THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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

Supreme Court Case No. 2017-001305
S.C. Ct. App. Case No. 2017-000218
Lower Court 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,.....Petitioner.

and

South Carolina State Plastering, LLC,.....Petitioner,

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/Petitioners.

RESPONDENTS', GRAZIAS', MOTION FOR SANCTIONS AGAINST PETITIONER SOUTH CAROLINA STATE PLASTERING, LLC AND RESPONDENTS/PETITIONERS DEL WEBB COMMUNITIES, INC. AND PULTE HOMES, INC. PURSUANT TO RULE 269, SCACR

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INTRODUCTION

Rule 269, South Carolina Appellate Court Rules (hereinafter referred to as "SCACR"), permits this Court to "impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." These sanctions are imposed, "Where an appeal, petition, or motion or return is frivolous or taken solely for the purposes of delay."

This case, presents the classic situation requiring the imposition of sanctions, as the instant appeals are both frivolous and are taken, once again, in order to delay a date certain trial which had been long ago set by the Trial Court. What is particularly egregious is that this is the second frivolous appeal of the same subject matter taken by South Carolina State Plastering, LLC (hereinafter "SCSP") and Del Webb Communities, Inc. and Pulte Homes, Inc. (hereinafter collectively "Webb/Pulte"), both appeals filed after the parties had been placed on actual notice by Orders of both the Court of Appeals and this Court that the orders sought to be appealed were and are interlocutory in nature, and not subject to appeal.

PROCEDURAL HISTORY

As this Court is aware, this matter is a large class action which has been active for approximately ten (10) years, and which was set for a date certain trial on April 17, 2017. During the pendency of the case, SCSP and Webb/Pulte have engaged in significant discovery including inspection of each house in the class, destructive testing, moisture testing, and depositions of individual homeowners.

Judge Michael Baxley certified the Class on December 8, 2011, and wrote a letter to counsel regarding this certification dated August 22, 2011 (attached hereto as Exhibit A). Additionally, as has been pointed out to this Court, Judge Baxley in his letter, from transcripts

of the record, and in his Notice to the putative Class, made it abundantly clear that his Certification was not preliminary. In spite of this exhaustive record, SCSP and Webb/Pulte have continued to insist to the contrary, and have attempted – now twice – to appeal the same interlocutory orders. The first appeal took place in 2012. Both SCSP and Webb/Pulte filed appeals. These appeals were given appellate numbers 2012-212212 and 2012-212364, respectively. The Grazia Respondents moved to dismiss these appeals. The Court of Appeals agreed, and dismissed the appeals on August 31, 2012 (Orders attached hereto as Exhibits B and C, respectively). Thereafter, SCSP and Webb/Pulte filed a combined ten (10) motions for extension to file their respective Petitions for a Writ of Certiorari, further delaying the case in this Court until December 10, 2013.

As this case moved closer to trial, Judge Dickson heard extensive argument on a variety of issues from SCSP and Webb/Pulte, which arguments culminated in his Orders of September 7, 2016, and December 29, 2016 (attached hereto as Exhibits D and E, respectively). Neither SCSP nor Webb/Pulte filed any motions, but rather they argued that the Trial Court needed once again to reconsider Judge Baxley's certification of the Class. Judge Dickson's Order of September 7, 2016, made it clear that the Class had long ago been certified and that the Defendant parties had already attempted to have Judge Baxley's certification reconsidered by the Court of Appeals and this Court, and those appeals were dismissed as interlocutory. Thereafter, SCSP and Webb/Pulte attempted a reconsideration motion one more time, and Judge Dickson did not deny those motions, but rather dismissed them as there is no provision in Rule 59 permitting the reconsideration of interlocutory orders.

Thereafter, SCSP and Webb/Pulte filed the following with the Court of Appeals, the first filing taking place on February 6, 2017, seventy (70) days before the trial was set to begin:

1. Notice of Appeal (SCSP) – filed February 6, 2017
2. Motion to Determine Appealability (SCSP) – filed February 8, 2017
3. Notice of Appeal – Cross Appeal (Webb/Pulte) – filed February 15, 2017
4. Motion to Determine Appealability (Webb/Pulte) – filed February 15, 2017
5. Return (Webb/Pulte) to Motion to Determine Appealability (of SCSP) – filed February 22, 2017
6. Motion for Extension of Time (SCSP) – filed February 24, 2017
7. Return (of Webb/Pulte) to Petition to Lift the Automatic Stay – filed March 9, 2017
8. Return (of SCSP) to Petition to Lift the Automatic Stay – filed March 9, 2017
9. Return (of SCSP) to Motion to Dismiss – filed March 9, 2017
10. Petition (of SCSP) for Rehearing from an Order of Dismissal – filed March 31, 2017
11. Petition (of Webb/Pulte) for Rehearing – served April 3, 2017

