

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
RESPONDENTS DEL WEBB COMMUNITIES, INC.'S AND PULTE HOMES, INC.'S
RETURN TO PETITION TO LIFT THE AUTOMATIC STAY**

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Attorneys for the Respondents

INTRODUCTION

Respondents Del Webb Communities, Inc. and Pulte Homes, Inc. (hereinafter referred to as “Webb/Pulte”) in their Return argue that the automatic stay can serve a useful purpose in promoting judicial economy by preventing the trial court from proceeding with matters affected by the appeal. While this concept, standing alone, makes some sense, it in fact has nothing to do with the instant case before the Court which is based on the improper appeal of interlocutory and time-barred orders of the trial court. Additionally, Webb/Pulte takes the incorrect position that Rule 241(c)(2), South Carolina Appellate Court Rules (hereinafter referred to as “SCACR”) limits this Court’s discretionary powers, and restricts this Court from lifting a stay unless one of two limited circumstances exist. In fact, Webb/Pulte cites no precedent as support for such a position, and a reading of Rule 241, SCACR does not indicate that this Court is limited by the application of that rule.

DISCUSSION

As does Appellant South Carolina State Plastering, LLC (hereinafter referred to as “SCSP”), Webb/Pulte continues the incorrect notion that Judge Baxley’s Class Certification order was “preliminary”, in spite of all record evidence to the contrary. Rather than specifically respond, Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs, (hereinafter referred to as “Respondents”) would refer the Court to their Reply to SCSP’s Return which is attached hereto as Exhibit A and made a part hereof.

Webb/Pulte’s reliance on Rule 241, and the assertion that the Rule limits petitions to a select few cases where jurisdiction might be at jeopardy, is incorrect. That Rule simply states that the Court “should consider” whether such an order is necessary to preserve

jurisdiction of the appeal or to prevent a contested issue from becoming moot. This language is in no way mandatory with language such as "shall" or "must", but rather is one guideline. It must also be stated that nowhere does this Rule contain any limitation that failing to make such a finding limits this Court or any Appellate Court in any way from issuing an order lifting the automatic stay. To so limit would effectively be a limitation on this Court's jurisdiction, a limitation which the Appellate Rules of practice do not sanction.

CONCLUSION

This Court is not limited in its ability to lift the automatic stay upon consideration of a proper petition to do so, which exists here. Some thousands of retirees with defective houses deserve their day in court, and this Court can and should give it to them.

Respectfully Submitted,



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Appellate Case No. 2017-000218

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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 Respondents Del Webb Communities, Inc.'s and Pulte Homes, Inc.'s Return to Petition to Lift the Automatic Stay via regular first class United States mail, postage prepaid, addressed as follows:

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

March 15, 2017

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MAR 16 2017

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.: 2007-CP-07-1396
Appellate No.: 2017-000218

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondents' Reply to Respondents' Del Webb Communities, Inc.'s and Pulte Homes, Inc.'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.

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

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SOUTH CAROLINA COURT OF APPEALS
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COLUMBIA SC 29201

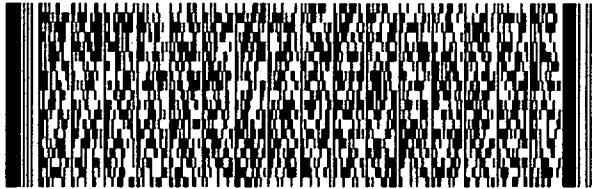
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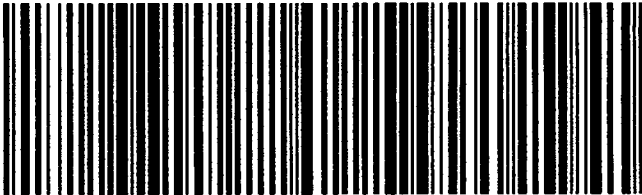
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