the issue of whether, instead of filing legitimate Appeals, Webb/Pulte's actual motive was delay in violation of that Rule. As is shown below, Pulte's entire strategy in this case is centered on delay, not only in this Appeal, but also in a companion Class Appeal in the matter of *Lancaster, et al vs. Del Webb, et al*, Appellate Case No. 2012-210927. Del Webb/Pulte's conduct in filing Notices of Appeal of orders which it knows do not constitute final adjudications and therefore are not appealable, and its continual pursuit of these improper Appeals will reveal to this Court a pattern of behavior which must be dealt with in accordance with the requirements of Rule 269.

## THE SUN CITY STUCCO AND TRIM CLASS CASES

As this Court is fully aware, there exist two Class cases involving the Del Webb/Pulte Sun City development. The instant *Grazia* case involving 4,300 homes with

allegations of defectively designed and installed stucco exteriors, and the *Lancaster* case, involving fewer homes with allegations of defective trim manufactured by Georgia Pacific Corporation and sold by Del Webb. Lower Courts have certified classes in both cases, and Del Webb has filed Appeals of these orders. Additionally, there are approximately 140 cases on the Beaufort County docket filed by individual homeowners against Del Webb/Pulte, Del Webb filed an Appeal in one of them (*Carlson, et al v. South Carolina State Plastering, LLC, et al*, Case No. 2008-CP-07-3386) following the Lower Court's Order that Pulte had waived any right to arbitration contained in its sales contract by waiting to seek enforcement of arbitration and instead utilizing the Court system.

#### **DEL WEBB/PULTE'S APPELLATE ACTIVITIES IN THE STUCCO CASES**

As noted above, Del Webb/Pulte has appealed virtually every Order issued by the Lower Court, whether or not appealable. In the instant Appeal, Pulte filed an Appeal of a Class Certification and case management order. When Pulte filed its Appeal, it had actual notice that the Lower Court's Order was not appealable, but filed the Appeal in spite of that knowledge. By this Petition Pulte now seeks to perpetuate that conduct. Its Appeal was filed on June 7, 2012. Prior to that date, it had received the Order from this Court in *Lancaster, et al v. Georgia-Pacific Corporation, et al*, Case No.: 2007-CP-07-3166, in which this Court reiterated that Class Certification Orders are not immediately appealable. As further evidence of this knowledge of non-appealability, Pulte also filed a document entitled, "Motion to Determine Appealability" - presumably attempting to

excuse its conduct in filing this patently improper Appeal, having just been told in a companion case that such an Appeal was subject to dismissal.

Respondents filed their Motion to Dismiss this Appeal, both sides fully briefed the issues raised by Appellant, and this Court issued its Order Dismissing this Appeal having considered those arguments. Now once again, Del Webb/Pulte attempts to keep the stucco class in the Appellate Courts and out of the Lower Court, where Class Notices will issue, discovery will be conducted, and a trial can take place. In its Petition for Rehearing, Pulte raises nothing new, nothing not already considered by this Court, and advances no reasoning entitling it to a rehearing. What it appears to be seeking is to require this Court to issue specific rulings on each of its complaints regarding the Class procedure as embodied in the case management section of the Order presumably for use either in the Lower Court or for further Appellate attempts. This procedure has never been the practice of this Court.

Concurrently, in Appeal No. 2012-212364 in the *Grazia* case, Pulte filed another Appeal from the Lower Court's dissolving an injunction prohibiting Class Counsel from discussing the Class case with class members. A review of this Appeal will demonstrate it lacks merit, and represents, at best, a minor, collateral issue, having little or no bearing on the ultimate decision to be made at the trial of the Class case.

In Appeal No. 2012-202907 in the *Carlson* case, this Appellant asserted a right to arbitrate rather than litigate, pursuant to language in its sales contract. It has appealed the Lower Court's finding of waiver, and again, an examination of that Appeal will demonstrate a highly questionable position.

**DEL WEBB/PULTE'S APPELLATE ACTIVITIES**  
**IN THE LANCASTER TRIM CASE**

Following its pattern of seeking delay at all costs, in the *Lancaster* case, Pulte has appealed essentially every Order of the Lower Court, from Class Certification orders, to case management Orders - none of which are appealable, as this Court has found. Now it has, as here, petitioned for Reconsideration of the Dismissal of that Appeal. In *Lancaster*, Judge Roger Young certified the Class, then issued case management orders. Significantly, below, this Appellant asked the Lower Court to conduct discovery of each Class Member and asked for a stay which, if granted would have prolonged almost indefinitely, any ultimate Class trial. The Lower Court declined. Thereafter, Del Webb appealed from six Orders. After the Appeal of the six interlocutory Orders, Del Webb then requested a conference call to ask the Lower Court to confirm Del Webb's position that all of its six Orders issued were stayed because of these Appeals. The Lower Court declined to so rule, stating, "I find that a legitimate question exists as to whether any of the interlocutory orders appealed by Del Webb and Georgia-Pacific is immediately appealable, and I am concerned that they are not. If the appeals are improperly taken, they should have no rightful impact upon the continued progress of this now four-plus-year old case." (See attached Exhibit "A").

Del Webb's response to this Order? Appeal it, after asking the Lower Court to reconsider it. This Court dismissed the latter two Appeals as moot on June 1, 2012.

Del Webb's true motive – delay - can be seen in its activities in the Lower Court prior to its Appeal of the eight Orders of the Lower Court, especially, its Appeal of the preliminary case management and scheduling order. It did not like the Court's Scheduling Order, as such Order puts the case on track for a trial on the merits, which

Pulte hopes to indefinitely postpone. Indeed reference to the Proposed Discovery Scheduling Order it submitted to the Lower Court in the *Lancaster* case presents an accurate picture of its strategy (attached as Exhibit “B”). Therein, Pulte proposes a ten (10) year Discovery schedule and a trial which will take place in 2024, setting trial 16 years after initiation of the claims. Presumably, by that time, most of the claimants in this retirement community -and even counsel - will no longer be able to prosecute these claims.

**DELAY SIGNIFICANTLY HARMS THE *GRAZIA* CLASS**

The Lower Court's Order, the subject of this Appeal, sets up a procedure wherein the Defendants have the right to Notice of Defects, and an opportunity to settle these claims pursuant to the Right to Cure Construction Dwelling Defect Act. For six years, Pulte has vigorously asserted the importance of that Act. The Order at issue envisions a procedure wherein after a Class is formed after Notice and opt-outs, Del Webb/Pulte can inspect, and make offers. The homeowners will be aware of their rights by then, having been represented by Class Counsel and oversight provided by the Court.

With this Appeal, and the delay it causes at the trial level, Del Webb/Pulte has felt free to ignore and contravene the procedure the Lower Court has ordered. Instead, it has embarked upon a course of conduct designed to eliminate as many Class members as possible by unilaterally soliciting “opt-out agreements” in advance of Class Notice publication where homeowners are not represented by counsel and do not know their rights under the Class Order. They cannot know of their rights, as the stay caused by these frivolous appellate proceedings has prevented the notice forms from being

approved and issued. Having learned of these activities, Respondents filed a Rule to Show Cause on Jan 23, 2012, (attached as Exhibit "C," caselaw exhibits D and E omitted) and this Appeal has effectively stayed a hearing on this Motion.

