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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE J.C. NICHOLSON, JR.
CIRCUIT COURT JUDGE

RECEIVED

NOV 08 2019

SC Court of Appeals

APPELLATE CASE NO. 2016-2339
CIVIL ACTION 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,

versus

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 the

RESPONDENTS.

And

Lennar Carolinas, LLC,

APPELLANT,

versus

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, Décor 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, Décor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource-Southeast Group, LLC are also the

RESPONDENTS.

And

Décor Corporation,

FOURTH PARTY PLAINTIFF,

versus

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, Ernesto M. Perez, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Betio Pereira, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Richardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sebastio Luiz de Araujo, and John Does 1-4,

FOURTH-PARTY DEFENDANTS.

**JOINT MOTION FOR LIMITED REMAND
TO THE CIRCUIT COURT FOR APPROVAL OF PARTIAL SETTLEMENT
AND LIMITED CLASS CERTIFICATION FOR THE SOLE PURPOSE OF
SETTLEMENT APPROVAL**

Plaintiffs-Respondents in the above-captioned action [Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brittany 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], Manale Landscaping, LLC (“Manale”), and Décor Corporation (“Décor”) hereby move this Court for a limited remand to the Circuit Court of Berkeley County for approval of the partial settlements between Plaintiffs and Manale, as well as between Plaintiffs and Décor. The parties also will seek certification of the Class pursuant to Rule 23, SCRCP before the Circuit Court for the sole purpose of approval of the partial settlements.

FACTUAL AND PROCEDURAL BACKGROUND

This is a construction defect case that involves alleged defects in multiple homes located in the Abbey at Spring Grove in Moncks Corner, South Carolina. The Abbey consists of sixty-nine (69) single-family homes constructed between 2010 and 2016. Since the construction of the homes at The Abbey, Plaintiffs have discovered alleged defects in their homes.

Plaintiffs filed this lawsuit on October 30, 2014, alleging causes of action for negligence, negligent misrepresentation, breach of warranties, breach of fiduciary duties, and unfair trade practices against multiple defendants, including Lennar Carolinas, LLC (“Lennar”). Plaintiffs filed an Amended Complaint on March 24, 2016, and subsequently moved for class certification.

On March 30, 2016, Lennar filed a Motion to Compel Arbitration pursuant to alleged arbitration agreements it had with some but not all of the Plaintiffs and its subcontractors. On or about September 19, 2016, Lennar’s Motion to Compel Arbitration was denied. On or about November 16, 2016, Lennar served a Notice of Appeal of the Trial Court’s order denying its Motion to Compel Arbitration. Plaintiffs, Lennar, and multiple subcontractor respondents, including Manale and Décor who also

oppose arbitration, have all filed final briefs with this Court which were each primarily filed in September 2017.

Partial Settlements Between Plaintiffs, Manale, and Décor

Plaintiffs, Manale, and Décor have tentatively settled the construction defect claims relating to Manale and Décor's work and desire to seek certification from the lower court of the Class for the sole purpose of the preliminary settlement approval and the associated approval of the settlements pursuant to Rule 23, SCRPC as set forth in the Motion For Preliminary Approval of a Partial Settlement attached hereto as Exhibit "A." While the parties believe that the settlements for which they seek approval from the Circuit Court will not affect the matters on appeal, out of an abundance of caution, the parties seek a ruling from this Court permitting a limited remand to the Circuit Court for approval of the partial settlements and the corresponding Class certification which will be limited for settlement approval only. See Rule 241(a), SCACR ("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 Supreme Court has instructed that when a matter is pending on appeal, a lower court may not take action on a settlement, except with regard to matters not affected by the appeal, unless the parties have requested the appellate court to have the matter remanded to the lower court. See Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 138, 742 S.E.2d 867, 868 (2013); see also Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal.").

Accordingly, pursuant to the Supreme Court's guidance in Lancaster and acting out of utmost prudence, Plaintiffs, Manale, and Décor request this Court for a limited remand to the Circuit Court for the narrow purpose of the Circuit Court's approval of the partial settlements between Plaintiffs, Manale, and Décor and the limited corresponding Class certification.

Respectfully submitted,

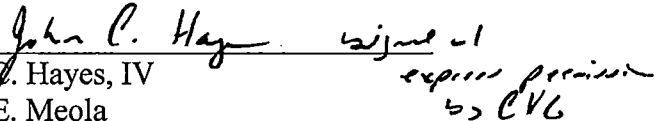


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and

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**ATTORNEYS FOR RESPONDENTS
MANALE LANDSCAPING, LLC AND
DÉCOR CORPORATION**



John C. Hayes, IV
Nina E. Meola
HAYES LAW FIRM, LLC
180 Meeting Street, Suite 330
Charleston, SC 29401
(843)805-7003
ATTORNEYS FOR PLAINTIFFS

November 8, 2019.

EXHIBIT “A”

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-08-02424

Patricia Damico and Lenna Lucas,)
individually and on behalf of all others)
similarly situated, Joshua and Brittany)
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,)

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF A
PARTIAL SETTLEMENT**

Plaintiffs,)

vs.)

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.)

Lennar Carolinas, LLC,)

Third-Party)
Plaintiff,)

vs.)

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, Décor 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.)

Décor Corporation,)

Fourth Party Plaintiff,)

vs.)

