

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Civil Action No.: 2009-CP-37-0652

Appellate Case No. 2022-001581

Paul W. Hund, III, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White, Stoneledge at Lake Keowee Owners' Association, Inc., Respondents

v.

IMK Development Co., LLC, Marick Home Builders, LLC, and Rick Thoennes, Defendants,

Of whom Marick Home Builders, LLC and Rick Thoennes are Appellants.

**RETURN TO MOTION TO CERTIFY CASE FOR
REVIEW BY THE SOUTH CAROLINA SUPREME COURT**

Appellants Marick Home Builders, LLC, and Rick Thoennes (hereinafter referred to collectively as “Appellants”), pursuant to Rule 204(e), hereby issue their Return to Respondent Stoneledge at Lake Keowee Owners’ Association, Inc.’s (hereinafter referred to as “Respondent”) Motion to Certify Case for Review by the South Carolina Supreme Court. While Appellants do not necessarily object to the Supreme Court’s undertaking jurisdiction of this

pending appeal, Appellants are compelled to correct factual errors, omissions and mischaracterizations set forth in Respondent's Motion, and to request its own relief.

I. Background and Facts

Appellants generally concur with Respondent's recitation of the basic background of the current posture of this case, to include the timing of the issuance of this Court's opinion set forth in *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC* 435 S.C. 109, 866 S.E.2d 542 (2021), the Respondent's filing of its Motion for Entry of Judgment on April 27, 2022 (attached hereto as **Exhibit 1**), and the Appellants' filing on June 10, 2022, of their Motion for Post Judgment Settlement (attached hereto as **Exhibit 2**). However, it is here where Appellants' view of this matter sharply diverges from that of the Respondent's, and a further explanation of background and facts is necessary.

As this Court is aware, this matter was tried in Oconee County in November of 2013. As this Court is also aware, multiple appeals and cross appeals were filed by various parties regarding various trial issues. One of the issues Appellants addressed as part of its appeals was whether Marick was responsible for the breach of fiduciary duty verdict, which was rendered against Thoennes only, and then the amount of sett-off to which Marick and Thoennes were entitled for any verdict rendered against either party. An answer to the latter question hinged, in part, on a decision on the first. At the same time the appeals were pending before the Court of Appeals, the parties were also litigating coverage actions in the United States District Court for the Fourth Circuit.

During the pendency of the initial appeals, Respondent and Appellants entered a Settlement Agreement (see Exhibit 2, B)¹. Thereafter, Respondent filed the Release of Judgment Lien as to Rick Thoennes with the Oconee County Court of Common Pleas on October 31, 2016 (see Exhibit 2, C). Inexplicably, Respondent has neither mentioned this document within its motion nor included it as an exhibit even though the same was an exhibit to Appellants' Petition for Post Judgment Relief, which Respondent *has* included.

Ultimately, this Court issued its opinion, *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC* 435 S.C. 109, 866 S.E.2d 542 (2021), wherein it determined (among other issues) that the allocation of the jury's verdict among the various causes of action as well as the set off required correction. This Court was cognizant that other settlements may have occurred, and of which it was unaware, and therefore remitted the matter to the Circuit Court, with instructions to enter the corrected judgments (see *Id.*, at 138, S.E.2d at 558). Judge McIntosh, recognizing that the remittitur's directive to the Circuit Court was for "final calculation and entry of judgment consistent with our opinion" (see *Id.*), sent correspondence to then-counsel for Appellants and Respondent stating that he understood the issue was "simply one of mathematics" and requested the parties to confer and advise whether there was an agreement or whether a hearing was needed (correspondence from the Honorable Lawton McIntosh to Jason Imhoff, Esq. and Robert Lyles, Esq., dated January 10, 2022, see Exhibit 2, D). Respondent filed its Motion for Entry of Judgment on April 27, 2022 (see Exhibit 1). On June 1, 2022, a "CP Hearing Sheet" was filed in this case (attached hereto as **Exhibit 3**), and Judge McIntosh issued

¹ This Settlement Agreement was drafted by Respondent's counsel, coverage counsel on behalf of Marick's insurance carriers, and approved by personal counsel for Mr. Thonnes. Appellants' current counsel were not involved in any aspect of this case until filing the Motion for Reconsideration.

an Order of Judgment as to Bostic Brothers Construction, Inc., Marick Home Builders, LLC, and Rick Thoennes on June 2, 2022, though it appears it was not filed electronically until June 24, 2022 (attached hereto as **Exhibit 4**). That Order indicates that the judgments were entered retroactively to November 8, 2013, and further that the judgment as to Thoennes maybe subject to set-off or release. Notably, the judgment regarding breach of fiduciary duty was entered against Thoennes only. Thereafter, Appellants filed their Motion for Post-Judgment Settlement on June 10, 2022 (see Exhibit 2) seeking recognition by the Circuit Court that the judgment against Thoennes had already been released by the previously filed Release of Settlement Lien. After the denial of both the Petition for Post-Judgment Settlement and their Motion to Alter, Amend and/or Reconsider the Court's Order Denying their Petition for Post Judgment Settlement (attached hereto as **Exhibit 5**), Appellants filed their Notice of Appeal.

Contrary to the Respondent's assertions, the relief sought by Appellants in this appeal (and through their original motion) is not a reversal of the entry of this Court's reallocated judgment amounts, but rather to have the terms of the Settlement Agreement (hereinafter "Agreement") and filed Release of Judgment Lien as to Rick Thoennes (hereinafter "Release of Lien") enforced.

II. Respondent Mischaracterizes or Misunderstands the Nature of the Appeal

Respondent has mischaracterized or misunderstands the issues of which Appellants seek review. Contrary to Respondent's statements, Appellants recognize that the remitter resulted in a reallocation of the dollar figures against them, retroactive to the original judgement entered November 8, 2013. Appellants are not seeking a reversal of the entry of the new judgment amounts, but rather a review of the Circuit Court's order declining to enforce both the

Agreement and Release of Lien after this Court's order had been carried out. It is Respondent who is seeking an unprecedented ruling from this Court: that a remittitur from this Court that corrects mathematical errors within an original jury verdict—which was released and marked as satisfied/canceled in the Clerk of Court's office (see Oconee County Tenth Judicial Circuit Public Index, attached hereto as **Exhibit 6**, and highlighted for ease of reference)—equates to a new or “intervening” judgment that supplants, revives or otherwise reinvigorates said satisfied judgment, or otherwise voids a previously entered settlement agreement. Such a ruling would fly in the face of the policy of this State to encourage settlement in lieu of litigation (see *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct.App. 1992)), permit parties to evade the South Carolina Appellate Court Rules, as discussed below, and further act as an aberration of the law regarding judgments.

A. Appellants did not waive protections of Agreement or Release of Lien

Because Respondent has no other legal support for its assertion that the Release of Lien is not valid with respect to the judgment against Thoennes, it is grasping to the tenuous argument that the protections provided by both the Release of Lien and Agreement can be waived, and that Appellants did so by not affirmatively advising either the Court of Appeals or this Court of the existence of either the Release of Lien or Agreement. Because of this alleged “omission”, according to Respondent, not only are Appellants precluded from asserting the protections of either the Release of Lien or Agreement, but the very documents themselves (as well as their contents) must be treated as if they do not now or ever existed. Of course, Respondent would like this Court to overlook the fact that Respondent's counsel assisted in the drafting of the

Agreement and Release of Lien, filed the Release of Lien, and never once mentioned the existence of either to any Court with appellate jurisdiction.

Appellants maintain that they are not precluded from requesting the Circuit Court or this Court to apply both the Agreement and filed Release of Lien to the reallocated judgment as to Thoennes, because they could not request enforcement of the Agreement or Release of Lien until the entire matter was remitted to the Circuit Court. See *Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 742 S.E.2d 867 (2013). There, Georgia-Pacific (“GP”) petitioned this Court for a writ of certiorari to review the Court of Appeals’ dismissal of underlying appeals. Del-Web, another petitioner, sought and received an extension of time to serve and file a petition of writ. In the meantime, the parties reached a settlement and submitted a joint motion to stay all deadlines and proceedings until the settlement documents could be submitted and approved by the trial court. This Court turned to Rule 205 of the SCACR, which states that, “...upon the service of a notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court.” (*Id.*, at 137, S.E.2d at 868). The remittitur had not been sent to the lower court due to GP’s petition for writ and Del-Web’s motion for extension of time to file petition for writ of certiorari. In finding that the trial court had no jurisdiction to undertake settlement approval until the matter was remitted, this Court relied upon Rule 221 SCACR, which reads “Where a petition for rehearing has been denied, the Court of Appeals shall not sent (sic) the remittitur to the lower court ...until the time to petition for a writ of certiorari under Rule 242(c) has expired.” (*Id.*, at 137, S.E.2d at 868). This Court went on to state: “Finally, because the issue of parties submitting agreements to the lower court while the matter is pending

before this Court has arisen with increasing frequency of late, we hereby remind the bench and bar that action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this Court. The parties must first seek to have the matter remanded to the lower court.” (*Lancaster* 403 S.C. at 138, 742 S.E.2d at 868).

The case currently before the Court was in a similar posture, where the parties had reached a partial settlement during the pendency of the appeal. And, like *Lancaster*, the matter was not remitted to the lower court with finality until this Court did so via its opinion in *Stoneledge at Lake Keowee Owners’ Ass’n, Inc. v. IMK Dev. Co., LLC* 435 S.C. 109, 866 S.E.2d 542 (2021), remitted to the Circuit Court January 4, 2022. It was not until that time that Appellants could request the Circuit Court to approve and enforce the agreement reached pending the appeal. Thus, Respondent’s argument that the Appellants somehow waived their ability to invoke the protections of the previously reached settlement is without merit and is evidence of buyer’s remorse.

B. Respondent is Estopped from Arguing Waiver or that the Agreement and/or Release of Lien are Void

Appellants assert that Respondent is estopped from arguing waiver or that the Agreement and/or Release of Lien are void. One need only look to the Agreement to see that Respondent’s counsel, who participated in the drafting of the Agreement, clearly agreed that “Nothing in this Settlement Agreement, except to the extent expressly stated herein, will affect the Phase I Judgment *or the appeal from that judgment taken by the Defendants.*” (see Exhibit 2, B). Respondent further agreed in paragraph 4b that the appeals would continue, with Respondent itself also preserving the right to pursue appeals (4a). Respondent cannot claim Appellants have

waived protection of the Agreement and Release of Lien when Respondent was more than aware that the appeals would continue even with the existence of the Agreement, presumably because the real issue to be determined was the amount of the verdict owed and by which party.

Specifically, it was necessary to determine 1) whether Marick, Thoennes or both were responsible for the breach of fiduciary duty verdict; 2) whether set-off applied to that verdict (regardless of who owed it), and 3) how much set-off other parties (including Marick) were entitled to considering the breach of fiduciary duty verdict. Indeed, the judgments rendered against all parties (to include Bostic Brothers and the Appellants) were all altered, due in part to the determination of the correct set-off amount. Had Appellants not requested the Court of Appeals and this Court to determine the issue of set-off as related to the breach of fiduciary duty verdict, it is unclear how the parties would have received corrected verdicts.

Next, Respondent is estopped from facing the repercussions of having filed the Release of Lien. Respondent was the one that prepared and filed the Release of Lien in 2016, in accordance with the terms of the Agreement. “Evidence that a party complied with the terms of the alleged contract or acted in conformity therewith is relevant and admissible on the issues of the contract’s existence, the meaning of its terms, and whether the contract was breached.” (*Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct.App. 2008), citing *Conner v. City of Forest Acres*, 363 S.C. 460, 473, 611 S.E.2d 905, 912 (2005)). “Parties [to a contract] are governed by their outward expressions and the court is not at liberty to consider their secret intentions.” *Silver*, citing *Ecclesiastes Prod. Ministries v. Outparcel Assoc., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct.App. 2007). “Interpretation of the contract is governed by the objective manifestation of the parties’ assent at the time the contract was made.

It does not depend on the subjective, after the fact meaning one party assigns to it.” *Silver* citing *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct.App. 1984). If Respondent did not believe it was required to file the Release of Judgment Lien in favor of Thoennes, it certainly should not have filed it. Respondent is attempting, through misplaced and disingenuous arguments, to have this Court ignore or otherwise set aside the Agreement and Release of Lien. (See *Silver*, 376 S.C. at 593, 658 S.E.2d at 543, where the Court of Appeals stated that homeowner was not permitted to reinterpret written contract terms midstream because he was unhappy with the contract he executed.)

Finally, Respondent is estopped from asserting issue waiver and/or voiding of the documents in their entirety because Respondents conducted themselves in the same manner as Appellants. Specifically, Respondent is claiming that because Appellants did not mention the existence of either the Agreement or Release of Lien the Appellants are now precluded from asserting the protections offered by both documents. Respondent also suggests that the same conduct by Appellants fully extinguishes the very existence of the Agreement and the Release of Lien, but only as to offering protection for Appellants. Respondent believes it is entitled to take advantage of any benefits conferred upon it pursuant to both documents. However, using its own logic, since it did not call the Court of Appeals’ or this Court’s attention to the existence of either the Agreement or the Release of Lien, then Respondent cannot use the same document to his benefit. To allow otherwise would result in a profoundly unfair advantage for the Respondent and reward it for the same behavior of which it accuses the Appellants.

C. Thoennes was Unequivocally Released from Judgment

Appellants maintain that Thoennes was unequivocally released from the Phase I judgment, and that the same was unequivocally satisfied, via both the Agreement and Release of Lien. “[W]here an agreement is clear and capable of legal construction, the courts [sic] only function is to interpret its lawful meaning and the intent of the parties as found within the agreement.” (*Patricia Grand*, citing *Messer v. Messer*, 359 S.C.614, 598 S.E.2d 310, 317 (Ct.App.2004)). “In the enforcement of an agreement, the court does not have the authority to modify terms that are clear and unambiguous on their face.” (*Messer*, at 621, 598 S.E.2d at 314, further citations omitted.)

The relevant language from the Agreement is quoted below:

“...WHEREAS, In anticipation of the trial of Phase II against the Defendants, the Parties have agreed to compromise certain aspects of this claim in the form of a stipulation of damages, as more fully set below, **and to release certain obligations of Rick Thoennes altogether.**

...

Scope of this Settlement Agreement. This Settlement Agreement, unless otherwise noted, only applies to the resolution of all acclaims asserted by Plaintiff against Defendant arising out of Phase II. **Nothing in this Settlement Agreement, except to the extent expressly stated herein, will affect the Phase I Judgment or the appeal from that judgment taken by the Defendants.**

...

2. The Plaintiff and Insurers agree to proceed with a declaratory judgment action for a determination of coverage under the policies issued by Cincinnati and Builders Mutual referenced above...This is not intended to be and does not limit the right of Plaintiff to also pursue recovery of sums related to the Phase I judgment, except as expressly provided for herein, **and subject to Defendants’ appeal of the Phase I Judgment.**

....

4. Furthermore, in consideration of the above-referenced stipulation of damages, the Parties also agree:

a. The appeal of the Phase I Judgment against Marick and others will continue at the discretion of appellants and their appeals. Plaintiff and Insurers reserve their rights to contest coverage for any final judgment that may result as to Phase I.

b. The only effect this Settlement Agreement will have on the Phase I Judgment is that Plaintiff will release the judgment obtained against Thoennes in regard to Phase I.

...

7. Attorney's Fees and Costs. The parties acknowledge that and agree that they shall bear all of their own attorney's fees, costs and expenses in connection with **the claims released herein** and/or the continuation of the declaratory judgment action between the Plaintiff and the Insurers. ..." (**Emphasis added**)

Specifically, the initial "whereas" clause clearly states Respondent would be releasing Thoennes from the judgment lien. This intention is again stated in paragraph 4b. Finally, paragraph 7 again references a "release" of claims. Appellants contend that the language within this Agreement is clear, unambiguous, and obviously contemplated the release of Thoennes from the Phase I judgment once it became final.

For the same reasons, the Release of Lien, filed by Respondent on October 31, 2016, while the appeal was pending, is capable of only one interpretation. It reads as follows:

"STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., (Stoneledge HOA") holder of a judgment lien against RICK THOENNES, which was entered against him in Case No. 2009-CP-37-0652, in the Circuit Court of Oconee County, said judgment lien being recorded on November 8, 2013 as Judgment Roll No. 2009-CP-37-0652 and amended by Order dated January 21, 2015, **does**, for good and valuable consideration, the receipt of which is hereby acknowledged, **hereby release Rick Thoennes from the judgment lien.**

PROVIDED, HOWEVER, that the judgment shall, in all other respects, be preserved and protected and **that the judgment lien, except as hereby released and discharged as to Rick Thoennes**, shall remain in full force and effect against Bostic Brother Construction, inc., Marick Home Builders, LLC, IMK Development Co., Integrys Keowee Development, LLC, William C. Cox and Larry Lollis."

Upon filing the document, the judgment was marked satisfied and canceled. In fact, even after the remittitur that corrected the judgment amounts as to various parties, the judgment is still marked as satisfied and canceled (see Exhibit 6). There is no other way to interpret this document than as discharging Rick Thoennes from the judgment lien and preserving the judgment as to the other parties referenced therein. "It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement

agreements. There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.” (*Kinghorn v. Sakakini*, 426 S.C. 147, 152, 825 S.E.2d 748, 750 (Ct.App. 2019), citing *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct.App. 1992)).

D. A Remittitur Does Not Create a New Judgment

Respondent appears to be positing an argument to this Court that suggests that the remittitur has created a new judgment against Appellants, that the previously filed Release of Lien does not apply to this new judgment, and further that both the Agreement and Release of Lien are now void due to this “new” judgment. Respondent is also arguing that the Circuit Court was without authority to either enforce the Agreement or recognize the Release of Lien and was instead limited to entering judgment as directed by this Court (which it had already done). Not only is this position insincere it also lacks any support either in fact or law.

In determining that a remittitur to correct a mathematical error within an original judgment does not equate to a new judgment, it is important to address judgments in general. In South Carolina, judgments are valid for ten years from the date of entry, and the time limit cannot be extended or tolled for any purpose (S.C. Code Sections 15-35-810 and 15-39-30. See also *Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018)).

Here, the original judgment was entered November 8, 2013, and entered as judgment roll number as 2009-CP-37-0652 (attached hereto as **Exhibit 7**). It is this same judgment that was amended by the trial court in 2015, and this Court in 2021. In fact, the remittitur from this Court on January 4, 2022, indicated that the judgment amount was to be corrected and entered retroactive to the date of the original verdict, and in fact the Circuit Court entered it as such on

June 2, 2022 (see Exhibit 4). The Release of Lien filed October 31, 2016, specifically identifies the applicable judgment roll number as 2009-CP-37-0652. At no time was a new judgment roll number assigned. It is, therefore, the Appellants' position that the judgment—regardless of its amount—was released effective October 31, 2016. Indeed Exhibit 6 indicates that this judgment is marked “satisfied/canceled”. Respondent has provided no case law to indicate that a remittitur that corrects a judgment amount equates to a new judgment. Further, Respondent cannot support its argument that a remittitur allows a party to evade a properly filed Release of Lien. Thus, with no “new judgment” having been created and no valid case law cited by Respondent, Appellant maintains that the judgment against Rick Thoennes is, in fact, satisfied. As an aside, Appellants would point out that even if the Court somehow determines that the Appellants waived the right to assert protections of the Release of Lien with respect to the final determination of a judgment amount (which Appellants do not concede), they should still be permitted to assert the protections of the Release of Lien with respect to any supplementary proceedings Respondent may attempt to commence in order to collect upon the (released/satisfied/canceled) judgment.

E. The Circuit Court's Orders were Controlled by Errors of Law

The Circuit Court's orders denying Appellants' Petition for Post Judgment Settlement and its Motion to Reconsider were controlled by errors of law. The Petition for Post Judgment Settlement was filed pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure, and therefore essentially amounted to a motion to enforce a settlement. In that Petition, Appellants requested the Circuit Court acknowledge and enforce both the Agreement and Release of Lien, entered into and filed during the pendency of the appeal.

“Whether to grant or deny a motion under Rule 60(b) [,SCRCP,] lies within the sound discretion of the judge. Our standard of review, therefore, is limited to determining whether there was an abuse of discretion.” (*May v. May*, 428 S.C. 131, 833 S.E.2d 78 (Ct.App. 2019), citing *Raby Construction, L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004) (citation omitted). “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.” (*Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 434, 673 S.E.2d 448, 457 (2009)).

“In South Carolina jurisprudence, settlement agreements are viewed as contracts.” (*Byrd v. Livingston*, 398 S.C. 237, 241, 727 S.E.2d 620, 622 (Ct.App 2012), citing *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct.App. 2009)). “An action to construe a contract is an action at law.” (*Byrd*, 398 S.C. at 241, 727 S.E.2d at 622, citing *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585 (Ct.App. 2008). “In an action at law, on appeal of a case tried without a jury, the judge’s findings will not be disturbed unless they are without evidentiary support.” (*Byrd*, 398 S.C. at 241, 727 S.E.2d at 622, citing *Townes Assocs. V. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)) “However, this court is free to decide questions of law with no particular deference to the trial court.” (*Byrd*, 398 S.C. at 241, 727 S.E.2d, citing *Silver*, 376 S.C. at 590, 658 S.E.2d at 542).

“[T]he circuit court’s role in determining the actual terms of the settlement agreement between the parties is similar to the court’s role in interpreting the terms of a contract. In interpreting contracts, the court should ascertain and give legal effect to the parties’ intentions. Where the language of the contract is clear and unambiguous, the court must construe the contract according to the terms the parties used as understood in their plain, ordinary, and

popular sense.” (*Patricia Grand Hotel, LLC v. MacGuire Enters.*, 372 S.C. 634 (Ct.App. 2007) (internal citations omitted)).

Appellants assert that the Circuit Court erred in not construing both the Agreement and Release of Judgment Lien in accordance with their clear language. The pertinent language of the Agreement reads as follows:

“...WHEREAS, In anticipation of the trial of Phase II against the Defendants, the Parties have agreed to compromise certain aspects of this claim in the form of a stipulation of damages, as more fully set below, **and to release certain obligations of Rick Thoennes altogether.**

...

4. Furthermore, in consideration of the above-referenced stipulation of damages, the Parties also agree:

a. The appeal of the Phase I Judgment against Marick and others will continue at the discretion of appellants and their appeals. Plaintiff and Insurers reserve their rights to contest coverage for any final judgment that may result as to Phase I.

b. The only effect this Settlement Agreement will have on the Phase I Judgment is that Plaintiff will release the judgment obtained against Thoennes in regard to Phase I.

...”

As indicated, Respondent’s counsel and counsel for Marick’s insurers authored the Agreement; Appellants’ trial counsel was not involved. Appellants filed the Petition on June 10, 2022, and the hearing was set for September 16, 2022. Respondent filed its Memorandum in Opposition to the Petition on September 14, 2022, at approximately 5:20 pm. At the outset of the hearing, Appellants’ then-counsel stated as follows:

“Mr. Imhoff: ...And so, if the Court is not convinced by the arguments and is inclined to either hear more or rule for the plaintiffs, I would ask that they [coverage counsel] be involved in it so they can respond to the allegations.

The Court: Nope. We’re gonna have it disposed, disposed of today. If they were gonna argue, they should be here, otherwise it’s gonna be done today.” (Transcript of Record, September 16, 2022, attached hereto as **Exhibit 8**, p. 4, lines 19-25).

Undeterred, Appellants' counsel set forth the basic background of the case, provided the Circuit Court with the relevant documents (the Agreement and Release of Lien), and requested that (among other relief) the judgment against Rick Thoennes be marked satisfied (which it already was, since the remittitur was retroactive to the original judgment that was satisfied on October 31, 2016). Appellants' counsel argued that the documents were clear and unambiguous, and that the Release of Lien was filed in accordance with the Agreement. The Circuit Court, however, determined, with no factual or legal support, that the language was not clear, and rather than Thoennes being released, the documents acted as a covenant:

“The Court: Let me ask you this. Under this settlement agreement, as I read it, it looks like the plaintiff has agreed not—for it not to be a judgment lien against Mr. Thoennes. However, it remains in full force and effect against—in all regards otherwise.

