

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

Clifton Newman, Circuit Court Judge

Trial Court Case No. 2010CP26-3901

Appellant Case No.: 2015-000248

Rivergate Homeowners' Association,

Appellant

v.

WW&LB Development Company, LLC,
RWG, Inc., Aiello Associates,
Daniels Engineering, Inc.,
Rivergate Homeowners' Association,
Rivergate Homeowners' Association
Board of Directors,
Wayne Winderman, individually,
Salvatrice Foran, individually,
Gerald Foran, individually,
Marcos Soares Construction,
William C. DeSouza, individually,
James Eason individually and d/b/a
James Eason & Company,
D&D Cleaning and Construction, Inc.,
Joel's Framing, Joe Freza,
Aroldo Garcia, Joaquin
Geraldo Zeferino, individually
and d/b/a Zeferino Framing,
Leo Trombley, Judy Schultz,
J&D Interior Design, Jose Dasmerces
d/b/a J.P. Construction,
Scott Chandler d/b/a Coastal
Custom Windows & Doors,
R&D Construction, Nicasio
Ramirez Zunigo, Walchir Morais,
Marco Trebbi, Blankenship
Roofing, Inc., DLJ Construction, LLC,
Dewayne Bates, The Bates Group, LLC,

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SC Court of Appeals

Bridges Construction Co., Brewer Construction, Inc., Speedy Concrete, REB-FEL, Inc., Mark Mychajluk, Eric Jazwinski, Southern Framing Corporation, AB Consulting Engineers, Inc., WWI Development Company, LLC, Michael Dawson Construction, Inc., Asphalt Paving & Maintenance Co., Inc. and Chuck's Construction Co., Inc., Right Way Group, Inc., Stevens Construction Co., Inc., Geometrics, Inc., Eric Yazwinski, Law Engineering, Inc., D & M Builders, Inc., Hill Construction Company, L.L.P., Adrian Mondragon, individually and d/b/a Mondragon Construction, Inc., and Glen Causey, Defendants,

Of Whom Speedee Concrete, Inc. and Chuck's Construction, Inc. are the Respondents,

Chuck's Construction Co., Inc., Third-Party Plaintiff,

v.

Vereen Concrete Co., Inc. and Asphalt Pavement Maintenance of Myrtle Beach, Inc., Third-Party Defendants,

Rivergate Homeowners' Association, Appellant,

v.

WW & LB Development Company, LLC, Speedy Concrete, AB Consulting Engineers, Inc., and Chuck's Construction Co., Inc., Defendants,

Of Whom AB Consulting Engineers, LLC, Inc. is the Respondent.

RETURN OF RESPONDENT SPEEDEE CONCRETE, INC.
TO APPELLANT'S PETITION FOR REHEARING

The Appellant seeks a rehearing on the issue pertaining to the driveways and their classification as Limited Common Elements. This Respondent asserted that the Appellant lacked standing to bring a lawsuit against Speedee Concrete for the alleged defects to the driveways because the driveways are limited common elements. (R. pp. 1107-1108). The Master Deed declares it is the responsibility of the individual homeowners, not the homeowner's association, to take care of the maintenance and repair of the driveways as limited common elements. (R. pp. 1116-1117). The owner is also responsible for any damages caused by the limited common elements. (R. pp. 1116-1117).

Article IV of the Master Deed states, "In all other respects, **and except as specifically provided in this Master Deed**, LIMITED COMMON ELEMENTS shall be treated as, and included within the definition of the term 'Common Elements.'" (emphasis added) (R. pp. 1107-1108). Since the Master Deed specifically declares that it was the duty and obligation of the owner to address any damages caused by the driveways (as limited common elements), there is no question of what the intention of the parties to the Master Deed was concerning the responsibilities of the owner as they pertain to the driveways. Therefore, the Appellant does not have standing to bring a lawsuit regarding alleged defects to the driveways. See Roundtree Villas Association, Inc. v. 4701 Kings Corp., 282 S.C. 415, 421, 321 S.E.2d 46 (1984), in which the

Supreme Court of South Carolina held that a homeowners association did not have the authority to bring suit for defects to limited common elements. The Appellant's assertion that the driveway is "everyone's responsibility" is contrary to the clear, unambiguous language set forth in the Master Deed.

Based on the foregoing, the Appellant's Petition for Reconsideration should be denied.

