THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Michael Baxley, 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, ... Appellant.

South Carolina State Plastering, LLC, ... Appellant,

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 .....Appellants.

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ABUSE ITS DISCRETION IN FAILING ADEQUATELY TO CONTROL COMMUNICATIONS FROM THE GRAZIAS' AND PUTATIVE CLASS COUNSEL TO HOMEOWNERS WHO MIGHT BECOME MEMBERS OF THE CLASS?

STATEMENT OF THE CASE

This case flows from a Beaufort County case that was initiated as a putative class action, though the class has not been finally certified. A dispute has arisen between the Plaintiffs' attorneys and Defendant's and Third-Party Defendants Del Webb Communities, Inc. and Pulte Homes' attorneys regarding efforts by the former to communicate with homeowners in Sun City who have not yet joined the putative class. On January 13, 2012, Appellant South Carolina State Plastering ("SCSP") filed a motion for a temporary injunction. R. 123. The motion sought to enjoin the Plaintiffs (Respondents here) and their attorneys from communicating with Sun City homeowners who were not already in an attorney-client relationship with the attorneys for the putative class regarding the trial court's order of December 19, 2011,[1] R. 10; from publishing information addressing that order; or from advising or taking any action to influence prospective members of the putative class to join the class action.

On January 23, 2012, Plaintiffs/Respondents Anthony and Barbara Grazia filed in the Circuit Court a document entitled "Plaintiff Class' Rule to Show Cause and Request for Immediate Injunctive Relief." R. 78. In it, the Grazias complained that Third Party

[1] The December 19, 2011 Order was entitled "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."

Defendant Pulte Homes was "attempting to subvert the Class Action process" by "making spot patches of residences." R. 78-9.

On March 8, 2012, the Circuit Court issued an Order granting SCSP's motion for a temporary injunction. R. 8. The Order changed SCSP's request that "the injunction remain in place 'until (1) the opt-out period has elapsed, or (2) until the court has denied the motion for class certification . . . '" to read that, "[t]his temporary injunction shall remain in force until further rulings by the court concerning issuance of the approved Notice to prospective Class Members, and Exclusion Forms," R. 9. This wording was included in a proposed order from the Grazias' counsel which had not previously been provided to SCSP's counsel but which the circuit court believed was a consent order. R. 4.

Because of the difference in duration of the temporary injunction, SCSP, Del Webb Communities, Inc. and Pulte Homes filed motions to alter or amend the court's order of March 8, 2012. R. 39, 41.

On May 16, 2012, the circuit court entered an Order Vacating the Temporary Injunction, Dismissing as Moot Defendants' Motion to Amend the Injunction Order, and Denying the Parties' Motion to Renew the Injunction. R. 3. It is this Order, and the subsequent Order denying SCSP's Rule 59(e) motion, R. 1, that are appealed. The Order denying the Rule 59(e) motion was entered and mailed to Appellant June 29, 2012. The Notice of Appeal was filed on July 12, 2012.

FACTS

Since this putative class action was initiated in 2007, the attorneys representing Anthony and Barbara Grazia, the representative Plaintiffs, have engaged in an extended process of trying to convince homeowners in the Sun City development to join the putative class action. A partial list of the promotional activities in which they have been involved is as follows:

- A January 4, 2012 article in islandpacket.com and beaufortgazette.com. R.109. The article noticed a public meeting at Bluffton High School "to field questions from Sun City homeowners about the class-action lawsuit alleging defective stucco work . . . ." The headline of the article, which included quotations from one of Plaintiffs' attorneys, stated that, "Sun City stucco suit gets class-action status; 4,000 homes could be included." That headline overstates the holding of the court's Order, which specifically stated that certification was not final. Order, p. 10; R. 19. This misstatement could mislead potential members of the class and encourage them to join the class.

- The cited internet article generated comments from a variety of people, many making disparaging comments about the builder. R. 111-112.

- A second article, with a revised headline, appeared on islandpacket.com on January 9, 2012. R. 113. That article repeats the incorrect statement from the January 4 article that, "Circuit Court Judge J. Michael Baxley ruled last month that attorneys representing Sun City couple Anthony and Barbara Grazia could represent thousands of other homeowners possibly affected by stucco problems."

