Court of Appeals, Division One

Civil Appeal

1 CA-CV 16-0143 K HOVNANIAN et al v. BORDER et al.

Appellate Case Information

Case Filed: 18-Mar-2016

Case Closed:

Dept/Composition

Side 1. K. HOVNANIAN GREAT WESTERN BUILDING COMPANY, LLC, et al., Plaintiff/Appellant

(Litigant Group) K. HOVNANIAN GREAT WESTERN BUILDING CO et al.

- **K Hovnanian Great Western Building Company LLC**
- **K Hovnanian Great Western Homes LLC**

Attorneys for: Plaintiffs/Appellants
Dennis I Wilenchik, Esq. (AZ Bar No. 5350)
John D Wilenchik, Esq. (AZ Bar No. 29353)
David Timchak, Esq. (AZ Bar No. 32095)

Side 2. BORDER MASONRY WALL, INC, et al., Defendant/Appellee

(Litigant Group) BORDER MASONRY WALL INC

- **Border Masonry Wall Inc**

Attorneys for: Defendant/Appellee
Leonard T Fink, Esq. (AZ Bar No. 16489)
David S Schopick, Esq. (AZ Bar No. 22016)

(Litigant Group) LMC CONSTRUCTION INC

- **LMC Construction Inc**

Attorneys for: Defendant/Appellee LMC
Mitchell J Resnick, Esq. (AZ Bar No. 16718)
Emily K Dotson, Esq. (AZ Bar No. 29510)

(Litigant Group) TRINITY PLUMBING 2000 INC - dismissed per order filed 10/07/2016

- **Trinity Plumbing 2000 Inc**

(Litigant Group) SAMONS BROS FRAMING LLC - dismissed per order filed 08/29/2016

- **Samons Bros Framing LLC**

CASE STATUS

Dec 21, 2016....Stayed Oct 24, 2016.....**At Issue**

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR	CV2012-006003	Breach of Express Warranty; Breach of Implied Warranty; Breach of Contract [see file]		J Richard Gama, Authoring Judge of Order		
MAR	CV2012-009546					

OPEN DUE DATE

Court Ordered Document due **Due By:** Monday, February 6, 2017 [2 extensions]

Border Masonry Wall, Inc. and appellants joint status report
Re: ORDERED: Joint Status Report = GRANTED. FURTHER ORDERED: directing appellee Border Masonry Wall, Inc. and appellants to file a joint status report on/before 11/30/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author

61 PROCEEDING ENTRIES

1.	18-Mar-2016	FILED: Index of Record, Notice of Appeal from Maricopa County Superior Court filed 02/19/16
2.	18-Mar-2016	FILED: e-Record on Appeal (CV2012-006003): Instruments/Minute Entries
3.	18-Mar-2016	FILED: e-Record on Appeal (CV2012-009546): Instruments/Minute Entries
4.	28-Mar-2016	FILED: Notice to Parties re: Appellants' Fee/Case Management Statement/Brief Due

Information presented in this document may not reflect all case activity and is subject to change without notice.