Mr. Imhoff: Your Honor, that—that's not what it says---

The Court: Yes, it is what it says. It's exactly what it says. In fact, if you look at your Exhibit C, it says release of judgment lien as to Rick Thoennes and it says provided however the judgment shall in all respects be preserved and protected and the judgment lie acceptance hereby released and discharged as to Rick Thoennes shall remain in full force and effect against Bostic Brothers Construction, Inc., Marick Home Construction Builders, LLC, IMK Development Company, Integrys Keowee Development, LLC, William C. Cox and Larry Lollis. How more specific can you be?

Mr. Imhoff: Well, Your Honor, Rick Thoennes isn't in there. It says it's dis—released and discharged as to Rick Thoennes---

The Court: No. No.

Mr. Imhoff: ---but shall remain in full force and effect against all the other parties. The judgment we're seeking to have settled is only against Rick Thoennes. That's the point. It's, it's released against Rick Thoennes and not against any of the other parties and here's the thing. None of those other parties have that million dollar fiduciary—breach of fiduciary judgment against them. It's only to Rick and that—

The Court: Well, let me ask you this, Mr. Imhoff. Looking at the Stoneledge I, and, and then the Court—Supreme Court said the amount, million dollars breach of fiduciary duty, not subject to setoff, was against Thoennes. So---

Mr. Imhoff: That's right.

The Court: ... So, although it's not a judgment lien as they signed and acknowledged, it doesn't go as a lien against his personal assets. What else are you asking me to do? Have you paid the money?

Mr. Imhoff: That million dollars, your Honor?

The Court: Yeah.

Mr. Imhoff: No, Your Honor. That—it was released in 2016.

The Court: No, it wasn't. No, it wasn't. It was---

Mr. Imhoff: Okay.

The Court: ---as to the judgment lien against Mr. Thoennes but it was not released.

Mr. Imhoff: Yes. But, Your Honor, that's the only thing here we're talking about. It's the judgment for the one million-dollars...

The Court: The only thing they're talking about, Jason, is the fact that it was not gonna be a personal judgment against Mr. Thoennes. But they weren't giving up these monies. That would be ridiculous. Why would they give it up if you haven't paid any money anyway?

Mr. Imhoff: Because that's the problem because they knew it wasn't covered. I don't know. But, Your Honor, in, in the settlement agreement---

The Court: I think your argument's fairly specious, Jason. I'll be quite frank with you. The clear intent of this agreement was that it not work as a judgment against Mr. Thoennes personally. But it remain in full force and effect and you hadn't---and has any money been paid towards it whatsoever?

Mr. Imhoff: I don't, I don't think so, Your Honor.

The Court: Well, then obviously that's not the intent.

Mr. Imhoff: Your, Your Honor—

The Court: There's no way.

Mr. Imhoff: May I say one other thing?

The Court: You certainly may.

Mr. Imhoff: Your Honor, if they wanted to do a covenant not to execute, in other words, have no execution against Mr. Thoennes himself, they could have done that and they did do that in Section D.

The Court: I think he wanted it to be clear that it was not gonna be a judgment against—it was gonna be released. You could have made it clearer yourself. The obvious intent of these documents is that the---we're not gonna go after Mr. Thoennes personally. We're not gonna make it be a judgment lien against him personally. But we're going after coverage. That's the whole point of it.

Mr. Imhoff: Well, that's right, Your Honor, and that's what he did in phase two. He did a covenant not to execute against Thoennes in phase two. He did a settlement agreement and release and satisfaction in Section B. He did two different things. He released Thoennes from the phase one judgment and he kept his insurance claim against Thoennes in phase two. It's set out here. They're separated. They're two different things. It was negotiating---I, I wasn't involved in negotiating this. But it was obviously negotiated and gone back and forth. They're two separate things, Your Honor. If it was only the one thing, if it was only one where it was a covenant not to execute, then there's no reason to have B and D separately.

The Court: Say that again please.

Mr. Imhoff: If it was only the one, it was only that he was preserving his right for the insurance company---coverage on phase one and phase two, then why are there two different sections releasing or having a covenant not to execute against Mr. Thoennes? It---there's no reason to have two. It's very clear that B is a release in phase one and D is a covenant not to execute in phase two.

The Court: It is not clear and I disagree with you distinctly. Mr. Lyles, I'll be glad to hear from you. You need to unmute please, sir.

Mr. Lyles: All right. Your Honor, you, you understand our arguments perfectly well. This, this was a---this was a vehicle to make sure that we preserved our coverage rights our or our rights to, to satisfy these judgments with coverage but to release Mr. Thoennes personally. And, and, and that's what we did, and, and that's why---

The Court: You received---now at the time you entered into this, this settlement agreement, you had already received---you'd already obtained a verdict in phase one in litigation, correct?

Mr. Lyles: Correct.

The Court: And you were negotiating an amount for phase two that everybody could agree upon instead of having to go litigate that and then go fight the insurance coverage?

Mr. Lyles: Correct.

The Court: Right?

....

The Court: Have you been paid any monies from the phase one verdict on this fiduciary?

Mr. Lyles: Not from Mr. Thoennes or his insurance companies, no, sir. We, we did get some money from Mr. Lollis which is also the subject of this petition.

...

The Court: ...So, as far as you were—you agreed, the way I read it, is that you agreed that Thoennes wasn't gonna have to personally pay this. But you were gonna collect it however else you could.

Mr. Lyles: Correct.

The Court: And you've not been paid a penny?

Mr. Lyles: No, sir.

The Court: All right. Mr. Imhoff, I'm just not buying what you're selling, buddy." (Exhibit 8, pp.7-13).

There are only two ways the Circuit Court could have reached the conclusions it did, both of which amount to errors of law: 1) either he misconstrued the very clear language of the Agreement and Release of Lien, or 2) or determined (erroneously) that the documents were ambiguous and considered only the arguments and documents submitted by Respondent's counsel while completely discounting the Agreement and Release of Lien as well as arguments by Appellants then counsel.

"It is a question of law for the court whether the language of a contract is ambiguous." (*Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585 (Ct.App. 2008), citing, *S.C. Dep't of Natural Res. V. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001)).

“In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.” (*Silver*, citing *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). “In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered.” (*Ecclesiastes Prod Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct.App. 2007)). “The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary[,] or explain the written instrument.” (*Curry v. Carolina Ins. Grp. Of SC, Inc.*, 428 S.C. 60, 832 S.E.2d 760 (Ct.App. 2019) citing *Bluffton Town Ctr., LLC v. Gilleland-Prince*, 412 SC 554, 571, 772 SE2d 882, 891 (Ct.App. 2015)). “When a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties.” (*Curry, Id.*, citing *Bluffton Town Ctr., Id.*)

The Circuit Court erroneously interpreted the documents as a covenant not to execute and not as an agreement to release the judgment lien against Thoennes. A covenant not to execute is “a promise not to enforce a right of action or execute a judgment when one had such a right at the time of entering into agreement.” (*Wade v. Berkley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), citing *Poston by Poston v. Barnes*, 294 S.C. 261, 264, 363 SE2d 888, 890 (1987)). The Agreement does not contemplate a reservation by Respondent of any rights to pursue collection

of the Phase I judgment against Thoennes; rather, it plainly states that the judgment will be released, in exchange for (among other items) an agreement upon the amount of damages for Phase II. Likewise, the Release of Lien plainly releases the judgment against Thoennes. “In cases involving a disputed or liquidated claim arising in contract or tort, the parties will reach an ‘accord’ whereby one of the parties agrees to accept as ‘satisfaction’ of the disputed claim some performance or undertaking different from that which he considers himself entitled.”

(Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 496, 649 S.E.2d 494, 501 (Ct.App. 2007), citing South Carolina Farm Bureau Mut. Ins. Co. v. Kelly, 345 S.C. 232, 239, 547 S.E.2d 871, 875 (Ct.App.2001). “We are cognizant that litigants are free to devise a settlement agreement in any manner that does not contravene public policy or the law. In fact, this Court encourages such compromise agreements because they avoid costly litigation and delay to an injured party. However, the settlement agreements must be carefully scrutinized in order to determine their efficiency and impact upon the integrity of the judicial process.”

(Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 649 S.E.2d 494 (Ct.App. 2007), citing Poston by Poston v. Barnes, 294 S.C. 263-264, 363 SE2d 888, 889-890 (1987)). Appellants submit that the Respondent agreed to release the judgment against Thoennes, which it did via the Release of Lien, in exchange for other consideration set forth in the Agreement.

Unfortunately, and erroneously, the Circuit Court focused almost exclusively on the language in the Release of Lien that indicated no other judgment was being released against any of the other enumerated parties and determined that the clause applied to Thoennes. This construction of the Release of Lien is simply not supported by the document itself. “The parties’ intention must be gathered from the contents of the entire agreement and not from any particular

clause therefrom.” (*Ecclesiastes Prod. Ministries* 374 S.C. at 498, 649 S.E.2d at 502 (Ct.App. 2007), citing *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977)). “It is fundamental that in the construction of the language of a [contract], it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning.” (*Ecclesiastes Prod. Ministries* 374 S.C. at 498-499, 649 S.E.2d at 502 (Ct.App. 2007), citing *Brady v. Brady*, 222 S.C. 242, 246-47, 72 S.E.2d 193, 195 (1952)). Appellants maintain that the Circuit Court assigned or inferred a meaning within the language of the Agreement and Release of Lien that did not reflect the intentions of the parties at the time the documents were drafted, executed and filed. As such, the Appellants are entitled to their requested relief.

Additionally, it appears the Circuit Court was looking beyond the four corners of the clear language of both documents to reach its conclusion. However, the Circuit Court made no outward finding that the documents (one, either or both) were ambiguous, such that review of and/or reliance upon parol evidence would have been acceptable. The Circuit Court seems to have relied entirely upon Respondent’s counsel’s narrative of the genesis of the Agreement as well as the intent of the parties at the time the document was prepared (Respondent did not even acknowledge the existence of the Release of Lien, nor was he asked to explain why it was filed or how he planned to execute upon a satisfied judgment) even though that explanation was in contrast to the words on the pages.

Here, the language of both the Agreement and Release of Lien were clear, their meaning was not susceptible of more than one meaning, and the Circuit Court erred when it assigned an intent to the verbiage that was not otherwise contained within the four corners of each document.

(See *Ecclesiastes Prod. Ministries*, 374 S.C. at 500, 649 S.E.2d at 503 (Ct.App. 2007): “The court must enforce an unambiguous contract according to its terms, regardless of the contract’s wisdom or folly, or the parties’ failure to guard their rights carefully.”

CONCLUSION

WHEREFORE, Appellants request this Honorable Court undertake a review of the Circuit Court’s denial of Appellants’ Petition for Post Judgment Relief, the Circuit Court’s denial of Appellants’ Motion for Reconsideration and/or to Alter or Amend, grant Appellant the relief requested in its Petition for Post Judgment Relief or remand the matter to the Circuit Court with directions to permit Appellants to submit additional evidence, and to deny Respondent’s request to dismiss this appeal.

Respectfully submitted,

By: s/ Stacey P. Canaday

Stacey P. Canaday (SC Bar No. 68805)

Erin D. Dean (SC Bar No. 65320)

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Attorneys for Appellants Marick Home Builders, LLC and Rick Thoennes

December 23, 2022

Beaufort, South Carolina

EXHIBIT 1

ELECTRONICALLY FILED - 2022 Apr 27 12:34 PM - OCONEE - COMMON PLEAS - CASE#2009CP3700652

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-00652
Stoneledge at Lake Keowee Owners'	)	
Association, Inc., et al.,	)	
	)	
Plaintiffs,	)	MOTION FOR ENTRY OF JUDGMENT
	)	AS TO BOSTIC BROTHERS
vs.	)	CONSTRUCTION, INC.; MARICK HOME
	)	BUILDERS, LLC; AND RICK
	)	THOENNES
IMK Development Co., LLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

Please take notice that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, the Plaintiffs, by and through its counsel, will move before the Presiding Judge of the Tenth Judicial Circuit, for an Order altering or amending a judgment of the court pursuant to Rule 58 of the South Carolina Rules of Civil Procedure ("SCRCP"). The grounds for this motion are stated below.

This matter comes before the Court on Remittitur from the South Carolina Supreme Court dated January 4, 2022. The Remittiturs followed the entry of Supreme Court Opinion Numbers 28070 and 28071, which are attached hereto (Exhibits A and B), and which resulted in judgments in the following amounts against the named Defendants:

Judgment against Bostic Brothers Construction, Inc. in the amount of **\$943,872.79** (comprised of \$858,066.17 for the negligence claim and \$85,806.62 for the implied warranty claim);

Judgment against Marick Home Builders, LLC in the amount of **\$629,248.53** (comprised of \$286,022.06 for the negligence claims and \$343,226.47 for the implied warranty claim);

Judgment against Rick Thoennes in the amount of **\$1,000,000.00**

Based upon the forgoing orders of the South Carolina Supreme Court, the judgments should be entered as reflected and made effective as of November 8, 2013.

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr., Esquire (SC Bar #10299)
Lyles & Associates, LLC
1037 Chuck Dawley Blvd., Suite G-100
Mt. Pleasant, South Carolina 29464
843.577.7730

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ATTORNEY FOR PLAINTIFFS

Mt. Pleasant, South Carolina
April 27, 2022

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-00652
Stoneledge at Lake Keowee Owners’	)	
Association, Inc., et al.,	)	
	)	
Plaintiffs,	)	DEFENDANTS MARICK HOME
	)	BUILDERS, LLC AND RICK THOENNES’
vs.	)	PETITION FOR POST JUDGMENT
	)	SETTLEMENT
	)	
IMK Development Co., LLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

PLEASE TAKE NOTICE, Defendants, Marick Home Builders, LLC and Rick Thoennes (collectively the “Defendants”), hereby submit this petition under South Carolina Rules of Civil Procedure 59 and 60 to amend the judgment following Remittitur from the South Carolina Supreme Court dated January 4, 2022. The Remittiturs followed the entry of Supreme Court Opinion Numbers 28070 and 28071, which are attached herewith as **Exhibit A**. This Petition is based on the following together with such other evidence, affidavits, or materials which have been, or which may hereafter be furnished to the Court:

1. The purpose of this petition is to seek a post judgment release and satisfaction of any Judgment against Rick Thoennes.
2. The entry of a Judgment against Rick Thoennes was released by Plaintiffs.
3. After the Phase I trial and during the appeal, the parties negotiated and executed a settlement agreement.
4. In that settlement agreement, Plaintiff released the judgment obtained against Thoennes in regard to Phase I. That agreement was memorialized in a “Settlement Agreement” in 2016 (attached **Exhibit B**).

5. Plaintiff's release of the Phase I Judgment against Rick Thoennes in Paragraph 4.b. while the appeal was proceeding cannot be disputed:

“4. Furthermore, in consideration of the above-referenced stipulation of damages, the Parties also agree:

b. The only effect this Settlement Agreement will have on the Phase I Judgment is that the Plaintiff will release the judgment obtained against Thoennes in regard to Phase I.”

6. The judgment released was the same Judgment Plaintiff now requests entered.

7. That judgment against Thoennes in the amount of \$2,144,088.23 as of November 8, 2013, was marked satisfied and cancelled at Plaintiff's request on October 31, 2016, in compliance with and after the execution of the Settlement Agreement (attached **Exhibit C**).

8. Any Judgment was completely released, marked satisfied, and cancelled pursuant to agreement.

9. Following the remittitur, the Hon. R. Lawton McIntosh sought guidance from the parties as to the handling of the “mathematics” of the case. See the January 10, 2022, e-mail of the Hon. R. Lawton McIntosh attached hereto and incorporated herein as **Exhibit D**.

10. Based on the foregoing, Defendants, Marick Home Builders, LLC and Rick Thoennes, respectfully request the Court issue its findings and/or otherwise make a ruling that: (i) Rick Thoennes's liability and judgment were released by Plaintiffs on the Phase I judgment; (ii) The Phase I judgment against Rick Thoennes was marked satisfied; (iii) any judgment against Rick Thonennes as directed by the Supreme Court be marked satisfied; and (iv) the \$500,000.00 settlement of IMK and Larry Lollis reduce the total judgment by \$500,000.00 as 75% to Negligence and 25% to Warranty.

This Petition may be further supported by the pleadings in the case, transcript of trial, South Carolina Law, and such other memoranda and affidavits submitted in support hereof.

Respectfully submitted this 10th day of June, 2022.

KENISON, DUDLEY & CRAWFORD, LLC

s/ Jason M. Imhoff

Jason M. Imhoff (SC Bar # 69355)

704 East McBee Avenue

Greenville, South Carolina 29601

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imhoff@conlaw.com

*Counsel for Defendants Marick Home Builders, LLC
and Rick Thoennes*



EXHIBIT A

The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

January 04, 2022

The Honorable Melissa C. Burton
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: Stoneledge v. IMK Dev. (Marick/Thoennes)
Lower Court Case No. 2009CP3700652
Appellate Case No. 2019-000038

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CHIEF DEPUTY CLERK

cc: Jason Michael Imhoff, Esquire
Robert T. Lyles, Jr., Esquire

ELECTRONICALLY FILED - 2022 Jun 10 5:35 PM - OCONEE - COMMON PLEAS - CASE#2009CP3700652

Lee Anne Walters, Esquire
Jenny Abbott Kitchings, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Stoneledge at Lake Keowee Owners' Association, Inc.;
C. Dan Carson; Jeffrey J. Dauler; Joan W. Davenport;
Michael Furnari; Donna Furnari; Jessy B. Grasso; Nancy
E. Grasso; Robert P. Hayes; Lucy H. Hayes; Ty Hix;
Jennifer D. Hix; Paul W. Hund, III; Ruth E. Isaac;
Michael D. Plourde; Mary Lou Plourde; Carol C. Pope;
Steven B. Taylor; Bette J. Taylor; and Robert White,
Individually and on Behalf of all others similarly
situated, Petitioners-Respondents,

v.

IMK Development Co., LLC; Keowee Townhouses,
LLC; Ludwig Corporation, LLC; SDI Funding, LLC;
Medallion at Keowee, LLC; Integrys Keowee
Development, LLC; Marick Home Builders, LLC; Bostic
Brothers Construction, Inc.; Miller/Player & Associates;
Bradford D. Seckinger; John Ludwig; William Cox;
Larry D. Lollis; Rick Thoennes; M Group Construction
and Development, LLC; Mel Morris; Joe Bostic; Jeff
Bostic; Clear View Construction, LLC; Michael Franz;
MHC Contractors; Miguel Porras Choncoas; Builders
First Source-Southeast Group; Mike Green; Southern
Concrete Specialties; Carl Compton d/b/a Compton
Enterprize a/k/a Compton Enterprises; Gunter Heating &
Air; All Pro Heating; A/C & Refrigeration, LLC;
Coleman Waterproofing; Heyward Electrical Services,
Inc.; Tinsley Electrical, LLC; Hutch N Son Construction,
Inc.; Upstate Utilities, Inc.; Southern Basements; Carl
Catoe Construction, Inc.; T.G. Construction, LLC;
Delfino Construction; Francisco Javier Zarate d/b/a
Zarate Construction; Alejandro Avalos Cruz; Herberto
Acros Hernandez; Martin Hernandez-Aviles; Francisco
Villalobos Lopez; Ambrosio Martinez-Ramirez; Ester

Moran Mentado; Socorro Castillo Montel; MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillio; Garcia Parra Insulation, Inc.; J&J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; Vincent Morales d/b/a Morales Masonry and Miller/Player & Associates, Defendants,

Of Which Marick Home Builders, LLC and Rick Thoennes are the Respondents-Petitioners.

Appellate Case No. 2019-000038

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 28071
Heard October 14, 2020 – Filed December 8, 2021

**AFFIRMED IN PART; REVERSED IN PART; AND
REMANDED**

Robert T. Lyles Jr. and Lee Anne Walters, both of Lyles & Associates, LLC, of Charleston, for Petitioners-Respondents.

Jason M. Imhoff, of Kenison Dudley & Crawford, LLC, of Greenville, for Respondents-Petitioners.

JUSTICE JAMES: This appeal stems from a construction defect lawsuit involving waterfront townhomes on Lake Keowee in Oconee County. After a two-week trial, Petitioners-Respondents Stoneledge at Lake Keowee Owners' Association, Inc. (the HOA) received plaintiff's verdicts against several defendants, including Respondents-Petitioners Marick Home Builders, LLC and Rick Thoennes. Marick Home Builders, Thoennes, and other defendants appealed, and in a pair of published opinions, the court of appeals affirmed in part and reversed in part. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC*, 425 S.C. 276, 821 S.E.2d 509 (Ct. App. 2018) (hereinafter *Stoneledge I*); *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC*, 425 S.C. 268, 821 S.E.2d 504 (Ct. App. 2018) (hereinafter *Stoneledge II*).

We granted several writs of certiorari to review the court of appeals' decisions. In this opinion, we review *Stoneledge I* and address the trial court's (1) jury charge, (2) denial of Marick's directed verdict motions, (3) finding of amalgamation, and (4) calculation of damages.¹ We affirm the court of appeals as to the jury charge and as to the trial court's denial of Marick's motions. We reverse the court of appeals as to amalgamation. We affirm in part and reverse in part the court of appeals as to the amount of the judgment in favor of the HOA and remand to the circuit court for final calculation and entry of judgment consistent with this opinion.

BACKGROUND

Immersion into the facts of this case and its knotty trial and appellate issues is not for the weary. In *Stoneledge I*, the court of appeals accurately summarized the pertinent facts and legal issues, but for easier reading, we will restate most of them. In 2002, Bostic Brothers Construction, Inc. (Bostic) began construction on a large luxury townhome project in Oconee County on Lake Keowee (Stoneledge). Construction of Stoneledge was divided into Phase I and Phase II. This litigation is limited to the thirty-seven units built during Phase I. Like other townhome communities, a homeowners' association would be responsible for maintaining the

¹ To ensure a complete discussion of the calculation of damages in this case, we have addressed issues raised by the HOA and Bostic Brothers Construction, Inc. in their related appeal. We have issued a separate opinion addressing the other issues raised in that appeal. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev. Co., LLC*, Op. No. 28070 (S.C. Sup. Ct. filed December 8, 2021) (Howard Adv. Sh. No. 43 at 11).

common areas and the exterior of the buildings. The stone-clad, waterfront townhomes were marketed as "quality" construction and "maintenance free." A marketing brochure touted "pleasurable experiences all year long." Unfortunately for the homeowners, this turned out not to be the case.

Bostic was the original general contractor on the project and was a part-owner of the original development company, Keowee Townhouses, LLC. At the time, Bostic was a large construction company with several other projects throughout the Southeast. By late 2004, Bostic had problems finishing other jobs and ceased operations at Stoneledge; at that time, only a few Stoneledge units had been completed and sold. A homeowner compared Stoneledge to a "ghost town" and noted Bostic had completed the exteriors of the unsold units but had not finished the interiors before walking away. Stoneledge was on the brink of foreclosure.

In March 2005, Keowee Townhouses escaped foreclosure by selling the entire Stoneledge project, including the remaining twenty-five or so unfinished units in Phase I, to IMK Development Company, LLC. IMK is comprised of Integrys Keowee Development, LLC (IK) and Marick Home Builders, LLC (Marick). IK's members include William Cox and Larry Lollis. Marick's managing member and construction license holder is Rick Thoennes. IK provided the funding to complete construction, and Marick became the general contractor and completed Phase I.

