THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-2339
Case No. 2014-CP-08-2424

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Beutow, 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, Geometries 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, Isidini 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.

RESPONDENTS' REPLY TO APPELLANT LENNAR CAROLINAS, LLC'S RETURN TO RESPONDENTS' PETITION FOR FULL APPELLATE COURT REVIEW OF DECISION

John C. Hayes, IV, Esquire
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
(843) 805-7003

Michael J. Jordan, Esquire
Steinberg Law Firm, LLP
PO Box 1028
Goose Creek SC 29445
843-572-0700

Jesse Sanchez, Esquire
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, SC 29401
(843) 814-8181

Catherine Dunn Meehan, Esquire
Steinberg Law Firm, LLP
PO Box 9
Charleston, SC 29402-009
(843) 720-2800

Attorneys for Respondents Patricia Damico, Joshua and Brettany Beutow, Bryan and Cynthia Camara, Matthew Collins, Jonathan and Theresa Douglass, Czara and Chad England, Lenna Lucas, and Danny and Ellen Davis Morrow

Respondents Patricia Damico, Joshua and Brettany Beutow, Bryan and Cynthia Camara, Matthew Collins, Jonathan and Theresa Douglass, Czara and Chad England, Lenna Lucas, and Danny and Ellen Davis Morrow (collectively, "Homeowners"), through their undersigned counsel, hereby respectfully submit this Reply to Appellant Lennar Carolinas, LLC's Return to Respondents' Petition for Full Appellate Court Review of Decision.

1. **The abuse of discretion standard is the proper standard of review and the *Order* entered on July 30, 2018 (the "Subject Order") fails to apply the abuse of discretion standard.**

Lennar Carolinas, LLC ("Lennar") argues that the abuse of discretion standard of review set forth in *Carolina Water Service, Inc. v. Lexington County Joint Municipal Water & Sewer Commission* does not apply to the present case. See *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n*, 367 S.C. 141, 148, 625 S.E.2d 227, 230-31 (Ct. App. 2006), *reversed on other grounds*, 373 S.C. 96, 644 S.E.2d 681 (2007) (reviewing a circuit court's decision to lift a statutory automatic stay in a condemnation action and noting that the circuit court has discretion over the imposition and lifting of stays, "The appropriate standard of review [for such a decision] is abuse of discretion."). In making its argument, Lennar implies that standard of review in *Carolina Water* should not apply because *Carolina Water* was "overruled by *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529 (2006)." See Lennar's Return at page 3. This argument is both incorrect and inherently misleading. *Edwards v. SunCom* does not overrule the standard of review set forth by the Court of Appeals *Carolina Water*. Rather, *Edwards v. SunCom* simply addresses whether an Order granting a stay is immediately appealable absent some specialized statute. ("The sole issue we need to address is whether an order granting a stay is immediately appealable.") *Edwards v. Suncom* 631 S.E.2d at 530.

Contrary to Lennar's inference, *Edwards v. SunCom* does not address the standard of

review for lifting automatic stays. The Supreme Court of South Carolina made it clear that it was only overruling *Carolina Water* to the extent that it was inconsistent with Edwards, noting, "[W]e explicitly overruled *Hiott v. Contracting Svcs., supra,* and *Carolina Water Svc., supra,* **to the extent they were inconsistent with *Edwards, supra.*"** *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm'n.* 373 S.C. 96, 644 S.E.2d 681, 682 (2007). Again, the abuse of discretion standard of review set forth in *Carolina Water* was not overruled and any intimation that it was overruled is improper and misleading.

Further, the Homeowners do not solely rely on *Carolina Water v. Lexington County* in arguing that the abuse of discretion standard is appropriate. See *Cousar v. New London Eng'g Co.*, 306 S.C. 37, 40, 410 S.E.2d 243, 245 (1991) (concluding that the circuit court did not abuse its discretion in retaining jurisdiction over discovery matters during the pendency of an appeal). This is consistent with *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980) (noting that the circuit court has the inherent power to control the order of its business to safeguard the rights of litigants).

Accordingly, this Court should review the circuit court's decision under the abuse of discretion standard.

II. Regardless of what standard of review is applied by this Court, the circuit court's *Order Granting Plaintiff's Motion to Lift Automatic Stay for Purpose of Discovery* was proper because discovery is not a matter affected by the underlying appeal.

