RECEIVED
Mar 30 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

---

Appellate Case No. 2018-001230

---

One Belle Hall Property Owners Association, Inc., and Marvin T. Meek and Francis E. Hill, individually and on behalf of all others similarly situated, ..... Respondents,

v.

Builders FirstSource-Southeast Group, LLC, ..... Petitioner/Appellant.

---

**PETITION FOR REHEARING AND FOR REHEARING *EN BANC***

---

Pursuant to Rules 221(a), 240, and 260 of the South Carolina Appellate Court Rules, Appellant Builders FirstSource-Southeast Group, LLC ("Builders") requests rehearing of the Court's order issued March 15, 2021, dismissing Builders' appeal. Builders further requests rehearing *en banc* pursuant to Rule 219(b) of the South Carolina Appellate Court Rules[1]. This Court misapprehended the purported jurisdictional issues in this case and overlooked Builders' arguments and the procedural history of this case. Builders timely appealed the trial court's Order

---

[1] Consideration by the full court is necessary to secure and maintain uniformity in its decisions and the proceeding involves questions of exceptional importance - namely, the effect of *nunc pro tunc* orders and whether a written JNOV motion for reconsideration is permitted if filed within 10 days of the denial of an oral JNOV motion.

dated November 16, 2017 (and the subsequent Rule 59(e) motion denial order) and this Court should therefore vacate its order of dismissal and reinstate this appeal.[2]

## Argument

The Court's order of dismissal is based on two incorrect premises. First, the Court misapprehended the effect of the *nunc pro tunc* order the trial court signed on September 22, 2016. That order is unambiguous. The trial court retroactively entered judgment on the verdict as if it was entering the order on September 1, 2016. The *nunc pro tunc* order did not (and could not) address any motions filed *after* September 1, 2016. The Court's finding that Builders was required to file a motion to alter or amend within ten days, or appeal within thirty days, of its receipt of the September 1 *nunc pro tunc* order that was signed on September 22, 2016, is therefore erroneous.

Second, the Court's analysis of the procedural history as to setoff is factually incorrect and inconsistent with South Carolina law. Builders filed a written motion seeking determination of setoff seven days after trial concluded, filed a written memorandum in support of its motion and right for setoff prior to a hearing on the motion, orally moved again for setoff at an initial hearing before the trial court, and argued its entitlement to setoff at two different hearings. Builders then timely moved to alter or amend within ten days of the trial court's written order denying its right to setoff, and it timely appealed within thirty days of the trial court's denial of the motion to alter or amend. Those facts confirm the timeliness of this appeal as to the trial court's setoff rulings and should end this Court's jurisdictional inquiry. This Court's finding that Builders never moved for setoff overlooks the record and misapprehends South Carolina law, which provides that setoff rights arise by operation of law regardless of whether or when a party moves for setoff.

---

[2] Builders reasserts and incorporates into this petition its arguments addressing the merits of the trial court's setoff ruling as if fully re-stated herein. After reinstating this appeal, this Court should reverse the trial court.

Finally, this Court's finding that Builder's *written* motion seeking JNOV was a nullity as a "successive" post-trial motion is a misapprehension of the facts and a misapplication of South Carolina law. Builders' September 12, 2016 post-trial JNOV motion is properly construed as a motion for reconsideration, which Builders timely submitted within ten days after the trial court's oral post-trial JNOV motion denial (which occurred on September 1, 2016). The written JNOV reconsideration motion properly remains pending in the trial court and has never been ruled on regarding its merits because the trial court viewed the motion as a "nullity" and declined to address it. This was incorrect, and this Court should not have agreed with the trial court's characterization of the motion.

This Court should grant rehearing, determine it has jurisdiction and reinstate this appeal, and address the merits of Builders' setoff arguments.

## I. This Court misapprehended the effect of the trial court's *nunc pro tunc* order.

The dismissal order focuses on September 22, 2016, as the date triggering Builders' Rule 59(e) and appellate deadlines. The Court appears to interpret the *nunc pro tunc* order as denying the motions Builders filed *after* September 1, 2016, including the September 8 motion for setoff. This Court's ruling is a factual misapprehension and legal misapplication of the order.

