

87442

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

RECEIVED
AUG 01 2018
SC Court of Appeals

THE GATES AT WILLIAMS-BRICE CONDOMINIUM
ASSOCIATION and KATHARINE SWINSON, Individually,
and on behalf of all others similarly situated #296848,

Appellants,

v.

QUALITY BUILT, LLC and COAST TO COAST
ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

Respondents.

**RESPONDENT QUALITY BUILT, LLC'S MOTION FOR EXTENSION TO FILE
FINAL BRIEF OF RESPONDENT**

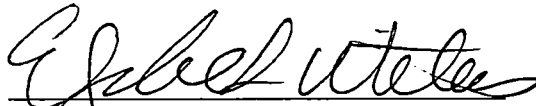
NOW COMES Respondent, Quality Built, LLC ("Respondent"), by and through its undersigned counsel, and pursuant to Rule 240 and 263(b) of the South Carolina Appellate Court Rules ("SCACR"), respectfully requests a forty-five (45) day extension of the deadline for filing its Final Brief, until such time this Honorable Court considers Respondent's Notice of Deficiency of Record on Appeal and Motion to Correct Record on Appeal and orders Appellants correct the Record on Appeal and serve a complete Record upon the Respondent in accordance with Rule 210 of the SCACR. See Exhibit A - Respondent Quality Built, LLC's Notice of Deficiency of Record on Appeal and Motion to Correct Record on Appeal.

Respondent was served with Appellants' Record on Appeal on July 16, 2018, thereby, pursuant to Rule 211 of the SCACR, the Final Brief of Respondent is required to be filed and served by August 6, 2018 (the actual due date of August 5, 2018 is a Sunday).

The Record on Appeal submitted by Appellants is not complete and in conformity with Rule 210 of the SCACR, as evidenced by the above-referenced Motion/Exhibit.

WHEREFORE, for good cause shown, Respondent respectfully requests this Honorable Court issue an Order granting the requested relief and permitting the Respondent to file and serve its Final Brief forty-five (45) days after such time this Honorable Court considers Respondent's Notice of Deficiency of Record on Appeal and Motion to Correct Record on Appeal and orders Appellants correct the Record on Appeal and serve a complete Record upon the Respondent.

Respectfully submitted,



Alan R. Belcher, Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
111 Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina 29464
Telephone: (843) 720-3460
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: July 31, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

RECEIVED

AUG 01 2018

SC Court of Appeals

THE GATES AT WILLIAMS-BRICE CONDOMINIUM
ASSOCIATION and KATHARINE SWINSON, Individually,
and on behalf of all others similarly situated #296848,

Appellants,

v.

QUALITY BUILT, LLC and COAST TO COAST
ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

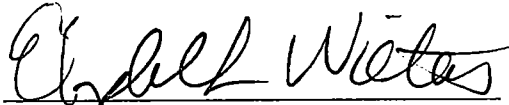
Respondents.

PROOF OF SERVICE

I certify that I have served Respondent Quality Built, LLC's Motion For Extension to File Final Brief of Respondent upon the attorneys of record by way of U.S. Mail, stamped First Class delivery, on July 31, 2018, addressed as follows:

Justin O'Toole Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29464
Attorneys for Appellants

Kent Stair, Esquire
Robin Graham, Esquire
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*



Alan R. Belcher, Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
111 Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina 29464
Telephone: (843) 720-3460
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: July 31, 2018

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

THE GATES AT WILLIAMS-BRICE CONDOMINIUM
ASSOCIATION and KATHARINE SWINSON, Individually,
and on behalf of all others similarly situated #296848,

Appellants,

v.

QUALITY BUILT, LLC and COAST TO COAST
ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

Respondents.

**RESPONDENT QUALITY BUILT, LLC'S NOTICE OF DEFICIENCY OF RECORD ON
APPEAL AND MOTION TO CORRECT RECORD ON APPEAL**

NOW COMES Respondent, Quality Built, LLC ("Respondent"), by and through its undersigned counsel, and pursuant to Rule 210 and 240 of the South Carolina Appellate Court Rules ("SCACR"), moves this Honorable Court to order Appellants, The Gates at Williams-Brice Condominium Association and Katharine Swinson, Individually, and on behalf of all others similarly situated #296848 ("Appellants"), to correct the Record on Appeal that was served upon Respondent on July 16, 2018.

Pursuant to Rule 210(c), SCACR, "The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of

Rule 267.” See Rule 210(c) (emphasis added). The Record is missing two items designated by Respondent that Appellants have omitted.¹ Those include:

- 22. Bankruptcy Court - Motion for Order Approving Sale of Property of the Estate Free and Clear of All Liens, Claims, and Encumbrances, Subject to Overbid; and Memorandum of Points and Authorities in Support Thereof (Filed 01/29/2010);
- 28. Bankruptcy Court - Reply Declaration . . . to U.S. Trustee’s Response to Debtor’s [Qualitybuilt.com] Motion for Order Approving Sale Of Property of the Estate Free and Clear of All Liens, Claims and Encumbrances, Subject to Overbid (Filed 02/18/2010).²

Respondent cannot prepare its Final Brief until these items have been added to the Record. Additionally, Respondent has provided these items to Appellants in its preparation of the Record.

