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MAY 13 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENTLEY D. PRICE  
CIRCUIT COURT JUDGE

---

APPELLATE CASE NO. 2022-000469  
CASE NO. 2019-CP-07-02629

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Margaret A. Eberly and Barbara J. Pavelik,

**PLAINTIFFS,**

versus

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather  
Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC,

**DEFENDANTS,**

Of whom

D.R. Horton, Inc. is

**APPELLANT,**

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.

**RESPONDENTS.**

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**RESPONDENTS LATHER CONSTRUCTION, INC., AND  
LATHER CONSTRUCTION, SC, INC.'S MOTION TO  
DISMISS APPEAL**

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Respondents Lather Construction, Inc., and Lather Construction, SC, Inc.’s (hereinafter collectively referred to as “Lather”) hereby move for an order dismissing the above-captioned appeal for failure to timely and properly serve a Notice of Appeal naming Lather as respondents within thirty (30) days after receipt of written notice of entry of the order or judgment as required by Rules 203(b)(1) and 262(c), SCACR. Lather moves for this relief upon the following grounds:

On March 11, 2022, the circuit court issued an order granting summary judgment to Lather and co-defendant, Hutton’s Landscapes, Inc. (“Hutton’s”), on the cross-claims asserted by D.R. Horton, Inc. (“D.R. Horton”). The circuit court issued its order denying D.R. Horton’s motion to alter or amend judgment on March 24, 2022. See Orders attached hereto as Exhibits “A” and “B” respectively. D.R. Horton has acknowledged that it received written notice of the entry of the order denying the motion to alter or amend judgment on March 24, 2022. See Notice of Appeal attached hereto as Exhibit “C.”

Rule 203(b)(1) of the South Carolina Appellate Court Rules requires that “[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment,” or “[w]hen a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) 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.”

“Service of the notice of appeal is a jurisdictional requirement, and th[e] [c]ourt has no authority to extend or expand the time in which the notice of intent to appeal must be served.” Camp v. Camp, 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010) (quoting Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)). Based upon the circuit court’s issuance of its

order denying D.R. Horton's motion to alter or amend judgment on March 24, 2022 and D.R. Horton's receipt of written notice of such order on the same day, any notice of appeal was required to be served upon Lather naming it as respondents no later than April 25, 2022 for this Court to have appellate jurisdiction to consider the appeal.

Furthermore, Rule 262(c) provides that service under the Appellate Court Rules is to be made upon the attorney if the party is represented by an attorney and prescribes three methods of service. First, service under Rule 262(c) may be made by delivering a copy of the document upon the attorney by either handing it to the attorney or leaving it at the office of that person with a clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. See Rule 262(c)(1).

Second, service under Rule 262(c) may be made by "depositing a copy in the U.S. mail, properly addressed to the person at that person's last known address with sufficient first-class postage attached." See Rule 262(c)(2).

Finally, service may be made under Rule 262(c)(3) "by electronic means in a manner provided by order of the Supreme Court of South Carolina." The Supreme Court issued an order on August 25, 2021, which was in effect for the relevant time periods of this appeal, establishing the method for the electronic service of documents in the appellate courts. Paragraph (d)(1) of this August 25, 2021 order provided that "[a] lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document." See Supreme Court's

August 25, 2021, Order, ¶ (d)(1), a copy of which is attached hereto as Exhibit “D.”

D.R. Horton filed a Notice of Appeal on April 11, 2022, which named only Plaintiffs Margaret A. Eberly and Barbara J. Pavelik as respondents to the appeal. The Notice of Appeal listed the only other counsel of record as the Plaintiffs’ attorneys. The Proof of Service to the Notice of Appeal stated that service was accomplished by depositing a copy of the Notice of Appeal in the United States Mail to the Plaintiffs’ attorneys, Alexandra S. Williams and Benjamin A.C. Traywick of the Ben Traywick Law Firm, LLC, on April 11, 2022. This Notice of Appeal was not served upon any other attorneys of record in the case via the three methods authorized for service under Rule 262(c). See Notice of Appeal attached hereto as Exhibit “C.”

Therefore, Lather was not named as respondents to the appeal by D.R. Horton in its Notice of Appeal filed on April 11, 2022. Counsel for Lather was also not served by April 25, 2022, the last day of the thirty (30) day time period for service of the notice of appeal, with a copy of a Notice of Appeal naming Lather as respondents by either hand delivery, U.S. Mail, or via service by D.R. Horton’s attorneys by using the primary e-mail addresses listed in the Attorney Information System (AIS) for Lather attorneys of record.