With regard to automatic stays, Rule 241, SCACR, explicitly states, "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." The circuit court's *Order Granting Plaintiff's Motion to Lift Automatic Stay for Purpose of Discovery* was proper because discovery is not a matter affected by the underlying appeal.

Homeowners assert claims against both Lennar and various subcontractor defendants. Contrary to Lennar's contention, discovery as to these claims is not affected by the underlying appeal.

A. Claims Against Subcontractor Defendants. The circuit court properly determined that the Homeowners should be permitted to conduct discovery as to their claims against the subcontractor defendants because those claims are not subject to arbitration. Homeowners' claims against the subcontractor defendants are not subject to arbitration because **the Homeowners and subcontractor defendants did not enter into any agreements (arbitration or otherwise) with each other. No such agreements exist.** Lennar's Return does not refute that the Homeowners and subcontractor defendants did not enter into any agreements with each other. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 591, 553 S.E.2d 110, 116 (2001) (noting, "'[T]he FAA does not require parties to arbitrate when they have not agreed to do so, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement.' (citations omitted). '[The FAA] simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms.'") Here, no such agreements exist between the Homeowners and the subcontractor defendants. The circuit court properly considered as much in reaching its determination, noting:

> [T]his Court finds that **matters relating to the claims against the subcontractors are not affected by the appeal.** There are no contracts or binding arbitration agreements between the subcontractor Defendants and the Plaintiffs. **In addition, any Homeowner Plaintiff who is not an original purchaser from Lennar has no arbitration agreement with Lennar.** Therefore, the decision that has been appealed bears no relation to the claims between the subcontractors and the Plaintiffs. As a result, Plaintiffs are free to conduct discovery and move their case forward as to the subcontractors. [Order at p. 6] [Emphasis Added]

Accordingly, the circuit court properly determined that discovery should proceed as to the

Homeowners' claims against the subcontractor defendants because these claims are not subject to arbitration and are, therefore, not affected by the underlying appeal.

B. Claims Against Lennar. The circuit court properly determined that discovery should continue as to the Homeowners' claims against Lennar because discovery would be permitted regardless of whether Homeowners' claims against Lennar are tried or arbitrated. As the circuit court noted:

> Plaintiffs assert that discovery is not affected by the appeal, that Plaintiffs would be prejudiced by a delay in discovery, and that regardless of which forum the Court of Appeals choses for this matter, some form of discovery is allowed to take place. The Court finds it compelling that under the arbitration rules, discovery still needs to take place. The agreement between Plaintiffs and Lennar contains an Arbitration Clause that incorporates the AAA Residential Construction Arbitration Rules. The AAA rules allow for exchange of documents and interviews. ARB-22. This equates to what is commonly known in litigation as discovery and depositions. The AAA rules further allow for expert reports and the exchange the [sic] the any expert reports and estimates. *Id.* In the event that the Appellate Court enforces the arbitration agreements between the parties, there will be discovery conducted. The Court sees no reason to needlessly delay events that would occur eventually, regardless of the forum. [Order at p. 7]

The circuit court properly determined that discovery should proceed as to the Homeowners' claims against the Lennar because discovery would occur regardless of whether the claims against Lennar were ultimately arbitrated or tried. Accordingly, it was proper for the lower court to lift the automatic stay because discovery is not a matter affected by the underlying appeal. Discovery as to Homeowners' claims against Lennar is going to occur whether this case is arbitrated or litigated.

C. Prejudice to Homeowners. In addition, the circuit court properly considered the prejudice that would result to Homeowners if the discovery were not permitted to proceed. The Court, noting the deteriorating conditions of the homes and procedural status of the case

considered the following:

> Plaintiffs also argued that as time passes by in this case, which was **filed in 2014**, witnesses' memories will lapse, the hazardous conditions present at the Abbey will worsen, properties will continue to deteriorate, insurance coverage will diminish, and Plaintiffs will be prejudiced as a result. The passing of time and rising expenses make it clear that allowing discovery to move forward in this case would promote the interests of judicial economy and equity. Plaintiffs have sufficiently shown that there will be no prejudicial effect against either party by lifting the stay for discovery. Alternatively, the Court finds that delaying discovery would prejudice Plaintiffs. Accordingly, the Court hereby lifts the stay solely for purposes of discovery. [Order at p. 8, Emphasis added.]

