

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**RECEIVED**  
**Dec 21 2021**

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

J.C. Nicholson, Jr., Circuit Court Judge

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Appellate Case No. 2020-001048

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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,

v.

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 Respondents.

And

Lennar Carolinas, LLC, Appellant,

v.

The Earthworks Group, Inc., Volkmar Consulting Services, LLC, Geometries 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, Decor 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, Decor Corporation, DVS, Inc., Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., South Carolina Exteriors, LLC, Builders Firstsource Southeast Group, LLC, are also Respondents.

And

Decor Corporation, Fourth Party Plaintiff,

v.

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, Isidini Mejia, Juan Perez, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Ricardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sebastio Luiz de Araujo, and John Does 1-4, Fourth Party Defendants,

Of whom Patricia Damico, Joshua and Brettany Beutow, Bryan and Cynthia Camara, Matthew Collins, Jonathan and Teresa Douglas, Czarra and Chad England, Lena Lucas, and Danny and Ellen Davis Morrow are the Petitioners.

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PETITIONERS' REPLY TO THE SUBCONTRACTOR RESPONDENTS'  
RETURN TO PETITIONERS' MOTION TO STRIKE

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Petitioners, Patricia Damico, Joshua and Brettany Beutow, Bryan and Cynthia Camara, Matthew Collins, Jonathan and Teresa Douglas, Czarra and Chad England, Lena Lucas, and Danny and Ellen Davis Morrow (collectively, "Petitioners"), through their undersigned counsel, hereby respectfully submit this very brief reply to the Return of Respondents Spring Grove Plantation Development, Inc., Manale Landscaping, LLC, Super Concrete of SC, Inc., Myers Landscaping, Inc., Knight's Concrete Products, Inc., Knight's Redi-Mix, Inc., Coastal Concrete Southeast, LLC, Coastal Concrete South East II, LLC, Guaranteed Framing, LLC, LA New Enterprises, LLC, Décor Corporation, Raul Martinez Masonry, LLC, Alpha Omega Construction Group, Inc., and South Carolina Exteriors, LLC (collectively, "Subcontractor Respondents").

## ARGUMENT

### I. SUBCONTRACTOR RESPONDENTS FAILED TO COMPLY WITH RULE 242, SCACR.

Subcontractor Respondents contend that “Damico has not identified any appellate court rule with which the undersigned Respondents have failed to comply.” This is patently incorrect. Petitioners’ Motion to Strike clearly delineates how the Subcontractor Respondents failed to comply with Rule 242(f), SCACR. Rule 242(f), SCACR, sets forth the requirements for opposing a Petition for Writ of Certiorari. Specifically, the Rule states: “Within thirty (30) days after service of the petition, respondent *shall* serve a copy of his return on opposing counsel, and *shall* file with the Clerk of the Supreme Court one original and six (6) copies of his return and proof of service showing that the return has been served. The return *shall include an argument on each question and may include a counter-statement of the case and of the questions presented for review.*” [Emphasis added]. Subcontractor Respondents’ Return completely ignores Petitioners’ argument as to Rule 242(f) and, again, fails to identify a single reason why they waited over a year to file anything with this Court.

Rule 242(f) is more than just a formality. It allows for all affected parties to know where each-other stands with regard to the Petition. It also provides a Petitioner with ample opportunity to brief and address any arguments made by a Respondent should the Petition be granted. For example, if the Petition is granted, as is the case here, Rule 242(i) provides the Petitioner with an *additional* thirty (30) days to prepare and serve a final brief. Under the requirements set forth under Rule 242(f), all parties would have, at this stage, already filed initial briefs with the Court addressing those issues raised in the Petition. In other words, Petitioners would know where each Respondent stands before preparing and filing their final brief, because each Respondent would have included

“an argument on each question” and a “counter-statement of the case and questions presented for review.” The Subcontractor Respondents did not do that. They ignored Rule 242(f) altogether, failing to file anything with this Court for over a year. Subcontractor Respondents, instead, submitted a joint brief at the eleventh hour “out of an abundance of caution and to preserve the arguments they made to the Court of Appeals.” In doing so they raise and misconstrue arguments that were never made in the history of this litigation, and which directly contradict their earlier position. Subcontractor Respondents are, again, unable to articulate a single reason why they chose to ignore the Petition or file anything with this Court for over a year. Whether the intention was to “surprise” Petitioners or simply an effort to circumvent the Court’s rules in an attempt to disadvantage Petitioners, the result should be the same: Subcontractor Respondents’ Brief should be stricken. They should not be permitted to participate at Oral Argument or divert attention away from those matters properly before this Court.

#### CONCLUSION

For the reasons stated hereinabove, Petitioners respectfully request that the Court strike Subcontractor Respondents’ Brief and the unpreserved arguments contained therein. Not a single one of the Subcontractor Respondents filed a Return to Petitioners’ Petition for Writ of Certiorari as required by Rule 240(f), SCACR. Subcontractor Respondents have, instead, waited around more than a year before attempting to now involve themselves in a case which they have otherwise ignored. In the alternative, Petitioners submit that Subcontractor Respondents’ arguments be dismissed and/or otherwise denied for those reason already set forth in Petitioners’ trial and appellate court briefs, the Petition, and their Reply Briefs.

[Signature on following page]

Respectfully submitted,

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Charleston, South Carolina