

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

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

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APPELLATE CASE NO. 2016-2339  
CIVIL ACTION NO. 2014-CP-08-2424

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SC Court of Appeals

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.**

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**REPLY TO APPELLANT LENNAR CAROLINAS, LLC'S RETURN TO 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**

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Appellant Lennar Carolinas, LLC ("Lennar") has filed a Return objecting to the limited remand sought by Plaintiffs, Manale Landscaping, LLC ("Manale"), and Décor Corporation ("Décor") in 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. Lennar contends that Respondents' Joint Motion does not comply with the requirements of Rule 241, SCACR for petitions for relief from the automatic stay and that the remand will affect issues raised by Lennar's appeal. Neither of these arguments is correct nor warrant denial of the limited remand sought by these Respondents 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.

**I. Respondents do not seek to lift the Automatic Stay.**

Rule 241 sets forth procedures for obtaining relief from the automatic stay imposed upon the service of a notice of appeal in a civil action as to matters decided in the order on appeal. Respondents' Joint Motion does not seek to lift the automatic stay or to reopen litigation in the Circuit Court pending appeal of the Circuit Court's denial of Lennar's motion to compel arbitration. Rather, Respondents' Joint Motion only seeks to resolve the claims and disputes among these particular Respondents, which includes a limited Class certification for the sole purpose of settlement between only these specific parties. Therefore, Respondents are not required to comply with procedures outlined in Rule 241 because they do not seek relief from the automatic stay. In addition, the Supreme Court has directed that the proper procedure to undertake for approval of a settlement while a case is pending on appeal is a remand from the appellate court to the lower court. Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 138, 742 S.E.2d 867, 868 (2013).

**II. Respondents' Joint Motion for Limited Remand and Class Certification does not affect any other party to this Appeal, including Lennar.**

The resolution of the claims among these Respondents and the limited corresponding Class certification will not affect any other party to the appeal, including Lennar. These Respondents have only moved for Class certification as to these Respondents solely as a part of the settlement approval among these specific parties. Class certification is not being sought as to any other parties or claim in the case, and whether this case proceeds in the lower court or in arbitration following this appeal, any limited settlement and Class certification with respect to these Respondents will have no effect on future proceedings as to the remaining parties and/or claims. If Lennar is able to prohibit these Respondents from settling the claims among them, then Lennar effectively controls whether any of the forty-one parties to this construction defect litigation can settle and resolve particular claims and disputes even if such settlements will not affect the non-settling parties.

Accordingly, for the reasons set forth in the Joint Motion and in this Reply, these Respondents respectfully request this Court for a remand to the Circuit Court for the limited 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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Carmen V. Ganjehsani  
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and

James H. Elliott, Jr.  
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Post Office Box 21203  
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(843) 805-6550  
**ATTORNEYS FOR RESPONDENTS  
MANALE LANDSCAPING, LLC AND  
DÉCOR CORPORATION**

*J.L. Hayes* signed and expressed  
permission by  
CV6  
\_\_\_\_\_  
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 22, 2019.

**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 Reply to Appellant Lennar Carolinas, LLC's Return to 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, dated November 22, 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:

James Lynn Werner, Esquire  
Jenna K. McGee, Esquire  
Katon E. Dawson, Jr., Esquire  
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200 Meeting Street, Suite 301  
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*Attorneys for Appellant*

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

Dated: November 22, 2019.

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

November 22, 2019

**VIA HAND DELIVERY**

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

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SC Court of Appeals

**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 Reply to Lennar Carolinas, LLC's Return to 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. Please return a clocked copy of the Motion via our courier.

By copy of this letter, we are serving a copy of this Reply 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

Enclosures

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