As noted in Homeowner's Petition, the circuit court has the inherent power to control the order of its business to safeguard the rights of litigants. *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). Accordingly, the circuit court acted within its sound discretion in lifting the automatic stay for the sole purpose of discovery.

III. Homeowners seek full appellate court review of the Court of Appeals *Order* entered on July 30, 2018 (the "Subject Order") pursuant to Rule 241(d)(2) and Rule 241(d)(7), SCACR. Homeowners do not, as Lennar implies, seek a hearing or rehearing *en banc*.

Rule 241(d)(2) and Rule 241(d)(7), SCACR, set forth the procedures for seeking review of a decision affecting an automatic stay. Specifically, Rule 241(d)(2) states:

> **(d) Procedure for Obtaining Lift of Stay or Supersedeas.** [...]
>
> (2) After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order. The individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court to hear and determine the matter, or he or she may issue a final order. **Upon the issuance of a final order by an individual judge or justice, an aggrieved party may petition the full appellate court for review of that decision.** [Emphasis added]

In addition, Rule 241(d)(7) states:

> (7) Any party aggrieved by the decision of the lower court, the administrative tribunal, or an individual judge or justice may petition under this Rule for a review of that decision.

Owners' do not seek a **hearing or rehearing** *en banc* pursuant to Rule 219, SCACR. Rather, Owners seek *review* of the Subject Order pursuant to Rule 241(d)(2) and Rule 241(d)(7). A review and a rehearing are two different mechanisms, which Lennar attempts to conflate in its return brief. The rules do not set forth any restrictions or express any reservations with regard to seeking appellate review of an order pursuant Rule 241(d)(2) or Rule 241(d)(7).

Lennar misdirects this court to Rule 219 and then misstates the rule with hopes of undermining Homeowners' Petition. Rule 219 does not state, as Lennar claims, that "en banc *consideration* is not favored and will not be ordinarily granted." Rather, Rule 219 states that "a ***hearing or rehearing*** en banc is not favored and will not be ordinarily granted." Again, Owners do not seek a hearing or rehearing en banc pursuant to Rule 219. Owners seek review of the Subject Order, a procedure, which is available under Rule 241(d)(2) and Rule 241(d)(7).

IV. The Subject Order's application of *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 571 S.E.2d 711 (Ct. App. 2002) to the present case was an error of law because the cases are factually and procedurally distinguishable.

Lennar argues that the ruling in *Stokes* "supports the conclusion that as long as the claims in this case *may* be subject to mandatory arbitration, it is logical and proper to enforce the stay of all proceedings, including discovery." *Stokes* does not stand for this proposition. In *Stokes*, the Court of Appeals stayed discovery because it **first determined that a) all of Plaintiff's causes of action fell within the scope of the arbitration agreement and that b) the Federal Arbitration Act (FAA) applied.** In the present case, there has been no determination that Homeowners' causes of action are subject to arbitration. To the contrary, the circuit court

properly determined that matters relating to Homeowners' claims against the subcontractor defendants are not affected by the appeal because no contracts exist between the Homeowners and the subcontractor defendants. See *Order* at page 6. The circuit court also properly determined that **any Homeowner that is not an original purchaser from Lennar does not have an arbitration agreement with Lennar.** Id. The circuit court further determined that even if an arbitration agreement were found to exist between certain homeowners and Lennar, the arbitration rules propounded by Lennar permit discovery. Id. at 7. As the circuit court properly determined, discovery is not a matter affected by the underlying appeal and discovery is, therefore, not subject to an automatic stay. Since this Court has not determined that the Homeowners' causes of action fall within the scope of an enforceable arbitration agreement, it was an error of law to rely on *Stokes* to stay discovery in this matter.

Further, unlike *Stokes*, the parties in the present case do not agree that the FAA applies to claims arising under any alleged agreement. See *Stokes*, 351 S.C. at 610. ("Neither party disputes the FAA applies to claims arising under the Form U-4 Stokes signed in 1992.") In the present case, Homeowners dispute that the FAA applies to their claims against both Lennar and the subcontractor defendants. (See *Respondent's Final Brief* at p. 13, noting, "The Circuit Court properly determined that, in the alternative to being unconscionable, the arbitration provisions are ambiguous and not governed by the FAA.") Accordingly, it was an error of law to rely on *Stokes* to divest the circuit court of jurisdiction over discovery matters because there has been no determination that Homeowners' claims are subject to the FAA.