The jury rendered its verdict on September 1, 2016. (R. 739–40). On that same day, an oral JNOV motion was made and denied. Although Rule 58, SCRCP provides that a judgment is to "forthwith" be entered upon a jury's verdict, this did not occur immediately after the jury's verdict. On September 8, 2016, Builders filed its Motion to Compel and Motion for Determination of Setoff. (R. 4492–93). On September 12, 2016, Builders filed its written motion captioned "Motion for Judgment, New Trial, or, in the Alternative, New Trial *Nisi Remittitur*." (R. 4494). On September 22, 2016, the trial court signed a Form 4 order dated "9-1-2016 nunc pro tunc." (R.

22–23). This unambiguous form judgment was the "separate document" that should have been entered following the jury's verdict on September 1, 2016, but which had not been entered. The trial court was, on September 22, 2016, correcting this omission *nunc pro tunc* with the Form 4 order, which it literally dated to be effective as if it had been entered on September 1, 2016. *See Irving v. Irving*, 67 So. 3d 776, 780 (Miss. 2011) (finding the effective date of an order was the *nunc pro tunc* date in the order, not the date the order was signed); *Daniels v. Comm'n for L. Discipline*, 142 S.W.3d 565, 573 (Tex. App. 2004) ("A nunc pro tunc judgment, although signed later, relates back to the date of the original judgment ***and is effective as of the earlier date***." (emphasis added)); *Hinkle v. Woolever*, 547 S.E.2d 782, 784 n.1 (Ga. Ct. App. 2001) ("[T]he nunc pro tunc entry made the divorce and the award of the policy to Mr. Hinkle effective as of that date.").

After the trial, and months later, the trial court considered substantial amounts of additional briefing and held two hearings regarding Builders' September 8 setoff motion and September 12 post-trial motion. It would not have expended these resources had it already ruled on the motions via the *nunc pro tunc* order it signed on September 22, 2016. The reason it held the hearings was because it had *not* addressed the set off motion (and still has not addressed the post-trial JNOV reconsideration motion). Again, the order signed by the trial court on September 22, 2016 is a *nunc pro tunc* order – and thus must be deemed to have been entered on September 1, 2016. Regardless of when the *nunc pro tunc* order was signed or received, it cannot affect motions filed *after* September 1, 2016.

Unambiguous orders, like unambiguous contracts and statutes, must be interpreted according to their plain meaning. *Doe v. Bishop of Charleston*, 407 S.C. 128, 135, 754 S.E.2d 494, 498 (2014) ("As a general rule, judgments are to be construed like other written instruments.

.... If the language employed is plain and unambiguous, there is no room for construction or interpretation, and the effect thereof must be declared in the light of the literal meaning of the language used."); *City of N. Myrtle Beach v. E. Cherry Grove Realty Co., LLC*, 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012) (same).

The September 22, 2016 signed order, on its face, is unambiguously a *nunc pro tunc* judgment retroactive to September 1, 2016. (R. 22–23). This Court's suggestion that September 22, 2016 – the date of the signing of that order --was instead the effective date of the judgment ignores the plain language of the Form 4 order. Accordingly, this Court misapprehended the effective date of the *nunc pro tunc* order.

Second, this Court misapprehended the effect of a *nunc pro tunc* order. That judgment belatedly memorialized the outcome of the September 1, 2016 proceedings. *See Ex parte Strom*, 343 S.C. 257, 264, 539 S.E.2d 699, 702 (2000) ("*Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect.").

On September 1, 2016, the trial court had not considered or denied Builders' motion for setoff because the motion had not yet been filed. It had only accepted a jury's verdict and denied Builders' oral post-trial motion. Accordingly, the *nunc pro tunc* order (effective September 1) did not deny—and could not have denied—Builders' September 8, 2016 setoff motion (or subsequent set off motion).

The *nunc pro tunc* order accomplished only what the trial court and clerk were required by law to do on September 1, 2016: enter judgment on the jury's verdict. *See* Rule 58, SCRCP ("[U]pon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, *the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court.*"

(emphasis added)). The clerk's and trial court's failure to formally enter the judgment until three weeks after the verdict did not change the nature of the judgment, and the *nunc pro tunc* order did not address or deny Builders' pending post-trial motions, including its motion for setoff.