In response to those filings, the Grazia Respondents were required to make the following filings:

1. Motion to Dismiss – filed February 16, 2017
2. Petition to Lift the Automatic Stay – filed February 22, 2017
3. Reply to Return (of SCSP) to Petition to Lift the Automatic Stay – filed March, 16, 2017
4. Reply to Return (of Webb/Pulte) to Petition to Lift the Automatic Stay – filed March 16, 2017
5. Reply to Return (of SCSP) to Motion to Dismiss – filed March 16, 2017
6. Return in Opposition to Petitions for Rehearing (of SCSP and Webb/Pulte) – filed April 6, 2017

The Court of Appeals once again, dismissed the appeals of SCSP and Webb/Pulte by Order of March 17, 2017 (attached hereto as Exhibit F).

DISCUSSION

As has been pointed out to this Court in numerous filings, and as stated in Judge Dickson's Order of September 7, 2016, SCSP previously asked Judge Baxley to reconsider his Class Certification Order. Judge Baxley declined, and SCSP and Webb/Pulte appealed

to this Court. These appeals were dismissed August 31, 2012. This appeal is identical to that effort. SCSP and Webb/Pulte failed to file any Motions before Judge Dickson, but sought instead to have Judge Dickson reconsider Class Certification. He declined to do so, citing the record. Notwithstanding the numerous attempts at collaterally attacking the Court's interlocutory orders, SCSP and Webb/Pulte again filed Motions to Reconsider and Amend dated September 19, 2016. Judge Dickson dismissed these Motions, noting, "The Court's Order dated September 9, 2016, was interlocutory, and therefore Defendants' Motions to Reconsider were improvidently filed. As this Court has previously ruled, there is no provision in Rule 59(e), South Carolina Rules of Civil Procedure (hereinafter referred to as "SCRCP"), allowing a party to challenge an interlocutory order." (Order of Jan. 6, 2017 – the subject of this Appeal). There was nothing to Appeal here – no underlying Motion to Reconsider Class Certification, only an attempt to appeal a **dismissal** of an improvidently filed Rule 59(e) Motion to Reconsider, an interlocutory case management directive. Here, unlike the 2012 attempt at an appeal, there was not even an underlying Motion, nor a denial of such motion – the entire matter being interlocutory. The Class Certification at issue was made nearly five (5) years ago by Judge Baxley, and SCSP and Webb/Pulte then-attempted appeal of that Certification which was rejected by the Court of Appeals on August 31, 2012, and this Court on December 10, 2013.

In this Appeal, SCSP and Webb/Pulte propounded an even farther-fetched theory which goes something like this: Since Judge Dickson's Order Dismissing the Rule 59(e) Motion was arguably timely appealed (although not in-fact appealable), then somehow, this Appellate filing resurrected SCSP's and Webb/Pulte's ability to appeal all of the Courts' previous interlocutory orders, including those already rejected by the Court of Appeals in

2012, and this Court in 2013. There is no precedent for such a theory, and SCSP and Webb/Pulte did not provide any. Instead, SCSP cited Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 623 S.E.2d, 387 (S.C. 2005). Edge, and its predecessors do not stand for this proposition. To the contrary, Edge holds that an Appellate Court may consider some orders which may not have been directly appealable for reasons of judicial economy "if there is an appealable issue before the Court." Cox v. Woodmen of the World Insurance Company, 347 S.C. 460, 566 S.E.2d 397, 402 (S.C.App. 2001). Here, there was never an appealable issue before the Court, and even if there had been, these decisions do not revive SCSP's and Webb/Pulte's ability to appeal time-barred orders, to the extent there was ever any right to appeal at all.

Judge Baxley did not, as SCSP and Webb/Pulte continued to urge, certify a "preliminary" class. This Class was certified and the Notice to the putative class members was approved by Judge Baxley after hours of exhaustive hearings. Judge Dickson, in his September 7, 2016 Order, cited the record, and the hearing transcript wherein Judge Baxley stated his certification was not preliminary. Judge Baxley also approved the very detailed and specific Notice and Exclusion forms which went out to all Class members. Nowhere in the Notice is there any mention of "preliminary" certification. Judge Dickson was careful to cite Judge Baxley's Order Approving Class Notice – an order Judge Baxley himself composed – in which he "declined to refer to the class as 'preliminary', for the reason that it was not and is not preliminary." (Order of 9/09/16 at pp. 3-4). SCSP and Webb/Pulte did not have any evidence to challenge these orders. Instead, SCSP and Webb/Pulte continued to argue that the orders and transcripts somehow did not mean what they say.