Lastly, even if even if the FAA were to apply, the FAA does not require the parties to arbitrate where they have not agreed to do so. The Court in *Stokes* noted this much, stating:

> "'[T]he FAA does not require parties to arbitrate when they have

> not agreed to do so, nor does it prevent parties who do agree to arbitrate from excluding certain claims from the scope of their arbitration agreement." *Zabinski v. Bright Acres Assocs.*, 346 S.C. at 591-592, 553 S.E.2d at 116 (citation omitted). The FAA 'simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms.' Volt, 489 U.S. at 478, 109 S.Ct. 1248. *Stokes*, 351 S.C. at 611.

In the instant case, **no agreements (arbitration or otherwise) were signed between the Homeowners and the subcontractor defendants.** Accordingly, it was an error of law to divest the circuit court of jurisdiction as to the claims between the Homeowners and the subcontractor defendants because the Homeowners and the subcontractor defendants have not agreed to arbitrate their claims. The circuit court had jurisdiction over discovery and exercised sound discretion in permitting discovery to proceed as to the Homeowners' claims against the subcontractors.

Also unlike *Stokes*, this Court has not made a determination that enforceable arbitration agreements exist between the Homeowners and Lennar. Even if the Court determines that enforceable arbitration agreements exist, discovery, as noted above, would be permitted under the arbitration rules propounded by Lennar.

The forgoing distinctions render *Stokes* inapplicable to the present case. It was an error of law to rely on *Stokes* to divest the circuit court of jurisdiction over discovery matters because *Stokes* is factually and procedurally distinguishable from the present case.

V. The Subject Order relies on federal case law that is inapplicable to the present matter due to substantive differences between state and federal procedural rules.

The Subject Order cites *federal* case law to support the divestiture of jurisdiction in a *state* court case. *Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 264 (4th Cir. 2011). As noted, in Homeowners' Petition, the Subject Order disregards that federal courts, including the Fourth

Circuit, have created a safeguard against improper divestiture of jurisdiction where a defendant files an appeal for purposes of delaying or otherwise disrupting litigation. In federal courts, an aggrieved party can immediately challenge the divestiture of jurisdiction caused by a defendant who appeals an order denying arbitration. See *Levin*, 634 F.3d at 265. The aggrieved party can immediately seek certification of the appeal as frivolous or forfeited. *Id.* **South Carolina state courts do not offer this safeguard.**

Lennar now argues that the circuit court's citation to *Levin* "merely supports the Court's logical conclusion that when the underlying appeal presents the *potential* that all claims must be compelled to arbitration, it is logical and proper that further judicial proceedings in the meantime should be stayed." [Emphasis added] This assertion is directly contradicted by *Levin* itself, which states:

> As the Ninth Circuit noted in *Britton*, **it would be inadvisable to "allow a defendant to stall a trial simply by bringing a frivolous motion to compel arbitration."** 916 F.2d at 1412. **For this reason, each of the circuits adopting the majority view has created a frivolousness exception to the divestiture of jurisdiction.** [...] The Tenth Circuit elaborated on the mechanics of the frivolousness exception as follows:
>
> [U]pon the filing of a motion to stay litigation pending an appeal from the denial of a motion to compel arbitration, the district court may frustrate any litigant's attempt to exploit the categorical divestiture rule by taking the affirmative step, after a hearing, of certifying the § 16(a) appeal as frivolous or forfeited. That certification will prevent the divestiture of district court jurisdiction. (Citing *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162 (10th Cir. 2005)) *Levin, 634 F.3d at 265.* [Emphasis added]

Again, South Carolina state courts do not offer an equivalent safeguard against improper divestiture of jurisdiction. As the Court in *Levin* notes, "it would be inadvisable to allow a defendant to stall a trial simply by bring a frivolous motion to compel arbitration." In order to avoid exploitation of the federal categorical divestiture rule, the federal courts have adopted a

safeguard against improper divestiture of jurisdiction where a defendant files an appeal for purposes of delaying or otherwise disrupting litigation. It was an error of law to rely on federal case law (i.e. *Levin*) *to* divest the circuit court of jurisdiction because the circuit court lacks the procedural safeguard afforded by the federal courts against improper divestiture of jurisdiction. There is no safeguard against a party who seeks to divest the lower court of jurisdiction for purposes of delay or to otherwise disrupt litigation. Accordingly, *Levin* does not stand for the proposition asserted by Lennar, but rather supports Homeowners' argument that relying on federal case law to divest a state court of jurisdiction is improper because state courts lack the procedural safeguards afforded to federal courts.