The document which Del Webb/Pulte requires an unrepresented homeowner to sign, in exchange for patch repairs to their residence (attached as Exhibit "D") is entitled: "Sun City Hilton Head Homeowner Request for Stucco Repairs and Agreement Not to Participate in Class Actions." This document is designed as a release and is designed to reduce or eliminate the Class. Upon information and belief, this partial repair/Class Exclusion outside of the judicial framework, and in total derogation of the Lower Court's Class Order is ongoing, and has become a large operation, the true scale and effect of which will not be revealed until the Lower Court conducts a hearing on this Rule to Show Cause and issues a Class Notice.

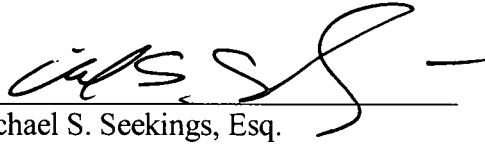
### **CONCLUSION**

If, by means of continued Appeals, a defendant can avoid discovery and trial while divesting the Lower Court of jurisdiction, it maintains a huge litigation advantage. If, during this time of delay, it is able to implement a plan to reduce or eliminate the size of the potential Class claims it is facing, it not only has an advantage, it has also scored a large partial victory, never having to face justice in a courtroom.

Very respectfully, Respondents ask this Court to examine the overall situation here and decide, as Rule 269, SCRAP, indeed requires, what is the proper role of an Appellate Court. Is it to correct errors of law in matters requiring judicial oversight, or is it to serve - by means of delay - as an adjunct to litigation strategy?

One of the key phrases in Rule 269 is the following: "and discouragement of like conduct in the future may require." Without the inquiry by this Court that the Rule requires, it is probable that the strategy outlined above will continue, and every case management order - or indeed, any other pre-trial order - will end up before this Court within 30 days of its issuance. The drafters of Rule 269 understood the pernicious effects of delay in litigation. This is especially true here, where the population of the Class is made up of aging retirees, who, quite, understandably, are hoping for a speedy resolution to the problems with their homes. This Court should accordingly grant the Respondent's Rule 269, SCRAP Motion.

Respectfully Submitted,



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Dated: Sept. 25, 2012

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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Case No. 2007-CP-07-1396  
Case Tracking No.: 2012-212364

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Anthony and Barbara Grazia, individually and  
on behalf of all other similarly situated Plaintiffs, ..... Respondents,

v.

South Carolina State Plastering, LLC, ..... Defendant.

and

South Carolina State Plastering, LLC, ..... Defendant,

v.

Del Webb Communities, Inc., Pulte Homes,  
Inc., and Kephart Architects, Inc. .... Third-Party Defendants.

Of Whom Del Webb Communities, Inc., and  
Pulte Homes, Inc. are ..... Appellants.

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**PROOF OF SERVICE**

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*Attorneys for the Respondents*

I, Michael S. Seekings, Esq., do hereby certify that on September 25, 2012, I served opposing counsel with a copy of Respondents' Return to Del Webb/Pulte's Petition for Rehearing and Memorandum in Support of Rule 269 SCRAP Motion via regular first class United States mail, postage prepaid, addressed as follows:

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September 25, 2012  
Charleston, South Carolina

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO. 2007-CP-07-3166

JIM LANCASTER, NANCY )  
LANCASTER, ART HOLLAND, )  
JEANNETTE HOLLAND, WENDELL )  
TURNER, PHYLLIS TURNER, JACK )  
BENNETT, JOAN BENNETT, ON )  
BEHALF OF THEMSELVES AND )  
OTHERS SIMILARLY SITUATED, )

PLAINTIFFS, )

vs. )

GEORGIA-PACIFIC CORPORATION )  
AND/OR GEORGIA-PACIFIC LLC, )  
GRAYCO HOME CENTER, INC., DEL )  
WEBB COMMUNITIES, INC., AN )  
ARIZONA CORPORATION, RAZOR )  
COMPONENT SYSTEMS, INC., A )  
SOUTH CAROLINA CORPORATION, )  
RAZOR ENTERPRISES, INC., A )  
TEXAS CORPORATION, AND DJ )  
CONSTRUCTION CO., LLC, )

DEFENDANTS. )

**ORDER REGARDING  
INTERLOCUTORY APPEALS**

2012 MAY 14 AM 11:51  
JAMES A. RUDENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

THIS MATTER COMES BEFORE THE COURT via Defendant Del Webb Communities, Inc.'s ("Del Webb") request for a conference call. The requested conference call was held on May 11, 2012, during which the impact of the appeals recently taken by Del Webb and Defendant Georgia-Pacific Corporation and/or Georgia-Pacific LLC ("Georgia-Pacific") was discussed.

Both Del Webb and Georgia-Pacific have appealed six interlocutory orders that the Court has entered in the conduct of this class action. The Plaintiffs have filed motions in the Court of Appeals to dismiss the appeals taken by Del Webb and Georgia-Pacific on the grounds that the orders identified in their respective notices of appeal are interlocutory and not immediately

appealable. The Plaintiffs have also moved the Supreme Court to certify and expedite the appeals for its direct and immediate review; particularly, immediate and expedited consideration and disposition of their motions to dismiss the appeals.

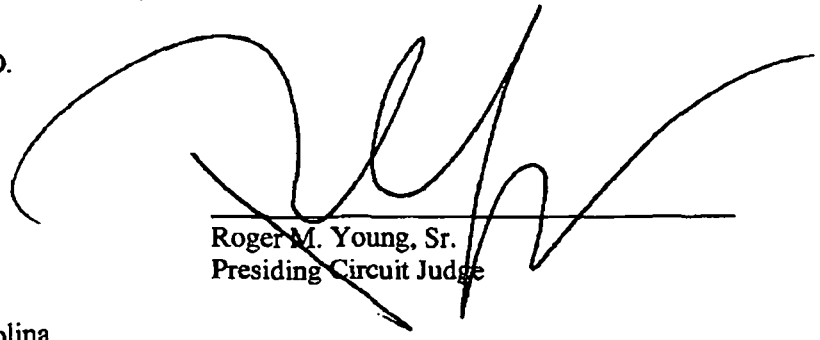
Del Webb asks this Court to rule that all of the orders identified in its notice of appeal are stayed because of its appeal, to include the present May 15, 2012 opt-out deadline set forth in the class notice, which notice was mailed to the putative class members by the Plaintiffs' counsel following this Court's order approving and authorizing class notice. Georgia-Pacific does not ask that the opt-out deadline be stayed, but asks for a stay of the Court's preliminary case management and scheduling order with respect to matters after the opt-out deadline.