Marick's site superintendent, Nathan Hornaday, testified he walked through the units shortly after IMK purchased the project to inspect for damage and to make a list of everything that needed to be fixed. He testified to the overall condition of the units and explained, "[M]ainly everything was finished except for, I think, two or three units. I'm not sure. And those units had all the exterior done. They didn't have sheetrock inside of them, but I believe -- I'm not sure, but I believe everything else was finished." Hornaday testified the exterior of the units, including the roofs, porches, decks, and siding, had been completed and that only two or three units needed doors installed. Hornaday testified Marick intended to fix all of the problems with the Phase I units.

Hornaday testified he pulled building permits needed to complete the unfinished units. The work description on a majority of the permits stated Marick was to "Complete Townhome from Rough-in Stage," but a few of the permits stated Marick was to "Complete Townhome from Foundation Stage." According

to the permits, Marick estimated that the cost to complete the remaining units totaled more than \$1.4 million. Marick worked to complete the unfinished units but also undertook repairs on some of the finished units. For example, Marick addressed a variety of issues raised by Steven Taylor and Robert White, who owned finished townhomes, and contracted with a waterproofing company to apply a waterproof coating to all of the Phase I decks and porches.

IMK created the HOA in 2005, and the HOA board was comprised of IMK representatives—including Cox, Lollis, and Thoennes. A homeowner testified HOA board business was regularly conducted, but he noted there was not a lot of interaction between the board and the homeowners. IMK remained in control of the HOA board until September 2008, when IMK turned control of the board over to the homeowners. IMK sold Stoneledge to a new developer, S.D.I./Ludwig Corporation, LLC.

In late 2008 or early 2009, the homeowner-controlled HOA began receiving numerous requests for repairs of damage caused by water intrusion, and it did not take long for the HOA to realize it could not afford the repairs. The HOA paid to fix what it deemed "emergencies" and hired an engineering company to look deeper into the problems. Destructive testing revealed substantial water damage throughout Phase I. In May 2009, the HOA filed this action against a myriad of defendants, including developers, general contractors, subcontractors, and other individuals. The HOA asserted several causes of action, including the ones pertinent to this appeal: negligence, breach of the implied warranty of workmanlike service, breach of the implied warranty of habitability, and breach of fiduciary duty. Extensive discovery ensued, but the case finally made it to trial.

During the two-week trial, the defendants did not dispute the HOA's claim of faulty construction. All parties agreed the HOA's actual damages claim was limited to the cost of repair. The main disputes centered upon the scope and cost of those repairs and which defendants were responsible.²

Derek Hodgkin, the HOA's forensic engineer, testified he found damage at every place he made a test cut. He testified water intrusion had caused extensive damage to roofs, windows, balconies, and foundations. He also testified the

² Bostic asserted a statute of limitations defense. That defense was addressed by the court of appeals in *Stoneledge II* and is the subject of our companion opinion in this case.

firewalls separating the units had been improperly installed. Hodgin testified the observations made by Marick when it took over the project triggered Marick's obligation as general contractor to perform a more thorough investigation to ascertain the source of the problems. Hodgin testified to a broad, extensive scope of repair. Bostic's expert, Richard Moore, presented a narrower, more surgical scope of repair. Estimators testified it would cost \$6,309,197 to implement Hodgin's scope of repair and slightly less than \$4,000,000 to implement Moore's scope of repair.

Many defendants settled before and during trial. When the jury began deliberations, the only remaining defendants were Bostic, Marick, IMK, IK, Thoennes, Cox, and Lollis. The jury returned verdicts for the HOA as follows:

- \$3,000,000 for negligence against Bostic and IMK/Marick;
- \$1,000,000 for breach of the implied warranty of workmanlike service against Bostic and Marick;
- \$1,000,000 for breach of fiduciary duty against IMK, IK, Thoennes, Lollis, and Cox.

After the jury verdicts were read, counsel for the HOA expressed confusion and asked the trial court if the verdicts were "cumulative," and the trial court replied that it thought they were. Counsel for the defendants did not comment on this exchange, and no one, including the trial court, explained their understanding of what "cumulative" meant. As we will explain, this confusion could have been completely avoided if just one party had requested the trial court to order the jury to reform its verdicts to reflect the same award of actual damages for each cause of action.

The trial then proceeded to the damages apportionment phase as to the negligence and breach of warranty verdicts. After hearing brief arguments from counsel on apportionment, the jury allocated 60% of the negligence verdict against Bostic and 40% against IMK/Marick. The jury allocated 70% of the breach of implied warranty verdict against IMK/Marick³ and 30% against Bostic.

³ The implied warranty verdict form lists Bostic and Marick as the potentially liable defendants; however, the subsequent apportionment form lists Bostic and "IMK/Marick" for the implied warranty award. The record does not reveal why

The trial court issued a Form 4 order entering judgment against Bostic and IMK/Marick in amounts reflecting the apportionments. The order also entered judgment against the five breach of fiduciary duty defendants in the amount of \$200,000 each (obviously a division of \$1,000,000 by five). Thereafter, counsel for the HOA appropriately notified the trial court that the HOA had previously received \$2,855,911.77 in settlements from other Phase I defendants.

The parties timely filed post-trial motions, and, upon motion of the HOA, the trial court amended the three verdicts to award \$5,000,000 to the HOA for each cause of action, subject to the apportionment percentages. The trial court then calculated the setoff of prior settlements paid by other Phase I defendants.

Marick, Thoennes, and Bostic appealed,⁴ and the court of appeals issued two published opinions: *Stoneledge I*, 425 S.C. 276, 821 S.E.2d 509 (Ct. App. 2018) and *Stoneledge II*, 425 S.C. 268, 821 S.E.2d 504 (Ct. App. 2018). In *Stoneledge I*, the court of appeals reversed the trial court's decision to raise the three verdicts to \$5,000,000 each, affirmed the trial court's denial of directed verdict motions, affirmed the trial court's "finding" of amalgamation, and adjusted the trial court's calculation of the final judgments. This Court granted cross-petitions for writs of certiorari arising from both *Stoneledge I* and *Stoneledge II*. This opinion is our review of *Stoneledge I*.

DISCUSSION

The parties argue the trial court erred in its: (1) jury charge, (2) denial of directed verdict motions, (3) finding of amalgamation, and (4) calculation of damages to be awarded on the three causes of action at issue.

A. Jury Charge

Marick argues the trial court erred by (1) not charging the jury that Marick could be held liable only for work it performed at Stoneledge and (2) charging the jury on breach of implied warranty of habitability. Marick contends the trial

IMK was included on the apportionment form. In any event, IMK was dismissed from the action while the case was pending before the court of appeals.

⁴ IMK, IK, Lollis, and Cox also appealed, but the HOA's actions against them were dismissed during briefing at the court of appeals. The record does not reflect whether these dismissals arose from settlement or some other event.

court's errors were prejudicial and require reversal. The court of appeals affirmed the trial court on those points and also rejected the HOA's preservation argument. *Stoneledge I*, 425 S.C. at 286-92, 821 S.E.2d at 514-17. We agree with the court of appeals' entire analysis and therefore affirm.

B. Directed Verdict

The court of appeals affirmed the trial court's denial of Marick's directed verdict motion as to the HOA's breach of implied warranty of workmanlike service claim and affirmed the trial court's denial of Marick's motion for a partial directed verdict on the negligence claim. *Id.* at 293-96, 821 S.E.2d at 518-20. Marick argues this was error. We agree with the court of appeals' analysis of these two issues and therefore affirm.

C. Amalgamation (Single Business Enterprise Theory)

Actions to pierce the corporate veil and to find a party responsible under the alter-ego theory lie in equity. *Oskin v. Johnson*, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). Likewise, an action to amalgamate parties lies in equity. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 648, 817 S.E.2d 273, 277 (2018) (noting equitable principles govern the application of amalgamation). Therefore, our standard of review on this issue is de novo and allows us to find facts in accordance with our own view of the preponderance of the evidence. *Oskin*, 400 S.C. at 397, 735 S.E.2d at 463. Despite this broad standard of review, we are not required to disregard the trial court's findings of fact, and we are mindful the trial court sits in a better position to assess witness credibility. *Id.*

South Carolina first recognized the theory of amalgamation in *Kincaid v. Landing Development Corp.*, 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986), in which the court of appeals held "an amalgamation of corporate interests, entities, and activities . . . blur[red] the legal distinction between [three related] corporations and their activities" Since then, this Court and the court of appeals have discussed the theory on several occasions. *See Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 340-41, 384 S.E.2d 730, 734 (1989); *Mid-South Mgmt. Co. v. Sherwood Dev. Corp.*, 374 S.C. 588, 604-05, 649 S.E.2d 135, 144 (Ct. App. 2007); *Pope v. Heritage Cmtys., Inc.*, 395 S.C. 404, 417-20, 717 S.E.2d 765, 772-73 (Ct. App. 2011); *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc.*, 397 S.C. 348, 358-60; 725 S.E.2d 112, 117-18 (Ct. App. 2012). We recently formally recognized and refined this theory in *Pertuis*, where we referred

to the amalgamation theory as "the single business enterprise theory." 423 S.C. at 651, 817 S.E.2d at 278. We will use those terms interchangeably in this opinion.

The parties have not raised this point, but the only decision made by the trial court regarding amalgamation was to deny Marick and Thoennes's directed verdict motion on that issue. The trial court never made a final ruling on the merits of the amalgamation claim, which was an equitable claim to be decided by the trial court, not by the jury. Even if the claim was to be decided by the jury, there was no jury charge, closing argument, verdict form, or jury verdict on amalgamation. During the post-trial motion stage, Marick and Thoennes argued only that the trial court erred in denying their motion for a directed verdict. In any event, for the duration of this appeal, the parties have treated the trial court's denial of the directed verdict motion as a final finding by the trial court on the merits, and the court of appeals treated it as such. Because the affected parties have treated the amalgamation claim as having been ruled upon on the merits, we will address the claim on the merits.

The HOA originally sued IMK, IK, Marick, Cox, Lollis, and Thoennes under the theories of amalgamation, alter ego, and piercing the corporate veil. However, at trial, the HOA conceded the theories of piercing the corporate veil and alter ego were not applicable and advised the trial court it was pursuing the theory of amalgamation as to IMK, Marick, and Thoennes. The trial court denied Marick and Thoennes's motion for a directed verdict on amalgamation, finding there was sufficient evidence of "self-dealing" to send that issue to the jury.

The court of appeals correctly noted the trial court conducted no analysis regarding the amalgamation of IMK, Marick, and Thoennes. *Stoneledge I*, 425 S.C. at 298, 821 S.E.2d at 520. Perhaps that is so because the trial court considered the issue only at the directed verdict stage and never decided the claim on the merits. Marick argues the court of appeals erred in affirming the trial court's amalgamation of Marick with IMK. Thoennes argues the court of appeals erred in affirming the trial court's amalgamation of him with IMK. Thoennes also argues there is no authority for the proposition that he, as an individual, can be amalgamated with a business entity such as IMK.⁵ We agree with Marick and Thoennes.

⁵ Marick and Thoennes do not contest the trial court's amalgamation of their interests with one another.

In *Pertuis*, a restaurant manager was a minority shareholder in a corporation that owned the restaurant. 423 S.C. at 644, 817 S.E.2d at 275. The majority shareholders in this corporation owned shares in three other corporations. The restaurant manager claimed these three other corporations and the corporation that owned the restaurant were amalgamated into a single entity. The manager claimed this amalgamation entitled him to distributions from the three other corporations. We surveyed the law from several other jurisdictions and summarized the single business enterprise theory as follows:

[W]here multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate corporate identities would defeat justice, courts have refused to recognize the corporations' separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Id. at 652-53, 817 S.E.2d at 279. We acknowledged "corporations are often formed for the purpose of shielding shareholders from individual liability[.]" and we noted "there is nothing remotely nefarious in doing that." *Id.* at 655, 817 S.E.2d at 280. Thus, we held the single business enterprise theory requires more than just a showing that the various entities' operations are intertwined. For a court to combine different corporate entities into a single business enterprise, there must also be a showing of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Id.* at 655, 817 S.E.2d at 281. We cautioned, "[a]s with other methods of piercing the corporate form that have previously been recognized in South Carolina, equitable principles govern the application of the single business enterprise remedy, and this doctrine 'is not to be applied without substantial reflection.'" *Id.* (quoting *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008)). We made clear the burden of proof lies with the person seeking to prove the existence of a single business enterprise. *Id.*

IMK, a limited liability company, was created to hold title to Stoneledge. IMK's members were IK and Marick, each holding a 50% interest in IMK. IK's members were Lollis (20%), Cox (40%), and Tim Roberson (40%). Marick's members were Thoennes (50%) and Thoennes's son (50%). The following trial

testimony provides greater insight into IMK's structure and how these entities and individuals conducted business.

Lollis testified he invested in Stoneledge at Roberson's behest. Lollis testified he was strictly an investor; he claimed he did not have any other involvement in IMK and was not familiar with IMK's day-to-day business. Lollis testified he did not know whether IK participated in the sale of Stoneledge units. Lollis acknowledged he received money from IMK's sale of units, and he testified he did not know whether there was any money left in IMK when IMK sold Stoneledge to S.D.I./Ludwig in 2008. Lollis testified he (1) did not know who was on the IMK HOA board, (2) did not attend any HOA board meetings, and (3) received copies of the meeting minutes in the mail. He testified he became aware of the construction defects only after the lawsuit was filed.

Cox, a managing member of IK, testified IK was formed to provide the investment capital needed to purchase and fund the Stoneledge project. Regarding the relationship between Marick and IK, he testified "Marick Home Builders was to provide the construction at their cost, and IK provided the investment. And [IK] did the books for IMK. And the agreement was we would split the profits [from the sale of the units]." Cox testified a couple of the salespeople for IMK were not employees of IK but were housed in IK's offices and used IK's email. Cox testified Marick was in charge of supervising these "contract salespeople."

Cox testified he negotiated IMK's sale of Stoneledge to S.D.I./Ludwig. He testified that sometime before the sale, he learned Marick owed money to S.D.I./Ludwig and that Marick pledged its profits from Stoneledge as collateral. Cox testified IK sold S.D.I./Ludwig its interest in IMK for cash, plus a percentage of the gross sales price for any remaining unsold units. Cox testified the funds IMK received from the sale were disbursed to IK's members. Cox testified that shortly after the sale, IMK turned the HOA board over to the homeowners. Cox testified IMK was insolvent and did not have any money to satisfy a possible judgment in favor of the HOA.

Thoennes testified he was the managing member and held the construction license for Marick. He testified his son, Rick Thoennes III, was also a member of Marick. Thoennes summarized the relationship between IK and Marick, stating "[IK] put in money; I put in hard labor." He testified that before IMK purchased the project, he inspected the units to make sure the project would be a good investment. Thoennes testified Marick charged IMK for Marick's construction

costs. He explained he would submit an invoice to IMK, IMK would write a check to Marick, and Marick would pay its suppliers, employees, and subcontractors. When asked whether Marick was responsible for the management of the Stoneledge sales team, Thoennes replied, "For the most part[.] IMK had some responsibility in that too. I mean, the sales was -- all had to be approved by IMK and what we were doing, and then sales materials and all of those things. So certainly IMK had some responsibility for the sales." Thoennes testified it was Marick's decision as to what work needed to be done on the Phase I units. Thoennes testified that when a unit owner had an issue, the owner would not go through a "formal process" by bringing the issue to the IMK-run HOA board but would bring it directly to him or Hornaday. Thoennes acknowledged he was an HOA board member. Thoennes testified about his many roles at Stoneledge:

It depends on which hat I had on on that particular day. I've been -- [counsel for the HOA] said I sold them. Somebody else said I built them, and somebody else said I'm a director on the board.

....

So I guess it depends on which hat I had. You know, on some days I would go out and jump somebody's car, so I guess I was a mechanic too. But I just -- you know, I didn't have the pleasure of being able to say, I'm a director now. At seven o'clock, I'm a contractor. At eight o'clock, I'm a marketing person. I didn't have that luxury. . . . It was very informal.

Thoennes testified Marick shut down its business shortly after the Stoneledge project failed.

Some of the homeowners were confused about the distinctions between and the roles these companies and individuals played. Homeowner Taylor testified he made no distinction between IMK and Marick. Further, Homeowner White testified, "IMK, to me, in terms of the faces of the folks that were part of IMK were Rick Thoennes and his son and Tim Roberson." White testified it was not until "later on" that he realized IMK was a combination of IK and Marick.

In their directed verdict motion on the amalgamation issue, Marick and Thoennes argued against the HOA's "piercing the corporate veil, amalgamation, alter ego, throw everything up against the wall, they're-all-together-and-everything-should-stick analysis." Marick and Thoennes presented a detailed argument to the trial court as to why the theories of piercing the veil, alter ego, and amalgamation should not be applied in this case. The HOA conceded that the theories of piercing the corporate veil and alter ego were inapplicable to Marick and Thoennes but argued amalgamation was a viable theory. The trial court denied Marick and Thoennes's motion for directed verdict on the amalgamation claim, stating there were factual issues for the jury to resolve.

In addressing the merits of the amalgamation claim, the court of appeals acknowledged this case was tried before our decision in *Pertuis* but found the trial court "failed to conduct any meaningful analysis supporting an amalgamation of interests." *Stoneledge I*, 425 S.C. at 298, 821 S.E.2d at 520. Nevertheless, the court of appeals affirmed the trial court in result, holding, "[O]ur review of the record reveals evidence of a unified operation between Marick and the amalgamated parties as well as evidence of self-dealing that resulted from a blending of their business enterprises." *Id.* The court of appeals found the "bad faith, abuse, fraud, wrongdoing, or injustice" requirement was met because Thoennes had "at least constructive knowledge of the pervasive construction defects . . . but was nevertheless directly involved in IMK and Marick's marketing and sale of the units." *Id.* at 299-300, 821 S.E.2d at 521. The court of appeals concluded, "Given that Marick's and IMK's profits were entirely dependent on IMK's ability to sell the units, their operations were clearly in pursuit of a common business purpose, albeit to the detriment of the HOA members." *Id.* at 300, 821 S.E.2d at 521.

Because Marick and Thoennes are the only parties appealing this issue, we do not address the trial court's "decision" to amalgamate IMK with IK, Cox, and Lollis. Our de novo review of the evidence compels us to hold the court of appeals erred in affirming the trial court's "decision" to amalgamate IMK, Marick, and Thoennes. See *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 281 (explaining the single business enterprise theory should only be applied after *substantial reflection*). As we held in *Pertuis*, a party seeking to impose the existence of a single business enterprise must show both (1) the intertwining of the operations of the entities and

(2) evidence of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions."⁶ 423 S.C. at 655, 817 S.E.2d at 280-81.

Specifically, we hold the HOA failed to prove "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions" sufficient to trigger the application of a single business enterprise between IMK, Marick, and Thoennes. The only evidence the court of appeals cited with regard to "bad faith, abuse, fraud, wrongdoing, or injustice" was:

Thoennes, as Marick's principal and license holder, had at least constructive knowledge of the pervasive construction defects that plagued the project, but was nevertheless directly involved in IMK and Marick's marketing and sale of the units. Given that Marick's and IMK's profits were entirely dependent on IMK's ability to sell the units, their operations were clearly in pursuit of a common business purpose, albeit to the detriment of the HOA members.

Stoneledge I, 425 S.C. at 299-300, 821 S.E.2d at 521 (footnote omitted). Viewing the facts of this case with the requisite hesitancy to invade the LLC form, we do not believe these facts warrant the application of the single business enterprise theory. As noted above, in *Pertuis*, we held the single business enterprise theory requires more than just a showing that the various entities' operations are intertwined. A "common business purpose" is simply not enough. 423 S.C. at 653, 817 S.E.2d at 279. For a court to combine different business entities into a single business enterprise, there must also be a showing of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal

⁶ In *Pertuis*, we adopted the reasoning of the Texas Supreme Court as to the single business enterprise theory. 423 S.C. at 655, 817 S.E.2d at 280. We noted the Texas Supreme Court has enumerated eight nonexclusive factors to be considered in determining whether constituent corporations have not been maintained as separate entities. *Id.* at 652, 817 S.E.2d at 279 n.5 (quoting *SSP Partners v. Gladstrong Invs. (USA) Corp.*, 275 S.W.3d 444, 450-51 (Tex. 2008)). However, as we clearly stated in *Pertuis*, the *Gladstrong* court cautioned "the limitation on liability afforded by the corporate structure can be ignored only when the corporate form has been used as part of a basically unfair device to achieve an inequitable result." *Id.* (internal quotation marks omitted) (quoting *Gladstrong*, 275 S.W.3d at 451).

distinctions." *Id.* at 655, 817 S.E.2d at 281. The conduct of Marick, Thoennes, and IMK did not rise to this level. Like other methods of invading the corporate form, invocation of the single business enterprise theory should be reserved for drastic situations and is the rare exception, not the rule.

For the same reasons, we conclude the evidence does not support a finding of amalgamation of Thoennes with IMK. In addition, we conclude the single business enterprise theory is not to be used to amalgamate an individual with a company. The single business enterprise theory exists as an equitable remedy for plaintiffs whenever they have been wronged by business entities with blurred identities.⁷

Thus, under the facts of this case, we refuse to disregard the corporate form by amalgamating IMK, Marick, and Thoennes, and we therefore reverse the court of appeals on this issue. We express no opinion as to the viability of other methods of invading the LLC form in this case, such as veil piercing or alter ego.

⁷ Other jurisdictions have held the single business enterprise theory is confined to the imposition of "shared liability on entities that are affiliated with a defendant entity" and have refused to apply the theory "to impose liability on individual persons." David J. Marchitelli, Annotation, *Disregard of Separate Existence of Corporations Under Single Business Enterprise Theory*, 50 A.L.R. 7th Art. 2 § 24 (2020); see *Angotti & Reilly, Inc. v. Rincon Residential Towers LLC*, No. A140648, 2015 WL 7294458 (Cal. Ct. App. Nov. 19, 2015) (applying California law); *Manhattan Constr. Co. v. Phillips*, No. 1:09-cv-1917, 2012 WL 13001890 (N.D. Ga. Apr. 9, 2012), *aff'd sub nom. Manhattan Constr. Co. v. Place Properties LP*, 559 F. App'x 856 (11th Cir. 2014) (applying Georgia law); *Nussli US, LLC v. Nola Motorsports Host Comm., Inc.*, No. 15-2167, 2016 WL 4063823 (E.D. La. July 29, 2016) (applying Louisiana law); *Andretti Sports Mktg. La., LLC v. Nola Motorsports Host Comm., Inc.*, 147 F. Supp. 3d 537 (E.D. La. 2015) (applying Louisiana law); *Sun Triangle, Inc. v. Image Stores, Inc.*, No. 96-3877, 1998 WL 252158 (E.D. La. May 15, 1998) (applying Louisiana law); *Spurgeon v. Leleux*, No. 6:11-CV-01807, 2019 WL 138388 (W.D. La. Jan. 8, 2019) (applying Louisiana law); *Medve Energy Ventures LLC v. Warhorse Oil & Gas LLC*, No. 6:17-cv-01336, 2018 WL 7051038 (W.D. La. Nov. 21, 2018), *report and recommendation adopted*, 2019 WL 303122 (W.D. La. Jan. 17, 2019) (applying Louisiana law).

D. Damages

All of the parties argue the court of appeals erred in some manner when it recalculated the trial court's damages award.

The HOA concedes it seeks recovery for a single element of damage—the cost to repair Phase I construction. No one disputes that point. The HOA argued to the jury that it was entitled to \$6,309,197 in damages, corresponding to the amount testified to by its expert. All defendants argued the HOA was entitled to the amount testified to by the defense expert—slightly less than \$4,000,000. The jury awarded the HOA damages as follows:

- \$3,000,000 for negligence against Bostic and IMK/Marick;
- \$1,000,000 for breach of the implied warranty of workmanlike service against Bostic and Marick;
- \$1,000,000 for breach of fiduciary duty against IMK, IK, Thoennes, Lollis, and Cox.