Respectfully submitted,



G. Michael Smith
Bar No. 5255
Thompson & Henry, PA
PO Box 1740
Conway, SC 29528
Telephone: (843)248-5741
Fax: (843)248-5112
Attorney for Respondent
Speedy Concrete

Dated: August 16, 2017

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James Eason & Company,
D&D Cleaning and Construction, Inc.,
Joel's Framing, Joe Freza,
Aroldo Garcia, Joaquin
Geraldo Zeferino, individually
and d/b/a Zeferino Framing,
Leo Trombley, Judy Schultz,
J&D Interior Design, Jose Dasmerces
d/b/a J.P. Construction,
Scott Chandler d/b/a Coastal
Custom Windows & Doors,
R&D Construction, Nicasio
Ramirez Zunigo, Walchir Morais,
Marco Trebbi, Blankenship
Roofing, Inc., DLJ Construction, LLC,
Dewayne Bates, The Bates Group, LLC,

Bridges Construction Co., Brewer
Construction, Inc., Speedy Concrete,
REB-FEL, Inc., Mark Mychajluk, Eric
Jazwinski, Southern Framing Corporation,
AB Consulting Engineers, Inc., WWI
Development Company, LLC,
Michael Dawson Construction, Inc.,
Asphalt Paving & Maintenance Co.,
Inc. and Chuck's Construction Co.,
Inc., Right Way Group, Inc., Stevens
Construction Co., Inc., Geometrics,
Inc., Eric Yazwinski, Law
Engineering, Inc., D & M Builders,
Inc., Hill Construction Company,
L.L.P., Adrian Mondragon, individually
and d/b/a Mondragon Construction, Inc.,
and Glen Causey, Defendants,

Of Whom Speedee Concrete, Inc. and Chuck's
Construction, Inc. are the Respondents,

Chuck's Construction Co., Inc., Third-Party Plaintiff,

v.

Vereen Concrete Co., Inc. and
Asphalt Pavement Maintenance
of Myrtle Beach, Inc., Third-Party Defendants,

Rivergate Homeowners' Association, Appellant,

v.

WW & LB Development Company,
LLC, Speedy Concrete,
AB Consulting Engineers, Inc.,
and Chuck's Construction Co., Inc., Defendants,

Of Whom AB Consulting Engineers,
LLC, Inc. is the Respondent.

Appellate Case No. 2015-000248

PROOF OF SERVICE

I certify that I have served a copy of the Return of Respondent Speedee Concrete, Inc. to Appellant's Petition for Rehearing on the following Appellant and Respondents AB Consulting Engineers, Inc. and Chuck's Construction Co., Inc. by depositing the same in the United States Mail, postage prepaid, on December 1, 2015, addressed to their attorneys of record as follows:

Blake A. Hewitt, Esquire
Bluestein Nichols
Thompson & Delgado
PO Box 7965
Columbia, SC 29202
Attorneys for Appellant

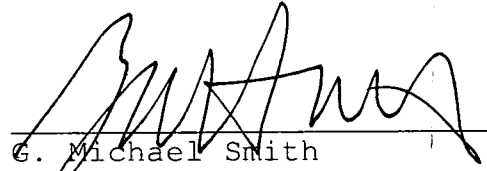
Stacy L. Stanley, Esquire
V. Denise Hamilton, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566
Attorneys for Appellant

Stephanie Burton, Esquire
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, SC 29302
Attorney for AB Consulting Engineers, Inc.

Christina Bisset, Esquire
J. Christopher Clark, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 1349
Myrtle Beach, SC 29578
Attorneys for Chuck's Construction, Inc.

Dated: _____

8/17/17



G. Michael Smith
Bar No.: 5255
Thompson & Henry, PA
PO Box 1740
Conway, SC 29528
Phone: (843)248-5741
Fax: (843)248-5112
Attorney for Speedee Concrete

THOMPSON & HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

G. MICHAEL SMITH
MSMITH@THOMPSONLAW.COM

August 17, 2017

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Rivergate Homeowners' Association vs. WW&LB Development
Company, LLC et al (Speedee Concrete)
Appellate Case No.: 2015-000248
Our Client: Speedee Concrete
Case No: 2010-CP-26-3901
Claim No.: 20987357/22 SBA BB9376
Our File No: 14260.50

Dear Ms. Kitchings:

I am enclosing an original and six copies of Respondent Speedee Concrete's Return to Appellant's Petition for Rehearing in the above-referenced matter along with Proof of Service on the Appellant and Co-Respondents. Please file the Return and return the clocked additional copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving the same upon opposing counsel. Thank you for your cooperation. If you have any questions or need anything further from me, please do not hesitate to call.

Very truly yours,


G. Michael Smith

GMS/tlt

Enclosures

cc: Blake A. Hewitt, Esq.
Stacy Stanley, Esq.
Stephanie Burton, Esq.
Christina Bisset, Esq.
J. Christopher Clark, Esq.
David Green
Adam Beaudoin