61 PROCEEDING ENTRIES

5.	31-Mar-2016	FILED: Notice of Pending Motion; Certificate of Service (Appellant)
6.	1-Apr-2016	ORDERED: Notice of Pending Motion (Appellant) = GRANTED/staying this appeal and revesting jurisdiction in Maricopa Superior Court to consider pending motion for new trial. FURTHER ORDERED: Within 10 days after superior court rules on motion for new trial, appellants shall file a notice w/ this court w/ ruling attached. FURTHER ORDERED: If any party wishes ruling on motion to be reviewed in this appeal, that party must file a timely notice of appeal or amended notice of appeal. FURTHER ORDERED: Directing appellants to file written notice w/ this court of status of motion for new trial on/before 5/16/16. FURTHER ORDERED: Vacating 5/27/16 due date for opening brief. Court will set a due date for opening brief after superior court rules on motion for new trial. Barbara Vidal Vaught ProTem Judge - Author
7.	4-Apr-2016	RECEIPT No.: 2016-00404 ; $280.00, Authorization: 95011710271, Applied to: K. HOVNANIAN GREAT WESTERN BUILDING CO et al. - Class A Filing Fee ($280.00) Paid for: Wilenchik & Bartness PC - By Integrated Resource Systems IN
8.	3-May-2016	FILED: Notice of Denial of New Trial Motion and Request for Reinstatement of Appeal; Certificate of Service (Appellant)
9.	4-May-2016	ORDERED: Notice of Denial of New Trial Motion and Request for Reinstatement of Appeal; (Appellant) = DENIED. FURTHER ORDERED: Continuing stay of this appeal to/including 6/20/16, and revesting jurisdiction in Maricopa Superior Court to consider application by appellants for a signed order denying motion for new trial and for a signed order w/ certification of finality pursuant to Rule 54 (c) dismissing complaint. FURTHER ORDERED: If superior court grants application, appellants shall file a copy of signed order(s) w/ in 10 days after entry. FURTHER ORDERED: If superior court has not ruled on application on/before 6/20/16, appellants shall file a request to continue stay of appeal or appeal will be dismissed. FURTHER ORDERED: Court will set a due date for opening brief and case management statement after superior court rules on application. Melina Brill ProTem Judge - Author
10.	6-May-2016	FILED: Supplemented Superior Court e-Record with Revised Index of Record (including Amended Notice of Appeal filed 5/3/16; Unsigned Minute Entry filed 4/27/16 re: denying Plaintiff's Motion for New Trial)
11.	31-May-2016	FILED: Notice of Denial of New Trial Motion and Request for Reinstatement of Appeal; Certificate of Service (Appellant)
12.	2-Jun-2016	ORDERED: Notice of Denial of New Trial Motion and Request for Reinstatement of Appeal (Appellant) = GRANTED. FURTHER ORDERED: Case Management Statement due 06/13/2016. FURTHER ORDERED: Opening Brief due 07/12/2016. FURTHER ORDERED: Apellees' filing fees due 06/16/2016. Melina Brill ProTem Judge - Author
13.	7-Jun-2016	FILED: Supplemented Superior Court e-Record with Revised Index of Record (including Order Denying Plaintiff's Motion for New Trial filed 5/27/16; Amended Notice of Appeal filed 5/31/16)
14.	7-Jun-2016	FILED: Notice of Payment of Filing Fee By Defendant/Appellee; Certificate of Service (Appellee Trinity)
15.	8-Jun-2016	FILED: Notice of Settlement; Certificate of Service (Appellee Samons Bros.)
16.	10-Jun-2016	RECEIPT No.: 2016-00712 ; $140.00, Authorization: #61013164767, Applied to: TRINITY PLUMBING 2000 INC - Class B Filing Fee ($140.00) Paid for: Perry Childers Hanlon & Hudson PLC - By Integrated Resource Systems IN
17.	10-Jun-2016	FILED: Notice of Payment of Filing by Defendant/Appellee LMC Construction, INC.; Untitled (Certificate of Service) (Appellee LMC)
18.	13-Jun-2016	RECEIPT No.: 2016-00721 ; $140.00, Authorization: 65004454119, Applied to: SAMON BROS FRAMING llc - Class B Filing Fee ($140.00) Paid for: Jones Skelton & Hochuli PLC - By Integrated Resource Systems IN
19.	13-Jun-2016	FILED: Case Management Statement (Appellants)
20.	13-Jun-2016	ORDERED: Directing appellee Samon Bros. Framing, LLC, and appellants to file a joint status report due 07/13/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
21.	15-Jun-2016	RECEIPT No.: 2016-00737 ; $140.00, Authorization: #66020053830, Applied to: LMC CONSTRUCTION INC - Class B Filing Fee ($140.00) Paid for: Resnick & Louis PC - By Integrated Resource Systems IN
22.	16-Jun-2016	FILED: Notice of Payment of Filing Fee by Defendant/Appellee Border Masonry Wall, Inc.; Certificate of Service (Appellee Border)
23.	17-Jun-2016	FILED: Motion to Withdraw as Counsel of Record; Certificate of Service (Appellee Border Masonry Wall Inc)
24.	21-Jun-2016	RECEIPT No.: 2016-00763 ; $140.00, Authorization: #72018123023, Applied to: BORDER MASONRY WALL INC - Class B Filing Fee ($140.00) Paid for: Springel & Fink LLP - By Integrated Resource Systems IN