That statement presupposes incorrectly that certification had been finally ordered, which is incorrect. It also encourages all the Sun City homeowners to believe that they are already part of the class action and are already represented by these attorneys, even if the attorneys would have a conflict of interest in representing them. The idea that these attorneys represent everyone in Sun City had been promulgated previously by these attorneys.

- On December 22, 2011, Attorney Seekings had sent a letter, R. 115, to Pulte's attorney implying that his firm represented all of the homeowners in Sun City and seeking to keep Pulte from making stucco repairs. This appears to put the attorneys in a direct conflict of interest with the homeowners who desire to have their houses repaired. Evidently, said attorneys believe that all homeowners are required to have their homes repaired only via the class action.
- Pulte's counsel responded to Attorney Seekings' letter. R. 116. On January 3, 2012, Attorney Seekings answered the questions posed in Pulte's counsel's letter. The upshot of this letter is that Attorney Seekings' firm reserves to itself the right to control repairs to any of the houses in Sun City, with no regard to the owners' desires. R. 118.
- As early as September 1, 2011, Plaintiffs/Plaintiffs' counsel had been misinforming the residents of Sun City about the status of the litigation. An "Important Memo," R. 119, handed out on that date to "Sun City Stucco Litigant(s)" stated that the case against South Carolina State Plastering had "been certified as a Class Action by Judge Baxley." Even at this date, 11 months later, the action has not been finally certified as a class action.

- On January 12, 2012, counsel for Appellant here wrote to Plaintiffs' counsel, outlining the problems with that firm's communicating with potential class members and especially with the planned January 26 "Town Hall Meeting." R. 120-21. The problems outlined therein will be exacerbated without a court serving as a referee.

ARGUMENT

I. STANDARD OF REVIEW

The denial of a motion for a temporary injunction is immediately appealable. S.C. CODE ANN. §14-3-330. The standard of review for granting or denying an injunction is whether there has been an abuse of discretion. Lambries v. Saluda County Council, 398 S.C. 501, 507, 728 S.E.2d 488, 492 (2012) (Pieper, J., dissenting) *quoting* Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E. 2d 687, 689 (2006).

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING SOUTH CAROLINA STATE PLASTERING'S MOTION FOR A TEMPORARY INJUNCTION AS TO THE ACTIONS OF PLAINTIFFS AND THEIR COUNSEL REGARDING HOMEOWNERS IN SUN CITY WHO HAVE NOT JOINED THE PUTATIVE CLASS ACTION.

Under the law of South Carolina, an injunction is proper when a party demonstrates the following elements: "irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." Denman v. City of Columbia, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010) (citing Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E. 2d 833, 834 (2005)). As further detailed infra, South Carolina State Plastering stands to suffer irreparable harm to its due process rights by Plaintiffs holding such "town hall meetings" and other forms of communication. At a "town hall meeting"

on July 19, the Plaintiffs' attorney told the crowd, inter alia, that the court had certified the class, implying incorrectly that the decision was final. In light of the law on enjoining improper communications between counsel and putative class members, South Carolina State Plastering asserts that it has a "likelihood of success" on this issue (and in the litigation as a whole). Finally, South Carolina State Plastering contends that there is no adequate remedy at law because, once Plaintiffs' counsel has communicated its side of the case to the putative class members, no one will be able to "unring the bell." See, e.g., State-Record Co., Inc. v. State, 332 S.C. 346, 356 n. 19, 504 S.E. 2d 592, 597 n.19 (1998) (citing United States v. Davis, 904 F.Supp. 564, 569 (E.D. La. 1995)) (illustrating the principle that, at least in criminal cases, a privileged communication that is improperly disclosed jeopardizes the right to a fair trial, because "it is difficult, if not impossible, to 'unring a bell'").