After due consideration of this matter, I find that a legitimate question exists as to whether any of the interlocutory orders appealed by Del Webb and Georgia-Pacific is immediately appealable, and I am concerned that they are not. If the appeals are improperly taken, they should have no rightful impact upon the continued progress of this now four-plus-year old case. See S.C. Pub. Serv. Auth. v. Arnold, 287 S.C. 584, 340 S.E.2d 535 (1986) ("Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay proceedings in the lower court.") Moreover, I find that a stay of the appealed orders is not necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. Further still, I find that, under the circumstances, a stay of the appealed orders is not in the interests of justice or judicial economy. Accordingly, I find that the orders identified in Del Webb and Georgia-Pacific's notices of appeal are and should be operative and decline the requests to stay these orders.

<SIGNED ON THE FOLLOWING PAGE>

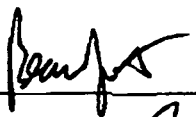
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AND IT IS SO ORDERED.

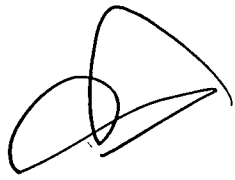


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Roger M. Young, Sr.  
Presiding Circuit Judge

 South Carolina

Dated: 5/14/12



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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS

Jim Lancaster, Nancy Lancaster, )  
Art Holland, Jeanette Holland, )  
Wendell Turner, Phyllis Turner, and )  
Jack Bennett, Joan Bennett, )  
on behalf of themselves and all others )  
similarly situated, )

Case No. 2007-CP-07-03166

Plaintiffs, )

v. )

**PROPOSED DISCOVERY  
SCHEDULING ORDER**

Georgia-Pacific Corporation and/or )  
Georgia Pacific, LLC, )  
Grayco Home Center, Inc., )  
Del Webb Communities, Inc., )  
an Arizona Corporation; )  
Razor Component Systems, Inc., )  
a South Carolina Corporation, )  
Razor Enterprises, Inc., a Texas )  
Corporation, and )  
DJ Construction Co., LLC, )

Defendants. )

1. Plaintiffs shall send court-approved class notice to all putative class members by April 15, 2012.

2. The opt-out/exclusion shall expire on June 1, 2012.

3. Each class member shall be required to comply with the provisions of the South Carolina Notice and Opportunity to Cure Residential Construction Defects Act. (Each class member must provide written notice under the Act to include the specific construction defects alleged to be found on the house, the specific location of said alleged defects, and the specific damage and locations of said damage that is a result of the alleged defects on that particular house.) The written notice must be signed by the homeowner. Any class member that has not

B

provided written notice to the Defendants pursuant to the Act by November 30, 2012 shall have his/her case dismissed with prejudice.

4. Defendants shall have until May 30, 2013 to complete house inspections pursuant to the Act and to make any offers to repair and/or settle the individual claims with the individual homeowners. On or before June 15, 2013, plaintiffs' counsel shall provide to the court and to the defendants the list of remaining class members (that neither opted out nor settled pursuant to the Right to Cure Act).

5. Defendants shall have until July 30, 2013 to file motions to dismiss individual class members' cases (*i.e.* motions pertaining to compelling arbitration, pursuant to the statute of repose and other similar legal issues) or to amend pleading to add additional parties or cross claims.

6. Plaintiffs shall have until August 31, 2013 to file any responsive pleadings to the motions to dismiss.

7. The court shall rule on said motions to dismiss by October 15, 2014, and plaintiffs' counsel shall have ten days from the date of the order to update the list of class members as to each defendant.

8. Defendants' counsel shall work with plaintiffs' counsel to attempt to agree on uniform written discovery requests to go to each class member. If the parties cannot agree to the written discovery requests, then, no later than December 15, 2014, the defendants shall file with the court the written discovery requests being sought from each class member, and the court shall have a hearing to approve the content of the proposed written discovery.

9. Plaintiffs shall designate all expert witnesses to be used at trial, and shall provide to the opposing counsel a report signed by the expert containing all opinions to be offered by the

expert with regard to liability and damages as to every remaining class member on or before July 15, 2015.

10. All class members' responses to the uniform written discovery requests shall be due on or before July 15, 2015. Any class member who does not fully respond by this date shall have his/her claim dismissed with prejudice.

11. The parties may have until July 15, 2023 to complete discovery with regard to all parties and with regard to plaintiffs' experts (including but not limited to depositions of class members, depositions of other witnesses, depositions of defendants and/or their employees, written discovery requests to defendants and/or to individual class members, and depositions of plaintiffs' experts, etc.).

12. Defendants shall designate all expert witnesses to be used at trial, and shall provide to the opposing counsel a report signed by the expert containing all opinions to be offered by the expert with regard to liability and damages as to every remaining class member on or before September 15, 2023.

13. Plaintiffs shall complete the depositions of defendants' experts by November 15, 2023.

14. The parties shall have until January 15, 2024 to submit motions for summary judgment as to any individual class member.

15. The parties shall be ready to try the case no sooner than two (2) months after the court rules on the parties' motion(s) for summary judgment.

IT IS SO ORDERED.

---

Roger Young, Circuit Court Judge

WE AGREE AND CONSENT:

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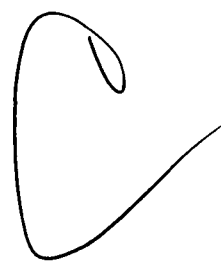
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Columbia, SC 29211

By: \_\_\_\_\_

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Attorneys for defendant DJ Construction



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
C/A NO. 07-CP-07-1396

2012 JAN 23 PM 4:03  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

ANTHONY AND BARBARA GRAZIA, )  
 )  
individually and on behalf of all other )  
 )  
similarly situated Plaintiffs, )

Plaintiffs, )

vs. )

SOUTH CAROLINA STATE )  
 )  
PLASTERING, LLC. )

Defendant. )

**PLAINTIFF CLASS' RULE TO SHOW  
CAUSE AND REQUEST FOR  
IMMEDIATE INJUNCTIVE RELIEF**

\_\_\_\_\_  
SOUTH CAROLINA STATE )  
 )  
PLASTERING, LLC, )

Third-Party Plaintiff, )

vs. )

DEL WEBB COMMUNITIES, INC., )  
 )  
PULTE HOMES, INC., and KEPHART )  
 )  
ARCHITECTS, INC., )

Third-Party Defendants. )  
\_\_\_\_\_ )

**INTRODUCTION AND SUMMARY**

The Class Certification Order was issued by this Court and filed in Beaufort County on December 19, 2011. Prior to the issuance of that Order, SINCE the issuance of the Order and in direct contravention of the Order, Pulte has engaged and continues to engage in the improper conduct of contacting represented parties and attempting to subvert the Class Action process stated in this Court's Order. The sole objective of this improper contact is to influence these parties to opt-out of the Class before a Class Notice has even been distributed. The only remedy

available which will curb these improper tactics is an injunction, and a further hearing with an Order so that the Court can discover the extent of this conduct and its effects. Additionally, Pulte has been engaged and is engaged in a process of destroying and spoliating evidence by attempting patching of the stucco systems on some houses belonging to putative class members. Again, this practice must be halted.

