

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2007-CP-07-1396
Case Tracking No.: 2012-212840

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SC Court of Appeals

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

v.

South Carolina State Plastering, LLC, Appellant.

and

South Carolina State Plastering, LLC, Appellant,

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.

**RESPONDENTS' RETURN TO MOTION TO HOLD
APPELLATE TIMELINES IN ABEYANCE, or in the Alternative,
FOR EXTENSION OF TIME TO SERVE AND
FILE INITIAL APPELLANTS' BRIEF**

This matter before the Court is an Appeal from the dissolution of an Injunction filed
by the Circuit Court on May 16, 2012. (attached as Exhibit "A"). Two parties to this

litigation, South Carolina State Plastering, LLC, (SCSP) and Pulte/Del Webb (Pulte) have independently filed a Notice of Appeal from that Order. By Order of this Court, these two Appeals of the May 16th Order were consolidated (attached as Exhibit “B”). SCSP has filed its Initial Brief. Pulte has not. Instead, Pulte has chosen a route of delay by filing its Notice to Hold Appellate Timelines in Abeyance. For the reasons stated below, this Motion should be denied and an SCRAP 269 inquiry conducted by this Court.

In its moving papers, Pulte states the following:

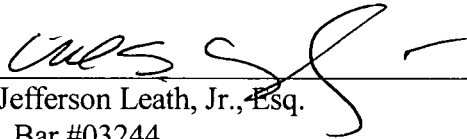
“This is an appeal from an order denying an injunction (the injunction appeal). This appeal was consolidated administratively with another appeal (the first appeal) on August 31, 2012. On that same date, however, this *Court granted a motion to dismiss the first appeal*, finding the appealed orders were not appealable. All Appellants have filed a petition for rehearing with this Court in the first appeal. The Appellants’ brief in the second appeal (injunction appeal) is currently due to be served and filed on October 1, 2012. Appellants Del Webb and Pulte (Del Webb) move to hold the appellate timelines in the second appeal (injunction appeal) in abeyance upon the grounds set forth below.”

This recitation is simply and plainly inaccurate and delivered for the improper purpose of confusion and delay. Pulte states that the Injunction Appeal now before this Court has somehow been consolidated with a previously dismissed Appeal from a case management order that certified a class. This, of course, would be impossible. Upon receipt of Pulte’s “Abeyance Motion,” below signed counsel advised counsel for Pulte of its error and requested that Pulte withdraw its motion (attached as Exhibit “C”). Pulte declined.

The efforts of Pulte to delay this case have been well documented with this Court. This filing is but another in a series of improper filings. (see Exhibit “D”). The Plaintiffs/Respondents are entitled to have their case proceed unburdened by the improper tactics of Pulte. Accordingly, Plaintiffs respectfully request that Pulte’s “Abeyance Motion”

be denied, its "Extension" Motion be denied and that this Court conduct an inquiry and issue an appropriate remedy pursuant to SCRAP 269.

Respectfully Submitted,



W. Jefferson Leath, Jr., Esq.
S.C. Bar #03244
Michael S. Seekings, Esq.
S.C. Bar #64850
Leath, Bouch & Seekings, LLP
92 Broad Street
P. O. Box 59
Charleston, SC 29402
(843) 937-8811

John T. Chakeris, Esq.
S.C. Bar #7060
The Chakeris Law Firm
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678

Phillip W. Segui, Jr., Esq.
S.C. Bar #7029
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865

Attorneys for the Respondents

Charleston, South Carolina

October 8, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2007-CP-07-1396
Case Tracking No.: 2012-212840

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

v.

South Carolina State Plastering, LLC, Appellant.

and

South Carolina State Plastering, LLC, Appellant,

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.

