

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2007-CP-07-1396

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

Plaintiffs, )

v. )

SOUTH CAROLINA STATE )  
PLASTERING, LLC, )

Defendant. )

SOUTH CAROLINA STATE )  
PLASTERING, LLC, )

Third-Party Plaintiff, )

v. )

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

Third-Party Defendants. )

2016 SEP - 9 AM 10:44  
JERRI ANN ROSENEAU  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

**ORDER**  
**(NO MOTIONS PENDING)**

This matter is currently pending before this Court as a class action. The class was certified by Order of Judge Baxley on December 8, 2011 following a hearing on October 5, 2011. Prior to certification, the South Carolina Supreme Court remanded the matter extolling in their decision the utility of the class action device to save the resources of the courts and the parties, and stating "class actions are favored in this state." *Grazia v. S.C. State Plastering, LLC*, Op. No. 26882 (S.C. Sup. Ct. filed Oct. 4, 2010) The Defendants sought to have Judge Baxley reconsider class certification. By order dated May 7, 2012, Judge Baxley dismissed Defendants' Motions to

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Jerri Ann Roseneau, Clerk of Court  
Beaufort County, SC - Melissa Kilby

Reconsider. An appeal was taken and on August 2012 the appeal was dismissed by the South Carolina Court of Appeals.

Notwithstanding the fact that the issue of class certification was long ago decided and reviewed, the direct defendant, South Carolina State Plastering, LLC (hereinafter "SCSP"), has now filed with this Court a pleading styled "South Carolina State Plastering, LLC's Supplemental Memorandum of Law and Facts in Opposition to Plaintiffs' Motion for Class Certification"<sup>1</sup>. No motion accompanied the filings and no action is hereby taken.

The issues now raised by the Defendants in their papers to the Court are, upon review, yet another after-the-fact attempt to seek reconsideration of class certification and to rehash the very issues that were argued before the Court on October 5, 2011, nearly five (5) years ago (as well as in many subsequent hearings). Based on the voluminous record and the many rulings previously entered, the Court will not, again, reconsider the issue of class certification or entertain any further argument on the issue.

The Court would remind counsel of the following statements made by Judge Baxley following the publication of his class certification order. At a motion hearing on April 30, 2012, Judge Baxley stated, "It takes us back to the issue... that you continue to argue, which is that we shouldn't have a class. Well, I made that decision against you," (*Motion Hearing* 71:21-23, April 30, 2012), and at a subsequent hearing on the class notice of February 1, 2013, Judge Baxley again address the issue,

**COUNSEL:** - - - and one of the first places that appears is in that statement, It should include, at a very minimum, it should include the words "the Court has preliminarily certified.

**THE COURT:** Well, let me just broach that now. I don't believe that's appropriate... because when I said I preliminarily certified it, what I meant was that's a certification... (*Tr. R.* 37:9-16, Feb. 1, 2013)

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<sup>1</sup> By separate filing, Third-Party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. ("Webb/Pulte") has joined this untimely and improper motion.

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Judge Baxley's rulings could not be more clear and this Court will not, in fact cannot, disturb them. The matter of class certification was long-ago settled. The class is defined as follows: "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." Judge Baxley did a thorough review of the Rule 23 requirements in determining and certifying the class.

The Court would further remind all counsel of Judge Baxley's continued rejection of challenges to the class, "The Court specifically rejects Defendant's and Third-Party Defendants' contention...that the factual and legal components within the cases automatically defeat a class action approach to resolution of this litigation, or the typicality, commonality, or adequacy of the named Plaintiff's representation of the class." He continued to address the arguments and subsequently dismissed them, stating that "it is the firm belief of this Court that common, core issues are present in all the cases and that a *class approach is not only the best, but the only method available* to enhance judicial economy, promote efficient disposition of these cases, and reduce litigation costs." (*Order* dated Dec. 8, 2011 at 11) (*emphasis added*) Moreover, Judge Baxley noted that the Supreme Court had the clear opportunity to deny class status in this very case but affirmatively chose not to do so, instead emphasizing in its decision the vitality of the class action doctrine to preserve the resources of the court and the parties. (*Id.* at 11)


Furthermore, in his Order Approving Class Notice that Judge Baxley himself wrote, he once again declined to refer to the class as "preliminary," for the reason that it was not and is not

preliminary. Judge Baxley's failure to do so even further evidences his intention that the class was, indeed, already certified.

A class has been certified, and this Court will not allow Defendants to seek reconsideration of Judge Baxley's Order when reconsideration was already denied and that decision was appealed. All procedural attempts by Defendants to question the certification in this Court have been pursued and have been unsuccessful.

By this Order all further discussion on the issue of class certification is terminated as previously decided and moot.

IT IS SO ORDERED.

  
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Edgar W. Dickson  
PRESIDING JUDGE

Orangeburg, South Carolina  
Dated: Sept. 7, 2016

**Brittany Johnson**

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**From:** Mike Seekings  
**Sent:** Friday, September 02, 2016 2:56 PM  
**To:** eak@swblaw.com; Vic Rawl; dcobb; methridge@carlockcopeland.com  
**Cc:** Jefferson Leath; john@chakerislawfirm.com; psegui@seguilawfirm.com; Brittany Johnson; Christi Daniels  
**Subject:** ORDER  
**Attachments:** ORDER - 9.2.2016.pdf

Counsel

In accordance with Judge Dickson's directive, sent via e-mail on August 26th, attached please find an Order terminating discussion of the issue of class certification. Under separate cover this Order is being mailed to the Court for signature with a self addressed stamped envelope for its prompt return to this office. Upon receipt of a signed copy I will have it filed in Beaufort County.

Mike