CONCLUSION

For the reasons stated hereinabove and in *Respondents' Petition for Full Appellate Court Review of Decision*, this Court should grant full appellate court review of Court of Appeals *Order* entered on July 30, 2018 and vacate the decision. Discovery is not a matter not affected by the appeal. There are no alleged agreements (arbitration or otherwise) between Homeowners and the subcontractor defendants. There are no alleged agreements (arbitration or otherwise) between any Plaintiff that was not an original owner and Lennar. The allege arbitration agreements that Lennar seeks to enforce permit discovery. Accordingly, discovery is not a matter affected by the underlying appeal.

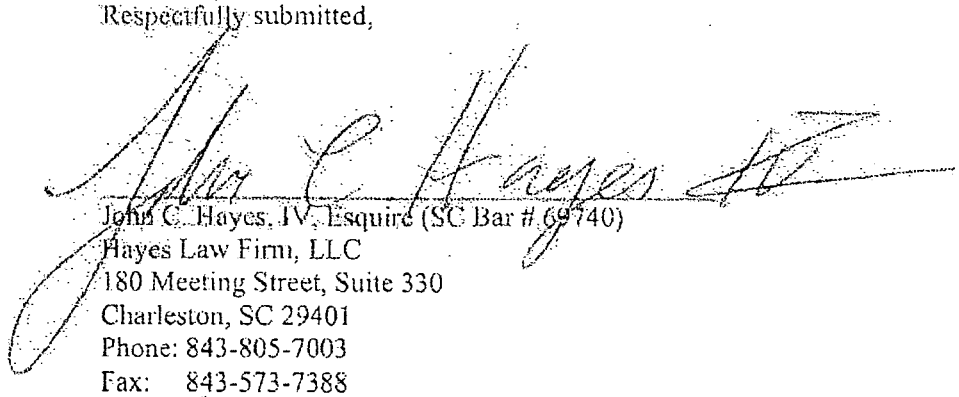
Because discovery is unaffected by the appeal, the circuit court can and should retain jurisdiction over discovery while the appeal is pending. The circuit court exercised its sound discretion in lifting the automatic stay for the sole purpose of discovery. Prohibiting discovery while the appeal is pending will result in significant prejudice to the Homeowners. In contrast, proceeding with discovery does not result in prejudice to Lennar.

In addition, the Subject Order should be vacated because it fails to apply the "abuse of discretion" standard of review to the circuit court's *Order Granting Plaintiffs' Motion to Lift Automatic Stay for Purposes of Discovery*. The circuit court has broad discretion deciding whether to lift a stay and the decision to lift a stay will only be overturned where there is an abuse of discretion.

Regardless of what standard of review is applied by this Court, the circuit court's *Order Granting Plaintiff's Motion to Lift Automatic Stay for Purpose of Discovery* was proper because discovery is not a matter affected by the underlying appeal. The Subject Order should be vacated because it is an error of law to rely on *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 571 S.E.2d 711 (Ct. App. 2002) because *Stokes* is factually and procedurally distinguishable from the present case. Lastly, the Subject Order should also be vacated because it relies on federal case law that is inapplicable to state court cases due to substantive differences between state and federal procedural rules.

[Signature on following page]

Respectfully submitted,



John C. Hayes, IV, Esquire (SC Bar # 69740)
Hayes Law Firm, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
Phone: 843-805-7003
Fax: 843-573-7388
jhayes@hayeslaw.org

Jesse Sanchez, Esquire (SC Bar #101906)
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, SC 29401
Phone: 843-814-8181
Fax: 843-284-3953
jesse@jessesanchezlaw.com

Michael J. Jordan, Esquire
PO Box 1028
Goose Creek SC 29445
mjordan@steinberglawfirm.com
843-572-0700

Catherine Dunn Meehan, Esquire
PO Box 9
Charleston, SC 29402-009
cmeehan@steinberglawfirm.com
843-720-2800

ATTORNEYS FOR RESPONDENTS PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW

September 24, 2018
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-2339
Case No. 2014-CP-08-2424

Patricia Damico and Lerna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Beutow, 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, Geometries 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, Isidini 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.

