

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 25 2022

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. 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 /Respondents,

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. is Appellant,

And

D. R. Horton, Inc.,

Cross-claimant and Appellant,

v.

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

APPELLANT D.R. HORTON, INC.'S RESPONSE IN OPPOSITION TO RESPONDENTS,
LATHER CONSTRUCTION, INC., LATHER CONSTRUCTION, SC, INC., AND HUTTON'S
LANDSCAPES, INC., MOTIONS TO DISMISS APPEAL

D. R. Horton, Inc., Appellant, through its undersigned counsel, files this Response In Opposition To Respondents,' Lather Construction, Inc., Lather Construction, SC, Inc., and Hutton's Landscapes, Inc., Motions To Dismiss Appeal. Respondents filed substantially identical motions to dismiss; accordingly, Appellant responds to Hutton's Landscapes, Inc. and Lather Construction, Inc. motions herein applying the same arguments to both. Appellant responds to Lather Construction, SC, Inc.'s motion to dismiss separately in Section II below.

Appellant filed crossclaims against Respondents Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's Landscapes, Inc. ("Hutton") in the circuit court. Respondents moved for summary judgment on Appellant's crossclaims. The circuit court granted Respondents' Hutton Landscapes, Inc. and Lather Construction, Inc. motions for summary judgment on March 11, 2022. Appellant timely moved to alter or amend on March 18, 2022, which the circuit court denied on March 24, 2022, and Appellant received the circuit court's order that same day. *The foregoing facts are not disputed.*¹

Section I – Response as to Hutton's Landscapes, Inc. and Lather Construction, Inc.

On April 11, 2022, 18 days after the circuit court issued its March 24, 2022, order on Appellant's motion to alter or amend, Appellant's counsel Jason Imhoff filed and served its notice of appeal alerting Respondents that the following orders are being appealed:

D.R. Horton, Inc. appeals the Order of the Honorable Bentley D. Price granting the Motions for Summary Judgment of **Lather Construction and Hutton 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.

¹ The circuit court did not grant the motion for summary judgment as to Lather Construction SC, Inc. **Exhibit C "Circuit Court Order."**

(emphasis added). **Exhibit A “Notice of Appeal and Electronic Service.”** All parties were served on April 11, 2022, through the circuit court’s electronic service system. The first and second pages of the official court record in Exhibit A, specifically state: “**The following people were served electronically:** Megan Christine White for Huttons Landscapes Inc . . . Scott Harris Winograd for Lather Construction Inc, Lather Construction Sc Inc . . .” The third page lists “Emily Guifford Lucey for Huttons Landscapes Inc, Phillip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc, Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc.” The fourth page lists all of them. If there is anything that South Carolina attorneys should be able to rely upon, it is what the court tells them. In this case, the circuit court told Appellant’s attorneys that all the attorneys for all the parties in the case were served the notice of appeal on April 11, 2022, electronically through the circuit court’s electronic service system. The electronic service in Exhibit A also has a section in bold that states: “**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**” The list is empty because everyone in the case was in fact served electronically.² Thus, service was made to all attorneys for all parties no later than April 11, 2022 – well before the thirty-day window within which the rules require. See, Notice of Appeal and Electronic Service, attached as Exhibit A. Importantly, Respondents have not alleged *any facts* inconsistent with the foregoing.

After discovering a scrivener’s error in the case style, Appellant’s counsel discussed the issue with the Clerk’s office at the Court of Appeals and then filed an Amended Notice of Appeal and Proof of Service on April 28, 2022. **Exhibit B “Amended Notice of Appeal and Electronic Service.”** The Amended Notice of Appeal is identical to the original Notice of Appeal, except that

² The Plaintiffs in the case were also served via U.S Mail.

it corrects the case style as to Lather Construction, Inc. and Hutton Landscapes, Inc. and it was served on an attorney for every party in the case via U.S. Mail.³ As previously, they were also served electronically. Respondents do not dispute that they were served the Amended Notice of Appeal.