Immediately after these verdicts were read, the trial court sent the jury out in preparation for the apportionment phase of the trial. Counsel for the HOA and the trial court engaged in an exchange that is very important to our review of the trial court's reformation of the jury verdicts:

Counsel for the HOA: I have a question about the verdict. And I was concerned about this occurring. I'm not sure, looking at the verdict, what the jury is awarding me.

Trial Court: They're awarding you what you asked for because you asked for three separate verdicts. Oh, excuse me. I take that back. [Bostic's counsel] asked.

Counsel for the HOA: Yes, sir, he did. And so it is a cumulative award against different defendants of five million dollars?

Trial Court: Well, the way the Defendants have been treating it, yes, it is cumulative because they've been

treating them all as separate little things that they want -- what is it? -- apportionment on this one and apportionment on that one.

There was no explanation of what the word "cumulative" meant. No one asked the trial court to question the jury about its intent behind awarding verdicts in separate amounts nor did anyone ask the trial court to resubmit the damages issue to the jury with the instruction that the dollar amount of damages for each cause of action must be the same.

The apportionment phase of the trial took place immediately thereafter. After jury argument from the parties, apportionment forms for the negligence and breach of warranty claims were submitted to the jury. As to negligence, the jury found IMK/Marick 40% responsible and found Bostic 60% responsible. As to breach of the implied warranty of workmanlike service, the jury found IMK/Marick⁸ 70% responsible and found Bostic 30% responsible. The trial court entered a Form 4 order awarding judgment. The judgment totals on this initial Form 4 mirrored the above-stated verdicts on the three claims (\$3,000,000 + \$1,000,000 + \$1,000,000).

The parties filed numerous timely post-trial motions. In the lead up to the hearing on the post-trial motions, the HOA informed the trial court it had previously received \$2,855,911.77 in settlements from other Phase I defendants. No one disputes that amount.

In its post-trial motion, the HOA requested the trial court to reform the jury's verdict and to amend the initial Form 4 to reflect that the verdicts were "cumulative" by raising the negligence, breach of warranty, and breach of fiduciary duty awards to \$5,000,000 each. The trial court entered a revised Form 4, raising each award to \$5,000,000. The trial court then applied setoff to the negligence, breach of warranty, and breach of fiduciary duty awards and also applied apportionment to the negligence and breach of warranty awards. After setting off

⁸ As we stated in footnote 3, the verdict form first completed by the jury lists "Marick" for the breach of warranty award. The subsequent apportionment form completed by the jury lists "IMK/Marick" for the apportionment of the implied warranty award. This discrepancy is inconsequential for two reasons. First, IMK is not a party to this appeal, and second, no one asked for it to be rectified.

the \$2,855,911.77 in settlements and applying apportionment to the negligence and breach of warranty awards, the trial court entered judgment on those two causes of action as follows: (1) as to negligence, \$2,144,088.23 against Bostic and \$857,635.29 against IMK/Marick and (2) as to breach of the implied warranty of workmanlike service, \$2,144,088.23 against Marick and \$643,226.47 against Bostic. As previously noted, the jury found Bostic 60% responsible for the damages awarded for negligence and found IMK/Marick 70% responsible for the damages awarded for breach of the implied warranty of workmanlike service. In calculating the foregoing figures, the trial court did not apply the apportionment statute to a defendant's share of liability when that defendant was found to be more than 50% responsible. *See* S.C. Code Ann. § 15-38-15(A) (Supp. 2020). However, the trial court did apply the statute to a defendant's share of liability when that defendant was found to be less than 50% responsible.

As to the cause of action for breach of fiduciary duty, the trial court entered judgment on the revised Form 4 in the amounts of \$2,144,088.23 against IMK; \$2,144,088.23 against IK; \$2,144,088.23 against Cox; \$2,144,088.23 against Lollis; and \$2,144,088.23 against Thoennes. This reflects the trial court's application of setoff, but not apportionment, to the breach of fiduciary duty claim.

The court of appeals reversed the trial court, substantially revising the trial court's computation of the various judgments. *Stoneledge I*, 425 S.C. at 302-03, 821 S.E.2d at 522-23.

1. "Cumulative" Verdict

The court of appeals reversed the trial court's decision to increase each judgment to \$5,000,000, holding this invaded the province of the jury. *Id.* at 302, 821 S.E.2d at 522. We agree with the court of appeals on that point.

The HOA argues the court of appeals erred in not affirming "the cumulative verdict of a single damage." The HOA asserts its single damage was the cost to repair the units and that there was no evidence to support a finding of different actual damages for the three causes of action. The HOA contends "[t]he trial judge simply applied the jury's findings, based upon his extensive observation of the trial and the evidence presented, and correctly applied the jury's verdict—\$5,000,000—as the cumulative award for a single damage, regardless of the cause of action." In support of its argument, the HOA cites a now-depublished opinion of the court of

appeals, *Keeter v. Alpine Towers International, Inc.*, Op. No. 2012-UP-692 (S.C. Ct. App. filed June 27, 2012).⁹

In *Keeter*, the plaintiff was severely injured in a fall during a high school recreational field day. *Id.* at *1. The jury returned a verdict for the plaintiff against the lone defendant on three separate causes of action: (1) \$500 in actual damages for strict liability; (2) \$900,000 in actual damages and \$160,000 in punitive damages for negligent design; and (3) \$2,500,000 in actual damages and \$950,000 in punitive damages for negligent training. Before the jury was dismissed, and upon request of the plaintiff, the trial court inquired of the jury whether it intended the three separate actual damages awards be added to result in a total award or whether it intended that the awards be separate for each cause of action. The forelady responded the jury intended for the awards to be "cumulative," or added together. The trial court asked the same question as to punitive damages, and the forelady responded in the same fashion. The defendant did not ask for further clarification. The court of appeals held that in the context that the plaintiff sought and could receive only one damages award for the same injury, the dialogue between the trial court and the forelady established the jury intended the damages awards for each cause of action be added together for a total award of \$3,400,500 actual damages and \$1,110,000 punitive damages. *Id.* at *12.

The HOA seizes upon its and the trial court's use of the word "cumulative" immediately after the jury was released to establish all parties agreed at that time that each of the three verdicts were actually \$5,000,000. We disagree. In light of the parties' reliance during the trial upon *Keeter*, which, again, was a published decision at the time of this trial, it was reasonable for the defendants to conclude the trial court intended the breach of warranty and negligence verdicts against Bostic and IMK/Marick to be added together to amount to \$4,000,000 and the

⁹ Normally, we would not consider arguments citing to an unpublished decision. However, *Keeter* was a published decision at the time of this trial, and a petition for certiorari was pending in this Court when the instant case was tried. The trial court and the parties relied upon *Keeter* when the instant case was tried; however, while the petition for certiorari was pending with this Court to review *Keeter*, the parties in *Keeter* submitted a joint motion to dismiss. Two years after this case was tried, the Court granted the parties' joint motion and ordered the court of appeals' opinion to be depublished. See *Keeter v. Alpine Towers Int'l, Inc.*, 410 S.C. 445, 766 S.E.2d 375 (2014).

breach of fiduciary duty verdicts against the remaining defendants to remain at \$1,000,000.¹⁰

In the case before us, the parties agree the HOA sought and could receive only one actual damages award for each cause of action. However, no party asked the trial court to request the jury for any clarification of the verdicts. The HOA submits no authority to support the trial court's reformation of the jury's verdict without receiving the input of the jury and relies upon the trial court's "extensive observation of the trial and the evidence presented." *See Joiner v. Bevier*, 155 S.C. 340, 355, 152 S.E. 652, 657 (1930) ("A jury's verdict should be upheld, when it is possible to do so, and carry into effect what was clearly the jury's intention. It is our duty to enforce a verdict, not to make it." (internal citation omitted)); *Camden v. Hilton*, 360 S.C. 164, 173, 600 S.E.2d 88, 92 (Ct. App. 2004) ("[I]t is not for the trial court to say what it thinks the verdict should be."). Did the jury find the HOA proved damages of \$5,000,000 for each cause of action, as the HOA claims? Perhaps, but perhaps not. Did the jury find the HOA proved damages of \$4,000,000? Perhaps, but perhaps not. Absent further dialogue with the jury, there was simply no way for the trial court to tell without speculating what the jury intended.

The trial court erred in reforming the verdicts on its own, absent a request from a party to resubmit the case to the jury with instructions that the dollar amounts for each verdict had to be the same. *See Rhame v. City of Sumter*, 113 S.C. 151, 154, 101 S.E. 832, 833 (1920) ("While the verdict is unusual, no effort was made to correct it before the jury had separated. His honor would have done so had he been requested to find out just what the jury meant, and had the verdict reformed."), *overruled on other grounds by Rourk v. Selvey*, 252 S.C. 25, 164 S.E.2d 909 (1968); *Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 282, 178 S.E. 819, 829 (1934) ("The law rather forbids this court assuming to take upon

¹⁰ The court of appeals also noted Marick's argument that the HOA should have been required to elect a remedy between the three causes of action. The court held Marick's argument was unpreserved because Marick did not object to the trial court's ruling that the awards were "cumulative." However, the court of appeals went on to hold that setoff should be applied proportionately to the three awards as to all defendants, including Marick. We agree with this method of setoff under the facts and posture of this case, and we conclude it moots Marick's election of remedies argument.

itself the powers, duties, rights, and privileges of a jury." (quoting *Sanders v. Commonwealth Life Ins. Co. of Ky.*, 134 S.C. 435, 440, 132 S.E. 828, 830 (1926)); *Allegro, Inc. v. Scully*, 400 S.C. 33, 49, 733 S.E.2d 114, 123 n.9 (Ct. App. 2012) ("If a jury verdict form is ambiguous or unclear, the jury should be returned to the jury room in order to clarify or conform the verdict to its intent before the jury is excused.").

The court of appeals correctly held the trial court invaded the province of the jury by reforming the verdicts on its own. *Stoneledge I*, 425 S.C. at 302, 821 S.E.2d at 522. We hold the silence of the defendants in the face of the trial court's statement that the verdicts were "cumulative" was of no significance because, in light of *Keeter*, the term "cumulative" was subject to a different meaning from what the plaintiff and the trial court intended. It was entirely reasonable for defense counsel to take the trial court's comment as its conclusion that the verdicts would be added together, as the verdicts were in *Keeter*. Because no party requested the trial court resubmit the verdict forms to the jury with instructions to make the verdicts consistent, we affirm the court of appeals' holding that the three verdicts must stand as delivered by the jury. We repeat that this entire problem and the appellate distress it has caused could have been avoided if just one party had requested the trial court to resubmit the verdicts to the jury with instructions to make them consistent.

We now turn to the application of setoff to the three verdicts.

2. Setoff

South Carolina courts have consistently held "there can be only one satisfaction for an injury or wrong." *Smith v. Widener*, 397 S.C. 468, 471, 724 S.E.2d 188, 190 (Ct. App. 2012) (quoting *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 113, 498 S.E.2d 395, 407 (Ct. App. 1998)). "Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Id.* at 471-72, 724 S.E.2d at 190 ("When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law."). "The right of setoff has existed under the common law for over 100 years." *Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015).

The Uniform Contribution Among Tortfeasors Act (the Act) "represents the Legislature's determination of the proper balance between preventing double-recovery and South Carolina's 'strong public policy favoring the settlement of disputes.'" *Id.* at 196, 777 S.E.2d at 830 (quoting *Chester v. S.C. Dep't of Pub. Safety*, 388 S.C. 343, 346, 698 S.E.2d 559, 560 (2010)). Section 15-38-50 of the Act codifies the principle of setoff for settlements paid by persons liable in tort to another:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

S.C. Code Ann. § 15-38-50 (2005).

a) Application of Setoff to the Breach of Fiduciary Duty Award

The trial court applied setoff to the breach of fiduciary duty award against Thoennes, but the court of appeals reversed concluding that because none of the defendants who settled with the HOA before and during trial were sued for breach of fiduciary duty, none of the settlement proceeds included damages directly resulting from breach of fiduciary duty. *Stoneledge I*, 425 S.C. at 302-03, 821 S.E.2d at 523. We agree setoff does not apply to the breach of fiduciary duty award, but we reach this conclusion for a different reason.

The HOA contends that because the damages it sought for each cause of action and because all the settlements it received were for the same injury—cost of repair—setoff applies to the breach of fiduciary duty award. Bostic, Marick, and Thoennes argue setoff should not apply to the breach of fiduciary duty award,

citing subsection 15-38-20(G) of the Act, which provides, "This chapter does not apply to breaches of trust or of other fiduciary obligation." We agree with Bostic, Marick, and Thoennes.

As we noted above, "[t]he right of setoff has existed under the common law for over 100 years." *Riley*, 414 S.C. at 195, 777 S.E.2d at 830. We noted in *Rutland v. South Carolina Department of Transportation* that allowing a setoff "prevents an injured person from obtaining a double recovery for the damage he sustained, for it is 'almost universally held that there can be only satisfaction for an injury or wrong.'" 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012) (quoting *Truesdale v. S.C. Highway Dep't*, 264 S.C. 221, 235, 213 S.C.2d 740, 746 (1975), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)). The provisions of subsection 15-38-20(G) prohibiting the application of setoff to a breach of fiduciary duty award are in derogation of this common law principle. We recently cited the settled rule that "[s]tatutes in derogation of the common law are to be strictly construed[.]" and "[u]nder this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature." *Eades v. Palmetto Cardiovascular & Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018) (internal quotation marks omitted) (quoting *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012)).

The Act is a part of Chapter 38. In fact, the Act is the only statutory scheme in Chapter 38. The Act governs the setoff of prior settlements paid by tortfeasors, and breach of fiduciary duty is a tort. Because subsection 15-38-20(G) of the Act provides Chapter 38 does not apply to breaches of trust or other fiduciary obligation, the General Assembly clearly intended Chapter 38 to prohibit the application of setoff to a breach of fiduciary duty award. Therefore, we hold the \$1,000,000 breach of fiduciary duty award against Thoennes is not subject to setoff.

b) Application of Setoff to the Breach of Warranty Award

Bostic argues the court of appeals erred in holding setoff applies to the breach of warranty award. Bostic asserts that only the negligence award should be subject to setoff. Bostic contends setoff is only available for tort claims and because breach of warranty is a contract claim, setoff is inapplicable.

Bostic is correct that claims for negligence sound in tort and claims for breach of warranty generally sound in contract. Bostic is also correct that the Act

discusses setoff in the context of tort claims. *See* § 15-38-50 (explaining setoff is available for "tortfeasors" who are "liable in tort"). The Act governs the setoff of prior settlements paid by those liable in tort, not those liable in contract. However, nothing in the Act prohibits the application of common law setoff to a claim founded in contract. *See Riley*, 414 S.C. at 195, 777 S.E.2d at 830 ("The right to setoff has existed at common law in South Carolina for over 100 years."). Therefore, setoff can be applied to the breach of warranty award.

c) Application of Setoff to the Negligence Award

All parties agree setoff applies to the negligence award. The parties disagree as to the setoff figures to be applied to calculate the final judgments. We make those calculations below in subsection D.4 (Judgment Amounts).

3. Apportionment

Subsection 15-38-15(A) of the Act provides for apportionment of liability among joint tortfeasors arising from tortious conduct:

In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

S.C. Code Ann. § 15-38-15(A) (Supp. 2020). In this subsection, "the legislature abrogated pure joint and several liability for joint tortfeasors who are less than fifty

percent at fault." *Smith v. Tiffany*, 419 S.C. 548, 552-53, 799 S.E.2d 479, 481 (2017).

As noted, breach of warranty claims generally sound in contract, not in tort, so the breach of warranty verdict was not subject to apportionment. However, at trial, the parties agreed the jury should apportion responsibility for the breach of warranty award between Bostic and Marick. Under subsection 15-38-15(A), Bostic is liable for the entire negligence verdict of \$3,000,000, and Marick is liable for its apportioned share of \$1,200,000. Marick is liable for the entire \$1,000,000 breach of warranty verdict, and Bostic is liable for its apportioned share of \$300,000. As we will now discuss, these amounts must be adjusted to take into account (1) pro rata allocation between the verdicts for these two causes of action and (2) setoff of the prior settlements.

4. Judgment Amounts

The jury awarded \$3,000,000 for negligence; \$1,000,000 for breach of the implied warranty of workmanlike service; and \$1,000,000 for breach of fiduciary duty, for a total award of \$5,000,000. The HOA received \$2,855,911.77 in settlements from other Phase I defendants. Had the jury been instructed to return one consistent verdict of actual damages, the application of setoff and the calculation of the net judgments after apportionment would have been simple. However, we find it appropriate to apply a pro rata allocation of the \$2,855,911.77 setoff to the negligence and breach of warranty verdicts. Of course, we must also take into account the apportionment percentages rendered by the jury.

The court of appeals correctly held—but, as discussed above, for the incorrect reason—that the breach of fiduciary duty verdict against Thoennes was not subject to setoff. *Stoneledge I*, 425 S.C. at 302-03, 821 S.E.2d at 523. The court of appeals also correctly held the \$4,000,000 in combined verdicts against Bostic and Marick were subject to setoff in the amount of \$2,855,911.77. *Id.* However, the court of appeals mistakenly concluded this calculation would leave a \$2,144,088.23 net judgment to be allocated between the negligence and breach of warranty verdicts. *Id.* The correct figure is \$1,144,088.23. The court of appeals correctly held "it would be proper to allocate three-fourths of the remaining judgment to the negligence cause of action and the remaining one-fourth to the [breach of warranty] cause of action." *Id.*

As noted above, during the apportionment phase, the jury found Bostic was 60% responsible for the negligence award, Marick was 40% responsible for the negligence award, Marick was 70% responsible for the breach of warranty award, and Bostic was 30% responsible for the breach of warranty award. Under subsection 15-38-15(A) of the Act, a defendant whose conduct is found to be less than fifty percent of the total fault is liable for only that percentage of the damages determined by the fact finder. Joint and several liability is assigned to defendants found liable for fifty percent or more of the damages. After applying the correct setoff, the apportionment percentages determined by the jury, and the apportionment statute, we hold the resulting judgments to be entered are as follows:

- Bostic: \$858,066.17 for negligence (joint and several liability for prorated verdict after setoff) and \$85,806.62 for breach of warranty (30% of prorated verdict after setoff)
- Marick: \$286,022.06 for breach of warranty (joint and several liability for prorated verdict after setoff) and \$343,226.47 for negligence (40% of prorated verdict after setoff)
- Thoennes: \$1,000,000 for breach of fiduciary duty (no setoff applied)

These figures do not take into account the HOA's monetary settlements (if any) with IMK, IK, Cox, and Lollis during the pendency of this appeal.

CONCLUSION

Based on the foregoing, we affirm in part and reverse in part the court of appeals. We remand this matter for final calculation and entry of judgment consistent with our opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Stoneledge at Lake Keowee Owners' Association, Inc.;
C. Dan Carson; Jeffrey J. Dauler; Joan W. Davenport;
Michael Furnari; Donna Furnari; Jessy B. Grasso; Nancy
E. Grasso; Robert P. Hayes; Lucy H. Hayes; Ty Hix;
Jennifer D. Hix; Paul W. Hund, III; Ruth E. Isaac;
Michael D. Plourde; Mary Lou Plourde; Carol C. Pope;
Steven B. Taylor; Bette J. Taylor; and Robert White,
Individually and on Behalf of all others similarly
situated, Respondents,

v.

IMK Development Co., LLC; Keowee Townhouses,
LLC; Ludwig Corporation, LLC; SDI Funding, LLC;
Medallion at Keowee, LLC; Integrys Keowee
Development, LLC; Marick Home Builders, LLC; Bostic
Brothers Construction, Inc.; Miller/Player & Associates;
Bradford D. Seckinger; John Ludwig; William Cox;
Larry D. Lollis; Rick Thoennes; M Group Construction
and Development, LLC; Mel Morris; Joe Bostic; Jeff
Bostic; Clear View Construction, LLC; Michael Franz;
MHC Contractors; Miguel Porras Choncoas; Builders
First Source-Southeast Group; Mike Green; Southern
Concrete Specialties; Carl Compton d/b/a Compton
Enterprize a/k/a Compton Enterprises; Gunter Heating &
Air; All Pro Heating; A/C & Refrigeration, LLC;
Coleman Waterproofing; Heyward Electrical Services,
Inc.; Tinsley Electrical, LLC; Hutch N Son Construction,
Inc.; Upstate Utilities, Inc.; Southern Basements; Carl
Catoe Construction, Inc.; T.G. Construction, LLC;
Delfino Construction; Francisco Javier Zarate d/b/a
Zarate Construction; Alejandro Avalos Cruz; Herberto
Acros Hernandez; Martin Hernandez-Aviles; Francisco
Villalobos Lopez; Ambrosio Martinez-Ramirez; Ester
Moran Mentado; Socorro Castillo Montel; MJG
Construction and Homebuilders, Inc. d/b/a MJG

Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillio; Garcia Parra Insulation, Inc.; J&J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; Vincent Morales d/b/a Morales Masonry and Miller/Player & Associates, Defendants,

Of Which Marick Home Builders, LLC and Rick Thoennes are the Appellants.

Appellate Case No. 2015-000392

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 5600
Heard December 7, 2017 – Filed October 10, 2018

AFFIRMED IN PART, REVERSED IN PART

Jason Michael Imhoff, Chad McQueen Graham, and Carl Reed Teague, all of The Ward Law Firm, PA, of Spartanburg, for Appellants.

Robert T. Lyles, Jr., of Lyles & Associates, LLC, of Charleston, for Respondent.

LOCKEMY, C.J.: In this construction defect case, Marick Home Builders, LLC (Marick) and Rick Thoennes appeal several of the trial court's orders arguing the trial court erred by (1) failing to give certain jury charges; (2) failing to grant their directed verdict motions; (3) improperly limiting their closing argument; (4) amalgamating the interests of several defendants; (5) failing to require Respondents to elect a remedy; and (6) failing to properly set off settlements Respondents received prior to trial. We affirm in part and reverse in part.

FACTS

In 2002, Bostic Brothers Construction, Inc. (Bostic) began construction as the general contractor on Stoneledge, a townhouse community on Lake Keowee. Bostic marketed the properties as "quality construction" and "maintenance free." Bostic stated, "The quality and attention to detail of the cedar and stacked-stone homes are just as breathtaking as the views." Bostic also noted "Your homeowner[']s association dues cover both maintenance of the grounds and the exterior of your home leaving you more time to enjoy the lake and surrounding attractions." Several of the units were sold in 2003, but the attempts to sellout were "erratic at best."

By late 2004, Bostic was having difficulties finishing other jobs and had to cease operations at Stoneledge. According to property owners at Stoneledge, when Bostic left in 2004, there were "a number of issues." Steven Taylor, a property owner at Stoneledge, testified "[i]t was like a ghost town." He stated property owners were concerned about whether electricity bills were being paid, whether the septic system would work properly, and who was responsible for keeping the common areas landscaped. Taylor testified Bostic had completed the exteriors of the remaining units, but had not completed the interiors when it abandoned the project.

In 2005, IMK Development Company purchased the property from Bostic, and Marick Home Builders, LLC took over the building responsibilities for Stoneledge. Marick's site superintendent, Nathan Hornaday, testified he walked through the unsold units and noted existing damage and what needed to be fixed. According to Hornaday, the exterior of the units, including the roof, porches, decks, and siding were installed in all of the homes and only two or three units needed doors or windows installed.

Hornaday testified that when he arrived on the Stoneledge site, he observed leaks around the porches and decks. Taylor testified he too noticed leaks on his porch and deck. Additionally, Hornaday stated he observed water damage inside the unfinished units, not associated with the porches. He believed that the water damage was the result of broken or missing windows and doors. Hornaday alerted Marick, and one of its principals, Rick Thoennes, about the issues. Marick pulled permits for the unfinished units to complete construction. Marick also hired Coleman Waterproofing to rectify the leaks on the decks and porches by applying a

waterproof coating to the concrete. According to Marick, the waterproofing appeared to rectify the issue.