A. RESPONDENT COMPLIED WITH RULE 209 SCACR - DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent, pursuant to Rule 209(a) SCACR, filed its Designation of Matter to be Included in the Record on Appeal simultaneously with its Initial Brief of Respondent on June 1, 2018. See Exhibit A (Respondent’s Designation of Matter). Respondent’s Designation “set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he [it] proposes to include in the record on appeal.” Rule 209(a) SCACR.

Respondent’s Designation identified the items it desired to be included in the Record on Appeal, and its Designation sought “to include portions of the transcript, pleadings, orders,

¹ Appellants also omitted Respondent’s Designation No. 2 “Appellants’ Third Amended Complaint – Gates I (Filed 08/07/2014)”; however, Respondent has agreed to the exclusion of this designation.

² Respondent’s Designation No. 27 “Bankruptcy Court – Affidavit of Elizabeth Michaelis (Filed 02/18/2010)” is part and parcel of Respondent’s Designation No. 28 as stated above.

exhibits, or other materials which may be properly included in the Record on Appeal”, and did not include any matter which is not relevant to the appeal. Rule 209(b) SCACR. Pursuant to Rule 209(c) SCACR, counsel for the Respondent certified that its Designation “contains no matter which is irrelevant to this appeal.” On June 1, 2018, Respondent served Appellants with its Designation of Matter to be Included in the Record on Appeal. See Exhibit A – Proof of Service.

B. APPELLANTS FAILURE TO INCLUDE ALL DESIGNATIONS OF RESPONDENT IS PROCEDURALLY DEFECTIVE AND, THEREFORE, THE RECORD ON APPEAL MUST BE CORRECTED

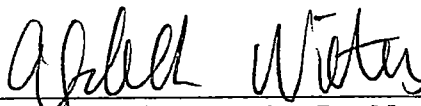
Appellants have failed to include Respondent’s Designations No.’s 22 and 28, as set-forth above. Rule 210 SCACR does not provide either of the parties the latitude to unilaterally alter the Designation of Matter. Instead, Rule 210(c) provides that, “The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267 . . .” Rule 210(c), SCACR. Under Rule 210(a) Appellants are responsible for preparing and serving a copy of the Record on Appeal. As such, it is incumbent upon Appellants to provide a complete Record on Appeal to the Respondent and this Honorable Court in compliance with Rule 210 SCACR.

CONCLUSION

For the reasons stated herein, Respondent moves this Honorable Court to order Appellants to add and include the above-listed items to the Record on Appeal, which the Respondent has designated. In addition, Respondent requests that the due date for its Final Brief be stayed while the Court considers this Motion and until Appellants correct the Record on Appeal. Respondent is filing a Motion for Extension of Time contemporaneously with this Motion.

{Signature page to follow}

Respectfully submitted,



Alan R. Belcher, Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
111 Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina 29464
Telephone: (843) 720-3460
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: July 31, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

THE GATES AT WILLIAMS-BRICE CONDOMINIUM
ASSOCIATION and KATHARINE SWINSON, Individually,
and on behalf of all others similarly situated #296848,

Appellants,

v.

QUALITY BUILT, LLC and COAST TO COAST
ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

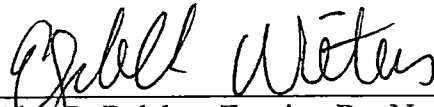
Respondents.

PROOF OF SERVICE

I certify that I have served Respondent Quality Built, LLC's Notice of Deficiency of Record on Appeal and Motion to Correct Record on Appeal upon the attorneys of record by way of U.S. Mail, stamped First Class delivery, on July 31, 2018, addressed as follows:

Justin O'Toole Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29464
Attorneys for Appellants

Kent Stair, Esquire
Robin Graham, Esquire
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*



Alan R. Belcher, Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
111 Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina 29464
Telephone: (843) 720-3460
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: July 31, 2018

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

RECEIVED
JUN 04 2018
SC Court of Appeals

THE GATES AT WILLIAMS-BRICE CONDOMINIUM
ASSOCIATION and KATHARINE SWINSON, Individually,
and on behalf of all others similarly situated #296848,

Appellants,

v.