Moreover, a trial court cannot grant or deny setoff until it reviews the settlement documents "to determine the amount of the settlement and its terms." *Huck v. Oakland Wings, LLC*, 422 S.C. 430, 438, 813 S.E.2d 288, 292 (Ct. App. 2018). The trial court in this case did not order the plaintiffs to produce their settlement agreements until a hearing on April 20, 2017, at which the trial court heard additional argument on Builders' setoff motion. (R. 869–73). The trial court had not reviewed the settlement documents when it signed the *nunc pro tunc* order on September 22, 2016, and therefore also could not have denied Builders' setoff motion on the merits at that time for this separate reason. Further, the trial court ultimately *granted* the motion to compel production of settlement documents at the April 20, 2017 hearing, *see* (R. 869–73), so any finding by this Court that the September 22, 2016 *nunc pro tunc* order *denied* the pending motion to compel and for determination of setoff overlooks the trial court's rulings and the procedural history regarding the setoff issue. This Court's finding to the contrary is a factual error and a misapprehension of both the order and South Carolina law.

## II. Builders moved for setoff and timely appealed the denial of its right to setoff.

This Court's dismissal order, respectfully, misapprehends the procedural record, overlooks Builders' arguments, and misapprehends South Carolina law regarding setoff. The time for Builders to move to alter or amend (or to appeal) the denial of its right to setoff did not begin to run until the trial court denied Builders' right to setoff. The trial court did not deny Builders' right to setoff until November 16, 2017, when it entered a written order denying Builders' setoff motion. (R. 26–44). For the first time, the trial court therein stated a rationale that Builder's set off motion

was untimely, among other things. Builders timely filed a motion to alter or amend the order denying setoff within ten days after receiving written notice of entry of that order, thus staying the time to appeal that order.[3] (R. 4624–48); *see also* Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); Rule 203(b)(1), SCACR ("When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion."). The trial court entered a written order denying Builders' motion to alter or amend on June 27, 2018, and Builders received written notice of entry of the order on June 28, 2018. (R. 45). Builders served its notice of appeal the next day, on June 29, 2018.

This procedural history shows that Builders timely appealed the trial court's setoff ruling. *See* Rule 203(b)(1), SCACR. This Court thus has jurisdiction over this appeal. Accordingly, on these facts alone, this Court should grant rehearing and reinstate this appeal.

The Court further overlooked or misapprehended several aspects of the jurisdictional issue purportedly arising from the trial court's setoff rulings. First, this Court's statement that Builders "only sought to compel settlement documents" and "never filed its subsequent set-off motion or any further briefing as to its entitlement to set-off" is incorrect. Builders repeated its assertion that it is entitled to setoff at least four times:

(1) Builders' original setoff motion, filed on September 8, 2016, sought a "determination of setoff." (R. 4492–93).

(2) Builders' memorandum in support of its September 8 setoff motion, filed on November 17, 2016, expressly asserted that the trial court must set off amounts

[3] Builders did not receive written notice of the trial court's order until November 27, 2017. *See* (R. 4624).

received by Plaintiffs from settling co-defendants against the jury's verdict. (R. 4581). This Court overlooked this request in its dismissal order.

(3) Builders orally moved for setoff again at the November 18, 2016 hearing at which the trial court heard the parties' setoff arguments. (R. 774–75).

(4) Builders argued its entitlement to setoff at the April 20, 2017 hearing at which the trial court heard additional argument on Builders' post-trial motions. (R. 838–73).

Accordingly, in finding Builders never moved for setoff or never filed further briefing addressing its entitlement to setoff, the Court overlooked or misapprehended the record and the procedural history of Builders' setoff request.

Second, Builders was not required to move for setoff at any particular time. *Ellis v. Oliver*, 335 S.C. 106, 110, 515 S.E.2d 268, 270 (Ct. App. 1999) (noting the setoff statute, section 15-38-50, "does not require that the rights thereunder be asserted at any particular juncture in the litigation"); *see also Tilley v. Pacesetter Corp.*, 355 S.C. 361, 376–77, 585 S.E.2d 292, 300 (2003) (rejecting an argument that a setoff motion came too late). Further, Builders' setoff rights arise by operation of law. *Ellis*, 335 S.C. at 110, 112, 515 S.E.2d at 270, 271 (addressing the question "whether the set-off required pursuant to § 15–38–50 arises by operation of law or must the party entitled to the set-off make a timely motion pursuant to the rules of civil procedure" and finding the setoff arose by operation of law). Hence, Builders' setoff motion cannot be untimely as a matter of law.