On April 28, 2022, three days after the expiration of the thirty (30) day time period for service of the notice of appeal, D.R. Horton served an Amended Notice of Appeal upon counsel for Lather via U.S. Mail which now named Lather, along with Hutton’s, as respondents. See Amended Notice of Appeal, attached as Exhibit “E” hereto. In the cover letter to this Court, counsel for D.R. Horton described its failure to initially name Lather and Hutton’s as respondents to the appeal as a “scrivener’s error.” See April 28, 2022 Letter, attached hereto as Exhibit “F.”

D.R. Horton’s failure to name Lather as respondents to the appeal and its corresponding failure to serve counsel for Lather with a Notice of Appeal naming Lather as respondents within

the thirty (30) day time period set forth under Rule 203(b)(1) and pursuant to the methods of service prescribed in Rule 262(c) is not a mere scrivener's error, but rather a failure of D.R. Horton to perfect its appeal against Lather in accordance with the requirements of the Appellate Court Rules.

A notice of appeal must be timely served because service of the notice of appeal is jurisdictional and therefore, the appellate court cannot extend the time for serving the notice of appeal. See Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (“[The Supreme Court] has consistently stated that service of the Notice of Appeal is a jurisdictional requirement, and [the appellate court] has no authority to extend or expand the time in which the Notice of Appeal must be served.”); see also Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act *except the time for serving the notice of appeal* under Rules 203 and 243 may be extended” (emphasis added)).

The notice of appeal must also be properly served upon the parties because the appellate court also cannot waive procedural defects in serving the notice. The failure of a party to comply with the procedural requirements for perfecting an appeal deprives the court of appellate jurisdiction over the case. Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 82 n.5, 529 S.E.2d 6, 7 n.5 (2000); see also State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (holding the failure of a party to comply with the procedural requirements for perfecting an appeal from the magistrate's court deprived the circuit court of appellate jurisdiction over the case).

The Supreme Court has also held that an appeal against two defendants was required to be dismissed when the two defendants were not served with a notice of appeal naming them as respondents within the thirty (30) day time period prescribed by Rule 203(b)(1). Conner v. City

of Forest Acres, 348 S.C. 454, 460–62, 560 S.E.2d 606, 609–10 (2002).

The last day for D.R. Horton to have served the Notice of Appeal upon Lather pursuant to the authorized methods for service under Rule 262(c) naming Lather as respondents was April 25, 2022. D.R. Horton did not timely or properly serve a Notice of Appeal naming Lather as respondents until April 28, 2022 – three days too late to confer appellate jurisdiction upon this Court. As such, this Court “lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party [here, D.R. Horton] by extending or ignoring the deadline for service of the notice.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

For the reasons set forth herein, Respondents Lather Construction, Inc., and Lather Construction, SC, Inc. therefore respectfully requests this Court to dismiss the appeal of Appellant D.R. Horton, Inc. for lack of appellate jurisdiction due to the untimely and improper service of the Notice of Appeal.

Respectfully submitted,

/s Scott H. Winograd

Jeffrey A. Ross, Bar No.: 74254

Philip P. Cristaldi, III, Bar No.: 102219

Scott H. Winograd, Bar No.: 103483

863 Coleman Blvd., Ste. B

Mt. Pleasant, South Carolina 29464

Phone: (843) 329-4040

Email: [jross@rclawsc.com](mailto:jross@rclawsc.com)

[pcristaldi@rclawsc.com](mailto:pcristaldi@rclawsc.com)

[swinograd@rclawsc.com](mailto:swinograd@rclawsc.com)

***Attorneys for Lather Construction, Inc. and  
Lather Construction SC, Inc.***

Mt. Pleasant, South Carolina

May 12, 2022

# **EXHIBIT “A”**

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF Beaufort  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0702629

Margaret A Eberly et al  
PLAINTIFF(S)

Lather Construction Inc et al  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter came before the Court as Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment.

Defendant Hutton's Landscapes, Inc.'s Motion for Summary Judgment on the Cross-Claims of D.R. Horton and Defendant Lather Construction, Inc.'s Joinder in Hutton's Motion for Summary Judgment are granted.

ORDER INFORMATION

This order  ends  does not end the case.  See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/11/2022 .

