

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
)
)

Anthony and Barbara Grazia,)
Individually and on Behalf of All) April 30, 2012
Other Similarly Situated Plaintiffs)
Plaintiff,)

Versus) 2007-cp-07-01396
)

South Carolina State Plastering, LLC)
Defendant.)
)

South Carolina State Plastering, LLC,)
Third-party Plaintiff,)

Versus)
)

Del Webb Communities, Inc.,)
Pulte Homes, Inc., and)
Kephart Architects, Inc.,)
Third-party Defendant.)
)

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

RECEIVED

APR 03 2017

SC Court of Appeals

Pamela Ozment-Cartee
Circuit Court Reporter

1 **MR. SEGUI:** Good afternoon, Your Honor. Phillip Segui,
2 also representing the Plaintiffs.

3 **THE COURT:** All right. Thank you, ladies and
4 gentlemen. We are glad to have this distinguished group of
5 lawyers with us here in Darlington for hearings in, and our
6 record should reflect this is Grazia and others versus South
7 Carolina State Plastering and others. And this is case
8 07CP071396, which is a case that I have under complex
9 jurisdiction out of Beaufort County.

10 Of course, just by way of historical reference so we will
11 know where we are today, the Court previously issued an Order
12 which preliminarily certified a class, and set some other
13 procedural dictates for this case to proceed. There was a
14 Rule 59 Motion filed to reconsider, as well as to clarify, and
15 that is on our docket for today.

16 The Plaintiffs have objected on a basis that that is not
17 a proper vehicle, and we will take that up when we start.
18 But, we have that issue.

19 We also have the issue of what I am going to call a
20 Temporary Restraining Order by consent, a little bit unusual.
21 And then a Motion by Mr. Kendall, I believe, to clarify the
22 terms of the Temporary Restraining Order, which is also on the
23 agenda for today.

24 And then late on Friday, we received a Motion concerning
25 individual discovery within the class vehicle. I don't have

1 . Complaint. So, I would think it would be the same thing if
2 the Plaintiffs' lawyers allege at the risk of Rule 11, and our
3 rules against Barratry and Champerty, and everything else we
4 have out there. They want to get out there and say that there
5 are some people who have damages, actually didn't. Well, they
6 do that at their risk. But that is just my gut reaction to
7 what I'm hearing.

8 **MR. RAWL:** Thank you, Your Honor. But, one thing I
9 would like to point out is in your example, each one of those
10 four people is represented by a lawyer or they would not have
11 filed suit.

12 **THE COURT:** Right.

13 **MR. RAWL:** In this case, we are trying to determine who
14 is going to be dragged into a lawsuit, and bound by this
15 Court's decision, that did not on their own accord go find a
16 lawyer and file suit. These decisions right now are due
17 process issues, because we are pulling somebody who is not
18 filing their lawsuit, and binding them to decision.

19 **THE COURT:** Right. Which is your opposition to the
20 entire class vehicle. And we have fought that battle. And I
21 just decline to make any changes at this point to the
22 preliminary certification order on that issue. Anything else?

23 **MR. RAWL:** Yes, sir, Your Honor. Each of you're A, B,
24 and C, I apologize, I don't understand exactly what you mean.
25 I will start with C. The Court says quote, "The presence of

1 moisture encapsulation by failing to leave a gap between the
2 stucco exterior and the structure slab." end quote. And I
3 apologize, I do not understand what the Court means. Is that
4 anybody who receives a notice with this class definition have
5 a hard time understanding what that means.

6 **THE COURT:** Again, I am going to decline to give you a
7 more further technical definition other than the order which I
8 do not believe, does not need clarification on that issue. It
9 speaks fairly clearly as to what it means, and if you wish to
10 describe it further in the opt out notice, please put that in
11 the recommended notice that you will provide to the Court
12 within thirty days of today. I simply cannot at this point
13 begin to parse and start -- we will be so confounded by the
14 time we get twenty minutes further into the parts of the
15 definitions, that we will be back to square one. So, I
16 decline to do it.

17 **MR. RAWL:** I apologize, Your Honor. I think that is
18 actually absolutely true, that the more we look at it, the
19 harder it is to determine who would be in the class, and who
20 would not be in the class.

21 **THE COURT:** Right. It takes us back to the issue, Mr.
22 Rawl, that you continue to argue, which is that we shouldn't
23 have a class. Well, I made that decision against you. And
24 again ultimately, who knows where this case will go. But,
25 that decision in this case, hard fought, preliminarily made in

1 favor of the opposing party, and I just simply decline to back
2 up and start all over again and say well, no this is too much
3 trouble, we are not going to have a class.

4 **MR. RAWL:** One last issue. I have several specific
5 questions about the class, but I won't go into each one of
6 them. They are in my Briefing.

7 **THE COURT:** Thank you.

8 **MR. RAWL:** They are all in there. Can I ask one last
9 question, which is, does the Court --- at some point we are
10 going to get past the Right to Cure process, and we will get
11 past the opt out process, and we will have a group of people
12 that are left that will be in a class, or could be in a class
13 if they meet this definition. At some point is the Court
14 foreseeing allowing the defendants discovery to determine
15 whether or not those class members actually comply with the
16 Court's class definition?

17 **THE COURT:** In other words you are saying, can you
18 contest at any point their ability to be in the class?

19 **MR. RAWL:** Well, at some point what we know is that a
20 lot of those four thousand don't have any of these three
21 issues. Your Honor has ruled, and the Plaintiffs are going
22 to be sending notices to lots of people who don't have these
23 issues. So, at some point, are the defendants and the third-
24 party Defendants going to have the ability to determine or
25 make an argument through discovery and say these five hundred