Builders timely moved to alter or amend the trial court's order denying Builders' motion for setoff, and it timely appealed the trial court's order denying its motion to alter or amend. Consequently, this Court has jurisdiction over this appeal. The Court should grant this petition, reinstate this appeal, and address the merits of the setoff issues raised by Builders.

## III. This Court should not dismiss this appeal on the basis that Builders' "JNOV motion" is a "nullity" as a successive post-trial motion.

Builders' September 12, 2016 Motion for Judgment, New Trial Absolute, or, in the Alternative, for New Trial *Nisi Remittitur* remains properly pending before the trial court. The trial court referenced, but did not rule on, the September 12, 2016 Motion -- calling it a "nullity" – in a footnote in her November 16, 2017 Order. (Order, p. 6, n.3, Rec. 00031). Builders has correctly maintained thereafter that the trial court should rule on the motion and not treat it as a nullity. This Court's dismissal order treating the September 12 motion as a "successive JNOV motion that was a nullity in the eyes of the law and did not suspend the time for appeal," is likewise in error and overlooks and misapprehends the motion and South Carolina law.

South Carolina courts do not rely on the label a litigant places on a motion in determining its effect. Instead, courts look to the substance of the motion to determine the requested relief. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 27–28, 609 S.E.2d 506, 510 (2005) (collecting cases emphasizing courts must look to the substance and effect of a motion and the relief requested, rather than to the label or form of the motion). Accordingly, the fact that Builders initially labeled its September 12, 2016 motion as a "Motion for Judgment, New Trial Absolute, or, in the Alternative, for New Trial *Nisi Remittitur*," (R. 4494), does not determine that the motion was a successive JNOV motion. *See Fields*, 363 S.C. at 27, 609 S.E.2d at 510 ("It is proper to treat Plaintiff's written motion as a Rule 59(e) motion even though it was erroneously captioned as a motion for new trial."). Rather, this Court must look at the substance of the motion.

Builders' post-trial motion is properly construed as a motion to reconsider the trial court's oral denial of its JNOV motion. The motion expressly invoked Rule 59 and renewed the grounds argued by trial counsel supporting a directed verdict. (R. 4494–95). As Builders explained in its appellate briefing, upon learning trial counsel made an oral JNOV motion immediately after the

verdict, did not make a new trial motion, and did not ask the trial court to allow ten days for written post-trial motions, Builders expressly withdrew any unpreserved grounds. (App. Br. 4 & n.7, 13–14; Reply Br. 6–7); *see also* (R. 4618–23). However, it expressly *maintained* its grounds for reconsideration of the trial court's denial of the original, oral JNOV motion. (R. 4618–23) (withdrawing certain grounds but maintaining Builders is entitled to reconsideration of the trial court's JNOV ruling). As such, the motion was *not* a nullity. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("A timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion."). Consideration of this full procedural history in context, rather than looking only at the label affixed to the September 12 post-trial motion, reveals the September 12 motion was, in substance and effect, a Rule 59(e) motion which stays the time for appeal according to the Supreme Court's opinions in *Elam* and *Fields*.

In ruling otherwise, this Court applied the same rationale it applied in *Matthews v. Richland County School District One*, 357 S.C. 594, 597–600, 594 S.E.2d 177, 178–80 (Ct. App. 2004). In *Matthews*, this Court held a first, written Rule 59(e) motion raising the identical grounds raised in a previous, oral JNOV/new trial motion was an improper, successive post-trial motion which did not stay the time to appeal. *Id.* The Supreme Court expressly overruled *Matthews* in *Elam*. *Elam*, 361 S.C. at 26, 602 S.E.2d at 781.