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APR 13 2022

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629

**Court Reporter:**

**E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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ELECTRONICALLY FILED - 2022 Mar 11 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0702629



Beaufort Common Pleas

**Case Caption:** Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design  
Division Of Isi Llc , defendant, et al  
**Case Number:** 2019CP0702629  
**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

# **EXHIBIT “B”**

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Margaret A. Eberly and Barbara J. Pavelik;  
Plaintiffs,

vs.

Advanced Flooring & Design Division of ISI,  
LLC et. al.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2019-CP-07-02629

**ORDER DENYING DEFENDANT D.R.  
HORTON, INC'S MOTION TO ALTER  
OR AMEND JUDGMENT**

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**SC Court of Appeals**

The Defendant D.R. Horton, Inc. filed a motion asking this Court to reconsider its March 11, 2022 Order.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).<sup>1</sup> Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, \*2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson

<sup>1</sup> Rule 59 is substantially the same as the Federal Rule. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat’l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After consideration of the issues raised in Defendant’s motion, the Court hereby DENIES Defendant D.R. Horton, Inc.’s Motion to Alter or Amend Judgment.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Beaufort Common Pleas

**Case Caption:** Margaret A Eberly , plaintiff, et al VS Advanced Flooring & Design  
Division Of Isi Llc , defendant, et al  
**Case Number:** 2019CP0702629  
**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

# **EXHIBIT “C”**

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

**NOTICE OF APPEAL**

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022 as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

Jason Imhoff (S.C. Bar No. 69355)

John T. Crawford, Jr. (S.C. Bar No. 69682)

Thomas E. Dudley, III (S.C. Bar No. 66154)

Kenison, Dudley & Crawford, LLC

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(864) 242-4844 (fax)

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dudley@conlaw.com

*Attorneys for Appellant*

**Other Counsel of Record:**

Alexandra S. Williams (S.C. Bar No. 102862)

Benjamin A.C. Traywick (S.C. Bar No. 74027)

Ben Traywick Law Firm, LLC

171 Church Street, Ste. 340

Charleston, South Carolina 29401

ben@bentraywicklaw.com

ali@bentraywicklaw.com

*Attorneys for Respondent*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APR 13 2022

**SC Court of Appeals**

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

CASE NO. 2019-CP-07-02629

Margaret A. Eberly and Barbara J. Pavelik.....Respondent,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on Respondent by depositing a copy to them in the United States Mail, postage prepaid, on April 11, 2022, addressed as follows:

Alexandra S. Williams, Esquire  
Benjamin A.C. Traywick, Esquire  
Ben Traywick Law Firm, LLC  
171 Church Street, Ste. 340  
Charleston, South Carolina 29401

Hon. Jerri Ann Roseneau  
Beaufort County Clerk of Court  
P.O. Box 1128  
Beaufort, South Carolina 29901

s/ Jason M. Imhoff

---

Jason Imhoff (S.C. Bar No. 69355)  
John T. Crawford, Jr. (S.C. Bar No. 69682)  
Thomas E. Dudley, III (S.C. Bar No. 66154)  
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[dudley@conlaw.com](mailto:dudley@conlaw.com)  
*Attorneys for Appellant*

April 11, 2022



**KENISON, DUDLEY  
& CRAWFORD, LLC**  
ATTORNEYS AT LAW

Jason M. Imhoff  
Of Counsel  
Licensed in SC  
704 East McBee Avenue  
Greenville, SC 29601  
864.242.4899  
imhoff@conlaw.com

April 11, 2022

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APR 13 2022

**SC Court of Appeals**

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**Re: Margaret A. Eberly & Barbara J. Pavelik, Respondents v. D.R. Horton, Inc.,  
Appellant  
Beaufort County Case No. 2019-CP-07-02629**

Dear Ms. Kitchings:

Enclosed please find the following for filing in the above-referenced matter:

1. Original and two copies of the Notice of Appeal;
2. Original and two copies of Proof of Service of the Notice of Appeal on the Respondents and the Clerk of Court for Beaufort County;
3. Copy of the Orders which are challenged on appeal; and
4. Filing fee of \$250.00.