From the above, it cannot be contradicted that when the second appeals were filed in February 2017, the parties and their attorneys knew not only that the interlocutory orders of the trial court were not appealable, but also that the "rights" which they continued to assert under the Right to Cure Act, did not constitute any new substantive rights, as the Court of Appeals' Order Dismissing this Appeal states. They knew – absolutely – of the lack of appealability. The decision of Knowles v. Standard Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979), cited by the Court of Appeals states unequivocally, that Class Certification Orders are not immediately appealable. ("Class certification, essentially procedural in nature, does not involve substantial or essential legal rights which require attention prior to final judgement...Neither does certification reach the 'merits' of the underlying cause of action...") They also knew because they had been instructed by both the Court of Appeals and this Court in this very case, by Dismissal Orders dated August 31, 2012 and December 10, 2013, of the same, exact, lack of appealability.

This Court's decision in Ex Parte Bon Secours – St. Francis Xavier Hospital, Inc., 393 S.C. 590, 413 S.E.2d 624 (S.C. 2011), upholding an award of sanctions by the Trial Court (Judge Baxley), presents a parallel case, involving conduct much less frivolous, than presented here. There, the Defendants removed the case to Federal Court twice, the last time on the eve of trial. In the second removal, they relied upon a pretrial brief filing by one of the physicians which allegedly for the first time raised a federal statutory issue. Prior to this removal, the Defendants sought the advice of their general counsel, counsel for their insurance company, a law professor, and a highly respected local attorney, all of whom opined that the second removal was legitimate.

Nonetheless, following the second remand by the U.S. District Court, sanctions for improper removal were handed down by Judge Baxley. While this Court modified and eliminated some of the sanctions award, it affirmed others and affirmed that the sanctions for this second removal on the eve of trial were warranted.

The Appellants argued in Bon Secours, that sanctions for the second removal were inappropriate, because the removal was done in good faith. This Court, in interpreting Rule 11, SCRCP, disagreed. It noted: "A (trial) court may impose sanctions on a party, a party's attorney, or both for filing a pleading, motion, or other paper **to cause delay or when no good grounds exist to support the filing**." (emphasis supplied)

Here, clearly, no good grounds existed to file these appeals. Not only were SCSP and Webb/Pulte on actual notice that the Class Certification Orders were interlocutory, but also they attempted to appeal orders which on their face state, essentially, that they are not immediately appealable.

In terms of delay tactics, both the timing of the filings, as well as subsequent conduct, demonstrates that the true reason behind these filings was and is to delay a trial on the merits, which, so far, has been a very successful effort. When the Court of Appeals' dismissal Order was received, the Grazia Respondents asked Judge Dickson to hold a status conference, and he agreed (email correspondence attached hereto as Exhibit G). Counsel for Webb/Pulte, however, wrote Judge Dickson, instructing him that a status conference would be improper, and demanding further delay.

CONCLUSION – SANCTIONS ARE MANDATED IN THIS CASE

Rule 269, SCACR, encompasses a two-pronged approach to a sanctions award. First, the focus is on the conduct – is the appeal frivolous, or, is it taken solely for the purpose

of delay. Secondly, the focus is on "discouragement of like conduct in the future". Here, with the history before this Court, all the elements of conduct, lacking in good faith, are present. There can be no question that the instant Petitions are frivolous – they attempt to overturn a dismissal of appeals of interlocutory orders which are not appealable, a fact actually known to the appealing parties, and it was taken to delay a trial, essentially on the eve of trial. If this conduct is not discouraged by significant sanctions, there is little question but that these parties will attempt some other delaying tactic, anything, to avoid a trial on the merits, and to deny the homeowners – members of this retirement community – the day in court which they have sought for more than ten (10) years.

SO MOVED.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

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,.....Petitioner.

and

South Carolina State Plastering, LLC,.....Petitioner,

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/Petitioners.