The Supreme Court identified two narrow exceptions to the general rule that a Rule 50 or 59 motion stays the time to appeal: (1) "when a party—instead of serving a notice of appeal—files a ***successive Rule 59(e) motion***, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment"; and (2) "when a party—instead of

serving a notice of appeal—recaptions a ***written JNOV/new trial motion***, which has been ruled on, and resubmits it as a virtually identical, ***written Rule 59(e) motion***." *Id.* at 20, 602 S.E.2d at 778 (emphases added). Neither of these exceptions apply here.

The *Elam* court drew a distinction between successive *written* post-trial motions raising identical grounds and a single written post-trial motion which follows, and raises identical grounds as, an *oral* post-trial motion. *Elam*, 361 S.C. at 19–20, 602 S.E.2d at 777–78. The court rejected the exact rationale applied by this Court here, stating: "We have found no foreign case similarly postured to the present case or *Matthews*, *i.e.*, a case in which a court held a ***written Rule 59(e) motion*** following an ***oral JNOV/new trial motion*** did not toll the time for appeal." *Id.* at 21, 602 S.E.2d at 778 (emphases added). Further, the *Elam* Court held parties usually are "free to file an initial Rule 59(e) motion, regardless of whether the previous JNOV/new trial motions were made orally or in writing, without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely," subject only to the two narrow exceptions identified above. *Id.*

The *Elam* court emphasized allowing a party one opportunity to seek reconsideration of the arguments raised in its initial JNOV motion ensures fairness and justice. *Id.* at 22, 602 S.E.2d at 779; *see also id.* at 23, 602 S.E.2d at 779 ("It is absolutely necessary *to justice*, that there should, upon many occasions, be opportunities of *reconsidering* the cause by a new trial." (quoting 11 Wright, Miller & Kane § 2801)). In fact, refusing to allow such a request for reconsideration—as the trial court and this Court have in this case—is inherently ***unfair***. *Id.* ("There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.

It is inherently unfair to disallow such an opportunity."). This rationale "holds true even when a party mislabels a post-trial motion." *Id.*

The Supreme Court further addressed the exact scenario presented here in *Fields*. The losing litigant in *Fields* made a simple oral motion for a new trial after the jury's verdict, and the trial court orally denied the motion. 363 S.C. at 26, 609 S.E.2d at 509–10. The litigant then filed a written new trial motion within ten days after the verdict. *Id.* at 26–27, 609 S.E.2d at 510. In addressing a challenge to its appellate jurisdiction, the Supreme Court held the written motion was "properly viewed as a motion for reconsideration under Rule 59(e), SCRCP to the extent it addressed the trial court's evidentiary rulings which Plaintiff challenged in her briefly stated oral motion at the end of the trial, . . . *even though it was erroneously captioned as a motion for new trial*." *Id.* at 27, 609 S.E.2d at 510 (emphasis added).

This Court overlooked the binding precedent in *Elam* and *Fields*, and misapprehended the nature of Builders' September 12 motion. Pursuant to *Elam* and *Fields*, a party is entitled to make both an oral JNOV motion immediately after the verdict *and* a subsequent, written motion raising the same grounds and asking the trial court to reconsider its JNOV ruling, regardless of how it labels the motion. *Elam*, 361 S.C. at 21, 602 S.E.2d at 778; *Fields*, 363 S.C. at 26–27, 609 S.E.2d at 509–10. Builders did exactly that. Builders' labeling the motion as a "Motion for Judgment, New Trial Absolute, or, in the Alternative, for New Trial *Nisi Remittitur*" is immaterial. *See id.* Like the appellant's motion in *Fields*, the substance and effect of Builders' motion seeks reconsideration of the trial court's denial of Builders' oral JNOV motion. This Court must rely on that substance and effect, not the label affixed to the caption. A proper application of *Elam* and *Fields* requires a finding that the September 12 motion was not a nullity and remains pending before the trial court. Builders' deadline to appeal the trial court's JNOV ruling has not expired

because the trial court still has not issued a final, appealable ruling on Builders' motion to reconsider on the merits. When the trial court finally rules on the motion, Builders will be entitled to appeal the ruling and any intermediate judgment or order not yet appealed. S.C. Code Ann. § 14-3-330(1). This Court should remand and instruct the trial court to consider the September 12 motion.