Please return the file-marked copies to me in the enclosed self-addressed stamped envelope.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

*Jason M. Imhoff*

Jason M. Imhoff

**Enclosures**

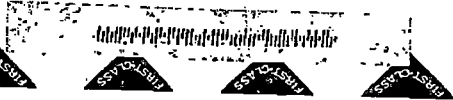
**cc(w/encl.): Alexandra S. Williams, Esquire  
Benjamin A.C. Traywick, Esquire**

FIRST CLASS  
US POSTAGE  PITNEY BOWES  
ZIP 29601 \$ 001.960  
02 74  
0000015070 APR 11 2022

**KENISON, DUDLEY & CRAWFORD, LLC**  
ATTORNEYS AT LAW  
704 East Market Avenue • Greenville, South Carolina 29601

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APR 13 2022  
SC Court of Appeals

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211



# **EXHIBIT “D”**

## Court News ...

2021-08-25-02

# The Supreme Court of South Carolina

RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules

Appellate Case No. 2020-000447

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### ORDER

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**(a) Purpose.** Pursuant to Rule 262(a)(3) and (c)(3) of the South Carolina Appellate Court Rules (SCACR), this Court may by order establish methods for the electronic filing and service of documents. Since the Order Relating to the Operation of the Appellate Courts during the Coronavirus Emergency has been rescinded, including the electronic methods of filing and service provided for by that order, the purpose of this order is to specify the permissible methods of electronic filing and service under Rule 262, SCACR. For the purpose of this order, "Appellate Court" means the Supreme Court of South Carolina or the South Carolina Court of Appeals.

**(b) Electronic Methods of Filing.** Filings with an appellate court may be made electronically using the methods listed below.

**(1) Electronic Filing by Lawyers.** Lawyers who are licensed to practice law in South Carolina may utilize OneDrive for Business to electronically submit documents for filing with the Supreme Court and the Court of Appeals, and *lawyers are strongly encouraged to use this method of filing*. More information about this method, including registration and filing instructions, is available in the Attorney Information System (<https://ais.sccourts.org/AIS>) under the tab "Appellate Filings."

**(2) Filing by E-mail.** Filings may be made by e-mail. For the Supreme Court, the e-mail shall be sent to [suptcfilings@sccourts.org](mailto:suptcfilings@sccourts.org); for the Court of Appeals, the e-mail shall be sent to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org). This method may not be suitable for large documents, and if it becomes necessary to split a document into multiple parts, the e-mail shall identify the part being sent (i.e., Record on Appeal, Part 1 of 4). A document filed by this method must be in an Adobe Acrobat file format (.pdf).

**(3) Faxing Documents.** A document may be filed by an electronically transmitted facsimile copy. The fax number for the Supreme Court is 803-734-1499. The fax number of the Court of Appeals is 803-734-1839. While this method is well suited for relatively small documents, depending primarily upon the limitations of the sending fax machine, it may not be possible to send large documents, such as a record on appeal, in a single transmission. If it becomes necessary to split a document into multiple parts to make the fax transmission, a separate cover sheet should be used on each part to identify the document (i.e., Brief of Appellant, Part 1 of 4). In the event, the facsimile copy is not sufficiently legible, the clerk of the appellate court may require the party to provide a copy by mail.

**(c) Filing Date and Payment of Fees for Documents Filed Electronically.** When filed using one of the methods specified in (b) above, a document transmitted and received by 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. If a filing fee is required for the document, a check or money order for the fee must be mailed or delivered to the appellate court within five (5) days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order.

**(d) Electronic Service Using AIS E-mail Address.**

**(1) Service on Another Lawyer.** A lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.<sup>1</sup>

**(2) Service by an Appellate Court.** An appellate court may send an order, opinion or other correspondence to a person admitted to practice law in South Carolina using that lawyer's primary e-mail address in AIS.

**(3) Service on Persons Admitted Pro Hac Vice.** For attorneys admitted pro hac vice under Rule 404, SCACR, service on the associated South Carolina lawyer using an electronic method permitted by this order shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

This order is effective immediately.

s/Donald W. Beatty\_\_\_\_\_C.J.  
s/John W. Kittredge\_\_\_\_\_J.  
s/Kaye G. Hearn\_\_\_\_\_J.  
s/John Cannon Few\_\_\_\_\_J.  
s/George C. James, Jr.\_\_\_\_\_J.

Columbia, South Carolina  
August 25, 2021

<sup>1</sup> The primary AIS e-mail address for lawyers admitted to practice in South Carolina may be obtained using the search function at <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. Lawyers may update their AIS information at <https://ais.sccourts.org/AIS>.

