

THE STATE OF SOUTH CAROLINA
In 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 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 CollinsRespondents.

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, Inc. and Rick Bryant,.....Defendants,

Of which 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 are.....Respondents.

And

Lennar Carolinas, LLC is.....Appellant.

v.

The Earthworkers 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 A.C. & A. Concrete, Inc., Alpha Omega Construction Group, Inc., Builders FirstSource-Southeast Group, LLC, Coastal Concrete of Southeast, LLC, Coastal Concrete of Southeast II,

LLC, Construction Applicators of Charleston, LLC, Décor Corporation, DVS, Inc., Guaranteed Framing, LLC, Knight’s Concrete Products, Inc., Knight’s Redi-Mix, Inc., LA New Enterprises, LLC, Land/Site Services, Inc., Myers Landscaping, Inc., Ozzy Construction, LLC, Raul Martinez Masonry, LLC, South Carolina Exteriors, LLC, and Volkmar Consulting Services, LLC areRespondents.

And

Décor Corporation,Respondents.

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, N&B Construction, LLC, Jose Dias Rodrigues, Livia Sousa, Jose Paz Castro Hernandez, Divinio Aperecido Corgosinho, Ricardo Chiche, CEBS Construction, Bayshore Siding and Flooring, Sabastio Liuz De Araujo, and John Doe 1-4,.....Fourth-Party Defendants.

Of whom

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

RETURN OF TO PETITIONERS’ PETITION TO LIFT STAY AS TO DISCOVERY AND
SUBCONTRACTOR CLAIMS ON BEHALF OF RESPONDENT SUPER CONCRETE OF
SC, INC.

Respondent Super Concrete of SC, Inc. (“Super Concrete”) opposes Petitioners’ Petition to Lift the Stay as to Discovery and Subcontractor Claims and would show that it should be denied as to Super Concrete for the following reasons.

PROCEDURAL HISTORY

This matter involves alleged defective construction of single-family residences in a development known as The Abbey at Spring Grove Plantation in Moncks Corner, South Carolina. Lennar Carolinas, LLC (“Lennar”) developed, constructed, and sole the residences. Lennar

subcontracted some of its work to various subcontractors, including Super Concrete. Petitioners filed a Summons and Complaint in this action on October 30, 2014. (R. pp.24-43.) On February 17, 2015, Lennar filed its Answer, Cross-Claims, and Third-Party Complaint. (R. pp.42) Therein, Lennar included claims against Super Concrete. On June 1, 2015, Lennar filed a Motion to Compel Arbitration. (R. pp. 259) On November 23, 2015, Petitioners filed a First Amended Complaint and therein they asserted direct claims against Lennar, Super Concrete, five other subcontractors, and the initial developer. (R. pp. 75.)

This appeal arises from the denial of Lennar's motion to compel arbitration against Petitioners and its subcontractors. (R. pp. 3:23; 257-70.) The trial court denied Lennar's motion on September 21, 2016. (R. pp. 4-23.) The trial court denied a motion for reconsideration on October 26, 2016. (R. pp. 3.)

On November 29, 2016, Lennar moved the Court of Appeals to enforce the stay. (Pet. To Lift Stay, Exh. B.) Lennar asserted that several motions were pending a hearing that directly affected the issues on appeal. *Id.* at p.5-6. These included Petitioner's motion for class certification and motions to compel against Lennar and other parties for not responding to discovery requests. *Id.* Lennar also asserted that a party had noticed the deposition of its corporate representative. *Id.* at p.6. Petitioners did not file an opposition to Lennar's Motion to Enforce Stay. The issue of Petitioners' direct claims against Lennar's subcontractors (whether asserted yet or not) was not brought to the attention of the Court of Appeals. The Court of Appeals granted Lennar's motion and ruled that all matters affected by the order on appeal are stayed. (Pet. To Lift Stay, Ex. C.) The order did not specify any areas of the case (including discovery by or toward Lennar's subcontractors directed at each other, Plaintiffs, or Lennar) that were not affected by the appeal.

On February 27, 2018, Petitioners moved before the trial court to lift the automatic stay. (Pet. To Lift Stay, Exh. D.) Petitioners requested to continue discovery in the trial court while this appeal is pending. *Id.* at pp. 3, 12. The trial court granted Petitioners' motion and allowed discovery to proceed. (Pet. To Lift Stay, Ex. E.) Lennar petitioned the Court of Appeals to review the trial court's order. (Pet. To Lift Stay, Ex. F.) Petitioners opposed the appeal arguing that the discovery process would not be affected by the appeal. (Pet. To Lift Stay, Ex. G.) The Court of Appeals granted Lennar's petition and denied Petitioners' request for a rehearing. (Pet. To Lift Stay, Ex. H and I.) With the current petition, Petitioners now ask (for the third time) to avoid the automatic stay to conduct discovery.

ARGUMENTS

Petitioners ask for the stay to be lifted so they can continue the discovery process and their claims against Lennar's subcontractors because Petitioners argue Lennar changed its position during oral arguments and now conceded that Lennar cannot force Petitioners to arbitrate their direct claims against the subcontractors such as Super Concrete. Lennar's position on Petitioners' direct claims against Super Concrete is not controlling and it does not alter the matter relevant to the stay, namely, the discovery process available to Super Concrete during this appeal. Pursuant to Rule 241, SCACRP, an appeal acts to automatically stay the matter, except for "matters not affected by the appeal." Petitioners allege conducting discovery with the subcontractors and pursuing their claims against them does not affect the appeal, but Petitioners fail to explain how they intend to conduct discovery without Lennar or without the third-party defendant subcontractors of whom Petitioners have not sued. The petition should be denied because the discovery process is affected by the appeal.

Petitioners' First Amended Complaint asserted claims against Lennar, Spring Grove Plantation Development (the initial owner/developer and seller), Manale Landscaping, LLC, Super Concrete of SC, Inc., Southern Greene, Inc., TJB Trucking/Leasing, LLC, Paragon Site Constructors, Inc., Civil Site Environmental, and Rick Bryant. (R. pp. 75.) Thereafter, Lennar asserted cross-claims against its co-defendants and third-party claims against nineteen of its other subcontractors. Petitioners did not thereafter amend or move to amend to asserted direct claims against those nineteen other subcontractors. As to those subcontractors, the only claims they face in this matter are the third-party claims by Lennar for which Lennar seeks to compel arbitration. If the Court grants the petition, the stay would still prohibit Super Concrete from engaging in discovery (such as interrogatories, requests for production of documents, subpoenas, requests for admissions, depositions, and motions) to obtain critical project information and documents involving these other nineteen subcontractors and Lennar. Should Petitioners, Super Concrete, or the other direct defendants engage in depositions among themselves or of non-parties, said depositions would be subject to duplication and wasteful expenditures when those depositions were retaken after this appeal is resolved. Such constrains on the discovery available to Super Concrete and the possibility for the significant expense of duplicative available discovery would be highly prejudicial to Super Concrete.

CONCLUSION

For the foregoing reasons, Super Concrete requests the Court deny the Petition to Lift the Automatic Stay.

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