A significant body of law exists on the issue of enjoining communications between parties (and their counsel) and putative class members in class action litigation. Rule 23(d)(2) of the South Carolina Rules of Civil Procedure is as follows:

> In the conduct of actions to which this rule applies . . . [t]he court may at any time impose such terms as shall fairly and adequately protect the interest of the persons on whose behalf the action is brought or defended. It may order that notice be given in such a manner as it may direct of the pendency of the action by the party seeking to maintain the action on behalf of the class . . .

Rule 23(d)(2), SCRCP (emphasis added). The South Carolina Supreme Court has recognized the need for limiting contact between parties and potential class members under the general grant of power in Rule 23(d)(2). Eldridge v. City of Greenwood, 308 S.C. 125, 127, 417 S.E.2d 532, 534 (1992) (citing Rule 23(d)(2), SCRCP). The United

States Supreme Court has held that trial courts have authority, in appropriate circumstances, to impose limitations on plaintiffs' counsel's contact with prospective clients in a class action context. The Court has held that, "[b]ecause of the potential for abuse [in class actions], a district court has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties." Gulf Oil Co. v. Bernard, 452 U.S. 89, 100, 101 S.Ct. 2193, 2200, 68 L.Ed.2d 693 (1981), as quoted in Payne v. Goodyear Tire and Rubber Co., 207 F.R.D. 16, 18 (D. Mass. 2002). The South Carolina Supreme Court has expressly agreed with the Gulf Oil case:

> Under certain circumstances, it may be necessary to limit communication between parties and potential members of the class . . . . [W]e agree with the United States Supreme Court that "an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties."

Eldridge at 128, 417 S.E.2d at 534 (quoting Gulf Oil at 101).

South Carolina State Plastering asserts that the record in this case is clear: Plaintiffs' counsels' attempted communications with putative class members rise to the level – and indeed surpass – the "potential for abuse." See infra. Since the named Plaintiffs have no rights that will be violated by this injunction, and since it is only South Carolina State Plastering, Del Webb Communities, Inc., Pulte Homes, and the putative class members who will be harmed if the Court does not issue the injunction, the Court can and should make the "specific finding" that the need for the proposed injunction outweighs the potential interference with the rights of the named Plaintiffs and their counsel.

A. SOUTH CAROLINA STATE PLASTERING WILL SUFFER IRREPARABLE HARM IF PLAINTIFFS' COUNSEL ARE ALLOWED TO CONTINUE UNRESTRAINED CONTACT WITH SUN CITY HOMEOWNERS WITH WHOM SAID ATTORNEYS HAVE NO PRIOR RELATIONSHIP.

1. SOUTH CAROLINA STATE PLASTERING'S DUE PROCESS WILL BE IRREPARABLY VIOLATED IF THE COURT DOES NOT, BY INJUNCTION, LIMIT PLAINTIFFS' COUNSELS' CONTACT WITH SUN CITY HOMEOWNERS WHO HAVE NOT JOINED THE PUTATIVE CLASS.

As Judge G. Ross Anderson has recently observed, "class actions, as other cases, are subject to the requirements of due process . . . ." Hege v. Aegon USA, LLC, 780 F. Supp. 2d 416, 425 (D.S.C. 2011) (quoting Twigg v. Sears, Roebuck & Co., 153 F.3d 1222, 1226 (11th Cir. 1998)). Due Process of law is guaranteed by the Constitutions of the United States and South Carolina. See U.S. CONST. AMEND. XIV; S.C. CONST.ART. I § 3. The Supreme Court of South Carolina has recognized that the notice rules in class actions directly implicate the Due Process Clause. See Hospitality Management Associates, Inc. v. Shell Oil Co., 356 S.C. 644, 654, 591 S.E.2d 611, 616 (2004) (describing the requirements of class notification vis-á-vis class members' due process rights, specifically noting that notice and adequate representation are due process rights owed to class plaintiffs); see also Civil Service Employees Ins. Co. v. Superior Court, 22 Cal.3d 362, 372, 149 (Cal. Rptr. 360, 365 (1978) (quoting People v. Pac. Land Research Co., 20 Cal.3d 10, 16, 569 P.2d 125 (1977) (noting that California appellate courts have found that "a defendant in a class action has a due process right to secure a determination of the issues relating to the sustainability of the action as a class matter as well as the composition of the class and the form of notice to the members, prior to determination of the merits of the action") (emphasis added)).