# **EXHIBIT “E”**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

---

CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.;.....Respondents.

---

**AMENDED NOTICE OF APPEAL**

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D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of Lather Construction and Hutton's Landscapes, Inc filed on March 11, 2022, as well as the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment of the Honorable Bentley D. Price dated and filed March 24, 2022. Counsel for the Respondent received written notice of entry of the Order Denying Defendant D.R. Horton, Inc.'s Motion to Alter or Amend Judgment on March 24, 2022.

s/ Jason M. Imhoff

---

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Construction, Inc. and Lather Construction  
SC, Inc.*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Hon. Bentley D. Price

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CASE NO. 2019-CP-07-02629

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Margaret A. Eberly and Barbara J. Pavelik.....Plaintiffs,

v.

Advanced Flooring & Design Division of ISI, LLC;  
Archer Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.;  
Hutton's Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC.....Defendants

Of Whom

D.R. Horton, Inc.....Appellant

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.;.....Respondents.

---

**PROOF OF SERVICE**

---

I certify that I have served the Notice of Appeal on Respondents by depositing a copy to them in the United States Mail, postage prepaid, on April 28, 2022, addressed as follows:

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Hon. Jerri Ann Roseneau  
Beaufort County Clerk of Court  
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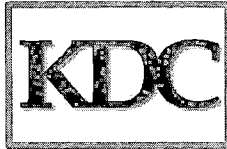
*s/ Jason M. Imhoff*

---

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*Attorneys for Appellant*

April 28, 2022

# **EXHIBIT “F”**



**KENISON, DUDLEY  
& CRAWFORD, LLC**  
ATTORNEYS AT LAW

---

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April 28, 2022

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**Re: *Margaret Eberly v. D.R. Horton, Inc.***  
**Appellate Case No. 2022-000469**

Dear Ms. Kitchings:

I spoke with Shelby Spencer in your office yesterday regarding a scrivener's error in Appellate's Notice of Appeal filed on April 11, 2022. In that Notice of Appeal, we inadvertently listed Plaintiffs as the Respondents. The *correct* Respondents are Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc.

Accordingly, we are filing the attached Amended Notice of Appeal to resolve the error and correctly state Lather Construction, Inc., Lather Construction of SC, Inc., and Hutton's Landscapes, Inc. as Respondents.

Thank you for your kind assistance in this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

KENISON, DUDLEY & CRAWFORD, LLC

*Stephanie Simpson*

Paralegal to Jason M. Imhoff

Attachment

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Page | 2  
April 28, 2022

---

cc(w/attach) via electronic mail:      Emily Gifford Lucey, Esquire  
Megan C. White, Esquire  
Jeffrey A. Ross, Esquire  
Philip P. Cristaldi, III, Esquire  
And All Counsel of Record

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

**RECEIVED**

MAY 13 2022

**SC Court of Appeals**

---

APPEAL FROM BEAUFORT COUNTY  
COURT OF COMMON PLEAS  
THE HONORABLE BENTLEY D. PRICE  
CIRCUIT COURT JUDGE

---

APPELLATE CASE NO. 2022-000469  
CASE NO. 2019-CP-07-02629

---

Margaret A. Eberly and Barbara J. Pavelik,

**PLAINTIFFS,**

versus

Advanced Flooring & Design Division of ISI, LLC; Archer  
Exteriors, Inc.; Crossroads Enterprises, LLC;  
D.R. Horton, Inc.; East Coast Construction Cleanup Corp.; Lather  
Landscapes, Inc.; Lather Construction SC, Inc.;  
Lather Construction, Inc.; Professional Drywall & Paint Services, LLC;  
Professional Exteriors II, LLC; and Valim Construction, LLC,

**DEFENDANTS,**

Of whom

D.R. Horton, Inc. is

**APPELLANT,**

versus

Hutton's Landscapes, Inc.; Lather Construction SC, Inc.; and  
Lather Construction, Inc.