Appellate Case No. 2017-001305

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I, W. Jefferson Leath, Jr., Esq., do hereby certify that on July 10th, 2017, I served opposing counsel with a copy of the Grazia Respondents' Motion for Sanctions Against Petitioner South Carolina State Plastering, LLC and Respondents/Petitioners Del Webb Communities, Inc. and Pulte Homes, Inc. via regular first class United States mail, postage prepaid, addressed as follows:

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EXHIBIT A

State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL BAXLEY
JUDGE

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August 22, 2011

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RE: Grazia, et al. v. SC State Plastering, LLC, et al. (07-CP-07-1396)
Plaintiffs' Motion for Class Certification

Counsel:

Thank you for your patience while the Plaintiffs' motion for class certification in this case has been under advisement. You may accept this letter as notice of the decision in this matter. This letter is being sent only to counsel who argued the motion in Court, please forward the letter to other named counsel representing your party.

Upon review of the South Carolina Rules of Civil Procedure, relevant case law, as well as extensive memoranda of law and oral arguments presented to the Court by all parties, the Court finds certification appropriate under the statutes and caselaw governing class actions. According to evidence presented, the Court finds that the Plaintiffs have met the five part test set forth under SCRCP 23(a). The Court finds that the putative members of this class, currently about 140 with pending cases but totaling a potential 3500, are far too numerous for joinder. Moreover, to try these cases individually would be overwhelming for the judicial resources within the Fourteenth Judicial Circuit. In addition, the Plaintiffs' complaint focuses only on exterior wall stucco installation and, thus, the predominant questions at issue are common in both fact and law. Next, the Court finds that the claims made by Plaintiffs and that the subsequent defenses available to Defendants are typical and not of a nature that would require individual investigation on the part of this Court. The Court also finds that the representative parties will adequately protect the interests of the class, and that the representative parties' interests are neither adverse nor antagonistic to the interests, economic or otherwise, of the putative class. Lastly, as to the prerequisites set forth under Rule 23(a), the Court finds that the Plaintiffs meet the amount in

controversy requirement and notes that historically this requirement was intended to limit class actions where the costs of litigation would exceed the amount in controversy, which based on the limited evidence already presented to the Court, litigation costs will not exceed actual damages claimed by each member of this class.

In making this ruling, the Court is aware of the Defendants' position that differences within the stucco application process, lack of uniformity in alleged resulting damages, and variances within the facts of the specific cases negate the utility of a class vehicle in resolving these claims. While the Court accepts Defendants' argument that not all of the pending stucco cases are exactly the same, it is the firm belief of the Court that common issues predominate all the cases, and that a class approach is the best method available to enhance judicial economy, speedy disposition, and reduction of litigation costs. Moreover, the Supreme Court had a clear opportunity to prohibit a class action in this very case, and affirmatively chose not to do so, extolling in their decision the utility of the class action device to save the resources of the Courts and the parties. Grazia v. SC State Plastering, et al, Sup. Ct. Op. 26882, filed October 4, 2010.

Attorney Seekings is requested to prepare a proposed Order of this Court's decision and forward the same to both Attorney Kendall and Attorney Rawl for review. Neither Attorney Kendall nor Attorney Rawl are asked to agree or consent to the Order, but are requested to review it for mistake of fact or misstatement of his party's position. Should further clarification or ruling on specific points not mentioned herein be necessary, counsel should send an email to the Court, with all parties included, requesting same. Thereafter, Attorney Seekings is asked to forward the finalized Order to this office (jbaxleylc@sccourts.org), this will come to law clerk Meson King) in Word format for review and signature. The finalized, signed Order will be returned to Attorney Seekings for filing and formal service on the parties.

As you are also aware, this office has pending under advisement the Defendant Pulte/Del Webb's motion to compel arbitration in the Carlson case. This signed Order will be simultaneously provided to Mr. Seekings for filing and service, along with the finalized class certification order.

I have enjoyed working with you in these rather complex issues, and appreciate the professional way in which these matters have been briefed and argued. Thank you for the courtesy and the level of professionalism you and your co-counsel have each brought to the Court.

Sincerely,

J. Michael Baxley
JMB/elo

Honorable Jerri Ann Roseneau (for filing)

EXHIBIT B

The South Carolina 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.

South Carolina State Plastering, Appellant,

v.

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

Appellate Case No. 2012-212212

ORDER

Appellant has filed a Notice of Appeal from an "Order Making Preliminary Finding that Plaintiffs' Proposed Class Meets the Requirements of Rule 23(a), SCRCP; 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" and an order denying reconsideration and clarification. Respondents have filed a motion to dismiss contending the underlying orders are not immediately appealable and Appellant has filed a "Motion to Determine Appealability." After careful consideration, Respondents' motion to dismiss is granted because these orders are not immediately appealable. Because this appeal is dismissed, this Court need not act on Appellant's "Motion to Determine Appealability."