QUALITY BUILT, LLC and COAST TO COAST
ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

Defendants,

Of Whom, QUALITY BUILT, LLC,

Respondent.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondent, Quality Built, LLC, proposes the following to be included in the Record
on Appeal:

1. Notice of Appeal (Filed 11/09/2017);
2. Appellants' Third Amended Complaint – Gates I (Filed 08/07/2014);
3. Appellants' Amended Complaint – Gates II (Filed 05/18/2016);
4. Respondent's Answer to Appellants' Amended Complaint (Filed 06/15/2016);
5. Criterium's Notice of Removal to U.S. District Court (Filed 06/17/2016);

6. Appellants' Motion to Remand (Filed 07/15/2016);
7. Order Granting Motion to Remand (Entered 09/07/2016);
8. Criterium's Motion for Summary Judgment (Filed 12/20/2016);
9. Respondent's Notice of Motion and Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment (Filed 01/17/2017);
10. Respondent's Memorandum in Support of Its Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment (Filed 02/21/2017);
11. Respondent's Motion for Summary Judgment (Filed 03/06/2017);
12. Order Dismissing Respondent's Motion for Summary Judgment (Filed 04/07/ 2017);
13. Order Granting Respondent's Motion for Declaratory Relief or in the Alternative, Motion for Summary Judgment (Entered 04/07/2017);
14. Order Granting Criterium's Motion for Summary Judgment (Entered 04/07/2017);
15. Appellants' Motion for Reconsideration (Filed 04/20/2017);
16. Respondent's Memorandum in Opposition to Appellants' Motion for Reconsideration (Filed 06/08/2017);
17. Order Denying Appellants' Motion for Reconsideration (Entered 10/17/2017);
18. U.S. Bankruptcy Court for the Southern District of California ("Bankruptcy Court"), Case No.: 09-12113-CL7, Order (I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (III) Granting Related Relief (Entered 03/11/2010);
19. Bankruptcy Court - Amended and Restated Asset Purchase Agreement by and among Qualitybuilt.com and Quality Built, LLC (Filed 01/29/2010);
20. State of California Secretary of State Seal and Qualitybuilt.com Articles of Incorporation (Dated 07/12/1999);
21. State of Delaware Secretary of State seal and Quality Built, LLC's Certificate of Formation (Dated 07/24/2009);

22. Bankruptcy Court - Motion for Order Approving Sale of Property of the Estate Free and Clear of All Liens, Claims, and Encumbrances, Subject to Overbid; and Memorandum of Points and Authorities in Support Thereof (Filed 01/29/2010);
23. Bankruptcy Court – Qualitybuilt.com Chapter 11 Bankruptcy Petition (Filed 08/14/2009);
24. Correspondence from Nigel S. Austin, Esq., of Austin Law, New York, New York dated January 28, 2014;
25. Bankruptcy Court – Compendium of Exhibits in Support of Motion for Order Approving Sale of Property of the Estate Free and Clear of All Liens, Claims and Encumbrances, Subject to Overbid inclusive of Asset Purchase Agreement and Schedules to Asset Purchase Agreement (Filed 01/29/2010);
26. Bankruptcy Court - Affidavit of Gary Elzweig (Filed 02/19/ 2010);
27. Bankruptcy Court - Affidavit of Elizabeth Michaelis (Filed 02/18/2010);
28. Bankruptcy Court - Reply Declaration . . . to U.S. Trustee's Response to Debtor's [Qualitybuilt.com] Motion for Order Approving Sale Of Property of the Estate Free and Clear of All Liens, Claims and Encumbrances, Subject to Overbid (Filed 02/18/2010);
29. The Respondent designates all pleadings and motions of record in this matter filed with the Richland County Court of Common Pleas and Court of Appeals.

I certify that this Designation contains no matter which is irrelevant to this appeal.

(Signature appears on succeeding page)



Alan R. Belcher, Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
111 Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina 29464
Telephone: (843) 720-3460
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: June 1, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Lower Court Case No. 2013-CP-40-7729
Court of Appeals Case No. 2017-002325

RECEIVED

JUN 04 2018

SC Court of Appeals

THE GATES AT WILLIAMS-BRICE CONDOMINIUM
ASSOCIATION and KATHARINE SWINSON, Individually,
and on behalf of all others similarly situated #296848,

Appellants,

v.

QUALITY BUILT, LLC and COAST TO COAST
ENGINEERING SERVICES, INC. d/b/a CRITERIUM
ENGINEERS,

Defendants,

Of Whom, QUALITY BUILT, LLC,

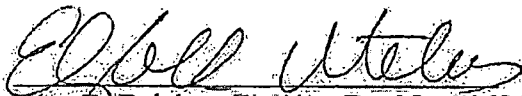
Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Designation of Matter to be Included in the Record On Appeal upon the attorneys of record by way of U.S. Mail, stamped First Class delivery, on June 1, 2018, addressed as follows:

Justin O'Toole Lucey, Esquire
Stephanie D. Drawdy, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29464
Attorneys for Appellants

Kent Stair, Esquire
Robin Graham, Esquire
Carlock Copeland
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
*Attorneys for Coast to Coast Engineering Services, Inc.
d/b/a Criterium Engineers*



Alan R. Belcher, Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
111 Coleman Boulevard
Suite 301
Mount Pleasant, South Carolina 29464
Telephone: (843) 720-3460
abelcher@hallboothsmith.com
ewieters@hallboothsmith.com
Attorney for Respondent Quality Built, LLC

Dated: June 1, 2018