This is not a case in which timely proper service did not occur.⁴

After receiving the Notice of Appeal on April 11, 2022, Respondents did not reach out to Appellant’s counsel to ask for the style to be corrected, nor did they ask or demand to be served again in a different manner.⁵ Instead, they set a trap for Appellant’s counsel Imhoff and filed their Motions to Dismiss after the 30 days had passed. However, a new system of electronic service was in effect due to an international pandemic. Respondents cannot ignore that new system. Nor should they be allowed to blindsides opposing counsel. “Civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party,” which is precisely what Respondents seek to do in this matter. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). Respondents were served within the 30 days, on April 11, 2022. They were served electronically at the primary email addresses they provided the circuit court, and each Respondent received electronic service to at least two attorneys of record – Hutton to both attorneys of record (Megan Christine White and Emily Gifford Lucey) and Lather to three attorneys of record (Scott

³ The Amended Notice of Appeal also lists Lather Construction SC, Inc. as a Respondent, which is discussed below in Section II.

⁴ This is not a case in which service occurred outside the jurisdictional thirty-day period to provide a notice of appeal. Accordingly, Respondents cases *Camp v. Camp*, 386 S.C. 571, 689 S.E.2d 634 (2010); *Ex Parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. Of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000); *Great Games, Inc. v. S.C. Dep’t of Revenue*, 399 S.C. 79, 529 S.E.2d 6 (2000) and *State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004) are all inapposite for this case.

⁵ Perhaps they do not understand the import of the August 25, 2021, Order of the Supreme Court providing for electronic service.

Harris Winograd, Phillip Paul Cristaldi, III, and Jeffrey A. Ross). The law was followed. See Exhibit A.

Nowhere in Respondents' Motions do they deny having been electronically served on April 11, 2022. Although it is clear from their Motions that they did receive the Notice of Appeal, they may have been confused. See *Wells Fargo v. Fallon, Opinion 27773*, Feb. 28, 2018 (S.C. Supreme Court acknowledged the confusion that has arisen from electronic communications in the litigation sphere). In this case, the electronic service provisions, put into place due to the pandemic, may have created some confusion about service.⁶ Because the attorneys in circuit court cases must keep their primary email address up to date with the circuit court, the circuit court email list has all the parties and their attorneys' emails, and the circuit court service system provides almost instantaneous service of process to all attorneys of record. Service was perfected on all attorneys of record at their primary email addresses on April 11, 2022. Service via the circuit court system complies with Rule 262, SCACR, because it provides service to each attorney at the primary email address each attorney has provided the court system. See Exhibit A, which shows the electronic service of process for all of Lather's and Hutton's lawyers. Moreover, no Respondent has asserted that the email used by counsel as their primary email in the circuit court's system is not their primary email address – which makes sense because the burden to update one's primary email address is on the attorney whose email address has changed and not the Appellant serving a Notice of Appeal. Respondents were served within the 30-day requirement and at each of their primary email addresses. Respondents have not alleged otherwise, nor could they genuinely do so.

⁶ The South Carolina Supreme Court has held that fairness dictates that its ruling regarding Rule 203, SCACR, be applied prospectively due to confusion about the Rule regarding electronic correspondence. *Wells Fargo v. Fallon, Opinion 27773*, Feb. 28, 2018. In the event that this Court determines that electronic service via the circuit court's electronic service system is not sufficient service, Appellant requests the Court to apply the decision prospectively as Appellants served via that method in good faith and reliance upon the plain language of the August 25, 2021 Order.

The Amended Notice of Appeal was filed due to a scrivener's error. South Carolina allows Notice of Appeal scrivener's errors to be corrected. It is well settled law in South Carolina that corrected errors are allowed and do not divest the appeals court of jurisdiction. Since at least 1899, South Carolina law has consistently held that "clerical errors in a notice of appeal do not destroy the appeal." *Moody v. Dickinson*, 54 S.C.526, 32 S.E. 563 (1899) ("the court may properly allow an appellant to correct a mere clerical error in the title to his notice of intention to appeal where there is no prejudice to the appellee"). Respondents have not been prejudiced, nor have they alleged any prejudice, nor can they. Respondents were electronically served notice of the appeal on April 11, 2022; that notice clearly advises them of the summary judgment orders being appealed, and specifically names Hutton's Landscapes, Inc., and Lather Construction in the description of the summary judgment decisions being appealed. Moreover, there have been no other dispositive motions decided by the circuit court in the case that could have possibly confused Respondents. Respondents are in a position similar to that of the appellees in *Charlestown Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431 (Ct. App. 1995), in which the court held that a scrivener's error in the cases listed for appeal in a multi-case matter did not warrant a dismissal of the appeal and there was no prejudice. *Id.* at 478. Respondents rely upon *Connor v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002) for the proposition that Connor's appeal was not perfected because she had not listed two defendants as respondents within 30 days of the order on appeal. However, that is an incorrect understanding of *Connor*. The appeals court notified Connor of her error and she did not correct the error soon after filing or even within 5 months of having filed her appeal. The court held that "Indeed, the rule of *Moody* compels us under these facts to find Rowe and Langley were misled into believing they were not part of this appeal by the almost five-month delay in amending the Notice, and therefore, they clearly were

