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Feb 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr.

Case No. 2016-CP-02-00263
Appellate Case No. 2020-001103

Robin Napier, individually and on behalf of all others similarly situated,.....Appellant,

v.

Mundy's Construction, Inc. d/b/a Mundy Construction,..... Respondent.

**AMENDED DESIGNATION OF MATTERS
TO BE INCLUDED IN THE RECORD OF APPEAL**

Appellant Robin Napier, individually and on behalf of all others similarly situated, propose the following be included in the Record on Appeal (*Reply Brief Additions in bold italics*):

Orders, Judgments, and Decisions

1. Order Granting Class Certification filed January 12, 2018
2. Form 4 Order Denying Motion for Partial Summary Judgment filed May 20, 2019
3. Order Denying Respondent's Motion to Decertify Class filed May 20, 2019
4. Judgment and Order filed April 14, 2020
5. Order Denying Appellant's Motion to Reconsider filed July 20, 2020
6. Order Granting Appellant's Motion to Intervene filed July 20, 2020

Pleadings and Related Matters

7. Summons and Complaint filed February 8, 2016

8. Third Amended Summons and Third Amended Complaint filed July 28, 2017
9. Respondent's Answer to Third Amended Complaint filed July 28, 2017
10. Respondent's Motion for Partial Summary Judgment filed March 13, 2019
11. Respondent's Memorandum in Support of Partial Summary Judgment filed April 10, 2019
12. Response Affidavit of Dr. Rhett Whitlock, P.E. filed April 10, 2019
13. Appellant's Memorandum in Opposition for Partial Summary Judgment filed April 11, 2019
14. Affidavit of Tony Mundy, Jr. filed April 22, 2019
15. Appellant's Jury Charges filed May 23, 2019
16. Appellant's Pre-Trial Brief filed May 24, 2019
17. Respondent's Pre-Trial Brief filed May 24, 2019
18. Respondent's Post Trial Position Statement filed June 3, 2019
19. Appellant's Post Trial Position Statement filed June 6, 2019
20. Appellant's Post Trial Power Point Submitted to Court (Extracted from Opening PPT) on June 6, 2019
21. Appellant's Amended Post Trial Position Statement (with citations to trial transcript) filed August 14, 2019
22. Appellant's Motion to Intervene filed April 24, 2020
23. Appellant's Motion to Reconsider filed April 24, 2020
24. Respondent's Memorandum in Opposition to Motion to Intervene filed May 4, 2020
25. Respondent's Memorandum in Opposition to Motion to Reconsider filed May 4, 2020 ***and Proposed Order***
26. ***Appellant's Response to Defendant Mundy's Opposition to Motion to Reconsider filed May 14, 2020***

Transcripts

27. May 28 and 29, 2019, Trial Transcript Volume I: Whitlock and Mundy Testimony

28. May 29 and 29, 2019, Trial Transcript, Volume 2: Balance of Trial Transcript
29. June 15, 2020, Transcript of Intervention Hearing

Exhibits

Appellant's Exhibits

30. ***Exh. 62 – Table of Permits and CO's***
31. Exh. 472 – November 1, 2015, Google Earth Image
32. Exh. 505 - 20050517-20050712 Maddox Construction Invoices
33. Exh. 608 - 20070124-20070807 Mundy Construction Invoices
34. Exh. 609 - 20070411-20080115 Maddox Constr. Draw Requests Bennington
35. Exh. 668 - 20071029-20090216 Mundy Construction Invoices
36. Exh. 669 - 20080115-20080122 Maddox Constr. Draw Requests HB
37. Exh. 708 - 2017-07-25 WDP Napier Report
38. Exh. 709 - 2017-8-31 WDP Scope of Repairs
39. Exh. 722 – Numbered Map with
40. Exh. 767 – Mundy Lien Waivers
41. Exh. 768 – Mundy New Haven Invoices
42. Exh. 821 – WDP Measurements
43. Exh. 926 - FOIA Response re Mundy Construction
44. Exh. 936 - Hillsborough Sitework Instruction (p. 3 of Ex. 1C to Whitlock Affidavit)
45. Exh. 938 - Mundy Work Experience Affidavit
46. Exh. 940 - Updated WDP Cost Estimate (vertical damages removed)
47. Exh. 949 - Ex. C to Whitlock Appellant's Opposition to Respondent's Partial Summary Judgment (Site Plans Notes)

48. Exh. 951 - Ex. C to Whitlock Affidavit to Appellant's Opposition to Respondent's Motion to Decertify Class (Map Showing Units measured and inspected)
49. Exh. 963 – WDP Crack Survey
50. Exh. 977 - Interior Damage Photograph Exemplar/115 Hillsborough
51. Exh. 978 - Interior Damage Photograph Exemplar/151 Bennington
52. Exh. 979 - Interior Damage Photograph Exemplar/211 New Haven
53. Exh. 980 - Interior Damage Photograph Exemplar/139 Hillsborough
54. Exh. 981 - Interior Damage Photograph Exemplar/110 Amity
55. Exh. 991 - Table of Building Permits and Certificate of Occupancies
56. Exh. 993 - Honeycutt 248 New Haven Lane Photographs
57. Exh. 995 - Herschler 116 Hillsborough Lane Photographs
58. Exh. 997 - VonBieberstein 234 New Haven Lane Photographs