Baranov Flooring, LLC, DJ)
Construction Services, LLC, Creative)
Wood Floors, LLC, Geraldo Cunha,)
Ebenezer Flooring, LLC, Enmanuel)
Flooring and Siding, LLC, Eusi Flooring)
and Covering, LLC, Nicolas Flores,)
Alexander Martinez, Isidru Mejia, Juan)
Perez Son, Ernesto M. Perez, N&B)
Construction, LLC, Jose Dias)
Rodrigues, Livia Sousa, Jose Betio)
Pereira, Jose Paz Castro Hernandez,)
Divinio Aparecido Corgosinho, Ricardo)
Chiche, Cebes Construction, Bayshore)
Siding and Flooring, Sebastio Luiz De)
Araujo, and John Does 1 – 4,)

Fourth-Party Defendants.)

Alpha Omega Construction Group, Inc.)

Fourth-Party Plaintiff,)

Vs.)

Garcia Roofing, LLC, Juan Garza)
Ramos, Jose Vera, and Espino Roofing,)
LLC,)

Fourth-Party Defendants.)

DVS, Inc.,)

Fourth-Party Plaintiff,)

Vs.)

Sousa Construction, LLC, Lima)
Construction, LLC, N&B Construction,)
LLC, Itatiaia Construction, LLC and JC)
Contractors, LLC)

Fourth-Party Defendants.)

South Carolina Exteriors, LLC)

Fourth-Party Plaintiff,)

Vs.)

Juan Garza Ramos, d/b/a Juan)
Constructors,)

Fourth-Party Defendant.)

Guaranteed Framing, LLC

Fourth-Party Plaintiff,

Vs.

First Construction, LLC, JC)
Contractors, LLC, Jessica Marroquin)
d/b/a Marroquin Construction, and)
Unique Framing, LLC,)

Fourth Party Defendants.

TO: THE ABOVE-NAMED PARTIES AND THEIR COUNSEL:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, pursuant to Rule 23 SCRPC, will move before this Honorable Court ten (10) days from the date of this notice, or as soon thereafter as the Court may schedule, at the Berkeley County Judicial Center located at 300-B California Avenue, for a Preliminary Approval of a Partial Settlement certifying the following Class in the above-captioned matter:

All persons and/or entities owning, in whole or in part, any homes/property within The Abbey in Spring Grove Plantation.

The elements of Rule 23 SCRPC are satisfied in this matter. (1) The class is composed of in excess of roughly sixty-nine (69) homeowners of individual homes and/or property, such that joinder is impractical; (2) all of the questions of law and fact are common to the class members; (3) the claims of the representative parties are typical of the claims of the class members; (4) the representative party will fairly and adequately protect the interests of the class; and (5) the amount in controversy exceeds \$100.00 for each member of the class.

Plaintiffs further move that:

1. Patricia Damico be designated as Class Representative;
2. That a proposed Notice of Class Action, Partial Settlement, and Final Hearing (the "Notice") to be submitted prior to the hearing be approved;
3. That a proposed Exclusion Request Form to be submitted prior to the hearing be approved;
4. Class counsel be authorized to mail the Notice and Exclusion Request Form to all class members at their last known address at The Abbey at Spring Grove Plantation.

Plaintiffs move that the Court preliminarily approve the terms of the settlements reached by and amongst the Plaintiffs certain parties as follows:

SETTLING DEFENDANT	GROSS SETTLEMENT AMOUNT
Manale Landscaping, LLC	\$28,000.00
Décor Corporation	\$42,000.00
TOTAL	\$70,000.00

The Plaintiffs may move for such other orders regarding the Class as may be appropriate.

This motion will be supported by the evidence thus far in this matter, affidavits, a memorandum of law, arguments of counsel and any other material the Court may receive.

Respectfully Submitted,

HAYES LAW FIRM, LLC

s/ John C. Hayes, IV

John C. Hayes, IV, Esquire

Nina E. Meola, Esquire

180 Meeting Street, Suite 330

Charleston, SC 29401

Phone: (843) 805-7003

jhayes@hayeslaw.org

ATTORNEYS FOR PLAINTIFFS

August 15, 2018


Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent Manale Landscaping, LLC and Décor Corporation, do hereby certify that I have this date served the foregoing Joint Motion for Limited Remand to the Circuit Court for Approval of Partial Settlement and Limited Class Certification for the Sole Purpose of Settlement Approval, dated November 8, 2019, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to counsel of record as indicated below:

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Katon E. Dawson, Jr., Esquire
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Attorneys for Appellant

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**ATTORNEYS FOR RESPONDENT
DÉCOR CORPORATION AND
MANALE LANDSCAPING, LLC**

Dated: November 8, 2019.

Reply to: Carmen V. Ganjehsani
Direct Dial: 803-253-8692
cganjehsani@richardsonplowden.com

November 8, 2019

VIA HAND DELIVERY

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

Re: *Patricia Damico, et al. v. Lennar Carolinas, LLC*
Appellate Case No. 2016-002339
Our File No.: 5563-0030

Dear Ms. Kitchings:

I am enclosing for filing the original and seven copies of the Joint Motion for Limited Remand to the Circuit Court for Approval of Partial Settlement and Limited Class Certification for the Sole Purpose of Settlement Approval on behalf of Plaintiffs, Manale Landscaping, LLC, and Décor Corporation in the above-referenced matter. Also enclosed is our firm's check in the amount of \$50.00 to cover the filing fee. Please return a clocked copy of the Motion via our courier.

By copy of this letter, we are serving a copy of this Motion on counsel for the Appellant with a courtesy copy being e-mailed to all counsel for Respondents.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Carmen V. Ganjehsani

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NOV 08 2019

SC Court of Appeals

Enclosures

cc: James Lynn Werner, Esquire
Jenna K. McGee, Esquire
Katon E. Dawson, Jr., Esquire
Counsel for Co-Respondents (via e-mail)