In 2005, IMK created a homeowners association (HOA) for Stoneledge. At that time, the HOA Board was comprised of IMK representatives, including Thoennes. The HOA conducted regular business, but the homeowners did not have much interaction with the Board. The HOA performed maintenance to the units, but progress was sometimes slow. The IMK/Marick representatives of the Board turned over the HOA to the homeowners in late 2008.

In the spring of 2009, the homeowner-controlled Board began receiving complaints of leaks on the decks and porches. Some homeowners also noticed water running through the crawl-space of their homes during heavy rains. The HOA completed destructive testing on the porches and decks and found significant damage. The HOA also found hidden rot caused by water intrusion to structural columns, and homeowners began reporting interior damage caused by water infiltration from the roof.

In February 2010, the HOA filed an action against Bostic, IMK, Marick, and other development entities, subcontractors and individuals. The HOA settled with some defendants, but went to trial against Bostic, IMK, Marick and the original IMK/Marick board members, alleging negligence, breach of implied warranty of workmanlike service, breach of implied warranty of habitability, and breach of fiduciary duty.

At trial, the HOA requested the jury return a verdict for \$6,309,197 for the full amount required to bring the damaged buildings up to the quality at which they were marketed. After deliberations, the jury returned a verdict in favor of the HOA for a total of \$5,000,000: \$3,000,000 on the negligence cause of action against Marick and Bostic, \$1,000,000 on the breach of implied warranty cause of action against Marick and Bostic, and \$1,000,000 for the breach of implied warranty cause of action against Marick. Following post-trial proceedings to allocate fault and setoff settlement funds, the trial court entered revised judgments. This appeal followed.

LAW/ANALYSIS

A. JURY CHARGES

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion." *Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 197, 781 S.E.2d 534, 542 (2015) (quoting *Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." *Id.* (quoting *Cole*, 378 S.C. at 404, 663 S.E.2d at 33).

"A trial court must charge the current and correct law." *Id.* (quoting *In re Estate of Pallister*, 363 S.C. 437, 451, 611 S.E.2d 250, 258 (2005)). "Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." *Id.* (quoting *Ross v. Paddy*, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000)). "However, jury instructions should be confined to the issues made by the pleadings and supported by the evidence." *Id.* "A trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal." *Id.* (quoting *Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005)).

"When an appellate court reviews an alleged error in a jury charge, it 'must consider the court's jury charge as a whole in light of the evidence and issues presented at trial.'" *Id.* (quoting *Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999)). "If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error." *Id.* at 198, 781 S.E.2d at 542 (quoting *Keaton*, 334 S.C. at 497, 514 S.E.2d at 575). "This holistic approach to jury instructions is linked to the principle of appellate procedure that '[a]n error not shown to be prejudicial does not constitute grounds for reversal.'" *Id.* (quoting *Ardis v. Sessions*, 383 S.C. 528, 532, 682 S.E.2d 249, 250 (2009)).

If the record does not contain any proposed jury charges, and it does not reflect that Appellant proffered any proposed jury charges, the issue is not preserved. *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs*, 347 S.C. 545, 556, 556 S.E.2d 718, 724 (Ct. App. 2001).

Marick argues the trial court erred by (1) not charging the jury that Marick could be held liable only for work it performed, (2) charging the jury on breach of implied warranty of habitability, even though that cause of action had been dismissed, (3) and failing to give its requested jury charge on the breach of fiduciary duty cause of action. We disagree.

1. Liability Charge

Marick asserts "[t]he trial court failed to charge the jury on the proper elements of negligence for a subsequent owner for original construction defects or similar limitations for breach of implied warranty of workmanlike service." The HOA, on the other hand, asserts Marick failed to preserve its argument because it did not proffer a proposed jury charge to the trial court prior to the court's charge to the jury.

In *Round Tree Villas Association v. 4701 Kings Corporation*, our supreme court determined whether a lender, that took control of a project in lieu of foreclosure from the builder, could be held liable for negligent work by the builder prior to the lender taking title to the property. 282 S.C. 415, 418-419, 321 S.E.2d 46, 48-49 (1984). The *Round Tree Villas* court refused to impose liability in such a case. *Id.* at 422, 321 S.E.2d at 50. Instead, the court found the lender could only be held responsible for its acts of negligence in repairing any issues. *Id.* at 423, 321 S.E.2d at 51. "Under this cause of action the Lender . . . may only be held liable for any damages proximately caused by the alleged negligent repair, but not for any original damages proximately caused by the negligence of the Builder, Architect or Contractor." *Id.*

During trial, Hornaday, Marick's site superintendent, and Taylor, a resident of Stoneledge, each testified the exteriors of many of the Phase I units were already constructed when Marick took over the project in 2005. But, Hornaday also testified he observed water damage in unfinished units and leaks around some porches and decks. Furthermore, he acknowledged Marick pulled permits to complete construction at Stoneledge totaling \$1.4 million, including some that stated the work was to "complete townhome from foundation stage."

During the charge conference, the court stated it would charge the elements of negligence. Specifically, the court stated, "I'll charge as far as the elements of damages the negligence is the cost of repairs and incidental and consequential damages." The court then noted, "Have we got any -- I don't know about the duty to exercise reasonable care in making repairs." The HOA told the trial court, "That would be relevant to the claims against Marick." Marick responded, "We put the *Roundtree Villas* case in there, I believe." Later during the charge conference, the court noted it would charge the jury "the burden of proof is upon the plaintiff to prove not only that there was negligence, but that the named defendant or defendants were the cause of that [damage]." Again, Marick argued to the trial court it should include a charge from *Roundtree Villas* regarding "liability of

subsequent builder making repairs." The court noted it could not find the proposed charge but Marick quoted from the charge that

One who undertakes to make repairs [sic], the defective components of a construction project is not liable for the negligence of the prior builder or contractor. The entity who assumes to make repairs to defective components is only liable for damages proximately caused by alleged negligent repair but not for any original damages proximately caused by the negligence of a builder or contractor.

The trial court declined to charge the language from *Roundtree Villas* because it involved a lender that took title to property, not a subsequent builder.

With regard to the HOA's issue preservation argument, we find Marick sufficiently proffered its requested charge to the trial court. While there was some discussion that the charge was not included in Marick's requests sent to the court prior to the charge conference, Marick sufficiently brought to the trial court's attention the requested content of the charge, and there is a sufficient record for this court to review it. Therefore, we find this issue has been sufficiently preserved for our review.

On the merits, the trial court charged the jury the correct statement of the law in South Carolina regarding builder negligence and liability. While we agree with Marick it may have been helpful to include the language from *Roundtree Villas* in the charge to the jury, after reviewing the entire jury charge, we find no error under the specific facts of the case.

The trial court charged the jury on the general elements of negligence. The court specifically charged the jury "[t]he plaintiffs must also prove by a preponderance or the greater weight of the evidence that they suffered damages as a result of the defendants' breach of duty." The trial court continued by instructing the jury on proximate cause. The court instructed, "The plaintiffs must prove by a preponderance of the evidence that the damages were proximately caused by the defendants' breach" and the plaintiffs must prove causation in fact "by showing that the damages would not have occurred but for the defendants' negligence." The court also charged the jury that a plaintiff must prove a builder negligently constructed a building and "the negligence or carelessness of the defendants in performing the construction work was a proximate cause of the damages sustained

by the plaintiff."¹ Finally, the court instructed, "If [two] acts happened one after the other, but not related to each other, they would not be concurring causes. In that case, only one person whose negligence actually caused the injury would be responsible."

Taken as a whole, these charges adequately instructed the jury on the law of South Carolina. Marick's requested charge is certainly appropriate here, but the court's charge as given instructed the jury that only the person or entity whose negligence caused the injury would be responsible. Accordingly, we affirm.

2. Breach of Implied Warranty of Habitability

Marick argues the trial court erred in charging the jury on the law of implied warranty of habitability because the breach of implied warranty of habitability claim had been dismissed prior to trial. The HOA asserts the trial court's error was harmless because no cause of action for breach of implied warranty was included on the verdict form. We agree with the HOA.

The HOA initially asserted a cause of action against the Stoneledge developers for breach of implied warranty of habitability. The trial court, however, granted the developers summary judgment on the breach of implied warranty of habitability prior to trial.

In preparing its jury instructions, the trial court stated it planned to charge the jury on four causes of action, including a charge for breach of the implied warranty of habitability. Marick then asked "Does anybody think there's a work habitability claim still out there?" The HOA responded, "Your Honor, I think that you dismissed the habitability claim by earlier order." The trial court agreed.

However, during the charge, the trial court instructed the jury,

A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, and workmanlike manner. This is an implied warranty of workmanlike services, and it exists as a matter of law. The implied warranty o[f]

¹ The trial court instructed the jury on multiple other occasions that a defendant is only liable for damages for which the defendant was the proximate cause; however, for the sake of brevity, we list only a sampling of those charges.

workmanlike manner is a duty to perform the work skillfully, carefully and diligently. The work need not be performed to absolute perfection or to the personal satisfaction of either party, but it must be performed to the satisfaction of the contract. The skill required of a person providing services is the same degree of skill, efficiency and knowledge of those of ordinary skill, competence and standing in the particular trade, profession or business in which the person is working. If you find the construction was defective by reason of the builder's workmanlike performance, the breach of warranty gives a plaintiff a claim for damages for the loss of his expectancy.

The plaintiffs alleged that there has been a breach of the implied warranty of workmanlike service and a breach of implied warranty of habitability. An implied warranty is one which is presumed to be included in every sale, whether the defendant actually stated the promise or not. The proper measure of damages for the breach of an implied warranty is the actual damages shown to have been sustained by the plaintiff which are the natural, direct and proximate cause of the breach of the implied warranty and which may be reasonably regarded as within the contemplation of the parties at the time [sic] the warranty as a probable consequence of the breach of this warranty.

In the court's instruction on damages for the breach of implied warranty cause of action, the trial court did not indicate a specific implied warranty, instead noting "[i]ncidental damages from a breach of implied warranty may be recovered."

After the charge, Marick noted its exception to the breach of implied warranty of habitability language. Marick acknowledged the implied warranty of habitability issue was a "small one" that was "buried in other charges." After deliberating, the jury requested the trial court "provide the jury charge for breach of implied warranty of workmanlike service and [the trial court's] charge for breach of fiduciary duty." The court repeated these charges at the jury's request. After the court's recharge on the law, Marick again objected to the implied warranty of

habitability reference. The trial court noted the error, but found there was no injury to Marick because the term was only mentioned one time in the section.

We agree with the trial court's assessment. The jury charge only included the phrase breach of implied warranty of habitability once; it did not define the concept or give any elements for it with respect to a separate cause of action. Further, the jury specifically requested the trial court recharge the issue of breach of warranty of workmanlike service, not mentioning the warranty of habitability. While inclusion of the phrase was error, we find Marick has failed to establish any prejudice resulting from the trial court's passing references to the breach of warranty of habitability in this case.

3. Breach of Fiduciary Duty

Marick argues the trial court gave an erroneous jury charge on the breach of fiduciary duty cause of action, which essentially converted breach of fiduciary duty into a strict liability cause of action. Based on the trial court's erroneous breach of fiduciary duty charge, Marick also asserts the trial court erred by not giving its requested charge on the business judgment rule. The HOA asserts the breach of fiduciary duty claim presented in this case is controlled by our supreme court's decision in *Concerned Dunes West Residents v. Georgia-Pacific Corporation*, 349 S.C. 251, 562 S.E.2d 633 (2002). We agree with the HOA.

In *Dunes West*, a developer created a planned unit development (PUD) governed by recorded covenants and restrictions. *Id.* at 254, 562 S.E.2d at 635. During development, the developers constructed roads and drainage systems. *Id.* Subsequently, the developer discovered significant repairs to the roads and drainage systems would be necessary. *Id.* at 255, 562 S.E.2d at 635. Before repairing the issues, the developer sold the remaining undeveloped portions to a buyer. *Id.* Prior to consummating the sale, the developer deeded the roads and other common areas within the development to the property owners association (POA). *Id.* Pursuant to the covenants, the POA was responsible for maintaining all common areas within the PUD. *Id.* at 255, 562 S.E.2d at 636. The POA later sued the developer to recover the costs to repair the roads and other common areas. *Id.*

The court noted,

the developer of a planned unit development . . . owes a fiduciary duty to the property owners association and its

members, much like that owed by promoters of a corporation to investors. As such, the developer has a responsibility to insure that the common areas are in good repair at the time they are conveyed to the property owners association or to provide the association with funds sufficient to effectuate any needed repairs to those areas.

Id. at 256, 562 S.E.2d at 636. "The developer of a PUD owes a duty to the POA to turn over common areas that are not substandard and that are in good repair. Failure to do so subjects the developer to liability for bringing the common areas up to standard." *Id.* at 257, 562 S.E.2d at 637. Under this legal framework the court found the developer liable to the POA for the road construction defects. *Id.*

Here, the trial court instructed the jury "The developer owes a fiduciary duty to ensure that the common areas of the development are in good proper repair at the time the developer relinquished control of the homeowners association over to the homeowners."

Marick asserts, "The charge given by the [trial] [c]ourt is not an accurate statement of the law of South Carolina, and it incorrectly expresses and implies that such a duty by a developer is akin to strict liability for defects, whether latent or patent." Marick argues "there was no evidence that Thoennes or the other members of the HOA Board[] had any knowledge of unrepaired defects at the Project at the time control of the HOA Board was transferred to the homeowners in 2007." Marick also argues the trial court should have instead charged the jury that "the conduct of the directors should be judged by the 'business judgment rule'; and absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action."

The trial court properly instructed the jury regarding the fiduciary duty a developer owes to an HOA when it controls the HOA. The HOA presented evidence that Marick knew about water infiltration issues, and even attempted to fix them prior to turning the HOA over to the homeowners. Because the circuit court properly charged the jury according to our supreme court's holding in *Dunes West*, we affirm.

B. DIRECTED VERDICT MOTIONS

"When reviewing a trial court's ruling on a directed verdict motion, this court will reverse if no evidence supports the trial court's decision or the ruling is controlled by an error of law." *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010). "When reviewing the trial court's decision on a motion for directed verdict, this court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Id.* "The trial court must deny a directed verdict motion where the evidence yields more than one inference or its inference is in doubt." *Id.*

1. Breach of Implied Warranty of Workmanlike Service

"In constructing a home, a builder warrants that the home is fit for its intended use as a dwelling, that the home is constructed in a workmanlike manner, and that the home is free of latent defects." *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 562, 658 S.E.2d 80, 88 (2008).

Marick argues it was entitled to a directed verdict on the breach of implied warranty claim because "[t]here was no evidence presented that Marick constructed the defective exteriors of the units." The HOA notes it did not sue Marick seeking to hold it vicariously liable for Bostic; rather, it sued Marick "for its own negligence and breaches of warranty with respect to the significant work it did in Phase 1 of Stoneledge." The HOA explains it has "not contended that Marick is a warrantor of Bostic's work."

Several homeowners testified they notified the Marick board members regarding issues with their units. The HOA also presented evidence that Marick pulled building permits detailing \$1.4 million in construction necessary to complete the units in Phase 1 and perform repairs; some of this work included completing buildings from the foundation stage. This evidence was sufficient to overcome Marick's motion for a directed verdict and raised a question of fact for the jury to decide. Accordingly, we affirm.

2. Proximate Cause

"Negligence is not actionable unless it is a proximate cause of the injury." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 146, 638 S.E.2d 650, 662 (2006). "[P]roximate cause is the efficient, or direct, cause[;] the thing which brings about the injuries complained of." *Hughes v. Children's Clinic, P. A.*, 269 S.C. 389, 398, 237 S.E.2d 753, 757 (1977). "The defendant's negligence does not

have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury." *Madison*, 371 S.C. at 147, 638 S.E.2d at 662. "Normally, proximate cause is a question of fact for the jury, and it may be proved by direct or circumstantial evidence." *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (2006).

Marick acknowledges the existence of "limited evidence that any repairs made by Marick were defective and proximately caused damages." However, Marick argues the trial court erred in failing to grant it a partial directed verdict on the negligence claim because the extent of its liability for construction defects was \$250,000. The HOA asserts it presented evidence of Marick's "failure to comply with the code in performance of over \$1.4 million worth of completion work; its extensive, failed efforts to repair waterproofing on the porches and decks and foundation; and its disregard of open and obvious deficiencies" its superintendent saw but did not repair, which led to damages.

The HOA's forensic engineer, Derek Hodgin testified he examined the units in Stoneledge and found a number of issues. On his first inspection of Stoneledge, Hodgin found issues with water intrusion on the decks and porches, flashing issues, and siding issues. Hodgin also testified he discovered a significant amount of damage to paneled subfloors and floor framing caused by water intrusion. Finally, Hodgin noted there were inappropriately constructed fire-rated walls which he could observe in an unfinished unit inspection.

Hodgin analyzed the plans and permits pulled in this case and determined Marick used out of date building codes when it applied for twenty-six building permits in 2005, although "there [was] really no substantial or substantive difference between the two codes . . . for any of the issues" in this case. He also noted several problems with the amount of detail on the plans, and stated the builders should have contacted the architect to clarify those points.

Finally, Hodgin testified the homeowner's reports of water intrusion should have put Marick on notice to sufficiently investigate to determine the source of the water intrusion. According to Hodgin, to completely fix the issues Stoneledge faces, it would require the removal of all the exterior wall material, and its subsequent reapplication using proper flashing and waterproofing details.

We acknowledge several witnesses testified the exteriors of the homes were already constructed when Marick took over at Stoneledge. We also note the

HOA's expert testified a large portion of the damages would not have been any different had Marick done nothing to attempt repair. The HOA's expert testified,

Certain things wouldn't change at all. The need for fire-rated walls to be correct would not change. The need for every window to be removed and reset with proper flashing would not change. The waterproofing of the foundation walls would not change. The balcony reconstruction, I don't think would change. There may have been -- you may have had some framing to salvage in the balconies in 2004. I don't know. But other than that it would be same fix.

However, Hodgin also testified Marick had a duty to properly investigate issues and make repairs as the subsequent general contractor when it knew of problems.

Marick's expert testified the repairs identified by the HOA's expert which were attributable to Marick would cost \$250,000 to repair. The record does not indicate that the HOA's expert broke down his damages opinions between Bostic and Marick.

Mindful of our standard of review, we find evidence in the record to support the jury's determination that Marick was the proximate cause of Stoneledge's damages, and those damages exceeded \$250,000. The most apparent evidence supporting the jury's decision are the permits for construction Marick requested, at least one of which was to completely construct a new unit. While the HOA's expert may not have taken time to delineate which damages were due to Bostic's negligence and which damages were due to Marick's negligence, we find there was evidence to support the jury's verdict. Therefore, we affirm the trial court's decision declining to grant directed verdict.

C. CLOSING ARGUMENT

"Closing arguments must be confined to evidence in the record and reasonable inferences therefrom." *O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 371 S.C. 340, 352, 638 S.E.2d 96, 102 (Ct. App. 2006) (quoting *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997)). A trial court is allowed broad discretion in dealing with the range and propriety of closing argument to the jury. *Id.* (quoting *State v. Condrey*, 349 S.C. 184, 195-96, 562 S.E.2d 320, 325 (Ct. App. 2002)).

Ordinarily, the trial court's rulings on such matters will not be disturbed. *Id.* (quoting *State v. Patterson*, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997)).

Marick argues the trial court improperly restricted its closing argument regarding the HOA's expert witness. Marick asserts there was no need to use the deposition during the trial because the expert admitted the content of his previous deposition testimony in a different case, and impeachment was therefore not necessary.

Marick made only conclusory statements and quoted the discussion between counsel and the court during the closing argument, without any citation to supporting authority. Therefore, this issue has been abandoned. *See Glasscock, Inc. v. U.S. Fidelity & Guar. Co.*, 348 S.C., 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

D. AMALGAMATION (Single Business Enterprise Theory)

Marick argues the trial court's decision to amalgamate its interests with IMK was erroneous, unsupported by the evidence, and "created a multitude of problems involving the jury charges (or lack thereof), the verdict form and both judgments entered by the trial court."²

The amalgamation of interests theory was first addressed in South Carolina in *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986); however, our supreme court only formally recognized amalgamation—or the "single business enterprise theory"—as a method of piercing the corporate form in the recent case of *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018). In *Pertuis*, the court summarized the doctrine as follows:

where multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate

² Plaintiffs also sued Marick and Rick Thoennes—Marick's principal and license holder—directly for their active fault. It appears that only Larry Lollis, a passive investor in IMK through Integrys Keowee Development, was actually impacted by the trial court's amalgamation of the interests with respect to the breach of fiduciary duty claim. Lollis, Cox, and Integrys Keowee are not parties to the appeal.

corporate identities would defeat justice, courts have refused to recognize the corporations' separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Id. at 652-53, 817 S.E.2d at 279. Noting there is nothing "remotely nefarious" in forming corporations for the purpose of shielding shareholders from individual liability, our supreme court reasoned that amalgamation "requires a showing of more than the various entities' operations are intertwined"; rather, it requires "further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Id.* at 655, 817 S.E.2d at 280-81.

In this case, although the trial court lacked the benefit of our supreme court's decision in *Pertuis*, we agree it failed to conduct any meaningful analysis supporting an amalgamation of interests. Nevertheless, our review of the record reveals evidence of a unified operation between Marick and the amalgamated parties as well as evidence of self-dealing that resulted from a blending of their business enterprises.

The threshold amalgamation issue "is an assessment of whether these entities actually operate as a single business enterprise, and thus should be treated as a single entity." *Id.* at 650, 817 S.E.2d at 278. Here, there was testimony Integrys Keowee and Marick were corporately affiliated under the umbrella of IMK, passed corporate funds directly between one another, and allowed individual members to operate as dual agents without distinction as to who they represented. Specifically, Integrys Keowee managing shareholder Bill Cox testified IMK was created to hold title to the Stoneledge project. "Marick Home Builders was to provide the construction at their cost, and [Integrys Keowee] provided the investment. And we did the books for IMK. And the agreement was we would split the profits." Cox was a managing member of both Integrys Keowee and IMK; Integrys Keowee and Marick each owned 50 percent of IMK. IMK had no business other than the development of Stoneledge.

Cox was also a partner in Integrys Holdings, a software company. Some of the Stoneledge salespeople—representatives of IMK—were housed in the Integrys Holding office, which "made it easy for them to use our email." According to Cox, these sales reps were not IMK owners or employees, but "contractors of IMK." Marick would primarily supervise these sales people, but they were contracted through IMK, working out of the office of the Integrys Holdings shareholders.

Other evidence was presented to establish that Marick and IMK shared responsibility for the management of Stoneledge's sales team.

Rick Thoennes' own testimony further established the joint nature of the Stoneledge enterprise. In attempting to explain how homeowners would report a defect with their unit, Thoennes stated:

It depends on which hat I had on that particular day. I've been—Mr. Lyles said I sold them. Somebody else said I built them, and somebody else said I'm a director on the Board. . . . So I guess it depends on which hat I had. . . . I didn't have the pleasure of being able to say, I'm a director now. At seven o'clock, I'm a contractor. At eight o'clock, I'm a marketing person. I didn't have that luxury.

In the eyes of the HOA members, IMK, Marick, and the individual investor parties serving on the HOA board were one and the same. Stoneledge property owner Robert White testified, "I.M.K., to me, in terms of the faces of the folks that were part of I.M.K. were Rick Thoennes and his son and Tim Roberson." White and his wife communicated with IMK regarding their "quite hefty list of punch list items."

Further, Thoennes, as Marick's principal and license holder³, had at least constructive knowledge of the pervasive construction defects that plagued the project, but was nevertheless directly involved in IMK and Marick's marketing and sale of the units. Given that Marick's and IMK's profits were entirely dependent on IMK's ability to sell the units, their operations were clearly in pursuit of a common business purpose, albeit to the detriment of the HOA members. Accordingly, we find evidence supports the trial court's single business enterprise ruling.