### **DISCUSSION**

This case has been pending for five years. Plaintiffs believe that Pulte has been engaged in making spot patches of residences, resulting in the destruction of evidence, the entire time. In the Order, the Class is clearly defined as:

All individuals, corporations, unincorporated associations, or other entities that currently own stucco-clad homes in Sun City Hilton Head to which SCSP applied the exterior stucco in whole or in part prior to July 31, 2007, which allegedly are damaged due to (a) the lack of head flashing above doors and windows, (b) the failure to install stucco control joints, and/or (c) the presence of moisture encapsulation by the failure to leave a gap between the stucco exterior and the structure slab.

Once this Order took effect, since there is no opt-in Class, ALL homeowners at Sun City meeting this description became Class Members unless and until they exclude themselves, and since Class Counsel represent the Class, they, as putative Class members are represented by Class Counsel.

As a result of information obtained about Pulte's ongoing activities as set forth above, Class Counsel put Pulte's counsel on notice of our representation, and asked Pulte to cease the improper conduct and contacts. The exchange of letters attached documents this notification process, and at no time did Pulte agree to cease in its efforts to contact or influence Class members, indeed it refused to do so. (Attached see Exhibit "A").

On January 18, Class Counsel was informed that agents representing at least one and possibly both Defendants were making contact with Class members seeking to induce them to opt-out of the Class in exchange for what is believed to be spot repairs, in derogation of the Court's Order and the process outlined therein. Counsel was able to obtain a copy of the document furnished to the Class Member which it is believed is routinely being furnished to other Class Members as well as part of an ongoing scheme to influence Sun City homeowners to opt out of the Class Action before receiving any Notice or explanation of their rights from the Court or Class Counsel. The contents of this document, attached as Exhibit "B," are startling.

First, is the acknowledgement in paragraph two that the homeowner with whom the Defendants are meeting is represented by counsel - thereby acknowledging an improper contact up front;

Second, is the notification of the Class Action - not the Notification which this Court has yet to approve;

Third, is the implicit and incorrect assertion that Pulte, after making its patch repairs, would be subject to a "double recovery" if the Class Member exercised their rights to pursue full recovery pursuant to the Class mechanism;

Fourth, is the General Release, that the Class Member agrees not only not to participate in "any way" (refusing to testify as a subpoenaed witness?) in the present Class Action;

Fifth, a General Release not to participate in "any future class action" (no matter what the subject);

Sixth, the confusing misrepresentation regarding the notion of an "opt-in" Class; and, especially;

Seventh, the General Release of any inclusion in the existing Class with no notification of the alternatives, or any explanation of the options available to the homeowner.

This is no more than an intentional end-run around the Order of this Court by sophisticated corporate Defendants, seeking, and indeed gaining, improper advantage in this litigation. As such it cannot be tolerated.

On Monday, January 16, 2012, almost four weeks after the Class Certification Order had been filed, Class Counsel received the attached e-mail from a client (attached as Exhibit "C") indicating that a Pulte representative, Allison Tucker, had addressed a group of putative Class members (with no prior notification to Class Counsel), at a meeting of the NRC at Sun City. At this meeting, the Pulte representative made representations about this litigation, made representations about counsel, and additionally, sought to influence this group of Class members to opt out of the litigation.

**REMEDIAL ACTION IS WARRANTED AND NECESSARY TO PRESERVE THE RIGHTS OF THE PARTIES AND SUBSTANTIAL JUSTICE**

*ONCE A CLASS IS CERTIFIED, CLASS COUNSEL IS DEEMED TO HAVE AN ATTORNEY-CLIENT RELATIONSHIP WITH EACH CLASS MEMBER. ACCORDINGLY, COMMUNICATIONS BY THE OPPOSING PARTY ARE GOVERNED BY THE APPLICABLE ETHICAL RULES, WHICH INVARIABLY REQUIRE THAT SUCH COMMUNICATIONS GO THROUGH CLASS COUNSEL.*

(Greer: A Practitioner's Guide to Class Actions ABA 2010 at p. 37)

Attached are copies of the U.S. District Court's decision in the matter of *Kleiner v. First National Bank of Atlanta*, 102 F.R.D. 754 (USDC ND Georgia 1983) and its affirmance by the 11th U.S. Court of Appeals (751 F.2d 1193) in 1985 (Attached as Exhibits "D" and "E"). In *Kleiner*, a class of bank customers had been certified, but the Notices had not yet been sent out. In that interim, the bank, with advice of counsel, embarked on a campaign to seek opt-outs from the putative Class Members. After -apparently - full discovery on the facts surrounding what

happened, and who caused it, the Court ultimately issued sanctions fining the Bank, and disqualifying both outside counsel and the bank's general counsel. On Appeal, the Court's actions were affirmed by the 11th Circuit, with the exception of disqualification of the bank's general counsel who had not acted as lead counsel.

The Defendants' Appeal of these sanctions involved First Amendment challenges to the lower Court's previously issued orders which had directed the Defendants not to communicate with the putative Class. This was rejected. At the time of these decisions, Rule 23 was only 17 years old, having been introduced in 1966. A First Amendment challenge was therefore at least a colorable argument. Forty-six years later, however, there is no excuse for advising a client that it is permissible - and indeed a good idea - to solicit opt-outs from putative Class Members once Class Certification has taken place and before a Notice has even been issued.

On December 22, 2011, after the Court's Certification Order was filed, Plaintiffs' counsel wrote Pulte's counsel, advising it of the Order and consequences, and demanding: "Please confirm that no further stucco work will be done by Pulte AND NO ADDITIONAL DIRECT CONTACT WILL BE MADE WITH OUR CLIENTS BY PULTE" (emphasis supplied). (Exhibit "A").

The response to this demand by Pulte was in the letter from Attorney Rawl of January 12, 2012, in the next to last paragraph, "Accordingly Pulte and/or Webb will not ignore their customers' service requests or warranty requests. If a homeowner contacts Pulte and/or Del Webb regarding an actual or perceived problem, Pulte and/or Del Webb will address the service if they can." (Exhibit "A").

Remarkably absent from this response was any mention that in connection with these contacts would be the solicitation of opt-outs, and a notification campaign by Pulte employees

such as Allison Tucker at the NRC meeting on January 12, 2012, effectively soliciting opt-outs in exchange for patch repairs. After this January 12 letter, both the Tucker meeting and the opt-out document attached as Exhibit "B," took place. Whether or not counsel advised Pulte that this conduct was permissible is a matter of which Plaintiffs have no knowledge, but which clearly should form the basis of an inquiry by the Court.

Sun City is a tight-knit community of retirees, and Pulte's campaign to seek opt-outs is obviously designed to have the word spread around the community that if any relief is forthcoming, it will be through Pulte and its patching work in exchange for an opt-out of the Class. Imagine the appeal of such a campaign to 80 year-old homeowners who simply want their houses fixed in some fashion - whether correctly or not - and who have waited out the processes of the Court System through five years of delay. The impact of such a one-sided campaign will be - and is designed to be - huge. It has already tainted the judicial process, and promises to do much more damage if not curtailed immediately and sanctioned.