PROOF OF SERVICE

W. Jefferson Leath, Jr., Esq.
S.C. Bar #03244
Michael S. Seekings, Esq.
S.C. Bar #64850
Leath, Bouch & Seekings, LLP
92 Broad Street
P. O. Box 59
Charleston, SC 29402
(843) 937-8811

John T. Chakeris, Esq.
S.C. Bar #7060
The Chakeris Law Firm
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678

Phillip W. Segui, Jr., Esq.
S.C. Bar #7029
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865

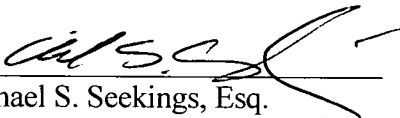
Attorneys for the Respondents

I, Michael S. Seekings, Esq., do hereby certify that on October 8, 2012, I served opposing counsel with a copy of Respondents' Return to Motion to Hold Appellate Timelines in Abeyance, or in the Alternative, for Extension of Time to Serve and File Initial Appellants' Brief via regular first class United States mail, postage prepaid, addressed as follows:

Everett A. Kendall, II, Esq.
Christy E. Mahon, Esq.
Sweeny Wingate & Barrow, P.A.
1515 Lady Street
P.O. Box 12129
Columbia, SC 29211
*Attorneys for Appellant South Carolina
State Plastering, LLC*

A. Victor Rawl, Jr., Esq.
Robert L. Widener, Esq.
McNair Law Firm
P.O. Box 11390
Columbia, SC 29211
*Attorneys for Appellant Del Webb Communities, Inc.,
and Pulte Homes, Inc.*

David S. Cobb, Esq.
Turner Padgett Graham & Laney, P.A.
40 Calhoun Street, Suite 200
P.O. Box 22129
Charleston, SC 29413
*Attorney for Third-Party Defendant Kephart
Architects, Inc.*


Michael S. Seekings, Esq.

October 8, 2012
Charleston, South Carolina

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RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Case No. 2007-CP-07-1396

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

Plaintiffs,)

v.)

**ORDER VACATING TEMPORARY
INJUNCTION, DISMISSING AS MOOT
DEFENDANTS' MOTION TO AMEND
INJUNCTION, AND DENYING
MOTION TO RENEW INJUNCTION**

SOUTH CAROLINA STATE)
PLASTERING, LLC,)

Defendant,)

and)

SOUTH CAROLINA STATE)
PLASTERING, LLC,)

Third-Party Plaintiff,)

v.)

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

Third-Party Defendants.)

2012 MAY 16 PM 1:21
REGINA ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This class action concerns allegations of defective stucco on approximately 4000 residences within the Sun City development in Hilton Head, South Carolina. The case has been declared complex and assigned to this Court for disposition. On January 13, 2012, Defendant South Carolina State Plastering ("SCSP") filed a Motion for Temporary Injunction, and on January 18, 2012, Third-Party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. likewise filed a Motion for Injunctive Relief. Both of these motions sought to enjoin Plaintiffs' counsel from communicating with stucco homeowners in Sun City Hilton Head prior to the

expiration of any opt-out period for inclusion in the class. According to Defendants, the motions were filed because Plaintiffs' counsel intended to conduct a "community meeting" with reference to this pending lawsuit, and published notice of such meeting in the local newspaper. Before a hearing could be scheduled on the motions, Plaintiffs' counsel submitted a proposed Order to the Court granting the injunction, presented as a consent Order, and the Court signed Plaintiffs' counsel's proposed order.

After the Court signed and issued the Order, Defendant SCSP and Third-Party Defendants Del Webb and Pulte moved to alter the Order. The Court conducted a hearing on this motion, during which Defendants asserted that the timeframe they had requested for the injunction to remain in place in their motions was different from the one actually outlined in the signed Order presented by Plaintiff's counsel. At that point, the Court learned that Defendants had not in fact consented to the proposed Order submitted by Plaintiffs' counsel.

After considering this issue with the knowledge that there was no true consent among the parties, the Court has determined that the Order was improvidently granted; moreover, after close review, the requested injunction was unilateral in nature and failed to require a bond in the event of Plaintiffs' counsel's failure to abide thereby, which is reversible error. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009); Rule 65, SCRPC. Therefore, the Court hereby vacates the Order Granting Temporary Injunction entered on March 15, 2012. As a result, the Court further now dismisses as moot Defendants' motion to alter or amend that injunction.