E. ELECTION OF REMEDY

³ Rick Thoennes and his son, Rick III, started Marick home builders together. When Marick Home Builders ceased operations and became insolvent in 2009, Thoennes and his son started a new home building corporation, M Group. Rick Thoennes was the license holder for both Marick Home Builders and M Group.

"Election of remedies involves a choice between different forms of redress afforded by law for the same injury or different forms of proceeding on the same cause of action." *Taylor v. Medenica*, 324 S.C. 200, 218, 479 S.E.2d 35, 44 (1996). "It is the act of choosing between inconsistent remedies allowed by law on the same set of facts." *Id.* "Its purpose is to prevent double recovery for a single wrong." *Id.* "Where a plaintiff presents two causes of action because he is uncertain of which he will be able to prove, but seeks a single recovery, he will not be required to elect." *Adams v. Grant*, 292 S.C. 581, 586, 358 S.E.2d 142, 144 (Ct. App. 1986).

Marick asserts the trial court erred in failing to require the HOA to elect a remedy because "[a]ll of the damages awarded to the [HOA] by the jury arise from the same set of facts and are not distinct to different causes of action." The HOA argues "everyone including Marick, [the HOA], and the trial court agree that the damages [the HOA] requested at trial, essentially the cost of repair, was the remedy [the HOA] sought. [The HOA] sought no other remedy Thus there was nothing for [the HOA] to elect."

Immediately after the jury returned its verdict, the HOA asked the trial court if the damages award was meant to be cumulative. The trial court stated, "Well, the way the Defendants have been treating it, yes, it is cumulative" Marick did not object to the trial court's ruling that the damages would be cumulative or ask the trial court to inquire as to the jury's intent behind the multiple awards.

Marick's failure to object to this ruling renders its election of remedies argument unpreserved. The trial court ruled that the damages the jury awarded for each of the causes of action would be added together, and that the HOA was entitled to damages for each of those causes of action. Marick failed to object to the court's decision or request the court ask the jury what its intent was in how it awarded damages. Accordingly, Marick is unable to argue on appeal the court's decision was in error. *See Allegro v. Scully*, 400 S.C. 33, 49 n.9, 733 S.E.2d, 114, 123 n.9 ("If a jury verdict form is ambiguous or unclear, the jury should be returned to the jury room in order to clarify or conform the verdict to its intent before the jury is excused.").

F. SET OFF

Section 15-38-50 of the South Carolina Code (2005) provides that, "[w]hen a release . . . is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (1) . . . it reduces the claim against the

others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater"

"[W]hen a prior settlement involves compensation for the same injury for which the jury awarded damages, the right to setoff arises as an operation of law." *Smith v. Widener*, 397 S.C. 468, 473, 724 S.E.2d 188, 191 (Ct. App. 2012). However, when the settlement involves compensation for an injury different from the one tried to verdict, there is no set off as a matter of law. *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 114-15, 498 S.E.2d 395, 407 (Ct. App. 1998). When the settlement "is argued to involve two claims, one of which involves the same injury as the claim tried to verdict and one of which does not, the circuit court must make the factual determination of how to allocate the settlement between" the claims. *Smith*, 397 S.C. at 473, 724 S.E.2d at 191.

At trial, the HOA requested the jury return a verdict for \$6,309,197 for the full amount required to bring the damaged buildings up to the quality at which they were marketed. After deliberations, the jury returned a verdict in favor of the HOA for a total of \$5,000,000-\$3,000,000 on the negligence cause of action against Marick and Bostic, \$1,000,000 on the breach of implied warranty cause of action against Marick and Bostic, and \$1,000,000 for the breach of fiduciary duty cause of action against Thoennes and other directors.

After the jury returned its verdict, the trial court held an additional proceeding to apportion fault among the defendants. The jury apportioned 40% of fault to Marick on the negligence claim and 70% of fault to Marick on the breach of implied warranty claim. The jury was then dismissed.

The trial court held a post-trial hearing on several motions after releasing the jury. Among those motions was a motion for setoff. During the hearing on the motion for setoff, the HOA requested the court reform the jury's verdict to reflect that each cause of action supported the \$5,000,000 cumulative verdict. After several motions for reconsideration, the trial court entered judgment against Marick as follows: (1) for negligence- \$857,635.29; (2) for breach of implied warranty- \$2,144,088.23. The trial court entered judgment against Rick Thoennes for \$2,144,088.23 for breach of fiduciary duty.

Initially, Marick asserts the trial court erred in entering judgment as detailed above because "the damages awarded and the apportionment provided do not correlate with the evidence." Essentially, Marick argues the trial court's final entry of judgment does not correlate with the jury's verdict. We agree.

It appears the trial court amended the jury's verdict to find that each cause of action independently supported a \$5 million verdict. In doing so, the trial court invaded the province of the jury. *See Joiner v. Bevier*, 155 S.C. 340, ___, 152 S.E.2d 652, 657 (1930) ("It is [the judiciary's] duty to enforce a verdict, not to make it."). Therefore, we find the jury's verdict, and its allocation of damages to the three separate causes of action should be reinstated.

The question then becomes how the court should allocate the setoff Marick and Thoennes are entitled to based upon the settlement the HOA received prior to trial. Thoennes' fiduciary duty to the HOA was the result of his position on the Board of the HOA. Based on the record, it does not appear any Board members settled with the HOA prior to trial. Therefore, none of the settlement proceeds should be set off against Thoennes' liability for breach of fiduciary duty because none of the settlement proceeds would have included any amount for damages resulting from a breach of fiduciary duty. Accordingly, Thoennes is responsible for the \$1 million award for breach of fiduciary duty, subject to any claims he may have for contribution from any other defendants.

The remaining \$4 million verdict should be set off by the amount of the prior settlements. After deducting the value of the settlements, this would leave a \$2,144,088.23 judgment to allocate between the negligence and breach of implied warranty causes of action. Because the jury awarded \$3 million to the negligence cause of action and \$1 million to the breach of implied warranty cause of action, we believe it would be proper to allocate three-fourths of the remaining judgment to the negligence cause of action and the remaining one-fourth to the breach of implied warranty cause of action. This allocation would mean \$1,608,066.17 would be allocated to the negligence cause of action and \$536,022.06 would be allocated to the breach of implied warranty cause of action.

Applying the apportionment statute and the apportionment amounts the jury determined at trial, Marick would therefore be responsible for \$643,226.47 for the negligence claim and \$536,022.06 for the breach of implied warranty claim, subject to any claims it may have against Bostic for contribution. *See S.C. Code Ann. § 15-38-15* ("In an action to recover damages resulting from . . . damage to property . . . if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages A defendant whose conduct is determined to be less than

fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.").

CONCLUSION

Accordingly, we affirm in part, reverse in part, and remand for entry of judgment consistent with this opinion.

HUFF and McDONALD, JJ., concur.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
Stoneledge at Lake Keowee Owners' Association, Inc., <i>et al.</i>	)	
	)	SETTLEMENT AGREEMENT
Plaintiffs,	)	
v.	)	
	)	
IMK Development Co., LLC, Bradford D. Seckinger, Larry D. Lollis, William C. Cox	)	
Integrays Keowee Development, LLC,	)	
Marick Home Builders, LLC, Rick Thoennes,	)	
	)	
<u>Defendants.</u>	)	

This Settlement Agreement is made and entered into by and among Stoneledge at Lake Keowee Owners' Association, Inc. ("Plaintiff"), Marick Home Builders, LLC and Rick Thoennes ("Marick" and "Thoennes" and collectively "Defendants"), and Cincinnati Insurance Company and Builders Mutual Insurance Company ("Cincinnati" and "Builders Mutual" and collectively "Insurers"). The Plaintiff, Defendants and Insurers are collectively referred to hereinafter as the "Parties."

RECITALS

WHEREAS, In above-captioned lawsuit ("Underlying Lawsuit"), the Plaintiff brought claims for negligence, breach of warranty and breach of fiduciary duty against Defendants alleging construction defects the Plaintiff sustained arising out of the development and construction of the Stoneledge Townhomes located on Lake Keowee, South Carolina (hereinafter "Stoneledge"); and

WHEREAS, Cincinnati issued policy number CPP 364 95 24 to Marick and Builders Mutual issued policy number CPP 0022751 to Marick, and Plaintiff contends both policies

provide coverage for the damages Plaintiff sustained and sought against Defendants in the Underlying Lawsuit; and

WHEREAS, the Insurers have provided a defense to the Defendants in the Underlying Lawsuit under a reservation of rights; and

WHEREAS, The Stoneledge development was constructed in two phases. Likewise, the Underlying Lawsuit was divided for trial into two separate actions, Phase I and Phase II; and

WHEREAS Plaintiff obtained a judgment against Defendants for Phase I on November 8, 2013, which was subsequently amended by order of the court dated January 30, 2015, in the net amount, after credit for set-offs, of \$2,144,088.23, which is accruing interest at the judgment rate (the Phase I Judgment); and

WHEREAS, In anticipation of the trial of Phase II against the Defendants, the Parties have agreed to compromise certain aspects of this claim in the form of a stipulation of damages, as more fully set below, and to release certain obligations of Rick Thoennes altogether.

NOW, THEREFORE, IN CONSIDERATION of the promises, covenants and agreements herein contained, the parties hereto agree as follows:

Scope of this Settlement Agreement. This Settlement Agreement, unless otherwise noted, only applies to the resolution of all claims asserted by Plaintiff against Defendants arising out of Phase II. Nothing in this Settlement Agreement, except to the extent expressly stated herein, will affect the Phase I Judgment or the appeal from that judgment taken by the Defendants.

1. For good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree that the damages sustained by the Plaintiff in connection with Phase II, as more fully set forth in the Underlying Lawsuit, are approximately and may exceed the sum of Five Million Six Hundred Thousand (\$5,600,000.00) Dollars. Furthermore, the

Defendants and Insurers are entitled to an offset of approximately Three Million Six Hundred Thousand and (\$3,600,000.00) Dollars, representing amounts the Plaintiff has received from other sources. Therefore, the Parties stipulate that the damages which Plaintiff would otherwise be entitled to recover from the Defendants, subject to the terms of this Settlement Agreement and to resolution of all coverage issues currently pending, is Two Million (\$2,000,000.00) Dollars (hereinafter "Plaintiff's Total Phase II Damages"). Accordingly, trial for the sole purpose of establishing the exact amount of the Plaintiff's damages for Phase II is unnecessary.

2. The Plaintiff and Insurers agree to proceed with a declaratory judgment action for a determination of coverage under the policies issued by Cincinnati and Builders Mutual referenced above. Insurers will pay to Plaintiff the total sum of "covered damages," as defined herein. The parties agree that "covered damages" means the amount of Plaintiff's Total Phase II Damages that are covered for purposes of indemnification under the above-referenced Cincinnati and Builders Mutual policies, as determined by a final judgment in the above-referenced declaratory judgment action, after exhaustion of any appeals, up to a maximum of Two Million (\$2,000,000.00) Dollars (hereinafter "the Phase II Covered Damages"). This is not intended to be and does not limit the right of Plaintiff to also pursue recovery of sums related to the Phase I Judgment, except as expressly provided for herein, and subject to Defendants' appeal of the Phase I Judgment.

3. The Parties further agree that Insurers will pay post-judgment interest, at the legal rate, on the Phase II Covered Damages, which will accrue from the date of the execution of this Agreement until the date the Insurers pay the Phase II Covered Damages to the Plaintiff. The Phase II Covered Damages and post-judgment interest on the Phase II Covered Damages (collectively hereinafter "the Total Phase II Covered Damages") shall be payable to Plaintiff. No

other amounts, including but not limited to attorneys' fees, shall be payable to Plaintiff related to the Phase II Judgment.

4. Furthermore, in consideration of the above-referenced stipulation of damages, the Parties also agree:

a. The appeal of the Phase I Judgment against Marick and others will continue at the discretion of appellants and their appeals. Plaintiff and Insurers reserve their rights to contest coverage for any final judgment that may result as to Phase I.

b. The only effect this Settlement Agreement will have on the Phase I Judgment is that Plaintiff will release the judgment obtained against Thoennes in regard to Phase I.

c. Marick will dismiss its cross-claims, including any related appeals and petitions, against any subcontractors for any claims related to Phase II.

d. Plaintiff covenants that it will not execute any judgment or pursue any recovery from Thoennes on account of the Phase II Judgment above or by virtue of any other provision of this Settlement Agreement.

e. This Settlement Agreement will not constitute an additional ground to deny or defeat coverage under the policies issued by Insurers; nor will the fact that the parties have stipulated to damages bar any party from establishing the facts necessary to make coverage determinations as to what amount, if any, of the damages are covered during a declaratory judgment action.

f. The Parties agree that a declaratory judgment action regarding coverage for Phase II can proceed. Plaintiff acknowledges it will not assert any claim for bad faith or extra contractual damages against Insurers arising out of the judgments obtained in Phase I or for any matter related to Phase II including but not limited to the terms of this Settlement Agreement.

g. It is expressly understood and agreed that this Settlement Agreement, including the stipulation of damages, is the compromise of a disputed claim against Defendants. The parties expressly understand and agree that nothing in this Settlement Agreement shall be construed as an admission of coverage or of any damages sustained by Plaintiff or any allegation contained in the pending declaratory judgment action.

5. Entire Agreement. The Parties agree that no promise or inducement has been offered with respect to this Settlement Agreement, the Underlying Lawsuit, or the judgments arising out of Phase I and further acknowledge that this Settlement Agreement is executed without reliance on any statement or representation by any Party or their representatives or their attorneys concerning the nature and extent of the damages and/or coverage that may be applicable. The Parties have relied wholly upon their own judgment, after consultation with counsel, and have not relied upon any representation or inducement not contained herein.

6. Governing Law. This Settlement Agreement shall be governed by the laws of the State of South Carolina.

7. Attorney's Fees and Costs. The Parties acknowledge and agree that they shall bear all of their own attorney's fees, costs and expenses in connection with the claims released herein and/or the continuation of the declaratory judgment action between the Plaintiff and Insurers.

8. Understanding and Severability. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood and voluntarily accepted for the purpose of making a compromise stipulation of damages in full resolution of Phase II of the Underlying Lawsuit and such additional resolution of the claims and other issues above mentioned. If any provision, or any part of any provision of this Settlement Agreement shall for

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Hymn Mazingo
Authorized Representative of Builders Mutual
Insurance Company

Authorized Representative of Marick Home Builders, LLC

any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of the Settlement Agreement shall not be affected thereby.

WITNESS our hands and seals this _____ day of _____, 2016.


Authorized Representative of
Stoneledge at Lake Keowee Owners' Association,
Inc.

Authorized Representative of Cincinnati Insurance
Company

Authorized Representative of Builders Mutual
Insurance Company





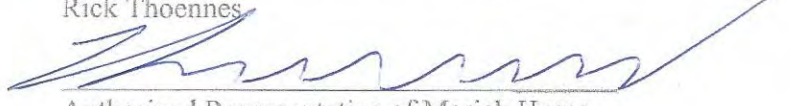
Rick Thoennes

Authorized Representative of Marick Home
Builders, LLC

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
Stoneledge at Lake Keowee)
Owners' Assoc., Inc.,)
)
v.)
)
IMK Development Co., LLC, et al)

**RELEASE OF JUDGMENT
LIEN AS TO RICK THOENNES
ONLY**

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., ("Stoneledge HOA") holder of a judgment lien against RICK THOENNES, which was entered against him in Case No. 2009-CP-37-0652, in the Circuit Court of Oconee County, said judgment lien being recorded on November 8, 2013, as Judgment Roll No. 2009-CP-37-0652 and amended by Order dated January 21, 2015, does, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby release Rick Thoennes from the judgment lien.

PROVIDED, HOWEVER, that the judgment shall, in all other respects, be preserved and protected and that the judgment lien, except as hereby released and discharged as to Rick Thoennes, shall remain in full force and effect against Bostic Brothers Construction, Inc., Marick Home Builders, LLC, IMK Development Co., Integrys Keowee Development, LLC, William C. Cox and Larry Lollis.

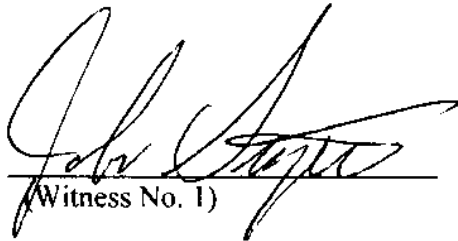
[SIGNATURE PAGE FOLLOWS]

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 OCT 31 P 1:13

Copies to:
Atty ☒ (P) _____ (D) _____
DSS _____ other _____
Mailed ☒ Boxed _____ handed _____



IN WITNESS WHEREOF, the undersigned has executed this Partial Release of Judgment Lien this 5 day of August, 2016.


(Witness No. 1)

STONELEDGE AT LAKE KEOWEE

OWNERS ASSOCIATION

By: Raymond Plachta

Its: PRESIDENT

(Witness No. 2 or Notary Public)

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

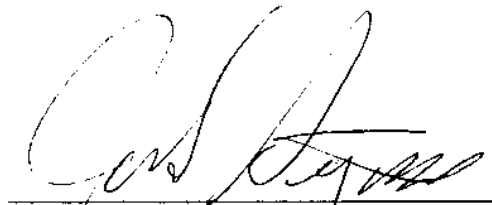
PROBATE

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2016 OCT 31 P 1:13

Before me, the undersigned notary public, personally appeared the undersigned, who, being sworn, deposed and said that (s)he saw the within named, **STONELEDGE HOA** by RAYMOND PLACHTA, its PRESIDENT, sign, seal and deliver the foregoing Partial Release of Judgment Lien and that they, together with the other witness subscribing above, witnessed the execution thereof.

SWORN to and subscribed before me
on this 5th day of August, 2016.


Notary Public for South Carolina
My Commission Expires: 10/28/2024
Seal


(Witness No. 1)

Stephanie Simpson

Subject: FW: Stoneledge v. IMK, Marick/Thoennes
Attachments: Letter- Marick Thoennes.docx

From: "McIntosh, Lawton Law Clerk (Grace Kerley)" <lmcintoshlc@sccourts.org>
Date: January 10, 2022 at 3:26:42 PM EST
To: Jason Imhoff <jimhoff@conlaw.com>, rtl@lylesfirm.com, lwalters@twlawfirm.com, "Kitchings, Jenny" <jkitchings@sccourts.org>, "Burton, Lisa" <lbarton@oconeesc.com>
Cc: "McIntosh, Lawton Secretary (Tammy Jennings)" <lmcintoshsc@sccourts.org>
Subject: Stoneledge v. IMK, Marick/Thoennes

All,

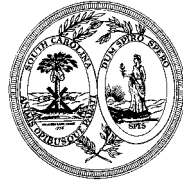
Please see an attached letter from Judge McIntosh regarding the recent remittitur from the SC Supreme Court in the Stoneledge v. IMK [Marick/Thoennes] case.

Thanks,

Grace Calhoun Kerley

Law Clerk to the Honorable Judge Lawton McIntosh
Phone: (864) 260-4059
Email: lmcintoshlc@sccourts.org

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



State of South Carolina  
The Circuit Court of the Tenth Judicial Circuit

**R. Lawton McIntosh**  
Judge

Post Office Box 8002  
100 South Main Street  
Anderson, SC 29622-8002  
Phone: (864) 260-4059  
Fax: (864) 224-6320  
lmcintoshj@sccourts.org

January 10, 2022

Jason Michael Imhoff, Esq.  
Robert T. Lyles, Esq.  
Lee Anne Walters, Esq.  
Jenny Abbott Kitchings, Esq.

**Re: Stoneledge v. IMK Dev. [Marick/Thoennes]**  
Lower Case No: 2009—CP—37—00652  
Appellate Case No: 2019—000038

Counsel,

The remittitur in the above case has been forwarded to me to handle. Not knowing more about the case, it would seem to me that the matter is simply one of mathematics. If so, I ask your input on whether a hearing needs to be scheduled or whether it's a matter you can handle by way of an agreed-upon order (although not a consent order). Please email me your positions.

Thank you,

Lawton McIntosh

CC: Hon. Melissa Burton  
Clerk of Court

**EXHIBIT 3**

ELECTRONICALLY FILED - 2022 Jun 01 4:35 PM - OCONEE - COMMON PLEAS - CASE#2009CP3700652

**OCONEE COUNTY COMMON PLEAS COURT  
HEARING COVER SHEET**

|                                                                                                                                                                         |                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| <b>JUDGE:</b>                                                                                                                                                           | <b>R. Lawton McIntosh</b>                                                                                                  |
| <b>DATE:</b>                                                                                                                                                            | <b>06/01/2022</b>                                                                                                          |
| <b>DOCKET #:</b>                                                                                                                                                        | <b>2009CP3700652</b>                                                                                                       |
| <b>NATURE OF HEARING:</b>                                                                                                                                               | <b>Plt's Motion/Entry of Judgment as to Bostic Brothers Construction Inc., Marick Home Builders LLC, and Rick Thoennes</b> |
| <b>PLAINTIFF:</b>                                                                                                                                                       | <b>Stoneledge at Lake Keowee Owners' Assoc., et al.</b>                                                                    |
| <b>PLAINTIFF'S ATTORNEY:</b>                                                                                                                                            | <b>Robert T Lyles, Jr., Esq.</b>                                                                                           |
| <b>DEFENDANT:</b>                                                                                                                                                       | <b>IMK Development Co. LLC, et al.</b>                                                                                     |
| <b>DEFENDANT'S ATTORNEY:</b>                                                                                                                                            | <b>Jason M. Inhoff, Esq. and Alan R Belcher, Jr., Esq.</b>                                                                 |
|                                                                                                                                                                         |                                                                                                                            |
|                                                                                                                                                                         |                                                                                                                            |
| <b>Notes: Judgment to be entered as Supreme Court ruled; Atty. Lyles to prepare order; to include an * by Thoennes stating set off to be determined at a later date</b> |                                                                                                                            |
| <b>IF NO HEARING IS HELD PLEASE CHECK ONE OF THE FOLLOWING:</b>                                                                                                         |                                                                                                                            |
| <b>CASE CONTINUED</b> <input type="checkbox"/>                                                                                                                          |                                                                                                                            |
| <b>DISMISSAL TO BE FILED</b> <input type="checkbox"/>                                                                                                                   |                                                                                                                            |
| <b>OTHER</b> <input type="checkbox"/>                                                                                                                                   |                                                                                                                            |
|                                                                                                                                                                         |                                                                                                                            |

**EXHIBIT 4**  
**FORM 4**

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009- CP-37-00652

Stoneledge at Lake Keowee Owners' Association,  
LLC, et al.,

Bostic Brothers Construction, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert T. Lyles, Jr. (SC Bar #10299)

Attorney for : ☒ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

**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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

**ORDER INFORMATION**

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

**THE JUDGMENTS LISTED BELOW ARE RETROACTIVELY EFFECTIVE TO NOVEMBER 8, 2013.**

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| STONELEDGE HOA                               | BOSTIC BROTHERS<br>CONSTRUCTION, INC.    | \$943,872.79                                                |
| STONELEDGE HOA                               | MARICK HOMES BUILDERS,<br>LLC            | \$629,248.53                                                |
| STONELEDGE HOA                               | RICK THOENNES                            | \$1,000,000.00                                              |

If applicable, describe the property, including tax map information and address, referenced in the order:

**E-Filing Note:** In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Date \_\_\_\_\_

STATE OF SOUTH CAROLINA )

COUNTY OF OCONEE )

Stoneledge at Lake Keowee Owners'  
Association, Inc., et al., )

Plaintiffs, )

vs. )

IMK Development Co., LLC, et al., )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE TENTH JUDICIAL CIRCUIT  
CASE NUMBER: 2009-CP-37-00652**ORDER OF JUDGMENT AS TO  
BOSTIC BROTHERS CONSTRUCTION,  
INC.; MARICK HOME BUILDERS, LLC;  
AND RICK THOENNES**

This matter comes before the Court on Remittitur from the South Carolina Supreme Court dated January 4, 2022. The Remittiturs followed the entry of Supreme Court Opinion Numbers 28070 and 28071, which are attached hereto.