PROOF OF SERVICE

I, the undersigned, certify that I have served *Respondents' Reply to Appellant Lennar Carolinas, LLC's Return to Respondents' Petition for Full Appellate Court Review of Decision* to the attorneys of record by depositing a copy of it in the United States Mail on September 24, 2018, addressed to the following:

James Lyn Werner
Jenna K. McGee
Katon E. Dawson, Jr.
Parker, Poe, Adams & Bernstein, LLP
PO Box 1509
Columbia, SC 29201
Attorneys for Appellant Lennar Carolinas, LLC

Michael J. Jordan
Catherine K. Dunn
The Steinberg Law Firm, LLP
PO Box 1028
Goose Creek, SC 29445

Attorneys for Respondents Patricia Damico; Joshua and Brettany Beutow; Bryan and Cynthia Camara; Matthew Collins; Jonathan and Theresa Douglass; Czara and Chad England; Lenna Lucas; Danny and Ellen Davis Morrow

Laura H. Budd
The Budd Law Group, PLLC
10550 Independence Point Pkway, Suite 301
Matthews, NC 28105
Attorneys for Respondent Alpha Omega Construction Group, Inc.

Stephen L. Brown
Catherine H. Chase
Young Clement Rivers, LLP
PO Box 993
Charleston, SC 29402
Attorneys for Respondent Alpha Omega Construction Group, Inc.

Brent M. Boyd
PO Box 6648 4406-B Forest Dr.
Columbia, SC 29260
Attorney for Respondents Coastal Concrete Southeast, LLC and Coastal Concrete Southeast II, LLC

Kathy A. Carleston
N. Keith Emge (Chip)
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Attorney for Respondent Civil Site Environmental, Inc.

Stephen P. Hughes
Howell Gibson and Hughes, P.A.
PO Box 40
Beaufort, SC 29901
Attorney for Respondent Builders FirstSource-Southeast Group, LLC

Preston B. Dawkins, Jr.
Aiken Bridges, P.A.
P.O. Drawer 1931
Florence, SC 29503
Attorneys for Respondent Alpha Omega Construction Group, Inc.

David S. Cobb
Turner Padget
PO Box 22129
Charleston, SC 29413
Attorney for Respondent Construction Applicators Charleston, LLC

Samia Nettles
James H. Elliott, Jr.
Richardson Plowden
40 Calhoun Street, Suite 220
Charleston, SC 29401
Attorney for Respondent Décor Corporation and Manale Landscaping, LLC

S. Markey Stubbs
Baker Ravenel Bender
PO Box 8057

Columbia, SC 29202
Attorney for Respondent DVS, Inc.

Christine Companion Varnado
The Seibels Law Firm
38 Broad Street, Suite 200
Charleston, SC 29401
Attorneys for Respondent Guaranteed Framing, LLC

Steven L. Smith
Zachary J. Closser
Samuel M. Wheeler
Smith Closser, P.A.
PO Box 405878
Charleston, SC 29423-0578
Attorneys for Respondents Knight's Concrete Products, Inc. and Knight's Redi-Mix, Inc.

John E. Rogers, II
The Ward Law Firm, p.A.
PO Box 5663
Spartanburg, SC 29304
Attorney for Respondent Land/Site Services, Inc.

Jenny C. Honeycutt
PO Box 13466
James Island, SC 29422
Attorney for Respondent South Carolina Exteriors, LLC

R. Trippett Boineau, III
Heath McAlvin Stewart, III
McAngus, Goudelock & Courie, LLC
PO BOX 12519
Columbia, SC 29211
Attorneys for Respondent Spring Grove Plantation Development, Inc.