After learning that the Court intended to vacate the previous injunction, Defendants have now moved to renew the injunction. A telephone conference was conducted on the record on May 9, 2012 to hear arguments on the issue of whether an injunction should issue. In considering this renewed motion, the Court is aware that class actions serve an important function in our system of civil justice, but they also present opportunities for abuse as well as problems for courts and counsel in the management of cases. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99, 101 S.Ct. 2193, 2200 (1981). Therefore, because of the potential for abuse, courts have been given the discretion to "impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended." Rule 23, SCRPC; *Eldridge v. City of Greenwood*, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992). To ensure that these interests are protected, courts may find it necessary to issue orders, like the previous one in this case, that limit communication between the parties and potential members of the class.

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But a court's power to issue an order curtailing communication is not unlimited. In fact, one such limitation flows from the framework and general policies contained in Rule 23 itself. As the South Carolina Supreme Court has stated, the specific grant of power to a court under Rule 23(d), SCRCF, are directed towards notifying the parties of the pending litigation. *Id.* Therefore, while it may be necessary for a court to issue an order limiting communications in certain circumstances, such an order "should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. Only such a determination can ensure that the court is furthering, rather than hindering, the policies embodied in [Rule 23]." *Id.*, citing *Gulf Oil Co.* at 101, 101 S.Ct. at 2200.

Another, and perhaps more important, limitation on a court's authority to enter an order prohibiting communication under Rule 23 emerges from the constitutional rights enshrined in the First Amendment. The impact of Defendants' motion is broad sweeping and effectively constitutes a prior restraint on speech. It enjoins the named Plaintiffs and Plaintiffs' counsel from "communicating with prospective class members regarding" the pending litigation, "publishing any statement" regarding the litigation, and "taking any action intended to advise or inform residents of Sun City Hilton Head of their legal rights." A prior restraint, of course, is subject to a heavy presumption against its constitutionality; in order for the restraint to be valid, it must prevent "direct, immediate, and irreparable damage" and be the least restrictive means of doing so. *New York Times Co. v. U.S.*, 403 U.S. 713, 732-33, 91 S.Ct. 2140, 2150-51 (1971). While the Court is well aware of the constitutional implications of Defendants' motion, this decision is not made upon constitutional grounds.

With regard to the motion for temporary injunction, the Court makes the following specific findings in weighing the need for limitation of communications between Plaintiffs' counsel and putative class members versus a potential interference with the rights of the parties:

1. The Court's ability to control the flow of information within a class action is superimposed upon the foundational democratic principles of the need for a free flow of information within society generally and specifically within the justice system;
2. The motions as filed are unilateral in nature, applying only to Plaintiffs' counsel, raising an immediate question as to the propriety of

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disparate treatment of the parties. While Defendants now offer to amend the motion so as to apply to all parties, this does not cure the Court's concerns;

3. This case involves a retirement community where the citizenry is similarly situated as to the construction of their residences by Defendants, and where putative class members have the necessary time, fiscal capability, and level of sophistication to fully participate in this case;

4. This case further involves the most substantial investment that most individuals make in a lifetime, their home, and thus is of core interest. Due to the large number of people involved who live in close proximity to one another, one can anticipate that rumor and misunderstanding will abound. The inability to discuss the issues in this litigation with counsel on either side of the case will result in the potential for confusion and frustration, particularly when individuals are attempting to determine whether or not to opt out of the proposed class;

5. This situation would undermine the confidence of potential litigants in the justice system as the ban on information would be imposed by Court order, as opposed to an agreement between counsel, and the Court finds no reason to impose such a ban;

6. The free flow of information, particularly in light of the requirements and directives of the Right to Cure Dwelling Defect Act, S.C. Code Ann. 40-59-810, et. seq., may lead to the settlement of many of these claims without the necessity of joining the class; and,

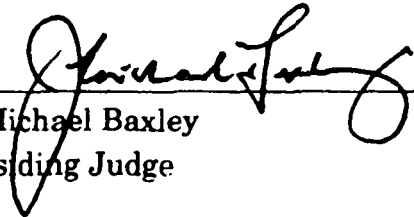
7. The Defendants have shown no "abuse" by Plaintiffs' counsel in their communications with putative class members, and the mere conjecture that such may occur is insufficient for this Court to impose a ban. *Gulf Oil Co.* at 104, 101 S.Ct. at 2202.