Based upon the Supreme Court's Opinions, I hereby enter judgment, retroactively effective to November 8, 2013, in the following particulars:

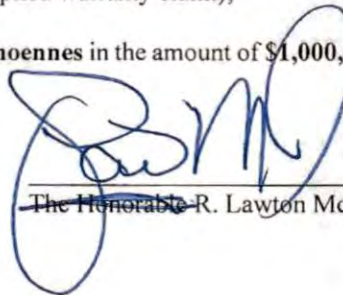
**Judgment against Bostic Brothers Construction, Inc.** in the amount of **\$943,872.79** (comprised of \$858,066.17 for the negligence claim and \$85,806.62 for the implied warranty claim);

**Judgment against Marick Home Builders, LLC** in the amount of **\$629,248.53** (comprised of \$286,022.06 for the negligence claims and \$343,226.47 for the implied warranty claim);

**Judgment against Rick Thoennes** in the amount of **\$1,000,000.00<sup>1</sup>**

IT IS SO ORDERED.

Anderson, South Carolina  
6-2, 2022

  
The Honorable R. Lawton McIntosh

<sup>1</sup> The judgment against Thoennes may or may not be subject to set-off or release, which may be the subject of argument after entry of judgment.

**EXHIBIT 5**  
**FORM 4**

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-00652

STONELEDGE AT LAKE KEOWEE OWNERS'  
ASSOCIATION, INC., ET, AL  
PLAINTIFF(S)

IMK DEVELOPMENT CO., LLC, MARICK  
HOME BUILDERS, LLC., ET, AL.  
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

**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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

**ORDER INFORMATION**

**DEFENDANT MOTION TO RECONSIDER IS DENIED WITHOUT THE NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER IS REQUESTED UNLESS REQUESTED BY COUNSEL.**

This order ☐ ends ☒ does not end the case.

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge

2155

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

---

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---

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

---

**CLERK OF COURT****Court Reporter:**

**E-Filing Note:** In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Oconee Common Pleas

**Case Caption:** Paul W Hund III , plaintiff, et al VS IMK Development Co LLC ,  
defendant, et al  
**Case Number:** 2009CP3700652  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

**EXHIBIT 6**

# Oconee County Tenth Judicial Circuit Public Index



[Oconee County Home Page](#) [South Carolina Judicial Department Home Page](#) [SC.GOV Home Page](#)

Switch View

## Paul W Hund III , plaintiff, et al VS IMK Development Co LLC , defendant, et al

|                      |                       |                   |                      |                    |                   |
|----------------------|-----------------------|-------------------|----------------------|--------------------|-------------------|
| Case Number:         | 2009CP3700652         | Court Agency:     | Common Pleas         | Filed Date:        | 05/29/2009        |
| Case Type:           | Common Pleas          | Case Sub Type:    | Person Inj/Other 399 | File Type:         | Jury              |
| Status:              | Appeal                | Assigned Judge:   | Sprouse, R. Scott    |                    |                   |
| Disposition:         | Other / Circuit Civil | Disposition Date: | 12/14/2016           | Disposition Judge: | Sprouse, R. Scott |
| Original Source Doc: |                       | Original Case #:  |                      |                    |                   |
| Judgment Number:     | 2009CP3700652         | Court Roster:     |                      |                    |                   |

[Case Parties](#) [Judgments](#) [Tax Map Information](#) [Associated Cases](#) [Actions](#) [Financials](#)

|              |                    |              |                        |               |        |                             |               |
|--------------|--------------------|--------------|------------------------|---------------|--------|-----------------------------|---------------|
| For:         | Hund, Paul W III   | Against:     | Ludwig Corporation LLC | Judg. Amount: | \$0.00 | Judgment Date:              | 01/25/2012    |
| Description: | Judgment / Default | Disposition: |                        | Disp. Date:   |        | Date Entered / Last Changed | 01/26/2012 -- |
| Notes:       | None               |              |                        |               |        |                             |               |

### Judgment Details

| Claims Code  |                    | Detail Desc. |                 |               | Detail Amount |                             | Detail Date  |  |
|--------------|--------------------|--------------|-----------------|---------------|---------------|-----------------------------|--------------|--|
| None         |                    |              |                 |               |               |                             |              |  |
| For:         | Hund, Paul W III   | Against:     | SDI Funding LLC | Judg. Amount: | \$0.00        | Judgment Date:              | 02/15/2012   |  |
| Description: | Judgment / Default | Disposition: |                 | Disp. Date:   |               | Date Entered / Last Changed | 02/15/2012 - |  |
| Notes:       | None               |              |                 |               |               |                             |              |  |

### Judgment Details

| Claims Code  |                    | Detail Desc. |                |               | Detail Amount |                             | Detail Date                    |  |
|--------------|--------------------|--------------|----------------|---------------|---------------|-----------------------------|--------------------------------|--|
| None         |                    |              |                |               |               |                             |                                |  |
| For:         | Hund, Paul W III   | Against:     | Franz, Michael | Judg. Amount: | \$0.00        | Judgment Date:              | 04/04/2012                     |  |
| Description: | Judgment / Default | Disposition: | Vacated        | Disp. Date:   | 05/14/2012    | Date Entered / Last Changed | 04/04/2012<br>--<br>05/14/2012 |  |
| Notes:       | None               |              |                |               |               |                             |                                |  |

### Judgment Details

| Claims Code  |                    | Detail Desc. |                             |               | Detail Amount |                             | Detail Date                    |  |
|--------------|--------------------|--------------|-----------------------------|---------------|---------------|-----------------------------|--------------------------------|--|
| None         |                    |              |                             |               |               |                             |                                |  |
| For:         | Hund, Paul W III   | Against:     | Clear View Construction LLC | Judg. Amount: | \$0.00        | Judgment Date:              | 04/04/2012                     |  |
| Description: | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 05/14/2012    | Date Entered / Last Changed | 04/04/2012<br>--<br>05/14/2012 |  |
| Notes:       | None               |              |                             |               |               |                             |                                |  |

### Judgment Details

| Claims Code | Detail Desc. |  |  | Detail Amount |  | Detail Date |  |
|-------------|--------------|--|--|---------------|--|-------------|--|
|-------------|--------------|--|--|---------------|--|-------------|--|

|                  |                    |              |                              |               |            |                             |                             |
|------------------|--------------------|--------------|------------------------------|---------------|------------|-----------------------------|-----------------------------|
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Compton, Carl-dba            | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Compton Enterprises          | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Coleman Waterproofing        | Judg. Amount: | \$0.00     | Judgment Date:              | 01/25/2012                  |
| Description:     | Judgment / Default | Disposition: | Vacated                      | Disp. Date:   | 12/13/2012 | Date Entered / Last Changed | 01/26/2012 --<br>12/13/2012 |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Ludwig, John                 | Judg. Amount: | \$0.00     | Judgment Date:              | 01/25/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 01/26/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Delfino Construction         | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Zarate, Francisco Javier-dba | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: | Vacated                      | Disp. Date:   | 11/15/2012 | Date Entered / Last Changed | 04/04/2012 --<br>11/15/2012 |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Zarate Construction          | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: | Vacated                      | Disp. Date:   | 11/15/2012 | Date Entered / Last Changed | 04/04/2012 --<br>11/15/2012 |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |

| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
|------------------|--------------------|--------------|------------------------------|---------------|------------|-----------------------------|-----------------------------|
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Cruz, Alejandro Avalos       | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Aviles, Martin Hernandez-aka | Judg. Amount: | \$0.00     | Judgment Date:              | 01/25/2012                  |
| Description:     | Judgment / Default | Disposition: | Vacated                      | Disp. Date:   | 02/28/2012 | Date Entered / Last Changed | 01/26/2012 --<br>02/29/2012 |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Hernandez Aviles, Martin     | Judg. Amount: | \$0.00     | Judgment Date:              | 01/25/2012                  |
| Description:     | Judgment / Default | Disposition: | Vacated                      | Disp. Date:   | 02/28/2012 | Date Entered / Last Changed | 01/26/2012 --<br>02/29/2012 |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Lopez, Francisco Villalobos  | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Martinez Ramirez, Ambrosio   | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Ramirez, Ambrosio Martinez   | Judg. Amount: | \$0.00     | Judgment Date:              | 04/04/2012                  |
| Description:     | Judgment / Default | Disposition: |                              | Disp. Date:   |            | Date Entered / Last Changed | 04/04/2012 --               |
| Notes:           | None               |              |                              |               |            |                             |                             |
| Judgment Details |                    |              |                              |               |            |                             |                             |
| Claims Code      |                    | Detail Desc. |                              | Detail Amount |            | Detail Date                 |                             |
| None             |                    |              |                              |               |            |                             |                             |
| For:             | Hund, Paul W III   | Against:     | Mentado,                     | Judg.         | \$0.00     | Judgment                    | 01/25/2012                  |

|                  |                    |              |                             |               |                |                             |                                        |
|------------------|--------------------|--------------|-----------------------------|---------------|----------------|-----------------------------|----------------------------------------|
|                  |                    |              | Ester Moran                 | Amount:       |                | Date:                       |                                        |
| Description:     | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 03 / 21 / 2012 | Date Entered / Last Changed | 01 / 26 / 2012<br>--<br>03 / 22 / 2012 |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |
| Claims Code      |                    | Detail Desc. |                             | Detail Amount |                | Detail Date                 |                                        |
| None             |                    |              |                             |               |                |                             |                                        |
| For:             | Hund, Paul W III   | Against:     | Montel, Socorro Castillo    | Judg. Amount: | \$0.00         | Judgment Date:              | 04 / 04 / 2012                         |
| Description:     | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 05 / 01 / 2012 | Date Entered / Last Changed | 04 / 04 / 2012<br>--<br>05 / 14 / 2012 |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |
| Claims Code      |                    | Detail Desc. |                             | Detail Amount |                | Detail Date                 |                                        |
| None             |                    |              |                             |               |                |                             |                                        |
| For:             | Hund, Paul W III   | Against:     | KMAC of the Carolinas Inc   | Judg. Amount: | \$0.00         | Judgment Date:              | 01 / 25 / 2012                         |
| Description:     | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 04 / 06 / 2012 | Date Entered / Last Changed | 01 / 26 / 2012<br>--<br>04 / 06 / 2012 |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |
| Claims Code      |                    | Detail Desc. |                             | Detail Amount |                | Detail Date                 |                                        |
| None             |                    |              |                             |               |                |                             |                                        |
| For:             | Hund, Paul W III   | Against:     | Garcia, Eufacio             | Judg. Amount: | \$0.00         | Judgment Date:              | 04 / 04 / 2012                         |
| Description:     | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 05 / 01 / 2012 | Date Entered / Last Changed | 04 / 04 / 2012<br>--<br>05 / 01 / 2012 |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |
| Claims Code      |                    | Detail Desc. |                             | Detail Amount |                | Detail Date                 |                                        |
| None             |                    |              |                             |               |                |                             |                                        |
| For:             | Hund, Paul W III   | Against:     | Jarmamillo, Everado         | Judg. Amount: | \$0.00         | Judgment Date:              | 04 / 04 / 2012                         |
| Description:     | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 04 / 23 / 2012 | Date Entered / Last Changed | 04 / 04 / 2012<br>--<br>04 / 23 / 2012 |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |
| Claims Code      |                    | Detail Desc. |                             | Detail Amount |                | Detail Date                 |                                        |
| None             |                    |              |                             |               |                |                             |                                        |
| For:             | Hund, Paul W III   | Against:     | Garcia Parra Insulation Inc | Judg. Amount: | \$0.00         | Judgment Date:              | 04 / 04 / 2012                         |
| Description:     | Judgment / Default | Disposition: | Vacated                     | Disp. Date:   | 05 / 01 / 2012 | Date Entered / Last Changed | 04 / 04 / 2012<br>--<br>05 / 01 / 2012 |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |
| Claims Code      |                    | Detail Desc. |                             | Detail Amount |                | Detail Date                 |                                        |
| None             |                    |              |                             |               |                |                             |                                        |
| For:             | Hund, Paul W III   | Against:     | J&J Construction            | Judg. Amount: | \$0.00         | Judgment Date:              | 04 / 04 / 2012                         |
| Description:     | Judgment / Default | Disposition: |                             | Disp. Date:   |                | Date Entered / Last Changed | 04 / 04 / 2012<br>--                   |
| Notes:           | None               |              |                             |               |                |                             |                                        |
| Judgment Details |                    |              |                             |               |                |                             |                                        |

| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
|------------------|-----------------------------------------------------|--------------|---------------------------------|---------------|---------------|-----------------------------|-----------------------------|--|
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Hund, Paul W III                                    | Against:     | Nino, Jose                      | Judg. Amount: | \$0.00        | Judgment Date:              | 04/04/2012                  |  |
| Description:     | Judgment / Default                                  | Disposition: | Vacated                         | Disp. Date:   | 04/25/2012    | Date Entered / Last Changed | 04/04/2012 --<br>04/25/2012 |  |
| Notes:           | None                                                |              |                                 |               |               |                             |                             |  |
| Judgment Details |                                                     |              |                                 |               |               |                             |                             |  |
| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Hund, Paul W III                                    | Against:     | Garcia, Jose Manuel             | Judg. Amount: | \$0.00        | Judgment Date:              | 04/04/2012                  |  |
| Description:     | Judgment / Default                                  | Disposition: |                                 | Disp. Date:   |               | Date Entered / Last Changed | 04/04/2012 --               |  |
| Notes:           | None                                                |              |                                 |               |               |                             |                             |  |
| Judgment Details |                                                     |              |                                 |               |               |                             |                             |  |
| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Hund, Paul W III                                    | Against:     | Eason Construction Inc          | Judg. Amount: | \$0.00        | Judgment Date:              | 01/25/2012                  |  |
| Description:     | Judgment / Default                                  | Disposition: | Vacated                         | Disp. Date:   | 09/20/2012    | Date Entered / Last Changed | 01/26/2012 --<br>09/20/2012 |  |
| Notes:           | None                                                |              |                                 |               |               |                             |                             |  |
| Judgment Details |                                                     |              |                                 |               |               |                             |                             |  |
| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Hund, Paul W III                                    | Against:     | Morales Vincent Masonry         | Judg. Amount: | \$0.00        | Judgment Date:              | 04/04/2012                  |  |
| Description:     | Judgment / Default                                  | Disposition: |                                 | Disp. Date:   |               | Date Entered / Last Changed | 04/04/2012 --               |  |
| Notes:           | None                                                |              |                                 |               |               |                             |                             |  |
| Judgment Details |                                                     |              |                                 |               |               |                             |                             |  |
| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Hund, Paul W III                                    | Against:     | Vincent Morales Masonry         | Judg. Amount: | \$0.00        | Judgment Date:              | 04/04/2012                  |  |
| Description:     | Judgment / Default                                  | Disposition: |                                 | Disp. Date:   |               | Date Entered / Last Changed | 04/04/2012 --               |  |
| Notes:           | None                                                |              |                                 |               |               |                             |                             |  |
| Judgment Details |                                                     |              |                                 |               |               |                             |                             |  |
| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Marick Home Builders LLC                            | Against:     | IMK Development Co LLC          | Judg. Amount: | \$0.00        | Judgment Date:              | 10/21/2013                  |  |
| Description:     | Judgment / Summary Judgment                         | Disposition: |                                 | Disp. Date:   |               | Date Entered / Last Changed | 10/21/2013 --               |  |
| Notes:           | as to Cross Claims                                  |              |                                 |               |               |                             |                             |  |
| Judgment Details |                                                     |              |                                 |               |               |                             |                             |  |
| Claims Code      |                                                     | Detail Desc. |                                 |               | Detail Amount |                             | Detail Date                 |  |
| None             |                                                     |              |                                 |               |               |                             |                             |  |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc. | Against:     | IMK Developement Co LLC/ Marick | Judg. Amount: | \$857,635.29  | Judgment Date:              | 11/08/2013                  |  |

|                  |                                                                                                                                         |              |                                                     |               |              |                             |                             |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------|-----------------------------------------------------|---------------|--------------|-----------------------------|-----------------------------|
|                  |                                                                                                                                         |              | Home Builders LLC-aka                               |               |              |                             |                             |
| Description:     | Judgment / Judgment                                                                                                                     | Disposition: |                                                     | Disp. Date:   |              | Date Entered / Last Changed | 01/30/2015 --<br>02/04/2015 |
| Notes:           | None                                                                                                                                    |              |                                                     |               |              |                             |                             |
| Judgment Details |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| Claims Code      |                                                                                                                                         | Detail Desc. |                                                     | Detail Amount |              | Detail Date                 |                             |
| None             |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| For:             | Bostic Brothers Construction Inc                                                                                                        | Against:     | Southern Stone Inc                                  | Judg. Amount: | \$0.00       | Judgment Date:              | 10/23/2012                  |
| Description:     | Judgment / Default                                                                                                                      | Disposition: |                                                     | Disp. Date:   |              | Date Entered / Last Changed | 10/23/2012 --               |
| Notes:           | None                                                                                                                                    |              |                                                     |               |              |                             |                             |
| Judgment Details |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| Claims Code      |                                                                                                                                         | Detail Desc. |                                                     | Detail Amount |              | Detail Date                 |                             |
| None             |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| For:             | Marick Home Builders LLC                                                                                                                | Against:     | Integrays Keowee Development LLC                    | Judg. Amount: | \$0.00       | Judgment Date:              | 10/21/2013                  |
| Description:     | Judgment / Summary Judgment                                                                                                             | Disposition: |                                                     | Disp. Date:   |              | Date Entered / Last Changed | 10/21/2013 --               |
| Notes:           | as to Cross Claims                                                                                                                      |              |                                                     |               |              |                             |                             |
| Judgment Details |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| Claims Code      |                                                                                                                                         | Detail Desc. |                                                     | Detail Amount |              | Detail Date                 |                             |
| None             |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| For:             | Marick Home Builders LLC                                                                                                                | Against:     | Lollis, Larry D                                     | Judg. Amount: | \$0.00       | Judgment Date:              | 10/21/2013                  |
| Description:     | Judgment / Summary Judgment                                                                                                             | Disposition: |                                                     | Disp. Date:   |              | Date Entered / Last Changed | 10/21/2013 --               |
| Notes:           | as to Cross Claims                                                                                                                      |              |                                                     |               |              |                             |                             |
| Judgment Details |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| Claims Code      |                                                                                                                                         | Detail Desc. |                                                     | Detail Amount |              | Detail Date                 |                             |
| None             |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| For:             | Marick Home Builders LLC                                                                                                                | Against:     | Cox, William C                                      | Judg. Amount: | \$0.00       | Judgment Date:              | 10/21/2013                  |
| Description:     | Judgment / Summary Judgment                                                                                                             | Disposition: |                                                     | Disp. Date:   |              | Date Entered / Last Changed | 10/21/2013 --               |
| Notes:           | as to Cross Claims                                                                                                                      |              |                                                     |               |              |                             |                             |
| Judgment Details |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| Claims Code      |                                                                                                                                         | Detail Desc. |                                                     | Detail Amount |              | Detail Date                 |                             |
| None             |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                                                                     | Against:     | Bostic Brothers Construction Inc                    | Judg. Amount: | \$943,872.79 | Judgment Date:              | 11/08/2013                  |
| Description:     | Judgment / Judgment                                                                                                                     | Disposition: |                                                     | Disp. Date:   |              | Date Entered / Last Changed | 01/30/2015 --<br>06/27/2022 |
| Notes:           | As to Negligence \$2,144,088.23; As to Breach of Warranty \$643,226.47 (\$2,787,314.70) SEE JUDGMENT ORDER FILED 6/24/2022 \$943,872.79 |              |                                                     |               |              |                             |                             |
| Judgment Details |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| Claims Code      |                                                                                                                                         | Detail Desc. |                                                     | Detail Amount |              | Detail Date                 |                             |
| None             |                                                                                                                                         |              |                                                     |               |              |                             |                             |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                                                                     | Against:     | Marick Home Builders LLC/IMK Development Co LLC-aka | Judg. Amount: | \$857,635.29 | Judgment Date:              | 11/08/2013                  |

|                  |                                                                                             |              |                                 |               |                |                             |                                |
|------------------|---------------------------------------------------------------------------------------------|--------------|---------------------------------|---------------|----------------|-----------------------------|--------------------------------|
| Description:     | Judgment / Judgment                                                                         | Disposition: |                                 | Disp. Date:   |                | Date Entered / Last Changed | 01/30/2015<br>--<br>02/04/2015 |
| Notes:           | As to Negligence \$857,635.29 - Joint and Several Liability with IMK Developement Co LLC    |              |                                 |               |                |                             |                                |
| Judgment Details |                                                                                             |              |                                 |               |                |                             |                                |
| Claims Code      | Detail Desc.                                                                                |              |                                 | Detail Amount |                | Detail Date                 |                                |
| None             |                                                                                             |              |                                 |               |                |                             |                                |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                         | Against:     | Marick Home Builders LLC        | Judg. Amount: | \$629,248.53   | Judgment Date:              | 11/08/2013                     |
| Description:     | Judgment / Judgment                                                                         | Disposition: |                                 | Disp. Date:   |                | Date Entered / Last Changed | 01/30/2015<br>--<br>06/27/2022 |
| Notes:           | As to Breach of Warranty \$2,144,088.23 SEE JUDGMENT FILED 6/24/2022 (\$629,248.53)         |              |                                 |               |                |                             |                                |
| Judgment Details |                                                                                             |              |                                 |               |                |                             |                                |
| Claims Code      | Detail Desc.                                                                                |              |                                 | Detail Amount |                | Detail Date                 |                                |
| None             |                                                                                             |              |                                 |               |                |                             |                                |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                         | Against:     | IMK Development Co LLC          | Judg. Amount: | \$2,144,088.23 | Judgment Date:              | 11/08/2013                     |
| Description:     | Judgment / Judgment                                                                         | Disposition: |                                 | Disp. Date:   |                | Date Entered / Last Changed | 01/30/2015<br>--               |
| Notes:           | As to Breach of Fiduciary Duty \$2,144,088.23                                               |              |                                 |               |                |                             |                                |
| Judgment Details |                                                                                             |              |                                 |               |                |                             |                                |
| Claims Code      | Detail Desc.                                                                                |              |                                 | Detail Amount |                | Detail Date                 |                                |
| None             |                                                                                             |              |                                 |               |                |                             |                                |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                         | Against:     | Integrys Keowee Development LLC | Judg. Amount: | \$2,144,088.23 | Judgment Date:              | 11/08/2013                     |
| Description:     | Judgment / Judgment                                                                         | Disposition: |                                 | Disp. Date:   |                | Date Entered / Last Changed | 01/30/2015<br>--               |
| Notes:           | As to Breach of Fiduciary Duty \$2,144,088.23                                               |              |                                 |               |                |                             |                                |
| Judgment Details |                                                                                             |              |                                 |               |                |                             |                                |
| Claims Code      | Detail Desc.                                                                                |              |                                 | Detail Amount |                | Detail Date                 |                                |
| None             |                                                                                             |              |                                 |               |                |                             |                                |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                         | Against:     | Thoennes, Rick                  | Judg. Amount: | \$1,000,000.00 | Judgment Date:              | 11/08/2013                     |
| Description:     | Judgment / Judgment                                                                         | Disposition: | Satisfied Or Cancelled          | Disp. Date:   | 10/31/2016     | Date Entered / Last Changed | 01/30/2015<br>--<br>06/27/2022 |
| Notes:           | As to Breach of Fiduciary Duty \$2,144,088.23 SEE JUDGMENT FILED 2/24/2022 (\$1,000,000.00) |              |                                 |               |                |                             |                                |
| Judgment Details |                                                                                             |              |                                 |               |                |                             |                                |
| Claims Code      | Detail Desc.                                                                                |              |                                 | Detail Amount |                | Detail Date                 |                                |
| None             |                                                                                             |              |                                 |               |                |                             |                                |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                         | Against:     | Cox, William C                  | Judg. Amount: | \$2,144,088.23 | Judgment Date:              | 11/08/2013                     |
| Description:     | Judgment / Judgment                                                                         | Disposition: | Satisfied Or Cancelled          | Disp. Date:   | 03/01/2019     | Date Entered / Last Changed | 01/30/2015<br>--<br>03/01/2019 |
| Notes:           | As to Breach of Fiduciary Duty \$2,144,088.23                                               |              |                                 |               |                |                             |                                |
| Judgment Details |                                                                                             |              |                                 |               |                |                             |                                |
| Claims Code      | Detail Desc.                                                                                |              |                                 | Detail Amount |                | Detail Date                 |                                |
| None             |                                                                                             |              |                                 |               |                |                             |                                |
| For:             | Stoneledge At Lake Keowee Owners' Association, Inc.                                         | Against:     | Lollis, Larry D                 | Judg. Amount: | \$2,144,088.23 | Judgment Date:              | 11/08/2013                     |