prejudiced by the amendment.” *Id.* at 462. Here, unlike in *Connor*, the correction was quickly made, Respondents were served both Notices of Appeal, and the description of what is being appealed specifically names them. Counsel for the Appellant did not delay. In fact, it is counsel for the Respondents who delayed, and did so deliberately. There was no prejudice or laxity alleged in Respondents’ Motions to Dismiss Appeal, nor could any be alleged in this case.

Section II – Response to Lather Construction SC, Inc.

The circuit court’s order did not grant summary judgment to Lather Construction SC, Inc. See **Exhibit C, “Circuit Court’s Order.”** The court’s order specifically states that it granted Lather Construction, Inc.’s motion for summary judgment, but it did not state that it granted Lather Construction SC, Inc.’s motion for summary judgment. Lather Construction SC, Inc. should have filed a motion to dismiss the appeal as to it because there is no circuit court order that applies to it at this time and, hence, nothing to appeal. Or it simply could have alerted Appellants to the situation and a joint motion to remove it as Respondent under the Amended Notice of Appeal could have been quickly filed.

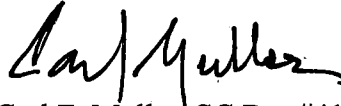
The response in Section I above as to service and the scrivener’s error that occurred also applies to Lather Construction SC, Inc. to the extent that Lather Construction SC, Inc. is a Respondent.

Conclusion

Appellants request the Court to deny Respondents Lather Construction, Inc., Lather Construction SC, Inc., and Hutton’s Landscapes, Inc. Motions to Dismiss the Appeal.

May 23, 2022

Respectfully,



s/Carl F. Muller, SC Bar #4131
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Attorneys for the Respondent Plaintiff

**Exhibit A “Notice of Appeal and Electronic
Service.”**

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP0702629

Official File Stamp:

04-11-2022 01:15:27 PM

Court:

CIRCUIT COURT

Common Pleas

Beaufort

Case Caption:

Margaret A Eberly , plaintiff, et al VS Advanced
Flooring & Design Division Of Isi Llc , defendant,
et al

Document(s) Submitted:

Appeal/Notice of Appeal to Court of Appeals

- Exhibit/Filing of Exhibits
- Exhibit/Filing of Exhibits

Filed by or on behalf of:

Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Megan Christine White for Huttons Landscapes
Inc

Thomas Elihue Dudley, III for D R Horton Inc

Scott Harris Winograd for Lather Construction Inc,
Lather Construction Sc Inc

Jason Michael Imhoff for D R Horton Inc

Stacey Patterson Canaday for Valim Construction
Llc

Clarke W. DuBose for Professional Drywall &
Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast
Construction Cleanup Corp.

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Brent Morris Boyd for Professional Drywall & Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret A Eberly et al.

Francis Heyward Grimball for Archer Exteriors Inc

James H. Elliott, Jr. for Archer Exteriors Inc

Alexandra Scott Williams for Margaret A Eberly et al

Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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Recipients

James Elliott - Notification transmitted on 04-11-2022 01:15:43 PM.
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Thomas Dudley - Notification transmitted on 04-11-2022 01:15:46 PM.
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Emily Lucey - Notification transmitted on 04-11-2022 01:15:44 PM.
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Megan White - Notification transmitted on 04-11-2022 01:15:46 PM.
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Philip Cristaldi - Notification transmitted on 04-11-2022 01:15:44 PM.
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John Crawford - Notification transmitted on 04-11-2022 01:15:43 PM.
Jason Imhoff - Notification transmitted on 04-11-2022 01:15:43 PM.
Michael Leech - Notification transmitted on 04-11-2022 01:15:45 PM.

