

The South Carolina Court of Appeals

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Buetow, Edward and Sylvia Dengg, Jonathan and Theresa Douglass, Anthony and Stacey Ray, Danny and Ellen Davis Morrow, Czara and Chad England, Bryan and Cynthia Camara, and Matthew Collins, Respondents,

v.

Lennar Carolinas, LLC, Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, Paragon Site Constructors, Inc., Civil Site Environmental and Rick Bryant, Individually, Defendants,

Of which Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Green, Inc. TJB Trucking/Leasing, LLC, and Civil Site Environmental are Respondents.

And

Lennar Carolinas, LLC, Appellant,

v.

The Earthworks Group, Inc., Volkmar Consulting Services, LLC, Geometrics Consulting, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C. & A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry,

LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource-Southeast Group, LLC, and Low Country Renovations and Siding, LLP, Third-Party Defendants,

Of which Volkmar Consulting Services, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., A.C. & A. Concrete, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete Southeast II, LLC, Guaranteed Framing, LLC, Ozzy Construction, LLC, Construction Applicators Charleston, LLC, LA New Enterprises, LLC, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource-Southeast Group, LLC, are also Respondents.

And

Decor Corporation, Fourth Party Plaintiff,

v.

Baranov Flooring, LLC, DJ Construction Services, LLC, Creative Wood Floors, LLC, Geraldo Cunha, Ebenezer Flooring, LLC, Emmanuel Flooring and Siding, LLC, Eusi Flooring and Covering, LLC, Nicolas Flores, Alexander Martinez, Isidru Mejia, Juan Perez, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Ricardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sebastio Luiz de Araujo, and John Does 1-4, Fourth-Party Defendants.

Appellate Case No. 2016-002339

ORDER

Appellant appealed a circuit court order denying its motion to compel arbitration in a construction defect case filed by Respondents. During the pendency of this appeal, the circuit court issued an order lifting the automatic stay "for purposes of discovery." Appellant has now filed a petition to review the circuit court's order lifting the stay, requesting this court reinstate the automatic stay.

After careful consideration, the motion is granted. *See* Rule 241, SCACR (emphasis added) ("As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters *not affected by the appeal* including the authority to enforce any matters not stayed by the appeal."); *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 571 S.E.2d 711 (Ct. App. 2002) (reversing the denial of defendants' motion for a stay, reversing plaintiff's motion to compel discovery, and staying all proceedings pending arbitration because all of plaintiff's causes of action were subject to arbitration); *see also Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 264 (4th Cir. 2011) (citations omitted) ("The core subject of an arbitrability appeal is the challenged continuation of proceedings before the district court on the underlying claims. Therefore, because the district court lacks jurisdiction over 'those aspects of the case involved in the appeal,' it must necessarily lack jurisdiction over the continuation of any proceedings relating to the claims at issue. That the present case involves only the continuation of discovery does not change that rationale. Discovery is a vital part of the litigation process and permitting discovery constitutes permitting the continuation of the litigation, over which the district court lacks jurisdiction.").

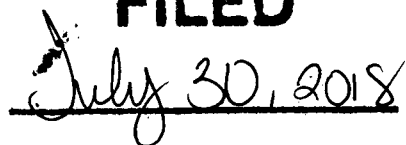


FOR THE COURT

Columbia, South Carolina

cc: Jenna Brooke Kiziah McGee, Esquire
Frederick Elliotte Quinn, IV, Esquire
Michael J. Jordan, Esquire

FILED



Catherine Dunn Meehan, Esquire
John Calvin Hayes, IV, Esquire
R. Patrick Flynn, Esquire
Michael Wade Allen, Jr., Esquire
Bachman S. Smith, IV, Esquire
James H. Elliott, Jr., Esquire
Samia Hanafi Nettles, Esquire
David Shuler Black, Esquire
Shanna Milcetic Stephens, Esquire
Stephen Lynwood Brown, Esquire
Catherine Holland Chase, Esquire
Preston Bruce Dawkins, Jr., Esquire
Stephen P. Hughes, Esquire
Kathy Aboe Carlsten, Esquire
N. Keith Emge, Jr., Esquire
Brent Morris Boyd, Esquire
David Starr Cobb, Esquire
Sidney Markey Stubbs, Esquire
Derek Michael Newberry, Esquire
Christine Companion Varnado, Esquire
Alan Ross Belcher, Jr., Esquire
Steven L. Smith, Esquire
Zachary James Closser, Esquire
Samuel Melvil Wheeler, Esquire
Erin DuBose Dean, Esquire
Thomas Frank Dougall, Esquire
William Ansel Collins, Jr., Esquire
Michal Kalwajtys, Esquire
John Elliott Rogers, II, Esquire
Jenny Costa Honeycutt, Esquire
Robert Trippett Boineau, III, Esquire
Heath McAlvin Stewart, III, Esquire
Ronald G. Tate, Jr., Esquire
Robert Batten Farrar, Esquire
Michael Edward Wright, Esquire
James Lynn Werner, Esquire
David Cooper Cleveland, Esquire
Rogers Edward Harrell, III, Esquire
Carmen Vaughn Ganjehsani, Esquire
Trey Matthew Nicolette, Esquire

Mary Skahan Willis, Esquire
Timothy J. Newton, Esquire
Katon Edwards Dawson, Jr., Esquire
John Adam Ribock, Esquire
Francis Heyward Grimball, Esquire
Wade Coleman Lawrimore, Esquire
Jesse Sanchez, Esquire
Edward Dengg
Sylvia Dengg
Anthony Ray
Stacey Ray