**RESPONDENTS.**

---

**Proof of Service**

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I certify that I have served Lather Construction, Inc. and Lather Construction, SC, Inc.'s Motion to Dismiss Appeal dated May 12, 2022, by personally serving the same pursuant to Rule 262 (c)(3),

SCACR, and S.C. Supreme Ct. Order dated August 25, 2021 on the following counsel of record using the primary email address listed in the Attorney Information System (if applicable):

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***Attorneys for D.R. Horton, Inc.***

A copy of the sent email is enclosed with this Certificate of Service.

s/ Scott H. Winograd  
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***Attorneys for Lather Construction, Inc. and Lather  
Construction SC, Inc.***

## Bobbi Myers

---

**From:** Scott Winograd  
**Sent:** Thursday, May 12, 2022 11:43 AM  
**To:** Court Of Appeals Filings; Carmen Ganjehsani  
**Cc:** Emily Gifford Lucey; Megan White; Emily Seelig; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams; Kay Kelly; Benjamin Traywick; Lin McDougall; Tom Bacon; Hope Grate; imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; Jeff Ross; Philip Cristaldi; Katy Barnes; Bobbi Myers  
**Subject:** RE: 2022-000469 Eberly v. D.R. Horton  
**Attachments:** 2022.05.12 SHW to Ct. Appeals re MTD.pdf  
**Categories:** Emily Not copied, Julie Not copied, Kirkley not copied, Kaylee not copied, Erin not copied

Pursuant to the Supreme Court Order dated May 6, 2022, please find served upon you Lather Construction, Inc. and Lather Construction SC, Inc.'s Motion to Dismiss Appeal in the above-referenced matter. A hard copy has been sent to the clerk for filing along with the \$50 filing fee. All counsel of record is copied on this e-mail.

Thank you and please let us know if you need anything else or have further questions.



**Scott Winograd**  
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*Admitted in SC, NC, & OH*

*Please note our email address change – our entire firm will now be “first initial, last name @rclawsc.com”*

*Please note our firm address change*

*Please note our firm is paperless – please request hard copies if desired*

This e-mail and the information transmitted herein may contain privileged and/or confidential information and is the property of the sender. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this information, or the taking of any action in reliance on the content of this email, is strictly prohibited. If you have received this e-mail in error, please immediately contact Bobbi Myers at Ross & Cristaldi, LLC, (843) 329-4040, and please delete the original email, all attachments and any copies thereof.

---

**From:** Court Of Appeals Filings <ctappfilings@sccourts.org>

**Sent:** Wednesday, May 11, 2022 1:42 PM

**To:** Carmen Ganjehsani <CGanjehsani@RichardsonPlowden.com>; Court Of Appeals Filings <ctappfilings@sccourts.org>

**Cc:** Emily Gifford Lucey <egiffordlucey@richardsonplowden.com>; Megan White <MWhite@RichardsonPlowden.com>; Emily Seelig <ESeelig@RichardsonPlowden.com>; teresa@bentraywicklaw.com; cappy@bentraywicklaw.com; Alexandra Williams <ali@bentraywicklaw.com>; Kay Kelly <kay@carlmullerlaw.com>; Erin Welk <ewelk@rclawsc.com>; Benjamin Traywick <ben@bentraywicklaw.com>; Lin McDougall <lin@mlf.law>; Tom Bacon <tom@mlf.law>; Hope Grate <HGrate@RichardsonPlowden.com>; imhoff@conlaw.com; crawford@conlaw.com; dudley@conlaw.com; carl@carlmullerlaw.com; Jeff Ross <jross@rclawsc.com>; Philip Cristaldi <pcristaldi@rclawsc.com>; Scott Winograd

**ROSS & CRISTALDI<sup>LLC</sup>**  
ATTORNEYS AT LAW

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\*Admitted in OH, NC, & SC

May 12, 2022

**Filed via USPS & email (ctappfilings@sccourts.org)**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

**MAY 13 2022**

**SC Court of Appeals**

Re: Margaret A. Eberly and Barbara J. Pavelik v. DR Horton, Inc.  
Appellate Case No.: 2022-000469

Dear Ms. Kitchings:

Enclosed please Respondents Lather Construction, Inc. and Lather Construction SC, Inc.'s Motion to Dismiss Appeal along with supporting exhibits and Certificate of Service for filing. We are also filing this Motion electronically with the Court of Appeals via email pursuant to Section (b)(2) of the Supreme Court's May 6, 2022 Order.

I have also enclosed a check in the amount of \$50.00 for the filing fee. Please return the filed copies to our office in the self-addressed, stamped envelope.

Thank you very much for your attention to the above.

Very truly yours,



Scott H. Winograd

SHW/bm

Enclosures

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MAY 2022

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South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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SC Court of Appeals