Professor Flanagan has described the importance of notification issues to class action litigation:

> Notice to class members is one of the central issues in class actions . . . Rule 23(d)(2) provides that the notice is given by the party seeking to maintain the action as a representative suit. This is subject, however, to the power of the court to control all aspects of the notice procedure . . . the court must supervise the content and mechanism of any notice procedure.

James F. Flanagan, SOUTH CAROLINA CIVIL PROCEDURE 196-7 (3d. ed. 2010) (emphasis added); see also MANUAL FOR COMPLEX LITIGATION, Fourth, § 21.31 (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 627 (1997)) ("Notice is a critical part of class action practice. It provides the structural assurance of fairness that permits representative parties to bind absent class members"). The importance, to class action defendants, of proper notice procedures is obvious – it is class action defendants that bear the risk of multiple, inconsistent adjudications. See, e.g., People v. Pac. Land Research Co., 63 Cal. App. 3d 873, 134 Cal. Rptr. 114, 126 (Ct. App. 1976) vacated on other grounds, 20 Cal. 3d 10, 569 P.2d 125 (1977) ("It is also settled that in a private class action the defendants have a constitutional due process right to have all potential members of the plaintiff class given appropriate notice . . . the rationale for requiring prior notice to members of the class is defendant's right to know the full potential consequences and liability . . . ."); see also Thomas A. Dickerson, CLASS ACTIONS: THE LAW OF THE 50 STATES § 7.01 (1992) ("[class action] defendants have a right to know the full potential of their liability") (citation omitted).

In light of these rules, it is clear that Plaintiffs' counsels' actions in communicating with putative class members are injurious to both the due process rights of the putative class and those of South Carolina State Plastering. As explained above,

the putative class members have a due process right to adequate representation. See Hospitality Management, 356 S.C. at 654, 591 S.E.2d at 616. If Plaintiffs' counsel does not correctly inform the putative class members of all relevant information, including information involving waiver of claims within the class, Plaintiffs' counsel may have a conflict of interest with the putative class. See infra. Specifically, in this case the Plaintiffs' counsel has agreed to the dismissal of all putative class members' claims under the South Carolina Unfair Trade Practices Act, thereby negating any claim that any putative class member may have for attorneys' fees and treble damages. Therefore such a conflict exists, but even if there is no conflict, but a large percentage of proposed class members disagree with the course of action suggested by Plaintiffs' counsel, then Plaintiffs will lose their claim that they are adequate representatives of the would-be class. See Runion v. U.S. Shelter, 98 F.R.D. 313, 317 (D.S.C. 1983) ("the representatives must have common interests with the unnamed members of the class . . . the class representative should not have any ... conflicting interests to the unnamed members....") (citations omitted). The proposed class members conceivably could collaterally attack and avoid any judgment not favorable to them because of a violation of their due process right to adequate representation. South Carolina State Plastering then would be in the unfavorable position of having to re-litigate issues already decided in a costly class action. See MANUAL FOR COMPLEX LITIGATION, Fourth, § 21.31 (citing 7B Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d §§ 1789, 1793 (1986 & Supp. 2002) ("Proper notice also lessens the vulnerability of the final judgment to collateral attack by class members"). Such an outcome is precisely what class actions – and the accompanying due process guarantees made to defendants – are designed to

prevent, and yet such an outcome is possible if Plaintiffs' counsel is allowed to disseminate information to the putative class members in a fashion other than that approved by the Court. See Gunnells v. Healthplan Services, Inc., 348 F.3d 417, 427 (4th Cir. 2003) (quoting 5 Moore's Federal Practice § 23.02 (1999)) ("class certification 'provides a single proceeding in which to determine the merits of the plaintiffs' claims, and therefore protects *the defendant* from inconsistent adjudications'"). In other words, South Carolina State Plastering's right to a proper adjudication of this class action will be jeopardized not through any fault of its own, *but rather by the inappropriate actions of Plaintiffs' counsel done in violation of South Carolina State Plastering's and putative class members' due process rights.*

