



BEST HONEYCUTT, PA
ATTORNEYS AT LAW

November 10, 2021

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SC Court of Appeals

VIA EMAIL ONLY

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Builders FirstSource-Southeast Group, LLC v. Palmetto Trim and Renovation, et al.
Appellate Case No. 2021-001050

Dear Ms. Kitchings,

We are in receipt of Appellant Builders FirstSource-Southeast Group, LLC's ("BFS") October 25, 2021 letter to the Court in which it objects to the consolidation of several related appeals in this matter and proposes that the Court proceed with one of the appeals and stay the remaining seven. For the reasons set forth herein, Respondent ECC Contracting, LLC respectfully request that the Court reject BFS's recommendation.

At the outset, BFS contends that consolidation of the appeals may be problematic because Rule 214, SCACR, "does not address the situation here, where multiple appeals are being taken from multiple different orders in the same case." Any concern raised by BFS's interpretation of this Rule is unwarranted as the Court has discretion to consolidate individual appeals when each appeal shares identical dispositive issues. See, Limehouse v. Hulsey, 404 S.C. 93, 117, n. 2, 744 S.E.2d 566, 579, n. 2 (2013) (citing Rule 214, SCACR).

BFS attempts to overcome this hurdle by arguing "the issues in the appeals are so varied that it [will be] difficult to brief, argue, and decide the appeals together." However, this argument ignores that the Court is required to address each question raised on appeal in its opinion, so long as the question was necessary to the Court's decision. See, Rule 220(b), SCACR ("[E]very point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case."). Thus, to the extent the appeals contain distinct legal issues, and such issues are raised on appeal, consolidation will not prohibit the parties from presenting such issues in their briefs or at oral arguments, nor will it prevent the Court from addressing such issues in its opinion.

As an alternative to consolidation, BFS requests the Court to proceed with only one of the individual appeals and stay the remaining seven until the single appeal is resolved. In addition

to not being properly presented to the Court (i.e., by not presenting this request via a motion or petition), the proposed stay is improper as it effectively denies Respondents of the stayed appeals their right to defend their position – i.e., they would be prevented from presenting any distinct legal questions which weigh on the dispositive issues in their briefs and/or at oral arguments, but may nevertheless be bound by the Court’s decision in the single appeal allowed to proceed. Not only is this approach highly prejudicial to the rights of the “stayed” Respondents, but it also impedes the resolution of the underlying matter by requiring the Court to review the stayed appeals individually and postponing such review until after the non-stayed appeal is resolved. Surely, such an approach, which would require expending resources to review briefs and attend oral arguments in each individual appeal, is not in the interest of judicial economy.

As an additional matter, BFS calls attention to several other pending appeals that involve one or more Respondents in the present case and proposes the Court take a similar approach to these “other appeals.” Importantly, the “other appeals” have not been consolidated by the Court and the “other appeals” are much further along in the appellate process than those involved in the case at issue – i.e., two are ready for consideration by the Court and one is awaiting submission of final briefs. As a Respondent in one of the “other appeals” (i.e., Builders FirstSource - Southeast Group, LLC v. ECC Contracting LLC, et al. (Appellate Case No. 2020-000415)), Respondent ECC Contracting, LLC objects to BFS’s suggestion that any of the “other appeals” be stayed. Such a stay would be extremely prejudicial to Respondents of the “other appeals” and would not be in interest of judicial economy.

Unlike the prejudicial approach proposed by BFS, consolidation of the eight appeals at issue is not only appropriate, but it is also the best way to ensure that the appeals are fairly and timely resolved. As such, Respondents respectfully request the Court reject BFS’s proposal and proceed with the consolidated appeals in the present matter as directed in the Court’s October 7, 2021 correspondence.

Should the Court require any additional information or discuss this matter further, Respondent ECC Contracting, LLC would welcome the opportunity to participate in a status conference.

Sincerely,

BEST HONEYCUTT, P.A.

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