FOR THE COURT

Columbia, South Carolina

cc:
Everett Augustus Kendall, II
Christy Elizabeth Mahon
Phillip Ward Segui, Jr.
John T. Chakeris
W. Jefferson Leath, Jr.
Michael S. Seekings

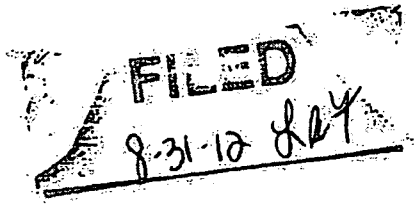

EXHIBIT C

The South Carolina Court of Appeals

Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs, Respondent,

v.

South Carolina State Plastering, LLC, Defendant.

South Carolina State Plastering, LLC, Defendant,

v.

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

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

Appellate Case No. 2012-212364

ORDER

Appellant has filed a Notice of Appeal from an "Order Making Preliminary Finding that Plaintiffs' Proposed Class Meets the Requirements of Rule 23(a), SCRCP; 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" and an order denying reconsideration and clarification. Respondents have filed a motion to dismiss contending the underlying orders are not immediately appealable and Appellant has filed a "Motion to Determine Appealability." After careful consideration, Respondents' motion to dismiss is granted because these orders are not immediately appealable. Because this appeal

is dismissed, this Court need not act on Appellant's "Motion to Determine Appealability."

FOR THE COURT

Columbia, South Carolina

FILED
8-31-12

cc:
Robert L. Widener
A. Victor Rawl, Jr.
W. Jefferson Leath, Jr.
Michael S. Seekings
Phillip Ward Segui, Jr.
John T. Chakeris

EXHIBIT D

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2007-CP-07-1396
ANTHONY and BARBARA GRAZIA, individually and on behalf of all other similarly situated Plaintiffs, Plaintiffs, v. SOUTH CAROLINA STATE PLASTERING, LLC, Defendant.	**ORDER** **(NO MOTIONS PENDING)**
SOUTH CAROLINA STATE PLASTERING, LLC, Third-Party Plaintiff, v. DEL WEBB COMMUNITITES, INC., PULTE HOMES, INC., and KEPHART ARCHITECTS, INC., Third-Party Defendants.	

This matter is currently pending before this Court as a class action. The class was certified by Order of Judge Baxley on December 8, 2011 following a hearing on October 5, 2011. Prior to certification, the South Carolina Supreme Court remanded the matter extolling in their decision the utility of the class action device to save the resources of the courts and the parties, and stating "class actions are favored in this state." *Grazia v. S.C. State Plastering, LLC*, Op. No. 26882 (S.C. Sup. Ct. filed Oct. 4, 2010) The Defendants sought to have Judge Baxley reconsider class certification. By order dated May 7, 2012, Judge Baxley dismissed Defendants' Motions to

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Reconsider. An appeal was taken and on August 2012 the appeal was dismissed by the South Carolina Court of Appeals.

Notwithstanding the fact that the issue of class certification was long ago decided and reviewed, the direct defendant, South Carolina State Plastering, LLC (hereinafter "SCSP"), has now filed with this Court a pleading styled "South Carolina State Plastering, LLC's Supplemental Memorandum of Law and Facts in Opposition to Plaintiffs' Motion for Class Certification"[1]. No motion accompanied the filings and no action is hereby taken.

The issues now raised by the Defendants in their papers to the Court are, upon review, yet another after-the-fact attempt to seek reconsideration of class certification and to rehash the very issues that were argued before the Court on October 5, 2011, nearly five (5) years ago (as well as in many subsequent hearings). Based on the voluminous record and the many rulings previously entered, the Court will not, again, reconsider the issue of class certification or entertain any further argument on the issue.

The Court would remind counsel of the following statements made by Judge Baxley following the publication of his class certification order. At a motion hearing on April 30, 2012, Judge Baxley stated, "It takes us back to the issue... that you continue to argue, which is that we shouldn't have a class. Well, I made that decision against you," (*Motion Hearing* 71:21-23, April 30, 2012), and at a subsequent hearing on the class notice of February 1, 2013, Judge Baxley again address the issue,

> **COUNSEL:** - - - and one of the first places that appears is in that statement, It should include, at a very minimum, it should include the words "the Court has preliminarily certified.
> **THE COURT:** Well, let me just broach that now. I don't believe that's appropriate... because when I said I preliminarily certified it, what I meant was that's a certification... (*Tr. R.* 37:9-16, Feb. 1, 2013)

[1] By separate filing, Third-Party Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. ("Webb/Pulte") has joined this untimely and improper motion.