Plaintiffs and their counsel, on the other hand, will suffer no detriment from having limitations placed on their communication with putative class members. Since Plaintiffs' counsels' conflicted or inaccurate communications with the putative class members are improper under the due process analysis listed above, Plaintiffs can make no claim that their rights are being infringed. Plaintiffs and their counsel do not have a constitutional right to solicit potential class members using false or incomplete information. Moreover, South Carolina State Plastering's Motion specifically exempts from the scope of the requested injunction communications between Plaintiffs' counsel and the named Plaintiffs. South Carolina State Plastering does not claim any right to intrude upon the attorney-client relationship that exists between Plaintiffs' counsel and the Grazias.

2. PLAINTIFFS' COUNSELS' COMMUNICATIONS WITH PUTATIVE CLASS MEMBERS VIOLATE THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT AND CREATE A CONFLICT OF INTEREST FOR PLAINTIFFS' COUNSEL, WITH POTENTIALLY ADVERSE CONSEQUENCES FOR SOUTH CAROLINA STATE PLASTERING.

According to Professor Flanagan, "[c]ommunication with prospective class members raises problems of solicitation by attorneys or apparent lack of impartiality by the court." Flanagan at 197. South Carolina State Plastering is concerned that "town hall meetings" as have been, and are intended in the future to be held, may constitute improper solicitation of business. Rule 7.3(a) of the Rules of Professional Conduct is as follows:

> A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain . . . .

Rule 7.3(a), South Carolina Rules of Professional Conduct. Since many of the persons in the Sun City development do not currently have an attorney-client relationship with Plaintiffs' counsel, they are "prospective clients." According to the Rule, such prospective clients should not be contacted in-person by attorneys motivated by pecuniary gain.

Another issue created by the proposed town hall meeting is the conflict of interest between Plaintiffs' counsel and the putative class members. The Rules of Professional Conduct on this issue are as follows:

> [A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest . . . [such a conflict exists if] the representation of one client will be directly adverse; or . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client . . . .

Rule 1.7(a)(1)-(2), South Carolina Rules of Professional Conduct. South Carolina State Plastering does not contest that Plaintiffs' counsel is in a proper attorney-client relationship with the Grazias. Therefore, Plaintiffs' counsel has a fiduciary obligation to the Grazias to maximize the value of their claims. Logically, the total value of a class action such as this one is increased if the size of the class is increased. Plaintiffs' counsel, then, will be motivated by pecuniary gain (for counsel and for the Grazias) at the town hall meeting. Thus, counsel will be unable to give unbiased advice to the putative class members concerning the import of joining a class action. In order to join this preliminary class, a homeowner in Sun City must surrender his rights under the South Carolina Unfair Trade Practices Act ("SCUTPA"). In the Order, the Court held that all SCUTPA claims were dismissed without prejudice during the period of preliminary class certification, but will be dismissed with prejudice if class certification is finalized. Order, p. 8; R.____. At the town hall meeting, Plaintiffs' counsel will be motivated to advise prospective clients to participate in the class and thereby waive their SCUTPA claims, even if this is not the best advice for a particular homeowner.

The Trial Court's Order of December 15, 2011 restricts the class to homeowners having one or more of the three forms of damage, as follows:

(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.

Order, p. 12; R. 17. Homeowners who have claims for other forms of damage against Defendant waive those claims by joining in the class action. This needs to be explained to prospective members of the class, but the representative parties' attorneys – seeking to

grow the number of participants – have a financial incentive not to mention this possibility.

Regardless of the merits of their advice, however, Plaintiffs' counsels' opinions on those issues will spring from their obligations to the Grazias and their motivation to maximize the value of the class action. This is a conflict of interest, and jeopardizes the status of the Grazias and Plaintiffs' counsel as adequate representatives for the class. See Runion. 98 F.R.D. at 317 ("the representatives must have common interests with the unnamed members of the class . . . the class representative should not have any . . . conflicting interests to the unnamed members . . . . "). South Carolina State Plastering requests that the Court stop this conflict of interest from occurring, and thereby prevent harm to both the putative class members and South Carolina State Plastering.