Derek M. Newberry
Hall Booth Smith, P.C.
40 Calhoun Street, Suite 550
Charleston, SC 29401
Attorneys for Respondent Guaranteed Framing, LLC

Alan R. Belcher, Jr.
40 Calhoun Street, Suite 550
Charleston, SC 29401
Attorneys fro Respondent Guaranteed Framing, LLC

Erin D. Dean
Tupper Grimsely & Dean, P.A.
PO BOX 2055
Beaufort, SC 29901-2055
Attorney for Respondents LA New Enterprises, LLC and Raul Martinez Masonry, LLC

Thomas F. Dougall
William A. Collins, Jr.
Michael Kalwajtys
Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045
Attorney for Respondent Ozzy Construction, LLC

Bachman S. Smith, IV
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street, Third Floor
Charleston, SC 29401
Attorney for Respondent Southern Green, Inc.

R. Patrick Flynn
Michael Allen
Pope Flynn, LLC
PO Box 70
Charleston, SC 29402
Attorneys for Respondent Super Concrete of SC, Inc.

David Shuler Black
Howell Gibson & Hughes, P.A.
PO Box 40
Beaufort, SC 29901-0040

Attorney for Respondent TJB Trucking/Leasing, LLC

Edward and Sylvia Dengg
238 Maywood Drive
Moncks Corner, SC 29461
Pro Se Respondents

Third Party Defendant Myers Landscaping, Inc.
c/o Joseph H. Myers, Registered Agent
Myers Landscaping, Inc.
382 Big Bird Lane
Summerville, SC 29486

Ronald G. Tate, Jr.
R. Batten Farrar
Gallivan, White & Boyd, P.A.
PO Box 10589
Greenville, SC 29603

Attorneys for Respondent Volkmar Consulting Services, LLC.

Anthony and Stacey Ray
107 Loch Circle
Hampton, VA 23669
Pro Se Respondents
Shanna Milcetech Stephens
Katherine C. Miars
Anderson Reynolds & Stephens, LLC
PO Box 87
Charleston, SC 29402
Attorney for Respondent A.C.&A Concrete, Inc.

Jesse Sanchez, Esquire (SC Bar #101906)
The Law Office of Jesse Sanchez, LLC
98 ½ Broad Street, Suite B
Charleston, SC 29401
Phone: 843-814-8181
Fax: 843-284-3953
jesse@jessesanchezlaw.com

September 24, 2018
Charleston, South Carolina

FAX COVER SHEET

TO	The Hon. Jenny Abbott Kitcthings South Carolina Court of Appeals
COMPANY	
FAX NUMBER	18037341839
FROM	Jesse Sanchez
DATE	2018-09-25 00:19:46 GMT
RE	Damico, et al. v. Lennar Carolinas, LLC, et al. - Case No. 2016-2339

COVER MESSAGE

Please find the attached cover letter, reply brief, and proof of service. Should you have any questions, please do not hesitate to contact me directly at 843-814-8181 or John Hayes, IV at 843-805-7003. Thank you for your assistance with this matter.

Best regards,

Jesse Sanchez, Esq.

HAYES LAW FIRM, LLC

180 Meeting Street – Suite 330
Charleston, South Carolina 29401
Tel: (843) 805-7003
Fax: (843) 573-7388

John C. Hayes, IV
Email: jhayes@hayeslaw.org

Nina E. Meola
Email: nmeola@hayeslaw.org

September 24, 2018

VIA USPS PRIORITY MAIL AND FAX (803) 734-1839

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Patricia Damico, et. al. v. Lennar Carolinas, LLC, et al.
Case No. 2014-CP-08-2424; Appellate Case No. 2016-2339.

Dear Ms. Kitchings,

Enclosed herewith, please find one (1) original and six (6) copies of the following:

1. *Respondents' Reply to Appellant Lennar Carolinas, LLC's Return to Respondents' Petition for Full Appellate Court Review of Decision.*
2. *Proof of Service.*

Thank you for your assistance with this matter. Should you have any questions or wish to discuss the request, please do not hesitate to contact me directly.

Sincerely,

John C. Hayes, IV, Esquire
SC Bar # 69740
ATTORNEY FOR RESPONDENTS PATRICIA DAMICO, JOSHUA AND BRETTANY BEUTOW, BRYAN AND CYNTHIA CAMARA, MATTHEW COLLINS, JONATHAN AND TERESA DOUGLASS, CZARRA AND CHAD ENGLAND, LENNA LUCAS, AND DANNY AND ELLEN DAVIS MORROW

Cc: All Counsel of Record (Via US Mail Only)
Enclosures