

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

Appeal No. 2017-000218

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APR 19 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.

**Appellant South Carolina State Plastering, LLC's Reply to Respondents'  
Anthony and Barbara Grazia, individually and on behalf of all other similarly  
situated Plaintiffs Return in Opposition to Petitions for Rehearing of  
Appellants South Carolina State Plastering, LLC and  
Respondents/Appellants Del Webb Communities, Inc., Pulte Homes, Inc.**

South Carolina State Plastering, LLC filed a Notice of Appeal from certain intermediate  
orders in this action, to wit:

1. The order of the Honorable J. Michael Baxley, "Order Making Preliminary Finding that Plaintiffs' Proposed Class Meets the Requirements of Rule 23(a), SCRCF; Setting Parameters for Putative Class; Dismissing Plaintiffs' Unfair Trade Practices Claim Without Prejudice; Imposing a Stay of Proceedings; and Setting Forth Procedures for Compliance with the Right to Cure Construction Dwelling Defect Act," dated December 8, 2011 and filed December 19, 2011;
2. The order of the Honorable J. Michael Baxley, "Order Dismissing Defendants' Motions to Reconsider and Denying Defendants' Motions for Clarification of Order Preliminarily Certifying Class, dated May 1, 2012 and filed May 7, 2012;
3. The order of the Honorable J. Michael Baxley, "Order Approving Class Notice, Mailing List, and Procedures for Right to Cure Process," dated April 9, 2014, and filed April 18, 2014;
4. The order of the Honorable Edgar W. Dickson, "Order Granting South Carolina State Plastering LLC's Motion for Destructive Testing," dated January 29, 2016, and filed February 12, 2016;
5. The order of the Honorable Edgar W. Dickson, "Scheduling Order," dated May 16, 2016, and filed May 26, 2016;
6. The order of the Honorable Edgar W. Dickson, "Order (No Motions Pending)", dated September 7, 2016, and filed September 9, 2016; and
7. The order of the Honorable Edgar W. Dickson, "Order Dismissing Defendants' Motions to Reconsider Pursuant to Rule 59(e)," dated December 29, 2016 and filed January 6, 2017.

The Court of Appeals has issued an order dismissing the appeal stating:

We find the orders on appeal are interlocutory and not appealable pursuant to section 14-3-330 of the South Carolina Code (2017); accordingly, we grant Respondents' motion and dismiss the instant appeals. See Knowles v. Standard Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) ("Class certification, essentially procedural in nature, does not involve substantial or essential legal rights which require attention prior to final judgment.... Neither does certification reach the 'merits' of the underlying cause of action .... "); Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 573, 703 S.E.2d 197, 202 (2010) ("[The] rights under the Right to Cure Act notice provisions are not new substantive rights, but instead represent an effort by the General Assembly to provide the contractors/subcontractors a new procedural timeline for asserting existing litigation rights.").

On March 31, 2017, pursuant to Rule 221, S.C.R.A.P, the Appellant South Carolina State Plastering, LLC (hereinafter "SCSP") filed a Petition for Rehearing on the ground that the Court

overlooked or misapprehended the following points as noted below and as more fully discussed in SCSP's Petition for Rehearing, Motion to Determine Appealability and Return to Plaintiffs' Motion to Dismiss, which are incorporated herein as if fully restated<sup>1</sup>:

1. The Court misapprehended that the general rule as stated in Knowles v. Standard Sav. & Loan does not apply to this appeal and overlooked the point that the Trial Court has never made a deliberative ruling on whether the Respondent Plaintiffs have proven all the Rule 23 factors to warrant class certification.

2. The Court has also overlooked or misapprehended that the Orders that are the subject of this appeal deprive the Appellant of substantial, legal rights under the Right to Cure Act and they also effectively strike defenses by not allowing discovery or providing a reasonable means to assert defenses.

3. The Court has overlooked or misapprehended that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under §14-3-330(2). Hagood v. Sommerville, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005), and cases cited therein.

4. The Court has overlooked or misapprehended that the orders of Judge Baxley and Judge Dickson dismissing Appellant SCSP's motions for reconsideration are appealable under §14-3-330(2) to the extent the Trial Court's refusal to allow the opportunity for reconsideration affects SCSP's substantial rights that could prevent them from raising certain issues on appeal.

5. Finally, the Court has overlooked or misapprehended that: "An order that is not directly appealable may be considered if there is an appealable issue before the court." Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005).

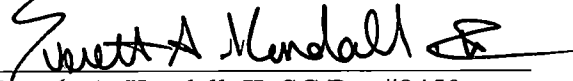
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<sup>1</sup> Appellant SCSP also adopts and incorporates each and all those points and arguments raised by the Respondents/Appellants Pulte Homes and Del Webb on the appealability issues.

Respondents argue that no errors have been made by this Court in its dismissal of the Appeals and that the Petitions for Rehearing are filed for purposes of delay and in an attempt to avoid a trial on the merits. To the contrary, this Petition has been filed in an effort to protect Appellant's rights under the statutes and laws of this State – as cited and discussed more fully in Appellant's Briefs filed relative to this Appeal. Far from seeking to avoid a trial, this Appellant has filed this appeal in an effort to address whether any trial on the merits can and should take place as a class action in light of the Trial Court's failure to make a deliberative ruling on whether the Respondents have proven all of the Rule 23 factors to warrant class certification.

WHEREFORE, the Appellant SCSP respectfully requests that the Court reconsider its order of dismissal and allow this appeal to proceed.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
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Anthony and Barbara Grazia, individually and  
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v.

South Carolina State Plastering, LLC, ..... Appellant.

AND

South Carolina State Plastering, LLC, ..... Appellant,

v.

Del Webb Communities, Inc., Pulte Homes, Inc.,  
and Kephait Architects, Inc., ..... Third-Party Defendants,

Of Whom Del Webb Communities, Inc. and Pulte Homes, Inc., are ..... Respondents.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of foregoing, **Reply to Respondents' Return to Petition for Rehearing** upon the following counsel of record via U.S. mail and/or Electronic Mail:

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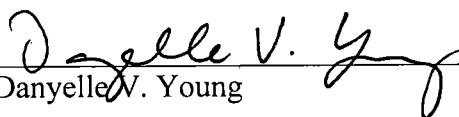
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This 19th day of April, 2017.

  
Danyelle V. Young

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APR 19 2017

April 19, 2017

SC Court of Appeals

Reply to: Main Office

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**VIA HAND DELIVERY**

Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
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Columbia, South Carolina 29202

RE: Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs v. South Carolina State Plastering, LLC, Del Webb Communities, Inc., Pulte Homes, Inc., and Kephart Architects, Inc.  
Appellate Case No.: 2017-000218  
Civil Action No.: 2007-CP-07-1396  
Our File: 3826-6177

Dear Ms. Kitchings:

Enclosed for filing please find the original of **South Carolina State Plastering, LLC's Reply to Respondents' Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs Return in Opposition to Petitions for Rehearing of Appellants South Carolina State Plastering, LLC and Respondents/ Appellants Del Webb Communities, Inc., Pulte Homes, Inc.** along with six (6) copies of the same. Please return all file-stamped copies with the Courier.

By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance in this matter. Should you have any questions or concerns, please do you hesitate to contact me.

Very truly yours,

**SWEENEY, WINGATE & BARROW, P.A.**



Everett A. Kendall, II

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Enclosures

April 19, 2017

Page 2 of 2

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