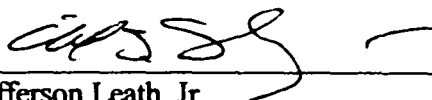
This Court's Order Certifying the Class contemplates an arms-length process whereby homeowners can understand just what potential problems they have, and can have a free and unpolluted decision making process regarding their biggest investment. Pulte's actions are designed to deliberately subvert this process and must be stopped. The process envisioned is one of inspection, and compliance with the Right to Cure Statute so that following inspections if repairs are offered, such offers can be transmitted THROUGH CLASS COUNSEL, with the opportunity for advice and understanding of the options available. The destruction and alteration of evidence by Pulte and its subcontractors cannot be countenanced if an orderly and fair administration of justice is indeed the goal.

This Court has not in the past hesitated to issue appropriate sanctions where merited. (*Wieters v. Bon Secours-St. Francis Xavier, et al*, Case No.: 2006-CP-10-1397). Case law cited in the Court's Order of June 21, 2010, in awarding sanctions against the hospital are equally applicable here, although the Class submits that the conduct at issue here is far more egregious, intentional, and aimed at the subversion of the rights of a large group of homeowners than was the case in *Wieters*.

Therefore at a minimum, the Class, through counsel, urges this Court to take the following action to protect the status quo prior to trial, and to prevent improper conduct and destruction of evidence in the future:

1. Issuing an Injunction preventing any contact by the Defendants with any putative Class Members until further Court Order;
2. Holding a hearing compelling testimony as a precursor to sanctions;
3. Issuing an Order compelling the Defendants to identify all houses on which they or their subcontractors have effected stucco work since original construction and to produce its (and its subcontractors) entire file on each house, and to further identify the author of Exhibit "B" and produce that individual together with Allison Tucker, a Pulte employee, for testimony at the hearing.

LEATH, BOUCH & SEEKINGS, LLP

By:   
W. Jefferson Leath, Jr.  
Michael S. Seekings  
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(843) 937-0606 facsimile  
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(843) 853-5678

SEGUI LAW FIRM, LLC  
Phillip W. Segui, Jr.  
864 Lowcountry Blvd., Suite A  
Mt. Pleasant, SC 29465  
(843) 884-1865

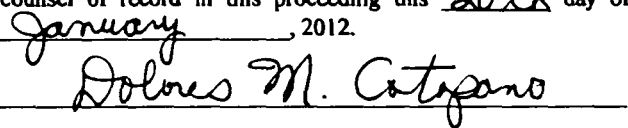
*Attorneys for the Plaintiffs*

Charleston, South Carolina

Dated: January 20, 2012

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was e-mailed to all counsel of record in this proceeding this 20th day of January, 2012.

  
\_\_\_\_\_  
Dolores M. Catapano

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Anthony and Barbara Grazia, et al,  
[X] Plaintiffs,

CASE NO.  
07-CP-07-1396

2012 JAN 23 PM 4: 03

v.  
South Carolina State Plastering, LLC,  
Defendant.

**MOTION AND ORDER INFORMATION FORM  
AND COVER SHEET**

CLERK OF COURT  
BEAUFORT COUNTY, S.C.

check box above indicating submitting party

<u>Name, S.C. Bar no. and address of plaintiff's attorney</u> W. Jefferson Leath, Jr. SC. Bar No.: 003244 Leath, Bouch & Seekings, LLP P. O. Box 59, Charleston, SC 29402  Telephone: 843-937-8811 fax: 843-937-0606 e-mail: <a href="mailto:jl@leathbouchlaw.com">jl@leathbouchlaw.com</a>	<u>name S.C. Bar no. and address of defendant's attorney</u> A. Victor Rawl McNair Law Firm P.O. Box 11390, Columbia, SC 29211  Telephone: 803-799-9800 fax: 803-753-3278 e-mail: <a href="mailto:vrawl@mcnair.net">vrawl@mcnair.net</a>
---	--

- MOTION HEARING REQUESTED (attach written motion and complete sections I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: **Plaintiff Class' Rule to Show Cause and Request for Immediate Injunctive Relief**  
Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed: YES / NO

**SECTION II: Motion/Order Type**

- Written Order:  
 Form Motion:

I hereby move for relief or action by the court as set forth in the attached proposed order.

  
Signature of Attorney for Plaintiffs

January 20, 2012  
Date submitted

**SECTION III: Motion Fee**

- PAID - AMOUNT: \$25.00  
EXEMPT:  Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_  
 Other:

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other:

\_\_\_\_\_  
JUDGE  
CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

DATE FILED

Collected by: \_\_\_\_\_  
(print name)

- MOTION FEE COLLECTED: \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \_\_\_\_\_



**LEATH, BOUCH & SEEKINGS, LLP**  
COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

December 22, 2011

**VIA E-MAIL ONLY**

A. Victor Rawl, Jr., Esq.  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211

RE: Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC  
Case No.: 07-CP-07-1396  
LBC No.: 1351.0001

Vic:

It has come to our attention that Pulte has embarked on a course stucco patchwork on a number of homes in Sun City. The effect of the work, and the presumed objective, is to cover over the originally and incorrectly installed stucco. In addition, we believe this work is inconsistent with Judge Baxley's recently entered Order that specifically outlines the procedure for any curative work that might be proposed on any of the 4300 houses that are subject to the Court's directive. Please confirm that no further stucco work will be done by Pulte and no additional direct contact will be made with our clients by Pulte. Thank you for your immediate attention to this correspondence.

Yours truly,

LEATH, BOUCH & SEEKINGS, LLP

*Michael S. Seekings*

Michael S. Seekings

MSS/sas

cc: John T. Chakeris, Esq.  
Phillip W. Segui, Jr., Esq.

**MCNAIR**  
ATTORNEYS

December 22, 2011

A. Victor Rawl, Jr.

vrawl@mcnair.net  
T (803) 799-8800  
F (803) 793-3278

Michael Seekings  
Leath, Bouch & Seekings  
P.O. Box 159  
Charleston, SC 29402

Re: *Grazia*, et al. v. South Carolina State Plastering, et al.;  
Case No. 2007-CP-07-1396

Dear Mike:

I just received your letter dated December 22, 2011 requesting that Pulte cease all communications with and repairs for its homeowners. I would just like to clarify a few issues with you:

1. Are the lawyers for the *Grazias* and the putative class in the *Grazia* case requesting that Pulte or Del Webb not return (or ignore) service request calls from Sun City Homeowners with stucco on their houses?
2. Are the lawyers for the *Grazias* and the putative class in the *Grazia* case requesting that Pulte or Del Webb not conduct any repairs requested by Sun City Homeowners with stucco on their houses?
3. Are you requesting that Pulte or Del Webb tell homeowners that you (the lawyers in the *Grazia* case) have asked Pulte or Del Webb not to talk with them, not to respond to service calls, not to conduct inspections of their house when asked, and not to perform requested repairs?
4. Please specifically describe what you think Pulte and/or Del Webb can/should or can't/shouldn't do with regard to "your clients."
5. How do you claim Judge Baxley's Order in the *Grazia* case affects Pulte or Del Webb with regard to service requests and repairs?
6. Please provide the list of those who you claim to be "your clients" that have claims against Del Webb or Pulte so that I may provide that list to my client and discuss your request with them.

