

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF BEAUFORT ) CASE NO.: 2007-CP-07-01396

ANTHONY GRAZIA AND BARBARA )  
GRAZIA, INDIVIDUALLY AND ON )  
BEHALF OF ALL OTHERS SIMILARLY )  
SITUATED, )

PLAINTIFFS, )

vs. )

SOUTH CAROLINA STATE )  
PLASTERING, LLC., )

DEFENDANT. )

TRANSCRIPT OF RECORD

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SOUTH CAROLINA STATE )  
PLASTERING, LLC., )

THIRD-PARTY PLAINTIFF, )

vs. )

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

THIRD-PARTY DEFENDANTS. )

**RECEIVED**  
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SC Court of Appeals

February 1, 2013

Charleston, South Carolina

1           **MR. COBB:** Good morning. I'm David Cobb, here for  
2 Kephart Architects.

3           **THE COURT:** Mr. Cobb, good to see you. You're  
4 welcome to come beyond the bar, if you wish.

5           **MR. COBB:** I'm sitting with my friends.

6           **THE COURT:** All right. Very good.

7           Since we're not normally in this county where we --  
8 where we are meeting today here in Charleston, why don't  
9 we let our bailiffs introduce themselves, so we will know  
10 with whom we are working.

11           Mr. Sutton, we will start with you.

12           **MR. SUTTON:** Neil Sutton.

13           **THE COURT:** Thank you.

14           **MR. ROBINSON:** Reynolds Robinson.

15           **THE COURT:** Thank you, Mr. Robinson.

16           All right. Ladies and gentlemen, we are glad to be  
17 here today. Also, Caroline Leonard is our non-jury  
18 coordinator here in Charleston County, who was kind enough  
19 to come and sit with us today here in this non-Charleston  
20 case. So we're glad to have you with us as well.

21           All right. Let's talk a little bit about where we  
22 are in this process. Of course, today's hearing was set  
23 for the purpose in the case of Grazia and others versus  
24 South Carolina State Plastering and others. We're here  
25 for the purpose of finalizing the opt-out Notice.

1 bring a lot of extra paper with me.

2 THE COURT: Okay. And do you have a copy of the  
3 opt-out Notice itself that you sent yesterday?

4 MR. KENDALL: Yes, Your Honor.

5 THE COURT: A printed copy?

6 MR. KENDALL: The exclusion form and the Notice? Is  
7 that what you're asking about? Let me give you everything  
8 that I E-mailed yesterday.

9 THE COURT: Yes, that would be helpful.

10 MR. KENDALL: Your Honor, we E-mailed a Notice, an  
11 Exclusion Request Form, and a Right to Cure Questionnaire.

12 THE COURT: All right. Now let me just simply say  
13 that we had taken the prior document, we highlighted  
14 differences, so that we will be -- we will not be fully  
15 apprised of changes between the two, but perhaps we can  
16 work through that during the session today.

17 What I had anticipated us doing, and I appreciate you  
18 sending us a potential listing of issues to discuss, was  
19 that we would take the Notices, I guess section by  
20 section, and hammer out the differences between them and  
21 resolve each section as we go. That was my suggestion,  
22 not to demand it, but simply to put that out there. Your  
23 outline that you handed up doesn't exactly follow that  
24 process.

25 Let me hear from -- well, let's start with the

1 standpoint also, we just want to make sure we're not  
2 waiving that issue.

3 THE COURT: Okay.

4 MR. RAWL: We understand that the purpose today is to  
5 reach a resolution of a document that's the best possible  
6 document that could go out.

7 THE COURT: Okay. Thank you.

8 What I would propose that we do is take this Class  
9 Notice and work from the plaintiffs proposal, and we would  
10 break it down into the Roman numeral category, such that  
11 we've got the, what I'm going to call the introduction,  
12 and then we start with Number 1: Why should I read this  
13 notice?

14 And just debate or discuss among yourselves  
15 number-by-number and make a decision as we go. We would  
16 take, like where there are subparts, 2.1, 2.2, we will  
17 take the whole thing at the same time, like all of Section  
18 2.

19 And my suggestion would be that we start by letting  
20 the plaintiff defend what they propose and letting the  
21 defendants tell us why it's not an appropriate proposal  
22 and what would be better. Now I suggest that for want of  
23 a better procedure, and let's begin with the face page and  
24 the introduction before we get to Roman Numeral One.

25 And who will be arguing for the plaintiff? Mr.

1           **THE COURT:** No, I'm starting off by looking at the  
2 one that we had previously.