Subject: Received Notice: Your filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received

? **efiledonotreply@sccourts.org** <efiledonotreply@sccourts.org>
to Jason Imhoff, Stephanie Simpson ▾

Mon, Apr



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Date: 2022-04-11 13:15:27.133
Subject: Your electronic filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Appeals, was received by CIRCUIT COURT.

Case Number: 2019CP0702629

Case Type: (100) Constructions

Document Type: Appeal/Notice of Appeal to Court of Appeals

Document Type: Exhibit/Filing of Exhibits

Document Type: Exhibit/Filing of Exhibits

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14

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.....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.

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**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)

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*Attorneys for Respondent*

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

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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**

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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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*Attorneys for Appellant*

April 11, 2022.

**Exhibit B “Amended Notice of Appeal and  
Electronic Service.”**

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP0702629

**Official File Stamp:** 05-06-2022 12:09:35 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Beaufort  
**Case Caption:** Margaret A Eberly ; plaintiff, et al VS Advanced  
Flooring & Design Division Of Isi Llc , defendant,  
et al  
**Document(s) Submitted:** Appeal/Notice of Appeal to Court of Appeals  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits  
Filing/Other  
**Filed by or on behalf of:** Jason Michael Imhoff

This notice was automatically generated by the Court's auto-notification system.

**The following people were served electronically:**

Carl F. Muller for D R Horton Inc  
Megan Christine White for Huttons Landscapes  
Inc  
Thomas Elihue Dudley, III for D R Horton Inc  
Scott Harris Winograd for Lather Construction Inc,  
Lather Construction Sc Inc  
Jason Michael Imhoff for D R Horton Inc  
Stacey Patterson Canaday for Valim Construction  
Llc

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Clarke W. DuBose for Professional Drywall & Paint Services Llc

John T. Crawford, Jr. for D R Horton Inc

Michael Lawrence Leech for East Coast Construction Cleanup Corp.

Brent Morris Boyd for Professional Drywall & Paint Services Llc

Benjamin Alexander Crute Traywick for Margaret A Eberly et al

Francis Heyward Grimball for Archer Exteriors Inc

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Emily Gifford Lucey for Huttons Landscapes Inc

Philip Paul Cristaldi, III for Lather Construction Inc, Lather Construction Sc Inc

Jeffrey A Ross for Lather Construction Inc, Lather Construction Sc Inc

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

# Certificate of Electronic Notification

| Recipients                                                                      |
|---------------------------------------------------------------------------------|
| <b>James Elliott</b> - Notification transmitted on 05-06-2022 12:09:52 PM.      |
| <b>Benjamin Traywick</b> - Notification transmitted on 05-06-2022 12:09:54 PM.  |
| <b>Thomas Dudley</b> - Notification transmitted on 05-06-2022 12:09:55 PM.      |
| <b>Stacey Canaday</b> - Notification transmitted on 05-06-2022 12:09:53 PM.     |
| <b>Emily Lucey</b> - Notification transmitted on 05-06-2022 12:09:52 PM.        |
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| <b>Carl Muller</b> - Notification transmitted on 05-06-2022 12:09:56 PM.        |
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| <b>Scott Winograd</b> - Notification transmitted on 05-06-2022 12:09:55 PM.     |
| <b>Alexandra Williams</b> - Notification transmitted on 05-06-2022 12:09:54 PM. |
| <b>Brent Boyd</b> - Notification transmitted on 05-06-2022 12:09:51 PM.         |
| <b>Jeffrey Ross</b> - Notification transmitted on 05-06-2022 12:09:54 PM.       |
| <b>Philip Cristaldi</b> - Notification transmitted on 05-06-2022 12:09:53 PM.   |
| <b>Francis Grimball</b> - Notification transmitted on 05-06-2022 12:09:55 PM.   |
| <b>John Crawford</b> - Notification transmitted on 05-06-2022 12:09:51 PM.      |
| <b>Jason Imhoff</b> - Notification transmitted on 05-06-2022 12:09:52 PM.       |
| <b>Michael Leech</b> - Notification transmitted on 05-06-2022 12:09:55 PM.      |

**Amanda Hammond**

---

**From:** efiledonotreply@sccourts.org  
**Sent:** Thursday, May 5, 2022 3:52 PM  
**To:** Jason Imhoff  
**Cc:** Stephanie Simpson  
**Subject:** Received Notice: Your filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received

**To:** Jason Michael Imhoff imhoff@conlaw.com  
**From:** efiledonotreply@sccourts.org  
**Date:** 2022-05-05 15:51:44.987  
**Subject:** Your electronic filing, Re: 2019CP0702629 - (100) Constructions - Appeal/Notice of Appeal to Court of Appeals, was received by CIRCUIT COURT.