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61 PROCEEDING ENTRIES

25.	22-Jun-2016	RECEIPT No.: 2016-00767 ; $140.00, Authorization: #73019490971, Applied to: BORDER MASONRY WALL INC - Overpayment Class B ($140.00) Paid for: Schneider & Onofry PC - By Integrated Resources System IN (Memo: Duplicate Pmt - See Rcpt 2016-00763 - Refund Needed)
26.	6-Jul-2016	FILED: Letter, dated 07/06/2016, from Court to Schneider & Onofry PC re: Refund of monies submitted in error
27.	11-Jul-2016	ORDERED: Motion to Withdraw as Counsel of Record (Appellee Border Masonry Wall Inc) = GRANTED. Melina Brill ProTem Judge - Author
28.	12-Jul-2016	FILED: Appellants' Opening Brief; Appellants' Certificate of Compliance; Appellants' Certificate of Service (Appellant)
29.	13-Jul-2016	FILED: Joint Status Report; Certificate of Service (Appellant)
30.	15-Jul-2016	ORDERED: Joint Status Report for appellee Samon Bros. Framing, LLC, and appellants due 08/11/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
31.	21-Jul-2016	FILED: Notice of Association of Counsel; Certificate of Service (Appellee)
32.	22-Jul-2016	FILED: Returned US Mail, Order re: Motion to Withdraw dated 07/11/2016, addressed to Brady Vorwerck Ryder & Caspino PC, Undeliverable - Return to Sender
33.	26-Jul-2016	FILED: Returned US Mail, Order re: Joint Status Report dated 07/15/2016, addressed to Brady Vorwerck Ryder & Caspino PC, Undeliverable - Return to Sender
34.	11-Aug-2016	FILED: Joint Status Report; Certificate of Service (Appellants)
35.	16-Aug-2016	FILED: Motion for Procedural Order to Extend Time; Certificate of Service (Appellee LMC Construction)
36.	16-Aug-2016	FILED: Affidavit (Appellee)
37.	17-Aug-2016	ORDERED: Motion for Procedural Order to Extend Time; Certificate of Service (Appellee) = GRANTED. Joint Answering Brief due date EXTENDED from Monday, 08-29-2016 to Wednesday, 09-28-2016; Joint Status Repoert due date EXTENDED from Thursday, 08-11-2016 to Thursday, 08-25-2016 (Joint Status Report: Samon Bros. Framing and Appellants). Melina Brill ProTem Judge - Author
38.	19-Aug-2016	FILED: Notice of Settlement; Certificate of Service (Appellant)
39.	22-Aug-2016	ORDERED: appellants and appellee Border Masonry Wall, Inc. shall file a joint status report on/before 09/16/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
40.	25-Aug-2016	FILED: Stipulation to Dismiss Defendant Samons Bros. Framing, LLC, ONLY, with Prejudice; Certificate of Service (Appellant)
41.	29-Aug-2016	ORDERED: Stipulation to Dismiss Defendant Samons Bros. Framing, LLC, ONLY, with Prejudice (Appellant) = GRANTED/dismissing appellee Samons Bros. Framing, LLC, from this appeal, party to bear own costs and attorneys' fees. Melina Brill ProTem Judge - Author
42.	8-Sep-2016	FILED: Notice of Settlement; Certificate of Service (Appellant)
43.	9-Sep-2016	ORDERED: directing appellants and appellee Trinity Plumbing 2000, Inc. to file a joint status report on/before 10/06/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
44.	16-Sep-2016	FILED: Joint Status Report; Certificate of Service (Appellant)
45.	19-Sep-2016	ORDERED: Joint Status Report (extension of time) = GRANTED. FURTHER ORDERED: directing appellee Border Masonry Wall, Inc. and appellants to file a joint status report on/before 10/17/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
46.	28-Sep-2016	FILED: Appellee Answering Brief; Certificate of Compliance; Certificate of Service (Appellee)
47.	6-Oct-2016	FILED: Stipulation to Dismiss Defendant/Appellee Trinity Plumbing 2000, Inc., ONLY, with Prejudice; Certificate of Service (Appellant)
48.	7-Oct-2016	ORDERED: Stipulation to Dismiss Defendant/Appellee Trinity Plumbing 2000, Inc., ONLY, with Prejudice (Appellant) = GRANTED/dismissing appellee Trinity Plumbing 2000, Inc., from this appeal, that party to bear its own costs and attorneys' fees. Melina Brill ProTem Judge - Author
49.	17-Oct-2016	FILED: Joint Status Report and Stipulated Request for an Extension of Time (Second Request); Certificate of Service (Appellant)