After review and consideration of this issue, the Court does not find that direct, immediate, and irreparable harm will result if Plaintiffs' counsel is allowed to communicate with the residents of Sun City Hilton Head. To the contrary, the Court finds that the interests of justice are better served if all counsel are permitted to discuss this case with prospective and potential members of the class, as the free

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flow of information from either side of the case will serve to better inform potential class members as to their rights and the potential to resolve individual claims without the need for litigation prior to the enrollment of the class. For this reason, the Court now declines to issue an injunction, and denies Defendants' motion.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Judge

Hartsville, South Carolina
May 11, 2012

B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 31, 2012

Mr. Everett Augustus Kendall, II
Ms. Christy Elizabeth Mahon
PO Box 12129
Columbia SC 29211

Mr. Robert L. Widener
Mr. A. Victor Rawl, Jr.
PO Box 11390
Columbia SC 29211

Re: Anthony Grazia v. SC State Plastering (2)
Appellate Case No. 2012-212840
Lower Court Case No. 2007CP0701396
Date of Court Orders: 05/11/2012 and 06/29/2012

Dear Counsel:

This Court has received multiple notices of appeal in this matter. These appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules (SCACR), and we anticipate receiving one record on appeal. When appeals are consolidated, the party filing the first notice of appeal, South Carolina State Plastering, LLC, has been designated as the primary appellant and the party filing the second notice of appeal, Del Web Communities, Inc. and Pulte Homes, Inc., have been designated as the secondary appellants. This is to further advise that each party is allowed to serve and file initial appellant's briefs along with a designation of matter to be included in the record on appeal, respondent's briefs and reply briefs as provided for in Rules 208 and 209, SCACR.

In light of this consolidation, the title of this case is amended as follows:

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

v.

South Carolina State Plastering, LLC, Appellant.

South Carolina State Plastering, Appellant,

v.

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

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

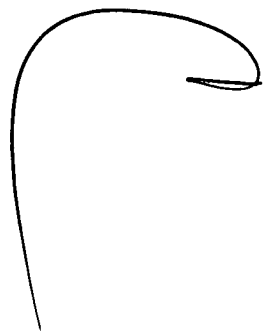
Please be advised that the appellants' initial briefs and designations of matter must be served and filed within 30 days of the date of this letter.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: W. Jefferson Leath, Jr.
Michael S. Seekings
Phillip Ward Segui, Jr.
John T. Chakeris



100% Recycled 30% PCW





LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

October 4, 2012

VIA E-MAIL ONLY

A. Victor Rawl, Jr., Esq.
Robert L. Widener, 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
LBS No.: 1351.0001

Dear Vic and Robert:

Today I received your "Motion to Hold Appellate Timelines in Abeyance, or in the alternative, for Extension of Time to Serve and File Initial Appellants' Brief." By this letter, I write to advise you of the inaccuracy of your procedural recitation to the Court and ask that you withdraw your Motion. In your Motion, you state the following:

"This is an appeal from an order denying an injunction (the injunction appeal). This appeal was consolidated administratively with another appeal (the first appeal) on August 31, 2012. On that same date, however, this *Court granted a motion to dismiss the first appeal*, finding the appealed orders were not appealable. All Appellants have filed a petition for rehearing with this Court in the first appeal. The Appellants' brief in the second appeal (injunction appeal) is currently due to be served and filed on October 1, 2012. Appellants Del Webb and Pulte (Del Webb) move to hold the appellate timelines in the second appeal (injunction appeal) in abeyance upon the grounds set forth below."

The implication is that the injunction appeal, appellate case no. 2012-212840, has been consolidated with the now dismissed class certification appeals, nos. 2012-212212 and 2012-212364. Such an assertion is incorrect. Attached to this correspondence is a copy of the Administrative Order to which you refer. It is clear that what has been consolidated are the two (2) appeals filed on the injunction order. All you need to do is look at the "Re:" line of the Court's correspondence which appears as follows:

"Re: Anthony Grazia v. SC State Plastering (2)
Appellate Case No. 2012-212840
Lower Court Case No. 2007CP0701396
Date of Court Orders: 05/11/2012 and 06/29/2012"

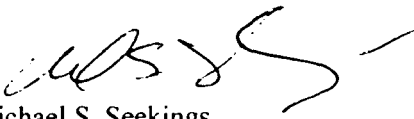
A. Victor Rawl, Jr., Esq.
Robert L. Widener, Esq.
October 4, 2012
Page 2

The two (2) Court Orders referenced both relate to the injunction. There is no suggestion, nor would it be possible, that the dismissed appeals also be consolidated, because those appeals have been dismissed.