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Judge Baxley's rulings could not be more clear and this Court will not, in fact cannot, disturb them. The matter of class certification was long-ago settled. The class is defined as follows: "All individuals, corporations, unincorporated associations, or other entities that currently own stucco-clad homes in Sun City Hilton Head to which SCSP applied the exterior stucco in whole or in part prior to July 31, 2007, which allegedly are damaged due to (a) the lack of head flashing above doors and windows, (b) the failure to install stucco control joints, and/or (c) the presence of moisture encapsulation by the failure to leave a gap between the stucco exterior and the structure slab." Judge Baxley did a thorough review of the Rule 23 requirements in determining and certifying the class.

The Court would further remind all counsel of Judge Baxley's continued rejection of challenges to the class, "The Court specifically rejects Defendant's and Third-Party Defendants' contention...that the factual and legal components within the cases automatically defeat a class action approach to resolution of this litigation, or the typicality, commonality, or adequacy of the named Plaintiff's representation of the class." He continued to address the arguments and subsequently dismissed them, stating that "it is the firm belief of this Court that common, core issues are present in all the cases and that a *class approach is not only the best, but the only method available* to enhance judicial economy, promote efficient disposition of these cases, and reduce litigation costs." (*Order* dated Dec. 8, 2011 at 11) (*emphasis added*) Moreover, Judge Baxley noted that the Supreme Court had the clear opportunity to deny class status in this very case but affirmatively chose not to do so, instead emphasizing in its decision the vitality of the class action doctrine to preserve the resources of the court and the parties. (*Id.* at 11)

Furthermore, in his Order Approving Class Notice that Judge Baxley himself wrote, he once again declined to refer to the class as "preliminary," for the reason that it was not and is not

preliminary. Judge Baxley's failure to do so even further evidences his intention that the class was, indeed, already certified.

A class has been certified, and this Court will not allow Defendants to seek reconsideration of Judge Baxley's Order when reconsideration was already denied and that decision was appealed. All procedural attempts by Defendants to question the certification in this Court have been pursued and have been unsuccessful.

By this Order all further discussion on the issue of class certification is terminated as previously decided and moot.

IT IS SO ORDERED.

Edgar W. Dickson
PRESIDING JUDGE

Orangeburg, South Carolina
Dated: Sept. 7, 2016

4/4

Brittany Johnson

From:	Mike Seekings
Sent:	Friday, September 02, 2016 2:56 PM
To:	eak@swblaw.com; Vic Rawl; dcobb; methridge@carlockcopeland.com
Cc:	Jefferson Leath; john@chakerislawfirm.com; psegui@seguilawfirm.com; Brittany Johnson; Christi Daniels
Subject:	ORDER
Attachments:	ORDER - 9.2.2016.pdf

Counsel

In accordance with Judge Dickson's directive, sent via e-mail on August 26th, attached please find an Order terminating discussion of the issue of class certification. Under separate cover this Order is being mailed to the Court for signature with a self addressed stamped envelope for its prompt return to this office. Upon receipt of a signed copy I will have it filed in Beaufort County.

Mike

EXHIBIT E

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2007-CP-07-1396
ANTHONY and BARBARA GRAZIA, individually and on behalf of all other similarly situated Plaintiffs, Plaintiffs, v. SOUTH CAROLINA STATE PLASTERING, LLC, Defendant. SOUTH CAROLINA STATE PLASTERING, LLC, Third-Party Plaintiff, v. DEL WEBB COMMUNITITES, INC., PULTE HOMES, INC., and KEPHART ARCHITECTS, INC., Third-Party Defendants.	**ORDER DISMISSING DEFENDANTS' MOTIONS TO RECONSIDER PURSUANT TO RULE 59(e)**

A Motion to Reconsider and/or Alter or Amend Order (No Motions Pending) dated September 9, 2016 was filed by Defendants Del Webb Communities, Inc. and Pulte Homes, Inc. (hereinafter "Webb/Pulte") on September 23, 2016, which Motion was subsequently joined by Defendant South Carolina State Plastering, LLC (hereinafter "SCSP") on October 3, 2016.

The Court's Order dated September 9, 2016 was interlocutory, and therefore Defendants' Motions to Reconsider were improvidently filed. As this Court has previously ruled, there is no provision in Rule 59(e), SCRCP, allowing a party to challenge an interlocutory order. Indeed, rule

59 motions are permitted only after final, appealable adjudications on the merits. Accordingly, once again, the Court hereby dismisses Defendants' Motions to Reconsider as improper.