Case Number: 2019CP0702629

Case Type: (100) Constructions

Document Type: Appeal/Notice of Appeal to Court of Appeals

Document Type: Exhibit/Filing of Exhibits

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Apr 28 2022

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.....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

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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RECEIVED

Apr 28 2022

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.....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
P.O. Box 1128
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s/ Jason M. Imhoff

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Attorneys for Appellant

April 28, 2022

Exhibit C, “Circuit Court’s Order.”

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 .

RECEIVED

APR 13 2022

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

30

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.



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

Electronically signed on 2022-03-11 12:23:59 page 3 of 3

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

MAY 25 2022

Hon. Bentley D. Price

SC Court of Appeals

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.

PROOF OF SERVICE

I certify that I have served Appellant D.R. Horton, Inc.’s Response in Opposition to Respondents, Lather Construction, Inc., Lather Construction, SC, Inc., and Hutton’s Landscapes, Inc., Motions to Dismiss Appeal upon Respondents by depositing a copy to them via e-mail and United States Mail, postage prepaid, on May 23, 2022, addressed as follows:

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Inc, Lather Construction SC, Inc.*

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s/ Jason M. Imhoff

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Attorneys for Appellant

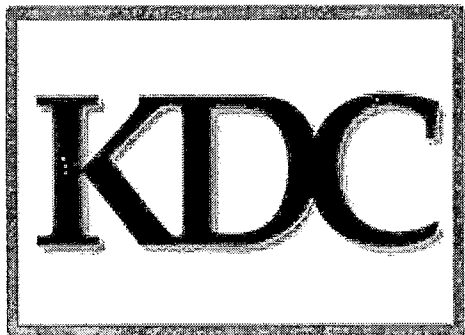
May 23, 2022

Amanda Hammond

From: Amanda Hammond
Sent: Monday, May 23, 2022 2:17 PM
To: 'mwhite@richardsonplowden.com'; 'ben@bentraywicklaw.com';
'ali@bentraywicklaw.com'; 'lin@mlf.law'; 'tom@mlf.law'; 'swinograd@rclawsc.com';
jross@rclawsc.com; pcristaldi@rclawsc.com; 'egiffordlucey@richardsonplowden.com';
'mwhite@richardsonplowden.com'
Cc: Carl Muller; John Crawford; Jason Imhoff; Stephanie Simpson; Kelly Nix; Cara Smith; Tom
Dudley; Jen Beckley
Subject: Appellate Case No. 2022-000469 - D.R. Horton, Inc.'s Response in Opposition to
Respondents, Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's
Landscapes, Inc., Motions to Dismiss Appeal
Attachments: 20225.23 - D.R. Horton's Response in Oppisition to Motions to Dismiss Appeal.pdf;
2022.5.23 Supplemental Proof of Service - Eberly.pdf

All,
Appellant D.R. Horton, Inc.'s Supplemental Proof of Service and Response in Opposition to
Respondents, Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's Landscapes, Inc.,
Motions to Dismiss Appeal are herewith served upon you via e-mail.

Sincerely,



Amanda Hammond

Paralegal
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May 23, 2022

Shelby Spencer
Appeals Specialist II
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

MAY 25 2022

SC Court of Appeals

RE: Appellate Case No. 2022-000469

Dear Mrs. Spencer

Enclosed please find the original and (6) copies of Appellant D.R. Horton, Inc.'s Response in Opposition to Respondents, Lather Construction, Inc., Lather Construction, SC, Inc. and Hutton's Landscapes, Inc., Motions to Dismiss Appeal. Also enclosed is the original Supplemental Proof of Service.

I have also enclosed (1) additional copy of both documents. Please return a file stamped copy to our offices in the enclosed self-addressed, postage paid envelope.

Sincerely,

Amanda Hammond

Enclosures

PRIORITY MAIL



US POSTAGE - PINEY SCOTES

ZIP 29601 \$ 010.55⁰
02 70
0006015079 MAY 23 2022

KENISON, DUDLEY & CRAWFORD, LLC

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1P

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MAY 25 2022

SC Court of Appeals

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