Respondent's Exhibits

59. Exh. 1 Mundy Invoices
60. Exh. 2 Invoice Summary
61. ***Exh. 68 Certificate of Occupancies***

Court Exhibits

62. Appellant's Listing of Exhibits
63. Appellant's Designation of excerpts from the May 18, 2018, Rule 30(b)(6) deposition of Hallum, LLC (Hal Trotter)
64. Respondent's Designation of excerpts from the May 18, 2018, Rule 30(b)(6) deposition of Hallum, LLC (Hal Trotter)
65. Deposition of Hal Trotter (Only pages published ***and referenced in briefs***)

Special Consideration for Motions, Objections, Rulings and Proffers

66. Emails between Respondent's Counsel, Appellant's Counsel, and the Honorable J. Cordell Maddox, Jr., regarding trial time constraints dated May 26, 2019
67. Email from Appellant's Counsel to the Honorable J. Cordell Maddox, Jr., accepting offer to go forward as a non-jury trial dated May 27, 2019
68. Email from Respondent's Counsel to the Honorable J. Cordell Maddox, Jr., accepting offer to go forward as a non-jury trial and concerned about sufficient time to present defense dated May 27, 2019
69. ***October 2, 2019 Proposed Order Submission with the Trial Court***
70. November 20, 2019 ***Trial*** Court Email Inquiry
71. November 26, 2019, Appellant's Response to November 20, 2019 ***Trial*** Court Email Inquiry
72. Email from the Law Clerk for the Honorable J. Cordell Maddox, Jr., regarding Judge Maddox preparing to rule on the case and conforming order to Judge Maddox's specifications dated February 4, 2020
73. Email from the Law Clerk for the Honorable J. Cordell Maddox, Jr., regarding Post Submission Follow-Up to Proposed Final Order & Judgment dated February 5, 2020
74. ***All*** June 18 ***and 24***, 2020, ***emails to the Trial Court regarding instructions, rulings and orders***
75. Email from the Law Clerk for the Honorable J. Cordell Maddox, Jr., regarding Appellant's Response to Respondent Mundy's Memo in Opposition to Motion to Reconsider dated June 24, 2020
76. ***(Proposed) Joint Voir Dire***
77. ***Maddox Construction, Inc. 30(b)(6) Dep. p. 119, lns. 16-24 (Kenny Gordon)***

JUSTIN O'TOOLE LUCEY, P.A.

/s/Justin Lucey

Justin O'Toole Lucey (SC Bar No. 15438)

Anna McCann (SC Bar No. 102314)

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Attorneys for Appellant

Mount Pleasant, SC
February 19, 2021

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PROOF OF SERVICE

I, the undersigned, do hereby certify that I have this date served the foregoing **AMENDED DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD OF APPEAL**, dated February 19, 2021, by personally serving the same pursuant to Section (g)(3) of the Supreme Court's Amended Order dated May 29, 2020, on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

David A. Anderson, Esquire
James B. Robey, III, Esquire
Carmen V. Ganjehsani, Esquire
P.O. Drawer 7788
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*Attorneys for Respondent Mundy's Construction, Inc. d/b/a
Mundy Construction*

A copy of the sent email is enclosed with this Certificate of Service.

JUSTIN O'TOOLE LUCEY, P.A.

/s/Justin Lucey

Justin O'Toole Lucey (SC Bar No. 15438)

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Attorneys for Appellant

Mount Pleasant, SC

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SC Court of Appeals

From: [Lee Weiland](#)
To: [David Anderson](#); [James Robey](#); [Carmen Ganjehsani](#)
Cc: [Lucey, Justin](#); [Anna McCann](#); [Jennifer Zambriczki](#); [Lee Weiland](#)
Subject: 2020-001103 Napier v. Mundy's Construction // Initial Reply Brief of Appellant and Amended Designation of Matters
Date: Friday, February 19, 2021 4:16:48 PM
Attachments: [20210219 Appellant's Initial Reply Brief.pdf](#)
[20210219 Proof of Service Reply Brief.pdf](#)
[20210219 Appellant's Amended Designation of Matter.pdf](#)
[20210219 Proof of Service Amended Designation of Matter.pdf](#)

Counsel,

Please find served upon you today, in compliance with the Supreme Court's Amended Order dated May 29, 2020, the Initial Reply Brief of Appellant, Amended Designation of Matters to be Included in the Record of Appeal, and respective Proofs of Record in the above-referenced appellate matter.

Please let me know if you have any questions.

Thank you,
Lee

Lee Weiland
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