AND IT IS SO ORDERED.

Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina
Dated: Dec. 29, 2016

EXHIBIT F

The South Carolina 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/Respondent.

And

South Carolina State Plastering, LLC, Appellant/Respondent,

v.

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

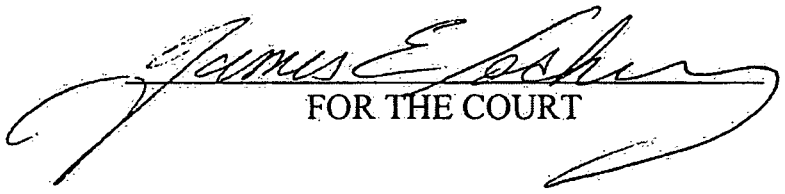
Of which Del Webb Communities, Inc. and Pulte Homes, Inc. are Respondents/Appellants.

Appellate Case No. 2017-000218

ORDER

Appellant/Respondent and Respondents/Appellants have filed separate motions to determine the appealability of the orders on appeal. Respondents have also filed a motion to dismiss, arguing the orders on appeal are not immediately appealable. 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."). The remittitur will be sent as provided by Rule 221(b), SCACR.[1]



FOR THE COURT

Columbia, South Carolina

cc: Everett Augustus Kendall, II, Esquire
W. Jefferson Leath, Jr., Esquire
Michael S. Seekings, Esquire
Phillip Ward Segui, Jr., Esquire
John T. Chakeris, Esquire
A. Victor Rawl, Jr., Esquire
Robert L. Widener, Esquire
Robert Michael Ethridge, Esquire
The Honorable Edgar W. Dickson

FILED
March 17, 2017

[1] Because we dismiss these appeals, we need not entertain Respondents motion to lift the automatic stay.

EXHIBIT G

Brittany Johnson

From: Mike Seekings
Sent: Monday, March 20, 2017 3:35 PM
To: Dickson, Edgar W. Law Clerk (John Dodds)
Cc: Jefferson Leath; john@chakerislawfirm.com; psegui@seguilawfirm.com; Vic Rawl; eak@swblaw.com; dcobb; Mike Ethridge; Ellie Martin; Christi Daniels; Alicia Petit; Stephen M. Bowden (stephen@chakerislawfirm.com); Brittany Johnson
Subject: Grazia, et al. v. SCSP, et al.

John,

As you know, the Court of Appeals has dismissed all filings of the Defendants and has returned the case to the Circuit Court for trial. I am writing today to inquire about Judge Dickson's availability to meet with counsel and hold a status conference given that trial is now just a few weeks away. I thought it might be helpful for us to get together to discuss pretrial matters and the process of jury selection. While I believe you have been provided with all of the filings and the Order of the Court of Appeals, please let me know if you or Judge Dickson need anything further from us.

By copy of this email, I am advising all counsel of my communication with the Court. Thank you in advance for your assistance.

Mike

Michael S. Seekings
Leath, Bouch & Seekings, LLP
92 Broad Street
Post Office Box 59
Charleston, South Carolina 29402
Phone: (843) 937-8811
Direct Dial: (843) 513-1073
Fax: (843) 937-0606

Brittany Johnson

Subject: FW: Grazia, et al. v. SCSP, et al.

From: Dickson, Edgar W. Law Clerk (John Dodds) [mailto:edicksonlc@sccourts.org]
Sent: Monday, March 20, 2017 4:44 PM
To: Mike Seekings <mseekings@leathbouchlaw.com>
Cc: Jefferson Leath <jl@leathbouchlaw.com>; john@chakerislawfirm.com; psegui@seguilawfirm.com; Vic Rawl <VRawlJr@mcnair.net>; eak@swblaw.com; dcobb <dcobb@turnerpadget.com>; Mike Ethridge <methridge@ethridgelawgroup.com>; Ellie Martin <emartin@seguilawfirm.com>; Christi Daniels <christi@chakerislawfirm.com>; Alicia Petit <alicia@chakerislawfirm.com>; Stephen M. Bowden (stephen@chakerislawfirm.com) <stephen@chakerislawfirm.com>; Brittany Johnson <bjohnson@leathbouchlaw.com>
Subject: Re: Grazia, et al. v. SCSP, et al.

Mr. Seekings,

I will speak with Judge Dickson first thing tomorrow and let you know. Thank you for the heads up, and please let me know if I can be of any assistance in the meantime.

