

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge
Edgar W. Dickson, Circuit Court Judge

Case No. 2007-CP-07-1396

RECEIVED

MAR 16 2017

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.....Respondents.

Appellate Case No. 2017-000218

RESPONDENTS', ANTOHNY AND BARBARA GRAZIA, INDIVIDUALLY AND ON
BEHALF OF ALL OTHER SIMILARLY SITUATED PLAINTIFFS, REPLY TO
APPELLANT SOUTH CAROLINA STATE PLASTERING, LLC'S RETURN TO
PETITION TO LIFT THE AUTOMATIC STAY

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

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

Phillip W. Segui, Jr., Esq.
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29465
(843) 884-1865

Attorneys for the Respondents

INTRODUCTION

Appellant, South Carolina State Plastering, LLC (hereinafter referred to as "SCSP"), opposes lifting the automatic stay as it claims it has not been able to complete an inspection under the Right to Cure Act process (S.C. Code Ann. §§ 40-59-810, *et. seq.*). All the Act permits is for SCSP to receive notice of a claim and inspect (by reasonable access) the dwelling, both of which were accomplished by SCSP's insurance company long ago. The claimant class has received no offers of settlement nor can it, as SCSP, the contractor, no longer exists. Its insurers are not capable of making repairs, and they have made no offers to the claimant class. As pointed out in Respondents' Reply to Appellant's Return to the Motion to Dismiss the Appeal (attached hereto as Exhibit A and made a part hereof) this class was certified in 2012. SCSP has inspected each house, has destructively tested the 47 houses agreed upon, and has had the benefit of 4,500+ questionnaire responses, as well as the results of Respondents' Del Webb Communities, Inc. and Pulte Homes, Inc. (hereinafter referred to as "Webb/Pulte") testing and destructive testing on some 2,000+ houses. It advances no reasons why this Court must not dismiss this Appeal and lift the automatic stay.

DISCUSSION

In their attached Reply, Respondents fully address the lack of appealability of the Orders at issue, and the fact that there is a final, certified class. The Notice and Opportunity to Cure Act, S.C. Code Ann. § 40-59-810, *et seq.*, in § 850 thereof, gives the contractor the right to inspect, offer to remedy, offer to settle, or deny the claim. Here, for a number of years, SCSP's agents and experts have visually inspected each home. The three (3) stucco exterior defects which are found in the class definition are readily observable from exterior

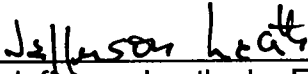
visual inspection. This visual inspection concluded in 2015, two (2) years ago. In addition to the visual inspection, SCSP agreed in Court to destructively test 47 houses, even though S.C. Code Ann. § 40-59-850 does not give it any right to destructively test any house. In addition, Webb/Pulte has shared its files of some 2,000+ class houses for which it has tested for moisture, destructively tested, photographed, and repaired.

The assumption made by SCSP, that: "The Appellant SCSP has not been granted the ability to fully explore its rights to a pre-litigation opportunity to inspect and remedy/settle", as it states in its Return, is contrary to the facts. The fact of the matter is that SCSP has had years in which to "explore its rights". It is a defunct corporate entity, and its rights are currently being exercised solely by its insurers, which have failed to pursue any meaningful resolution.

CONCLUSION

As urged by the petitioners, time is of the essence here. No reason has been advanced by SCSP in opposition, thus the automatic stay should be lifted.

Respectfully Submitted,



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

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

Phillip W. Segui, Jr., Esq.
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29465
(843) 884-1865

Attorneys for the Respondents

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

RECEIVED

MAR 16 2017

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge
Edgar W. Dickson, 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,.....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.....Respondents.

Appellate Case No. 2017-000218

PROOF OF SERVICE

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

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

Phillip W. Segui, Jr., Esq.
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29465
(843) 884-1865

Attorneys for the Respondents

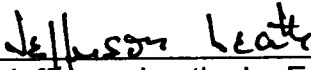
I, W. Jefferson Leath, Jr., Esq., do hereby certify that on March 15, 2017, I served opposing counsel with a copy of the Respondents' Reply to Appellant South Carolina State Plastering, LLC's Return to Petition to Lift the Automatic Stay via regular first class United States mail, postage prepaid, addressed as follows:

Everett A. Kendall, II, Esq.
Marshall C. Crane, Esq.
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, SC 29211
Attorneys for Appellate South Carolina State Plastering, LLC

A. Victor Rawl, Jr., Esq.
Robert L. Widener, Esq.
McNair Law Firm, P.A.
Post Office Box 1431
Charleston, SC 29401
Attorneys for Third-Party Defendants Del Webb Communities, Inc., and Pulte Homes, Inc.

David S. Cobb, Esq.
Turner Padgett, Graham & Laney, P.A.
P.O. Box 22129
Charleston, SC 29413-2129
Attorney for Third-Party Defendant Kephart Architects, Inc.

R. Michael Ethridge, Esq.
Ethridge Law Group, LLC
P.O. Box 20969
Charleston, SC 29413
Attorney for Appellant South Carolina State Plastering, LLC



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



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

March 15, 2017

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

RECEIVED

MAR 16 2017

SC Court of Appeals

RE: *Anthony and Barbara Grazia, et al v. South Carolina State Plastering, LLC*
Case No.: 2007-CP-07-1396
Appellate No.: 2017-000218

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondents' Reply to Appellant's Return to Petition to Lift the Automatic Stay, along with a Proof of Service in the above-referenced matter. 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

W. Jefferson Leath, Jr.

W. Jefferson Leath, Jr.

WJLjr/bah
Enclosures as stated
cc: All Counsel of Record

ORIGIN ID: CHSA (843) 937-8811
BRITTANY HUSKEY
LEATH, BOUCH & SEEKINGS, LLP
92 BROAD STREET

CHARLESTON, SC 29401
UNITED STATES US

SHIP DATE: 15MAR17
ACTWGT: 0.40 LB
CAD: 100509876/NET3850

BILL SENDER

TO THE HONORABLE JENNY ABBOTT KITCHING
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET

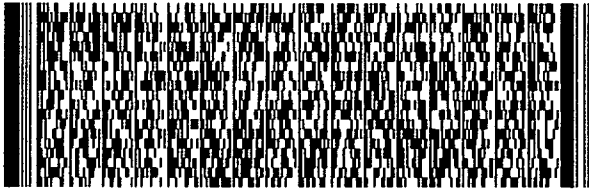
546J31A0B63C1

COLUMBIA SC 29201

(803) 734-1890
INV:
PO:

REF:

DEPT:



FedEx
Express



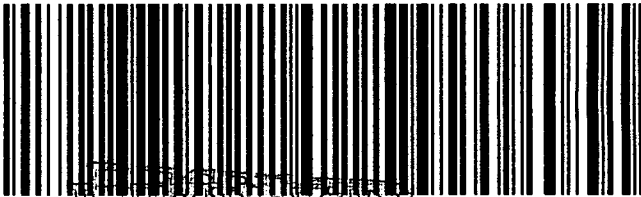
4111172146100

THU - 16 MAR 10:30A
PRIORITY OVERNIGHT

TRK# 7786 5856 6587
0201

28 USCA

29201
SC-US CAE



RECEIVED

MAR 16 2017
MAR 16 2017
SC COURT OF APPEALS