3           **MR. KENDALL:** Okay. Fair enough. I just wanted to  
4 sing along with you.

5           **MR. SEEKINGS:** That's the one I think that we're  
6 operating off of too, Your Honor.

7           **MR. KENDALL:** And so, Your Honor, you're looking at  
8 the second paragraph, the last two sentences was your  
9 first question? Am I in the right place?

10          **THE COURT:** Well, yes, but now I'm wondering if this  
11 is appropriate to work off of this old document when you  
12 proposed this new one. But I don't have a way to tell  
13 what's different about this new one from the one that we  
14 had previously, nor what's different from the -- from what  
15 the plaintiff proposed. So tell me what would you  
16 propose?

17          **MR. KENDALL:** A couple of the highlights, we first of  
18 all, Your Honor, I think -- a lot of the -- a lot of the  
19 differences are for stylistic, perhaps and whatnot, but in  
20 general the concern that we have about the Paragraph One  
21 is, first of all, it does not -- there are some statements  
22 in there that are inconsistent with what was required --  
23 what the Court required to be in the order or in the  
24 Notice.

25                 Specifically, in Paragraph Two, the last line it says

1 that the Court certified this civil action to proceed as a  
2 Class action. Your order made very clear that this was in  
3 all respects to indicate that this was a preliminary  
4 certification and there would be subsequent discussions  
5 and refinements and/or un-certifications down the road.  
6 That's -- that's a problem with me throughout this order,

7 ---

8 **THE COURT:** Right.

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

13 **THE COURT:** Well, let me just broach that now. I  
14 don't believe that's appropriate, Mr. Kendall, because  
15 when I said I preliminarily certified it, what I meant was  
16 that's a certification, it's just not in its final form  
17 because we have to deal with the Right to Cure Statute.  
18 But I don't want to confuse the homeowners with the  
19 concept that, well, all of these pages you're looking at  
20 may be reversed at some later point in the process.

21 I would say that the presumption is that it will not  
22 be reversed, or it would not have been preliminarily  
23 certified to begin with. But secondly, I believe that's  
24 going to inject confusion and uncertainty into this entire  
25 process, particularly when we're dealing with laymen.

1           What do you -- how do you respond to that?

2           **MR. KENDALL:** Well, we were trying to comply by the  
3 words of your order.

4           **THE COURT:** Right.

5           **MR. KENDALL:** And I'm not -- I'm not throwing back  
6 your language. Please don't take me to be disrespectful.  
7 But why we have it in there, in your order you had said  
8 this Notice must contain standard information. And then  
9 it said the Notice should inform potential members that  
10 Class certification is preliminary at this juncture,  
11 pending the results of the right to cure process. Once  
12 the opt-out period has ended, the right to cure document  
13 must be individually -- and so forth, it talks about that.

14           And then it says the Court will make a final  
15 determination of Class certification, and the potential  
16 Class members will be notified of this final decision. We  
17 were simply trying to enact what we thought you meant,  
18 which was to tell them that there are -- this thing could  
19 change.

20           **THE COURT:** Well, that's valid, but I believe as a  
21 policy decision at this juncture, I'm going to alter what  
22 sounds like the plain meaning of what you read so as not  
23 to confuse the potential Class members with the  
24 preliminary status of the Class. Of course, we all know  
25 that if we determine, as the order says, later on that we

1 cannot, due to particular facts and circumstances of these  
2 cases, the Right to Cure Act, and the Class status and we  
3 must decertified, well, we'll just lay that news on the  
4 Class at that time, without warning them in advance that  
5 such could happen. Because, again, I feel like it's an  
6 unlikely circumstance, and it is one that is confusing to  
7 the layman. So I will follow the plaintiffs' proposed  
8 language with regard to whether the Class is preliminarily  
9 certified.

10 **MR. KENDALL:** Your Honor -- thank you, Your Honor.  
11 And for my record-keeping assistance, do you anticipate --  
12 would just the oral amendment to the order stand, or would  
13 you issue something different on that?

14 **THE COURT:** I'm going to let this record stand for  
15 itself, and I would decline to issue a further written  
16 order. We may yet have in here somewhere that it is  
17 preliminary, but I just in this -- throughout the proposal  
18 that you made and right here in this instance, I don't  
19 believe it's in the best interest.

20 **MR. KENDALL:** I understand.

21 **THE COURT:** We'll consider that when we get to the  
22 end of this process.

23 **MR. KENDALL:** Very good.

24 Your Honor, a number of the differences that we have  
25 with what was proposed by the plaintiff and one of the