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61 PROCEEDING ENTRIES

50.	18-Oct-2016	ORDERED: Joint Status Report = GRANTED. FURTHER ORDERED: directing appellee Border Masonry Wall, Inc. and appellants to file a joint status report on/before 11/30/2016, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
51.	24-Oct-2016	FILED: Appellants Request for Oral Argument; Certificate of Service re Request for Oral Argument (Appellant)
52.	24-Oct-2016	FILED: Appellants' Reply Brief; Certificate of Compliance; Certificate of Service (Appellants)
53.	3-Nov-2016	FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
54.	8-Nov-2016	ORDERED: Appellants Request for Oral Argument (Appellant) = GRANTED. Oral argument will be scheduled in the normal course of the court's civil appeals calendar, and the court will notify counsel of the date. Hon Michael J Brown - Author
55.	14-Nov-2016	FILED: Supplemented Superior Court e-Record with Revised Index of Record
56.	30-Nov-2016	FILED: Defendant/Appellee Border Masonry Wall, Inc's Motion for Intervention; Certificate of Service (Appellee)
57.	2-Dec-2016	FILED: Joint Status Report and Stipulated Request for an Extension of Time; Certificate of Service (Appellant)
58.	6-Dec-2016	ORDERED: granting the motion (joint status report and stipulated request for an extension of time). FURTHER ORDERED: directing appellee Border Masonry Wall, Inc.. and appellants to file a joint status report on/before 01/17/2017, if a stipulation to dismiss has not been filed. Melina Brill ProTem Judge - Author
59.	15-Dec-2016	FILED: Notice of Non-Opposition Re: Defendant/Appellee Border Masonry Wall, Inc.'s Motion for Intervention; Certificate of Service (Appellant)
60.	21-Dec-2016	ORDERED: staying appeal and revesting jurisdiction in the Superior Court of Maricopa County for purpose of permitting that court to consider the Motion for Intervention. FURTHER ORDERED: within 15 days after superior court rules on motion, appellee Border Masonry Wall, Inc. shall file a notice with this court with ruling attached. FURTHER ORDERED: if this court has not received a notice or stipulation to dismiss appeal by 02/06/2017, appellee Border Masonry Wall, Inc. shall file a status report advising the court of the status of motion and settlement agreement. Hon Michael J Brown - Author
61.	3-Jan-2017	FILED: Returned US Mail, Order re: Joint Status Report dated 12/06/2016, addressed to Brady Vorwerck Ryder & Caspino PC, Undeliverable - Return to Sender

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