McNair Law Firm, P. A.  
1221 Main Street  
Suite 1800  
Columbia, SC 29201

Mailing Address  
Post Office Box 11390  
Columbia, SC 29211

mcnair.net

Thank you for your immediate attention to this correspondence.

Michael Seekings  
December 22, 2011  
Page 2

**M C N A I R**  
ATTORNEYS

---

Very truly yours,

*A. Victor Rawls, Jr.*

A. Victor Rawl, Jr.

AVR,jr/plj



# LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

January 3, 2012

**VIA E-MAIL ONLY**

A. Victor Rawl, Jr., Esq.  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211

RE: Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC  
Case No.: 07-CP-07-1396  
LBC No.: 1351.0001

Dear Vic:

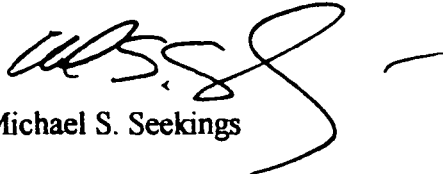
In response to your letter of December 22, 2011, the short answer to your first three (3) questions is yes. Any work done by Pulte on stucco exteriors at Sun City is nothing more than spoliation of evidence and an attempt to bypass the Court's Right to Cure directive and the residents' ability to get complete repair for their stucco problems. Should Pulte be contacted by any Sun City Owner about stucco problems, it is incumbent on you and Pulte to tell us immediately.

To date, we have not advised the residents of Sun City about their rights and obligations as class members because to do so before the issuance of an Order by the court would have been improper. It is certain that many are unaware of their substantial rights. We assume that Pulte has specifically adopted a policy of not informing homeowners of the pending litigation in an effort to bypass their obligation of full repair. This must now stop. Before any repairs are made, you are to contact us with all relevant information about the owner, address and plan of repair and await a response before doing any work.

Thank you for your compliance.

Yours truly,

LEATH, BOUCH & SEEKINGS, LLP

  
Michael S. Seekings

MSS/sas

cc: W. Jefferson Leath, Esq.  
John T. Chakeris, Esq.  
Phillip W. Segui, Jr., Esq.  
Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
David S. Cobb, Esq.

**MCNAIR**  
ATTORNEYS

January 12, 2012

A. Victor Rawl, Jr.

vrawl@mcnair.net  
T (803) 799-9800  
F (803) 753-3278

Michael Seekings  
Leath, Bouch & Seekings  
P.O. Box 159  
Charleston, SC 29402

Re: *Grazia*, et al. v. South Carolina State Plastering, et al.;  
Case No. 2007-CP-07-1396

Dear Mike:

I received your letter dated January 3, 2011 requesting that Pulte cease all communications with and repairs for its homeowners/customers.

In that letter you indicated that:

1. The lawyers for the *Grazias* and the putative class in the *Grazia* case are requesting that Pulte or Del Webb ignore service request calls from any Sun City Homeowners with stucco on their houses.
2. The lawyers for the *Grazias* and the putative class in the *Grazia* case are requesting that Pulte or Del Webb not conduct any repairs requested by Sun City Homeowners with stucco on their houses.
3. The lawyers for the *Grazias* and the putative class in the *Grazia* case are requesting that Pulte or Del Webb tell homeowners that you (the lawyers in the *Grazia* case) have asked Pulte or Del Webb not to talk with them, not to respond to service calls, not to conduct inspections of their houses when asked, and not to perform requested warranty repairs.

However, you have not answered the following questions that were addressed to you:

1. Please provide the list of those who you claim to be "your clients" that you represent with regard to their claims against Del Webb or Pulte.
2. How do you claim Judge Baxley's Order in the *Grazia* case (in which your clients are not suing Pulte) affects Pulte or Del Webb with regard to responding to homeowners' service requests and requests for repairs?

McNair Law Firm, P. A.  
1221 Main Street  
Suite 1800  
Columbia, SC 29201

Mailing Address  
Post Office Box 11360  
Columbia, SC 29211

mcnair.net

At this point, you have less than 140 clients that are directly suing Pulte or Del Webb. When those plaintiffs request repairs from Del Webb, they are informed

Michael Seekings  
January 12, 2012  
Page 2

**MCNAIR**  
ATTORNEYS

that any such request needs to come from counsel (you or your co-counsel). Then, normally, I receive an e-mail from one of your co-counsel requesting that Pulte go inspect and make requested repairs. However, you have not provided to us a list of anyone who you claim to represent that has a claim against Pulte or Del Webb other than those who you have filed a complaint on behalf of (the 140). With regard to the Order in Grazia regarding "preliminary certification", it is unclear as to whether you are class counsel or not. Even if you are deemed to be class counsel, your representation would be limited to the claims alleged by your client against SCSP. You would not represent any of the class members with regard to any of their claims (if they have any) against Pulte or Del Webb (as no such claims have been asserted). Further, with Judge Baxley's new class definition, it is completely unclear what homeowners (if any) are in your "preliminary" class.

Accordingly, Pulte and/or Del Webb will not ignore their customers' service requests or warranty requests. If a homeowner contacts Pulte and/or Del Webb regarding an actual or perceived problem, Pulte and/or Del Webb will address the service request if they can.

However, if you represent homeowners with individual claims against Pulte and/or Del Webb (other than the 140), please provide us with a list of their names and addresses. Otherwise, you have no basis to try to stop homeowners from requesting and receiving appropriate attention and/or repairs from Del Webb and/or Pulte.

Thank you for your immediate attention to this correspondence.

Very truly yours,



A. Victor Rawl, Jr.

AVR,jr/pkj



# LEATH, BOUCH & SEEKINGS, LLC

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL  
January 17, 2012

**VIA E-MAIL ONLY**

A. Victor Rawl, Jr., Esq.  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211

RE: Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC  
Case No.: 07-CP-07-1396  
LBC No.: 1351.0001

Dear Vic:

In response to your self-serving letter of January 12, 2012, I refer you to pages 11 and 12 of Judge Baxley's Order wherein the class in this case is very clearly defined:

All individuals, corporations, unincorporated associations, or other entities that currently own stucco-clad homes in Sun City Hilton Head to which SCSP applied the exterior stucco in whole or in part prior to July 31, 2007, which allegedly are damaged due to (a) the lack of head flashing above doors and windows, (b) the failure to install stucco control joints, and/or (c) the presence of moisture encapsulation by the failure to leave a gap between the stucco exterior and the structure slab.

These people are our clients and any contact with them by you or Pulte would be and is improper. In my letter of January 3, I make it very clear, and do so again today, that it is incumbent on you to keep us informed about any contact you and your client have with any person or entity that fits within the class definition, regardless of who initiates that contact, and that any repairs be scheduled and completed within the framework of the S.C. Right To Cure Statute and Judge Baxley's Order.

With all due respect, this process should not be too complicated. Those who fall within the class definition have rights that are being circumvented each time you and Pulte make contact with them and do any work that is less than a strip and re-clad.

Pulte is a party to this case and has participated in every hearing and other proceeding leading up to the issuance of the Court's Order. Pulte is now bound by that Order. The homeowners within the defined class are represented by Counsel and are entitled to be fully advised of their rights before any work is done on their homes.