Finally, as explained above, the *nunc pro tunc* order did not (and could not) rule upon Builders' September 12 motion to reconsider – a motion filed *after* the *nunc pro tunc's* effective date of September 1, 2016. Further, the trial court expressly stated in the November 16, 2017 Order on appeal that it considered the September 12 motion a "nullity" in a footnote. The trial court has thus acknowledged in her November 16, 2017 Order that she *has not addressed* the September 12 motion on its merits[4]. The trial court should be ordered to do so.

The Court misapprehended these issues. Accordingly, the Court should grant rehearing and reinstate this appeal.

## Conclusion

Builders requests that the Court grant rehearing, reinstate this appeal, and address the merits of the set off issues raised by Builders. Further, the Court should grant rehearing and order

[4] The Court also erroneously relies on *Wright v. Craft*, 372 S.C. 1, 19, 640 S.E.2d 486, 496 (Ct. App. 2006), which is inapplicable to the jurisdictional issue in this appeal. *Wright* provides that a party must move for a directed verdict at the close of all the evidence to preserve the directed verdict motion and any subsequent JNOV motion for appellate review. *Id.* at 19–20, 640 S.E.2d at 49 ("Craft moved for a directed verdict at the close of Wright's case, but failed to renew the motion after concluding his presentation of evidence. Consequently, the denial of Craft's motion is ***not preserved*** for our review." (emphasis added)). It provides a preservation rule, not a jurisdictional requirement. A party's failure to properly preserve its JNOV motion for appeal may be a ground to affirm the trial court's ruling, but it is not a ground for dismissal of an appeal based on lack of jurisdiction. *See, e.g.*, *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17 (2017) (distinguishing between non-jurisdictional claim-processing rules and mandatory jurisdictional requirements provided by statute).

the trial court to consider the September 12, 2016 motion on its merits. Builders further requests that the Court consider this petition *en banc* because consideration by the full court is necessary to secure or maintain uniformity in its decisions and the proceeding involves questions of exceptional importance.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

C. Mitchell Brown
SC Bar No. 012872
E-Mail: mitch.brown@nelsonmullins.com
William C. Wood, Jr.
SC Bar No. 015111
E-Mail: bill.wood@nelsonmullins.com
Nicholas A. Charles
SC Bar No. 101693
E-Mail: nick.charles@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

*Attorneys for Defendant Builders FirstSource-Southeast Group, LLC*

Columbia, South Carolina

March 30, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

---

Appellate Case No. 2018-001230

---

One Belle Hall Property Owners Association, Inc., and Marvin T. Meek and Francis E. Hill, individually and on behalf of all others similarly situated, ..... Respondents,

v.

Builders FirstSource-Southeast Group, LLC, ..... Petitioner/Appellant.

---

**PROOF OF SERVICE**

---

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Builders FirstSource Southeast Group LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleading: **Petition for Rehearing and for Rehearing *En Banc***

Counsel Served:

**U.S. Mail (*only*)**
Justin O'Toole Lucey, Esquire
Dabny Lynn, Esquire
Anna Scarborough McCann, Esquire
Justin O'Toole Lucey, P.A.
415 Mill Street
Post Office Box 806
Mt. Pleasant, SC 29465

Eileen Hindman
Administrative Assistant

March 30, 2021

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street, 17th Floor
Columbia, SC 29201
T: 803.799.2000 F: 803.256.7500
nelsonmullins.com

William C. Wood, Jr.
T: (803) 255-9534 F: (803) 255-5167
bill.wood@nelsonmullins.com

March 30, 2021



**Via E-Mail and U.S. Mail**
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia SC 29201

RE: One Belle Hall v. Builders FirstSource
Appellate Case No. 2018-001230
Our File No. 000350/01800

Dear Ms. Kitchings:

Enclosed is a ***Petition for Rehearing and for Rehearing En Banc,*** in the above-referenced matter. We are sending our check in the amount of $50.00 for the required filing fee per U.S. Mail pursuant to the Supreme Court's Order of May 29, 2020, regarding Operation of the Appellate Courts during the Coronaviral Emergency.

By copy of this letter to all counsel, we are hereby serving them with a copy of the petition via U.S. Mail.

Very truly yours,

William C. Wood, Jr.

WCW:eh
Enclosure
cc: Justin O'Toole Lucey, Esq.
Dabny Lynn, Esq.
Anna Scarborough McCann, Esq.