

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

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| PUSEY & RAFFENSPERGER BUILDERS, INC., | : | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| | : | |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | |
| AMERICAN/HUNGERFORD BUILDING PRODUCTS, A MASCO CONTRACTOR SERVICES COMPANY, | : | |
| | : | |
| Appellee | : | No. 1215 MDA 2013 |

Appeal from the Order entered June 7, 2012
in the Court of Common Pleas of Lancaster County,
Civil Division, at No(s): CI-10-12696

BEFORE: MUNDY, J., OLSON, J., AND STRASSBURGER, J.*

CONCURRING STATEMENT BY STRASSBURGER, J.: Filed: March 6, 2013

I agree with the Majority that the order granting Appellee’s motion for judgment on the pleadings should be affirmed. In affirming, I would adopt the reasoning of the trial court offered in its opinion of June 11, 2012 (to wit, that Appellant’s admission of all averments contained in the new matter via failing to file a timely reply entitled Appellee to judgment as a matter of law), rather than apply the standard of review applicable to the grant of a motion to strike a pleading discussed by the Majority on pages 4 and 6 of its Memorandum.

* Retired Senior Judge assigned to the Superior Court.