I am certain that upon receipt of this letter you will immediately take the necessary steps to withdraw your Motion, advise the Court of your error, and timely file your brief.

Yours truly,

LEATH, BOUCH & SEEKINGS, LLP

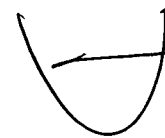


Michael S. Seekings

MSS/dmc
Enclosure

cc: John T. Chakeris, Esq.
Phillip W. Segui, Jr., Esq.
Everett A. Kendall, II, Esq.
David S. Cobb, Esq.

)





90000 SERIES
10% P.C.W.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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

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.

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

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.

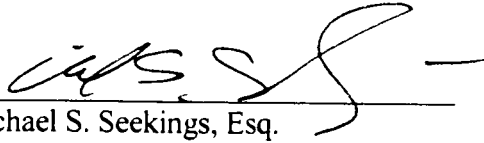
CONCLUSION

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,



Michael S. Seekings, Esq.
S.C. Bar #64850
W. Jefferson Leath, Jr., Esq.
S.C. Bar # 03244
Leath, Bouch & Seekings, LLP
92 Broad Street
P. O. Box 59
Charleston, SC 29402
(843) 937-8811

John T. Chakeris, Esq.
S.C. Bar #7060
The Chakeris Law Firm
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678

Phillip W. Segui, Jr., Esq.
S.C. Bar #7029
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865

Attorneys for the Respondents

Dated: Sept. 25, 2012

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

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

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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SC Court of Appeals

Michael S. Seekings, Esq.
S.C. Bar #64850
W. Jefferson Leath, Jr., Esq.
S.C. Bar #03244
Leath, Bouch & Seekings, LLP
92 Broad Street
P. O. Box 59
Charleston, SC 29402
(843) 937-8811

John T. Chakeris, Esq.
S.C. Bar #7060
The Chakeris Law Firm
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
(843) 853-5678

Phillip W. Segui, Jr., Esq.
S.C. Bar #7029
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464
(843) 884-1865

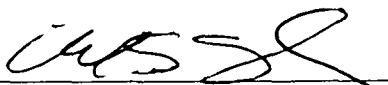
Attorneys for the Respondents

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:

Everett A. Kendall, II, Esq.
Christy E. Mahon, Esq.
Sweeny Wingate & Barrow, P.A.
1515 Lady Street
P.O. Box 12129
Columbia, SC 29211
*Attorneys for Appellant South Carolina
State Plastering, LLC*

A. Victor Rawl, Jr., Esq.
Robert L. Widener, Esq.
McNair Law Firm
P.O. Box 11390
Columbia, SC 29211
*Attorneys for Appellant Del Webb Communities, Inc.,
and Pulte Homes, Inc.*

David S. Cobb, Esq.
Turner Padgett Graham & Laney, P.A.
40 Calhoun Street, Suite 200
P.O. Box 22129
Charleston, SC 29413
*Attorney for Third-Party Defendant Kephart
Architects, Inc.*


Michael S. Seekings, Esq.

September 25, 2012
Charleston, South Carolina



LEATH, BOUCH & SEEKINGS, LLP

COMMERCIAL LITIGATION • CONSTRUCTION • ENVIRONMENTAL

October 8, 2012

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

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SC Court of Appeals

RE: Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC
Case No.: 07-CP-07-1396
Case Tracking No.: 2012-212840
LBS File No. 1351.0001

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Respondents' Return to Motion to Hold Appellate Timelines in Abeyance, or in the alternative, for Extension of Time to Serve and File Initial Appellants' brief, along with a Proof of Service in the above-referenced matter. Please return a filed stamped copy to us in the enclosed envelope. By copy of this letter, I am serving one copy of each upon opposing counsel.

Thank you and 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