Best,
John

Brittany Johnson

Subject: FW: Grazia, et al. v. SCSP, et al.

From: Dickson, Edgar W. Law Clerk (John Dodds) [mailto:edicksonlc@sccourts.org]
Sent: Monday, March 20, 2017 4:55 PM
To: Mike Seekings <mseekings@leathbouchlaw.com>
Cc: Jefferson Leath <jl@leathbouchlaw.com>; john@chakerislawfirm.com; psegui@seguilawfirm.com; Vic Rawl <VRawlJr@mcnair.net>; eak@swblaw.com; dcobb <dcobb@turnerpadget.com>; Mike Ethridge <methridge@ethridgelawgroup.com>; Ellie Martin <emartin@seguilawfirm.com>; Christi Daniels <christi@chakerislawfirm.com>; Alicia Petit <alicia@chakerislawfirm.com>; Stephen M. Bowden (stephen@chakerislawfirm.com) <stephen@chakerislawfirm.com>; Brittany Johnson <bjohnson@leathbouchlaw.com>
Subject: Re: Grazia, et al. v. SCSP, et al.

I just sent Judge Dickson a text, and he asked if the attorneys would be available tomorrow via telephone. He can do whatever time is best for everyone. Please let me know at your earliest convenience. If tomorrow doesn't work, he is available Wednesday as well.

Brittany Johnson

Subject: FW: Grazia, et al. v. SCSP, et al.
Attachments: Appellate Order

From: Rawl, Vic [mailto:VRawlJr@mcnair.net]
Sent: Monday, March 20, 2017 6:17 PM
To: Dickson, Edgar W. Law Clerk (John Dodds) <edicksonlc@sccourts.org>
Cc: Mike Seekings <mseekings@leathbouchlaw.com>; Jefferson Leath <jl@leathbouchlaw.com>; john@chakerislawfirm.com; psegui@seguilawfirm.com; eak@swblaw.com; dcobb <dcobb@turnerpadget.com>; Ellie Martin <emartin@seguilawfirm.com>; Christi Daniels <christi@chakerislawfirm.com>; Alicia Petit <alicia@chakerislawfirm.com>; Stephen M. Bowden (stephen@chakerislawfirm.com) <stephen@chakerislawfirm.com>; Brittany Johnson <bjohnson@leathbouchlaw.com>; Frampton, Hal <HFrampton@mcnair.net>; Mike Ethridge <methridge@ethridgelawgroup.com>; Widener, Robert <RWidener@MCNAIR.NET>; Miller, Dana <DLMiller@mcnair.net>
Subject: RE: Grazia, et al. v. SCSP, et al.

Dear Judge Dickson and John,

Respectfully, we believe that it would be improper for the Circuit Court to have a status conference or take any other action at this time.

As expressly set forth in the Court of Appeals' order (attached), the Court of Appeals has not yet returned the remittitur to the Circuit Court. The Court of Appeals states that it will return the remittitur in accordance with Rule 221(b), SCACR, which requires the Court of Appeals to hold the remittitur for at least 15 days following its order to give the losing party time to petition for rehearing. Under Rules 221(b) and 242(c), SCACR, if a party petitions for rehearing and the petition is denied, the Court of Appeals must wait a further 30 days to allow time to file a Petition for Certiorari with the Supreme Court before returning the remittitur to the Circuit Court. The South Carolina Supreme Court has recently clarified this issue for the trial bench. The Court specifically ruled that until the remittitur is sent by the Court of Appeals to the Circuit Court, the Court of Appeals retains exclusive jurisdiction of the matter. See Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 137, 742 S.E.2d 867, 868 (2013) ("The appellate court retains jurisdiction until the remittitur is sent to the lower court."). In the attached order, the Court of Appeal specifically states that remittitur has not yet been returned.

Del Webb intends to file a petition for rehearing and, if unsuccessful, a petition for certiorari. Thus, we do not expect the remittitur to be returned for at least 45 days. Moreover, Del Webb's petitions for writs of certiorari and mandamus remain pending in the Supreme Court. Because this Court does not possess the remittitur, we believe it would be improper for the Court to take any action with respect to this matter. We would therefore request that the Court hold off on scheduling any status conferences or other matters until the remittitur is returned and this Court can properly act in this case.

Respectfully submitted,

Vic

A. Victor Rawl Jr.
Shareholder and Chair of Class Action Practice Group vrawl@mcnair.net

McNair Law Firm, P.A.

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