It has been brought to my attention that as recently as last week, a Pulte representative was dispensing legal advice about this case to class members. Included in this advice was the following:

- Judge Baxley has yet to issue an Order on the Class (plainly untrue);
- This matter will take years to resolve (your strategy as exactly stated in the attached excerpt from Oros);
- Lawyers will be first to be compensated (this plainly is an effort to promote opting out);
- Pulte is willing to “fix” (i.e., cover up) problems with stucco if owners “opt-out” (interesting term for a lay person to use in a case where she stated no ruling has been made on the Class issue); and
- All owners will be included in the Class whether they opt-out or not (nonsensical).

I certainly hope that Pulte’s legal team did not support or condone this type of contact and dissemination of inaccurate information which is outrageous. While we all applaud zealous advocacy, this activity is beyond the limits of our rules and the Class Order of the Court. We will file a motion promptly.

Yours truly,

LEATH, BOUCH & SEEKINGS, LLP



Michael S. Seekings

MSS/dmc

Enclosure

cc: W. Jefferson Leath, Esq.  
John T. Chakeris, Esq.  
Phillip W. Segui, Jr., Esq.  
Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
David S. Cobb, Esq.

1 putative plaintiffs, the putative class members, the  
2 people that the Oroses claim to be prosecuting this case  
3 on behalf of, they also have to comply with the statute.

4 The defendant has the right, before they're  
5 sued, to have notice of what the claim is and have a  
6 right to try to cure the claim.

7 And, so, technically, pursuant to the statute,  
8 the case cannot be prosecuted against any other or on  
9 behalf of any other homeowners until that homeowner has  
10 complied with the statute.

11 Now, what does that realistically mean? That  
12 means that the case is stayed until all putative class  
13 members comply with the statute. And we just argued this  
14 exact same motion on Monday, before Judge Dukes, in  
15 another class action, these same gentlemen brought  
16 against my client. And the problem is that these  
17 gentlemen don't represent all 4,000 homeowners in Sun  
18 City/Hilton Head. But they are attempting to in a  
19 representative capacity. And, so, by actually staying  
20 the case, until all putative homeowners comply with the  
21 statute, which they have to do, pursuant to South  
22 Carolina law, how long is the case going to be stayed?  
23 Most likely indefinitely. These are all homeowners that  
24 are have to be over 55 to live there. By the time all  
25 4,000 comply, which they probably never will, half of

1       them will be already be dead.

2                   And, so, which leads us to the next rational  
3       statement, which other courts around the country have all  
4       set down, that the right to cure statute in class actions  
5       are incompatible. Since a procedural rule cannot abridge  
6       a substantive right and substantive law, you know, the most  
7       rational decision would be to say, at this point, to  
8       strike the class allegation so that the individuals  
9       plaintiffs, who actually do have a problem, can go  
10      forward with their own litigation.

11                   MR. WILLS: You could never have a class  
12      action in a construction litigation.

13                   MR. RAWLS: In a construction defect case  
14      against a contractor.

15                   MR. WILLS: Yes.

16                   MR. RAWLS: And

17                   MR. WILLS: Or developer.

18                   MR. ETHERIDGE: Or architect.

19                   MR. WILLS: Or architect.

20                   MR. RAWLS: You can have one against a  
21      manufacturer. For example, if the claim was that the  
22      stucco that was developed by MasterWall, that was put on  
23      the house out there, was somehow defective, then the  
24      plaintiffs could maintain a class action against the  
25      manufacturer, and that happens. You know, you may stop

**Sun City Hilton Head Homeowner Request for Stucco Repairs  
and  
Agreement not to Participate in Class Actions**

I am a homeowner in Sun City Hilton Head, and I am requesting that repairs be made to the stucco system on my house.

I am either represented by legal counsel with regard to stucco issues, and/or I understand that I have the right to consult with legal counsel of my choosing prior to signing below.

I understand that at least two homeowners have filed lawsuits with class action allegations relating to stucco on homes in Sun City Hilton Head.

I understand that Del Webb and/or Pulte does not want to pay for or make repairs to my home if I chose to stay in a class action lawsuit which is seeking money for stucco repairs. In other words, Del Webb/Pulte is not willing to pay me twice for stucco repairs.

If Del Webb Communities, Inc., Pulte Homes, Inc., or one of their stucco subcontractors makes repairs to my stucco, then I agree not to participate in any way in any present or future class action lawsuit against Del Webb Communities Inc., Pulte Homes, Inc., or any stucco subcontractor that has applied stucco to homes in Sun City Hilton Head (including, but not limited to, South Carolina State Plastering). My agreement not to participate in class actions includes, but is not limited to, the following: 1) I agree not to be a named plaintiff or class representative; 2) I agree not to accept any funds from a class action lawsuit (whether by way of a class settlement or by judgment); 3) I agree that if an "opt in class" is certified, then I will not "opt in" to the class; 4) I agree that if an "opt out class" is certified, then I will "opt out" of the class; and 5) I agree that this document may be provided to any tribunal and/or filed with any court as evidence and notice of my intent not to participate in a/the class action (to either not "opt in" or to "opt out").

I understand that this agreement does not affect my right to file an individual lawsuit or arbitration if I discover construction defects in the future.

\_\_\_\_\_  
Homeowner Address

\_\_\_\_\_  
Print Homeowner Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Homeowner Signature

\_\_\_\_\_  
Date

----- Forwarded message -----

From: **Stephen Grossberg** <[grossb2@gmail.com](mailto:grossb2@gmail.com)>

Date: Fri, Jan 13, 2012 at 12:25 PM

Subject: [Hidden Cypress] NRC MEETING STUCCO AND OVER ISSUES

To: Hidden Cypress <[hiddencypress@islc.net](mailto:hiddencypress@islc.net)>

### **NRC Monthly Meeting:**

Yesterday's meeting was a short one due to activities from a political candidate visiting Sun City.

However there were **several important issues** that were raised that you need to be made aware of :

- **Sales of homes by Pulte for 2011:**

- While Pulte almost never reveals this sort of information, they have told us that they sold 106 homes on the North side last year. However they closed on 134 homes. Which means that they had a backlog of 28 homes that they needed to complete from the year before. It would also indicate to me that the previous year had significantly greater amount of sales.
- They also told us that the average sale price for 2011 was \$277K up from 2010 which was \$273.
- Finally they indicated that the Loft models were the best sellers, and that they will be introducing new models in all the series this next year

- **Golf sales for 2012 and New Golf Director:**

- Sales for this year were at 85% of what was projected, however Wentworth indicated they are still getting sales and they have also introduced programs for part timers which they believe will increased the amount of rounds that they feel they need to obtain.
- They indicated that they need to sell 80,000 rounds of 18 holes at \$36 to make their required goal.
- At one time they use to sell a 100,000 rounds at a lessor cost, but they indicated that they didn't believe they could maintain the courses properly if the sold that many rounds.
- The New Golf Director was introduced, he is at this point meeting with groups to discuss their concerns about golf and it make take several months to see if he will be beneficial.

