

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas
J. Michael Baxley, Circuit Court Judge

Case No. 2007-CP-07-1396

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.

Affidavit of Robert L. Widener

Personally appeared before me, Robert L. Widener, who first being sworn to tell the truth, does depose and state as follows:


- (1) He is lead appellate counsel in the above-captioned appeal for Appellants Del Webb Communities, Inc., and Pulte Homes, Inc.
- (2) He files this affidavit in response to accusations by Respondents' counsel that the above-captioned appeal is frivolous and warrants sanctions under Rule 269, SCACR.

(3) He has been licensed to practice law in South Carolina since November 1983 --- his practice has been limited primarily to appellate practice since 1994 – he has never filed an appeal with this Court or any court without a good faith basis for the appeal, including the appeal in this matter.

(4) As set forth in Appellants’ Return to Motion to Dismiss Appeal and their Reply to Return to Petition for Rehearing, there is a good faith basis for the appeals dismissed by this Court.

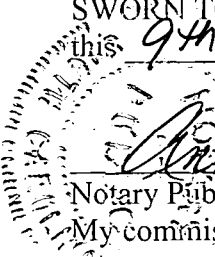

(5) The Supreme Court has held that certain orders must be appealed immediately or the right to appeal is lost. The Supreme Court first applied this rule to cases involving orders that denied the right to a jury trial or the right to a non-jury trial. See *Creed v. Stokes*, 331 S.E.2d 351 (1985) (order denying right to jury trial); *Pelfrey v. Bank of Greer*, 244 S.E.2d 315 (1978) (order denying right to non-jury trial). For a number of years, it appeared the Supreme Court would limit this immediate appeal requirement to only those types of orders. See, e.g., *Flagstar Corp. v. Royal Surplus Lines*, 533 S.E.2d 331 (S.C. 2000); *Hannah v. United Refrigeration Servs., Inc.*, 409 S.E.2d 360 (S.C. 1991); *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 357 S.E.2d 725 (S.C. 1987). More recently, however, the Supreme Court has expanded the immediate appeal requirement to include various types of orders under various situations. See, e.g., *Neeltec Enterprises, Inc. v. Long*, 725 S.E.2d 926 (S.C. 2012) (order substituting a party must be appealed immediately), *rev’g* 705 S.E.2d 57 (S.C. App. 2011); *Salmonsens v. CGD, Inc.*, 661 S.E.2d 81, 87 (S.C. 2008) (class action order creating an opt in class must be appealed immediately); *Hagood v. Sommerville*, 607 S.E.2d 707 (S.C. 2005) (order disqualifying an attorney in a civil case must be appealed immediately). These recent decisions, however, do not establish the parameters of this expansion, nor do they set forth a unified analytical framework for determining when the immediate appeal requirement applies to a particular order. Here, the Appellants cannot risk that the failure to immediately appeal the appealed orders would later be ruled a waiver of the right to appeal given that Plaintiffs claim damages exceeding Three Hundred Million Dollars.¹ This is particularly true when, as here, the trial court deviated from the mode of trial mandated by the Supreme Court in remanding the prior appeal in this case.

FURTHER AFFIANT SAYETH NOT



Robert L. Widener

SWORN TO AND SUBSCRIBED BEFORE ME
this 9th day of October, 2012.

Notary Public for South Carolina
My commission expires: 5-14-2020

¹ Plaintiffs (Respondents) contend the class contains approximately 4,300 homes that must be repaired at a cost of \$75,000 per home for a total of \$322,500,000.00.