

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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

Appellate Case No. 2020-001048

Case No. 2014-CP-08-2424

Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Buetow, 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, Plaintiffs.

Of whom Patricia Damico and Lenna Lucas, Individually and on behalf of all others similarly situated, Joshua and Brettany Buetow, Jonathan and Theresa Douglass, Danny and Ellen Davis Morrow, Czara and Chad England, Bryan and Cynthia Camara, and Matthew Collins are Petitioners,

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, Respondent,

v.

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, 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, Isidru Mejia, Juan Perez, Ernesto M. 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.

**LENNAR CAROLINAS, LLC'S
RETURN TO PETITIONERS' MOTION TO STRIKE
JOINT RESPONDENTS' BRIEF**

Respondent Lennar Carolinas, LLC ("Lennar") respectfully submits this Return to 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"), Motion to Strike the Joint Brief of the Subcontractor Respondents.

None of the issues raised in the Petition for a Writ of Certiorari requested review of the Court of Appeals' decision related to the subcontractor defendants. The Court of Appeals simply found "the circuit court did not specifically rule on Lennar's motions to compel the subcontractors and the developer, Spring Grove Plantation, Inc. to arbitration" and, therefore, "remand[ed] those motions to the circuit court for a ruling." *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 199, 844 S.E.2d 66, 72 (Ct. App. 2020), *reh'g denied* (July 1, 2020), *cert. granted* (May 28, 2021).

The decision of the Court of Appeals to remand the subcontractor defendants' issues to the circuit court is not before the Court because that decision was not raised in the Petition for a Writ of Certiorari or in the Petitioners' Brief. *See Sloan v. Dep't of Transp.*, 365 S.C. 299, 307-08, 618 S.E.2d 876, 880 (2005) ("Issues not raised in the Petition for a Writ of Certiorari are not preserved for review by this Court."); *see also McCray v. State*, 317 S.C. 557, 559 n.1, 455 S.E.2d 686, 687 n.1 (1995). Since the Court of Appeals' decision regarding the issues raised in the appeal by the subcontractor defendants is not at issue in Petitioners' Writ of Certiorari, Lennar's only position is that the subcontractor defendants are not direct respondents to any of the issues raised by the Petitioners. Accordingly, none of the time allotted to "Respondents" during the oral argument scheduled to be held on Tuesday, February 1, 2022, should be allocated to the subcontractor defendants because they are not direct respondents in this matter.

Otherwise, Lennar takes no position on the arguments raised in the Subcontractor Defendants' Joint Respondents' Brief in support of the Court of Appeals' decision to enforce the arbitration provision in the Purchase and Sale Agreements between Lennar and Petitioners.

s/Katon E. Dawson Jr.
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