If such a conflict of interest exists, members of the putative class who lose claims because of their participation in the class action will have grounds to abrogate the resolution of the class action as to themselves, thereby obviating the perceived advantages of having class actions – and will likely involve Appellant South Carolina State Plastering in further litigation, to its great prejudice.

3. THE TRIAL COURT ABUSED ITS DISCRETION BY NOT MAKING A SUFFICIENT EXAMINATION OF THE FACTS TO BE ABLE TO WEIGH THE INTERESTS OF THE PARTIES.

The trial court signed an Order granting SCSP's motion for a temporary injunction on March 8, 2012. The document that the court signed was prepared by Plaintiffs' counsel. It echoed a proposal made by Defendant's counsel for a temporary injunction, but changed the termination date for the injunction. The court accepted it as a consent order. Order of May 16, 2012, p. 2; R 4.

Upon receipt of the Order, Defendants' counsel moved to alter or amend the order as to the termination date. R. 39. 41. When the court discovered that the Order was not a consent order, it entered an Order Vacating Temporary Injunction, Dismissing as Moot Defendants' Motion to Amend Injunction, and Denying Motion to Renew Injunction. R. 3.

When it entered the Order of May 16, the circuit court had before it a wealth of factual evidence, including that referenced *supra,* pp. 3-4. However, perusal of the court's Order reveals that it gave only cursory, conclusory attention to the interests of Appellant. The potential for further litigation initiated by misinformed members of the putative class is ignored.

The court's Order obviating the temporary injunction it had previously ordered appears, moreover, to have been unnecessary; the parties inferably agreed on the need for some limitations to be placed on contacts between the Plaintiffs' attorneys and the prospective members of the class. An amended Order could have required a bond and established a termination date equitable to both parties. Instead, the court, R. 5-6, provided a list of general factors that it considered in declining to impose any limitations on the contact Plaintiffs' attorneys have with prospective members of the class.

The factors considered by the court do not include any that take cognizance of Defendants' Due Process concerns or their apprehension about future litigation flowing from the conflict of interest situation presented by Plaintiffs' attorneys soliciting homeowners for the putative class who might waive other claims that they may have.

If reasonable restrictions are not placed on contact and solicitation by parties and attorneys with prospective class members, Defendants will necessarily need to enter the

information arena, to make certain that Sun City homeowners are being given all of the information for the ramifications of becoming members of the class. Signatures on opt-out or opt-in forms will become the objectives of all parties in an escalating information/solicitation battle. The stakes are very high, which will elicit significant effort.

Clearly, having such an unlimited contest for the hearts and minds of potential members of the proposed class is not the best way for such a judicially-sponsored contest to be run. In almost all competitive activities, an official or several officials are required, e.g., referees in football; umpires in baseball; and line judges in tennis. In this case, the circuit court is the natural referee. The court's Orders of May 16 and June 29, 2012, declined a request to serve in that capacity. It was an abuse of discretion to decline this opportunity.

CONCLUSION

The circuit court's Orders of May 16 and June 29, 2012, should be vacated and the matter remanded for the establishment of reasonable restraints on the contacts between Plaintiffs' attorneys and prospective members of the proposed class.

South Carolina State Plastering joins in and incorporates the arguments made by Dell Webb Communities, Inc. and Pulte Homes, Inc. in their Initial Brief.

Signature Page Follows

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PROOF OF SERVICE

I certify that I served the Final Brief of Appellant on Anthony and Barbara Grazia, individually and on behalf of all other similarly situated Plaintiffs, by depositing a copy of it in the United States Mail, postage prepaid, on March 1, 2013, addressed to their attorneys of record and all counsel of record, listed as follows:

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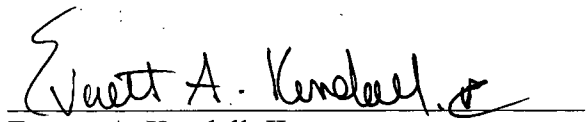
CERTIFICATE OF COUNSEL

The undersigned certified that this Brief of Appellant complies with Rule 211(b), SCACR.

February 28, 2013



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