- If our neighborhood golfers would like to sit down and meet with him as a group to discuss your concerns please see if you can form a group and we will attempt to arrange a meeting. Please let Roger know and we set up a meeting.
- **Purrysburgh Pool Issues:**
  - Allison Tucker speaking for the BOD indicated that they did not believe that they had any recourse in obtaining any money back from Contractors.
  - I agreed with her position but I questioned the BOD to explore going after the Architect and Engineers who designed the building. They hold what is known as Errors and Omission insurance. E/O issues have no expiration date as does contractor warranties.
    - I raised the issue as to whether the dehumidifying system ever worked properly for this type of system since when I was involved on the Property and Grounds committee several years ago this was raised as problem that had been on going for numerous years. Allison didn't feel this was possible .
    - I then raised the issue that the ground water issue that caused them to have to completely rebuild the pool should have been address when the pool was designed originally, after all this was a wetlands property that they were building on and they were aware of the magnitude of change and growth that was planned for and this should have been addressed by them.
    - I was shocked that instead of exploring these two issues they(BOD) choose to make excuses for the conditions.
  - My experience as an Arbitrator for the American Arbitration Association for Design and Construction Cases( Something that I have been involved with for over 25 years). Have sat on numerous cases of this type of problem and these are valid issues that should be addressed. I was told to take this discussion off line.
  - I guess the BOD needs to hear from the residents if they want anything done.
- **STUCCO Issues:**
  - Allison Tucker informed us that while the Class Action Suit has not be determined yet by the Judge involved in the matter. If he decides that this suit should move forward as a Class Action suit. There will be a number of changes that will effect all of us.
    - All home owners whose homes were built from 1998 to 2007 will be included in the case regardless unless you Opt out of the case.

- The case is not directly against Pulte, but against the Subcontractor who performed the work, but Pulte has been drawn into the suit as a third party.
- This suit will take years to resolve, which is true and the attorneys will be the first to be compensated. The end result will be in the form of financial compensation and not in correction of the problems. Which will not cover corrective actions. I believe this to be so from my experience in these type cases.
- Finally if the judge decides the case goes forward Pulte will stop doing corrective work on the homes. They feel that it would not make sense to spend money for repair and then possibly have to pay for suit and verdict.
- **How does this impact us presently?**
  - Pulte is presently continuing to come out and inspect homes based on the results of the inspection reports.
    - However they are only willing to fix problems if the homeowner will to sign an OPT OUT letter to the Class Action Suit.
  - I would advise home owners to continue to get their homes inspected, if based on those inspections they should consider on getting them inspected by Pulte and if Pulte agrees their is a problem get them to correct the problem. After all that is what we really want done, even if that requires you to sign an OPT OUT form.
  - I am also concern that Pulte corrective action is now focused on Mold and moisture issues only. But when I had my home inspected I discovered another problem on my home that wasn't related to moisture or mold that need corrective action.
    - My home had a horizontal crack about 5' above the slab on the wall (It ran most of the length of the wall). This type of crack made no sense to me. So I requested that Pulte open up two small pockets in the wall to see why I had these type of cracks.
      - The cracks were caused because the Lathe wire mesh which is part of the stucco system which is suppose to be secured to the plyscore is attached to the wall by staples. The staples should be attached every 6"-8" but instead stapled was every 24" thus causing the mesh to slack by gravity and causing the

cracks, if you were to caulk this type of crack they would show up again shortly after caulking repair. This has been confirmed by Robert Flathery.

- In my case Pulte has corrected the situation but unless you made them aware of this they are ignoring the situation on other homes in our neighborhood.
- I have raised this with the NRC, and they are setting up a meeting with Pulte to discuss the issue. I will let you know of the results.
- In the meantime if your home has been inspected by Pulte and if you have these type of cracks, and they haven't done anything about it, go back to them and ask them to open up your wall to make sure that the mesh is properly secured to your plyscore, mentioned that you aware of what they had to do on my home.

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A 2



**Sun City Hilton Head Homeowner Request for Stucco Repairs  
and  
Agreement not to Participate in Class Actions**

I am a homeowner in Sun City Hilton Head, and I am requesting that repairs be made to the stucco system on my house.

I am either represented by legal counsel with regard to stucco issues, and/or I understand that I have the right to consult with legal counsel of my choosing prior to signing below.

I understand that at least two homeowners have filed lawsuits with class action allegations relating to stucco on homes in Sun City Hilton Head.

I understand that Del Webb and/or Pulte does not want to pay for or make repairs to my home if I chose to stay in a class action lawsuit which is seeking money for stucco repairs. In other words, Del Webb/Pulte is not willing to pay me twice for stucco repairs.

If Del Webb Communities, Inc., Pulte Homes, Inc., or one of their stucco subcontractors makes repairs to my stucco, then I agree not to participate in any way in any present or future class action lawsuit against Del Webb Communities Inc., Pulte Homes, Inc., or any stucco subcontractor that has applied stucco to homes in Sun City Hilton Head (including, but not limited to, South Carolina State Plastering). My agreement not to participate in class actions includes, but is not limited to, the following: 1) I agree not to be a named plaintiff or class representative; 2) I agree not to accept any funds from a class action lawsuit (whether by way of a class settlement or by judgment); 3) I agree that if an "opt in class" is certified, then I will not "opt in" to the class; 4) I agree that if an "opt out class" is certified, then I will "opt out" of the class; and 5) I agree that this document may be provided to any tribunal and/or filed with any court as evidence and notice of my intent not to participate in a/the class action (to either not "opt in" or to "opt out").

I understand that this agreement does not affect my right to file an individual lawsuit or arbitration if I discover construction defects in the future.

\_\_\_\_\_  
Homeowner Address

\_\_\_\_\_  
Print Homeowner Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Homeowner Signature

\_\_\_\_\_  
Date



**LEATH, BOUCH & SEEKINGS, LLP**  
COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

September 25, 2012

RECEIVED  
SEP 27 2012  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC  
Case No.: 07-CP-07-1396  
Case Tracking No.: 2012-212364 (Del Webb/Pulte Appeal)  
LBS File No. 1351.0001

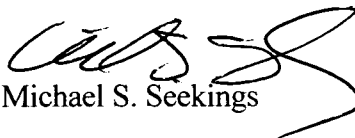
Dear Ms. Kitchings:

Please find enclosed for filing an original and one copy of Respondents' Return to Del Webb/Pulte's Petition for Rehearing and Memorandum in Support of Rule 269 SCRAP Motion in the above referenced Appeal. Please return a filed copy in the enclosed envelope. By copy of this letter I am serving one copy upon all counsel.

With best regards, I am

Yours very truly,

LEATH, BOUCH & SEEKINGS, LLP

  
Michael S. Seekings

MSS/dmc

Enclosures

cc: Victor Rawl, Jr., Esq.  
Robert L. Widener, Esq.  
Everett A. Kendall, II, Esq.  
Christy E. Mahon, Esq.  
David S. Cobb, Esq.  
John T. Chakeris, Esq.  
Phillip W. Segui, Jr., Esq.  
The Honorable J. Michael Baxley