|                  |                                               |              |                                  |               |            |                             |                                |
|------------------|-----------------------------------------------|--------------|----------------------------------|---------------|------------|-----------------------------|--------------------------------|
| Description:     | Judgment / Judgment                           | Disposition: | Satisfied Or Cancelled           | Disp. Date:   | 03/01/2019 | Date Entered / Last Changed | 01/30/2015<br>--<br>03/01/2019 |
| Notes:           | As to Breach of Fiduciary Duty \$2,144,088.23 |              |                                  |               |            |                             |                                |
| Judgment Details |                                               |              |                                  |               |            |                             |                                |
| Claims Code      |                                               | Detail Desc. |                                  | Detail Amount |            | Detail Date                 |                                |
| None             |                                               |              |                                  |               |            |                             |                                |
| For:             | Hutch N Son Construction                      | Against:     | Marick Home Builders LLC         | Judg. Amount: | \$1,100.39 | Judgment Date:              | 09/08/2014                     |
| Description:     | Judgment / Judgment                           | Disposition: |                                  | Disp. Date:   |            | Date Entered / Last Changed | 09/08/2014<br>--               |
| Notes:           | Award of Costs                                |              |                                  |               |            |                             |                                |
| Judgment Details |                                               |              |                                  |               |            |                             |                                |
| Claims Code      |                                               | Detail Desc. |                                  | Detail Amount |            | Detail Date                 |                                |
| None             |                                               |              |                                  |               |            |                             |                                |
| For:             | Hutch N Son Construction                      | Against:     | Thoennes, Rick                   | Judg. Amount: | \$1,100.39 | Judgment Date:              | 09/08/2014                     |
| Description:     | Judgment / Judgment                           | Disposition: |                                  | Disp. Date:   |            | Date Entered / Last Changed | 09/08/2014<br>--               |
| Notes:           | Award of Costs                                |              |                                  |               |            |                             |                                |
| Judgment Details |                                               |              |                                  |               |            |                             |                                |
| Claims Code      |                                               | Detail Desc. |                                  | Detail Amount |            | Detail Date                 |                                |
| None             |                                               |              |                                  |               |            |                             |                                |
| For:             | Thoennes, Rick                                | Against:     | Integrays Keowee Development LLC | Judg. Amount: | \$0.00     | Judgment Date:              | 10/21/2013                     |
| Description:     | Judgment / Summary Judgment                   | Disposition: |                                  | Disp. Date:   |            | Date Entered / Last Changed | 10/21/2013<br>--               |
| Notes:           | as to Cross Claims                            |              |                                  |               |            |                             |                                |
| Judgment Details |                                               |              |                                  |               |            |                             |                                |
| Claims Code      |                                               | Detail Desc. |                                  | Detail Amount |            | Detail Date                 |                                |
| None             |                                               |              |                                  |               |            |                             |                                |
| For:             | Thoennes, Rick                                | Against:     | IMK Development Co LLC           | Judg. Amount: | \$0.00     | Judgment Date:              | 10/21/2013                     |
| Description:     | Judgment / Summary Judgment                   | Disposition: |                                  | Disp. Date:   |            | Date Entered / Last Changed | 10/21/2013<br>--               |
| Notes:           | as to Cross Claims                            |              |                                  |               |            |                             |                                |
| Judgment Details |                                               |              |                                  |               |            |                             |                                |
| Claims Code      |                                               | Detail Desc. |                                  | Detail Amount |            | Detail Date                 |                                |
| None             |                                               |              |                                  |               |            |                             |                                |
| For:             | Thoennes, Rick                                | Against:     | Lollis, Larry D                  | Judg. Amount: | \$0.00     | Judgment Date:              | 10/21/2013                     |
| Description:     | Judgment / Summary Judgment                   | Disposition: |                                  | Disp. Date:   |            | Date Entered / Last Changed | 10/21/2013<br>--               |
| Notes:           | as to Cross Claims                            |              |                                  |               |            |                             |                                |
| Judgment Details |                                               |              |                                  |               |            |                             |                                |
| Claims Code      |                                               | Detail Desc. |                                  | Detail Amount |            | Detail Date                 |                                |
| None             |                                               |              |                                  |               |            |                             |                                |
| For:             | Thoennes, Rick                                | Against:     | Cox, William C                   | Judg. Amount: | \$0.00     | Judgment Date:              | 10/21/2013                     |
| Description:     | Judgment / Summary Judgment                   | Disposition: |                                  | Disp. Date:   |            | Date Entered / Last Changed | 10/21/2013<br>--               |
| Notes:           | as to Cross Claims                            |              |                                  |               |            |                             |                                |

| Judgment Details |              |               |             |
|------------------|--------------|---------------|-------------|
| Claims Code      | Detail Desc. | Detail Amount | Detail Date |
| None             |              |               |             |

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## EXHIBIT 7

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 -CP-37-00652

FILED OCONEE, SC  
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC. ET AL  
BEVERLY H. WHITFIELD  
CLERK OF COURT

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS,  
WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT,  
LLC; MARICK HOME BUILDERS, LLC, BOSTIC  
BROTHERS CONSTRUCTION, INC., RICK THONNES

2013 NOV 8 PM 12:48

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## 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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **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: Jury found for the Plaintiff on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of \$3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of \$1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrlys Keowee Development, LLC, Rick Thonnes, William C. Cox and Larry D. Lollis in the amount of \$1,000,000.00 (See Attached Verdict Form and Apportionment Form for more specific details.) All parties have 10 days to submit post-trial motions.

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This trial encompassed Phase 1 of Stoneledge only.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                                                                                                  | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Stoneledge at Lake Keowee Owner's<br>Assoc., Inc., C. Dan Carson, Jeffrey J.<br>Dauler, Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy B. Grasso,<br>Nancy E. Grasso, Robert P. Hayes, Lucy<br>H Hayes, Ty Hix, Jennifer D. Hix, Paul W.<br>Hund, III, Ruth E. Isaac, Michael D. | IMK Development Co., LLC                 | \$1,150,000.00                                           |

|                                                                                                                                                                                                                                                                                                                                                                                                    |                                    |                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------|
| Plourde, Mary Lou Plourde, Carol C.<br>Pope, Steven B. Taylor, Bette J. Taylor,<br>Robert White                                                                                                                                                                                                                                                                                                    |                                    |                |
| Stoneledge at Lake Keowee Owners'<br>Assoc., Inc., C. Dan Carson, Jeffrey J.<br>Dauler, Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy B. Grasso,<br>Nancy E. Grasso, Robert P. Hayes, Lucy<br>H. Hayes, Ty Hix, Jennifer D. Hix, Paul W.<br>Hund, III, Ruth E. Isaac, Michael D.<br>Plourde, Mary Lou Plourde, Carol C.<br>Pope, Steven B. Taylor, Bette J. Taylor,<br>Robert White. | Larry D. Lollis                    | \$ 200,000.00  |
| Stoneledge at Lake Keowee Owners'<br>Assoc., Inc. C. Dan Carson, Jeffrey J.<br>Dauler, Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy B. Grasso,<br>Nancy E. Grasso, Robert P. Hayes, Lucy<br>H. Hayes, Ty Hix, Jennifer D. Hix, Paul W.<br>Hund, III, Ruth E. Issac, Michael D.<br>Plourde, Mary Lou Plourde, Carol C.<br>Pope, Steven B. Taylor, Bette J. Taylor,<br>Robert White   | William C. Cox                     | \$ 200,000.00  |
| Stoneledge at Lake Keowee Owners'<br>Assoc., Inc., C. Dan Carson, Jeffrey J.<br>Dauler, Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy B. Grasso,<br>Nancy E. Grasso, Robert P. Hayes, Lucy<br>H. Hayes, Ty Hix, Jennifer D. Hix, Paul<br>W. Hund, III, Ruth E. Issac, Michael D.<br>Plourde, Mary Lou Plourde, Carol C.<br>Pope, Steven B. Taylor, Bette J. Taylor,<br>Robert White  | Integrays Keowee Development, LLC  | \$ 200,000.00  |
| Stoneledge at Lake Keowee Owners'<br>Assoc., Inc., C. Dan Carson, Jeffrey J.<br>Dauler, Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy B. Grasso,<br>Nancy E. Grasso, Robert P. Hayes, Lucy<br>H. Hayes, Ty Hix, Jennifer D. Hix, Paul<br>W. Hund, III, Ruth E. Issac, Michael D.<br>Plourde, Mary Lou Plourde, Carol C.<br>Pope, Steven B. Taylor, Bette J. Taylor,<br>Robert White  | Marick Home Builders, LLC          | \$ 950,000.00  |
| Stoneledge at Lake Keowee Owners'<br>Assoc., Inc., C. Dan Carson, Jeffrey J.<br>Dauler, Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy B. Grasso,<br>Nancy E. Grasso, Robert P. Hayes, Lucy<br>H. Hayes, Ty Hix, Jennifer D. Hix, Paul<br>W. Hund, III, Ruth E. Issac, Michael D.<br>Plourde, Mary Lou Plourde, Carol C.<br>Pope, Steven B. Taylor, Bette J. Taylor,<br>Robert White  | Bostic Brothers Construction, Inc. | \$2,100,000.00 |

## FORM 4

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

## JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-00652

Stoneledge at Lake Keowee

IMK Development Co., LLC, et al

Owners' Assoc., Inc., et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## 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. ☐ See Page 2 for additional information.
- ☐ **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 \_\_\_\_\_
- ☐ **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: See Page 1

## ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                                                                                                                                                                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Stoneledge at Lake Keowee<br>Owners' Assoc., Inc., C. Dan<br>Carson, Jeffrey J. Dauler,<br>Joan W. Davenport, Michael<br>Furnari, Donna Furnari, Jessy<br>B. Grasso, Robert P. Hayes,<br>Lucy H. Hayes, Ty Hix, Jennifer<br>D. Hix, Paul W. Hund, III, Ruth<br>E. Isaac, Michael D. Plourde,<br>Mary Lou Plourde, Carol C. Pope<br>Steven B. Taylor, Bette J.<br>Taylor, Robert White, Nancy<br>E. Grasso | Rick Thoennes                            | \$ 200,000.00                                            |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2063  
Judge Code11/08/13  
Date

2013 NOV 8 PM 12:48

FILED OCCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

For Clerk of Court Office Use Only

This judgment was entered on the 08th day of November, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 08th day of November, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher,  
Cynthia Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield  
CLERK OF COURT

Court Reporter: Benee Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

) TENTH JUDICIAL CIRCUIT

Stoneledge at Lake Keowee Owners' Association, Inc.,  
C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport,  
Michael Furnari, Donna Furnari, Jessy B. Grasso,  
Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty  
Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac,  
Michael D. Plourde, Mary Lou Plourde, Carol C. Pope,  
Steven B. Taylor, Bette J. Taylor, and Robert White,  
Individually and on Behalf of All Others Similarly  
Situating

) Civil Action No.: 2009-CP-37-0652

APPORTIONMENT FORM

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2013 NOV 8 AM 9 09

Plaintiffs,

vs.

IMK Development Co., LLC, Larry D. Lollis, William  
C. Cox, Integrys Keowee Development, LLC, Marick  
Home Builders, LLC, Bostic Brothers Construction,  
Inc., Rick Thoennes,

Defendants

Using the combined **negligence** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC

40 %

Bostic Brothers Construction, Inc.

60 %

**Total**

**100%**

Using the combined breach of **implied warranty of workmanlike service** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC

70 %

Bostic Brothers Construction, Inc.

30 %

**Total**

**100%**

Walhalla, South Carolina  
November 7, 2013

*Morris R. Cobb*  
MORRIS R. COBB, Foreman

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

STONELEDGE AT LAKE KEOWEE OWNERS'  
ASSOCIATION, INC., ET AL

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS,  
WILLIAM C. COX, INTEGRYS KEOWEE  
DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC,  
BOSTIC BROTHERS CONSTRUCTION, INC., RICK  
THOENNES,

Defendants,

) IN THE COURT OF COMMON PLEAS  
) FOR THE TENTH JUDICIAL CIRCUIT  
) CASE NUMBER: 2009-CP-37-0652

VERDICT FORM

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff  
       Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff  
       Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars (\$ 3,000,000.00 )

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the;

✓ Plaintiff  
       Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff  
       Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

one million dollars (\$ 1,000,000.00 )

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

- a. ✓ Plaintiff  
       Defendant IMK Development Co., LLC
- b. ✓ Plaintiff  
       Defendant Integrys Keowee Development, LLC
- c. ✓ Plaintiff  
       Defendant Rick Thoennes

d. ✓ Plaintiff

         Defendant William C. Cox

e. ✓ Plaintiff

         Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one millim dollars (\$1,000,000.00)

Walhalla, South Carolina  
November 7, 2013

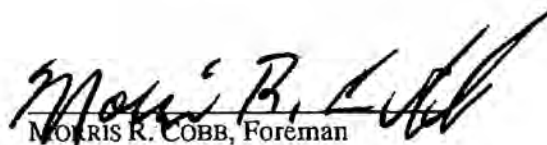
  
MORRIS R. COBB, Foreman

**EXHIBIT 8**

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE ) COURT OF COMMON PLEAS NONJURY

STONELEDGE AT LAKE KEOWEE OWNERS' )  
ASSOCIATION, INC., ET AL, )  
PLAINTIFFS, )  
VS. )  
IMK DEVELOPMENT CO., LLC, MARICK )  
HOME BUILDERS, LLC, ET AL, )  
DEFENDANTS. )

TRANSCRIPT  
OF  
RECORD  
2009-CP-37-652

September 16<sup>th</sup>, 2022

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, Judge.

A P P E A R A N C E S:

ROBERT LYLES  
ESQ.  
Attorney for the Plaintiff

JASON IMHOFF  
ESQ.  
Attorney for the Defendant Marick Homebuilders, LLC and  
Rick Thoennes

Transcribed by Pamela E. Green, from  
WebEx Recording

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony  
taken during this hearing.)

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P R O C E E D I N G S

THE COURT: All right. Let's go gentlemen. This is without a court reporter. So I'm gonna start with Mr. Imhoff first.

Jason, I want you to state your full name. Spell it for the record. Give me the full caption of the case. Give me the motions that you have pending and give me your arguments. And then I'm gonna let Mr. Lyles respond to you and do the same.

Okay.

MR. IMHOFF: Yes, Your Honor.

THE COURT: All right. Go ahead.

MR. IMHOFF: My name is Jason Imhoff.

THE COURT: Just one second. My law clerk is reminding me I need to do a start time at 11:03AM.

Sorry, Mr. Imhoff. Go ahead.

MR. IMHOFF: Okay. My name is Jason Imhoff. I represent defendants Marick Homebuilders, LLC and Rick Thoennes. My last name is spelled I-M-H-O-F-F. I have filed a petition for post-judgment settlement and I'm not sure that's exactly the right thing. But that's, that's what I have filed.

Your Honor, if I may, I'm gonna try to share this with the Court. We think it's a fairly simple matter. I'm not

1 as good at WebEx as -- Your Honor, do you have the, the  
2 petition in front of you here on the screen?

3 THE COURT: Yep. And I've read it.

4 MR. IMHOFF: You've read it, right.

5 All right. And, and, as you know, this went up through  
6 the Appellate Court and the Supreme Court after the phase  
7 one trial. That took a very, very long time. The, the  
8 trial was in 2013. The judgment was modified by Judge  
9 McCauley in 2015 and then there was a settlement agreement.  
10 This allows this right in preparation for phase two to avoid  
11 the expense of the trial.

12 I will say, Your Honor, that in Mr. Lyles brief in  
13 response to this, he puts in a lot of things about the  
14 coverage case, the federal coverage case. I can't speak to  
15 those things. That is a completely different set of  
16 attorneys. As a matter of fact, I think the settlement  
17 agreement that I'm spoke -- that I'm gonna show you in just  
18 a moment was also negotiated through those attorneys.

19 And so, if the Court is not convinced by the arguments  
20 and is inclined to either hear more or rule for plaintiffs,  
21 I would ask that they be involved in it so they can respond  
22 to the allegations.

23 THE COURT: Nope. We're gonna have it disposed,  
24 disposed of today. If they were gonna argue, they should be  
25 here. Otherwise it's gonna be done today.

1 MR. IMHOFF: All right, Your Honor.

2 THE COURT: Go ahead.

3 MR. IMHOFF: Your Honor, this -- I did a terrible job  
4 with the, with the highlighting. But I'll go to the top.

5 Your Honor, this is a settlement agreement. In that  
6 case, Stoneledge at Lake Keowee Owners' Association, I think  
7 I forgot to say the caption, versus IMK Development, Brad  
8 Seckinger, Larry Lollis, William Cox, Integrys Keowee  
9 Building, LLC, Marick Homebuilders, and Rick Thoennes.

10 Your Honor, that settlement agreement was entered into,  
11 excuse me, and signed by the president of the -- Stoneledge  
12 at Lake Keowee Owners' Association in 2016, Cincinnati  
13 Insurance, and Builders Mutual Insurance Company, Your  
14 Honor, and Rick Thoennes signed it on a, on a second page.

15 Your Honor, the settlement agreement, as Mr., as Mr.  
16 Lyles has pointed out, was to avoid the phase two trial. We  
17 essentially just sat what the damages we both thought would  
18 come in in the phase two trial.

19 Here are the, the promises, covenants, and agreements  
20 in that. The settlement agreement, unless otherwise noted,  
21 only applies to the resolution of all claims asserted by  
22 plaintiff against defendants arising out of phase two.  
23 That's the phase one judgment or the -- the judgment we're  
24 talking about was for phase one, Your Honor.

25 So there is a special note after that. Nothing in this

1 settlement agreement, except to the extent expressly stated  
2 in here, will affect the phase one judgment or the appeal  
3 from that judgment taken by the defendants. So, it's  
4 expressly set out here that nothing affects the phase two  
5 except for what's expressly noted.

6 And so here's, here's where the agreement is. They're  
7 gonna put 5.6 million-dollars up in the Federal Court  
8 declaratory action on coverage.

9 Your Honor, this is a declaratory judgment action for  
10 determination of coverage under the policies in phase two.  
11 The parties further agree that insurers will pay  
12 post-judgment interest at the legal rate of the phase two  
13 coverage damages. And here the parties agree, Your Honor,  
14 at four, in consideration of the above referenced  
15 stipulation of damages, the parties agree the appeal of the  
16 phase one judgment against Marick and others will continue  
17 at the discretion of appellants and their appeals.  
18 Plaintiffs insurers reserve their rights to consent --  
19 contest coverage for any final judgment.

20 THE COURT: Mr. Imhoff, I don't need you to read me the  
21 agreement. I've read it several times. I -- how about do  
22 me a favor and describe for me particularly the re -- relief  
23 that you're asking me to give you.

24 okay?

25 MR. IMHOFF: The relief is this, Your Honor. The phase

1 one judgment for breach of fiduciary duty and anything else  
2 against Thoennes is specifically released as per B. Mr.  
3 Lyles is making an argument that it's, it's a covenant.

4 THE COURT: Let me ask you this.

5 Under this settlement agreement, as I read it, it looks  
6 like that the plaintiff has agreed not -- for it not to be a  
7 judgment lien against Mr. Thoennes. However, it remains in  
8 full force and effect against -- in all regards otherwise.

9 MR. IMHOFF: Your Honor, that -- that's not what it  
10 says. It says---

11 THE COURT: Yes, it is what it says. It's exactly what  
12 it says. In fact, if you look at your Exhibit C, it says  
13 release of judgment lien as to Rick Thoennes and it says  
14 provided however the judgment shall in all respects be  
15 preserved and protected and that the judgment lien  
16 acceptance hereby released and discharged as to Rick  
17 Thoennes shall remain in full force and effect against  
18 Bostic Brothers Construction, Inc., Marick Home Construction  
19 Builders, LLC, IMK Development Company, Integrys Keowee  
20 Development, LLC, William C. Cox and Larry Lollis.

21 How more specific can you be?

22 MR. IMHOFF: Well, Your Honor, Rick Thoennes isn't in  
23 there. It says it's dis -- released and discharged as to  
24 Rick Thoennes---

25 THE COURT: No. No.

1 MR. IMHOFF: ---but shall remain in full force and  
2 effect against all the other parties. The judgment we're  
3 seeking to have settled is only against Rick Thoennes.  
4 That's the point. It's, it's released against Rick Thoennes  
5 and not against any of the other parties and here's the  
6 thing. None of those other parties have that million dollar  
7 fiduciary -- breach of fiduciary judgment against them.  
8 It's only to Rick and that---

9 THE COURT: Well, let me ask you this, Mr. Imhoff.

10 Looking at the Stoneledge 1, and, and then the Court --  
11 Supreme Court said the amount, million dollars breach of  
12 fiduciary duty, not subject to setoff, was against Thoennes.  
13 So---

14 MR. IMHOFF: That's right.

15 THE COURT: So, although it's not a judgment lien as  
16 they signed and they acknowledged, it doesn't go as a lien  
17 against his personal assets.

18 what else are you asking me to do?

19 Have you paid the money?

20 MR. IMHOFF: That million dollars, Your Honor?

21 THE COURT: Yeah.

22 MR. IMHOFF: No, Your Honor. That -- it was released  
23 in 2016.

24 THE COURT: No, it wasn't. No, it wasn't. It was---

25 MR. IMHOFF: Okay.

1 THE COURT: ---as to the judgment lien against Mr.  
2 Thoennes but it was not released.

3 MR. IMHOFF: Yes. But, Your Honor, that's the only  
4 thing here we're talking about. It's the judgment for one  
5 million-dollars---

6 THE COURT: The only thing they're talking about,  
7 Jason, is the fact that it was not gonna be a personal  
8 judgment against Mr. Thoennes. But they weren't giving up  
9 these monies. That would be ridiculous.

10 why would they give it up if you haven't paid any money  
11 anyway?

12 MR. IMHOFF: Because that's the problem because they  
13 knew it wasn't covered. I don't know. But, Your Honor, in,  
14 in the settlement agreement---

15 THE COURT: I think your argument's fairly specious,  
16 Jason. I'll be quite frank with you.

17 The clear intent of this agreement was that it not work  
18 as a judgment against Mr. Thoennes personally. But it  
19 remain in full force and effect and you hadn't -- and has  
20 any money been paid towards it whatsoever?

21 MR. IMHOFF: I don't, I don't think so, Your Honor.

22 THE COURT: Well, then obviously that's not the intent.

23 MR. IMHOFF: Your, Your Honor---

24 THE COURT: There's no way.

25 MR. IMHOFF: May I say one other thing?

1 THE COURT: You certainly may.

2 MR. IMHOFF: Your Honor, if they wanted to do a  
3 covenant not to execute, in other words, have no execution  
4 against Mr. Thoennes himself, they could of done that and  
5 they did do that in Section D.

6 THE COURT: I think he wanted it to be clear that it  
7 was not gonna be a judgment against -- it was gonna be  
8 released. You could have made it clearer yourself. The  
9 obvious intent of these documents is that the -- we're not  
10 gonna go after Mr. Thoennes personally. We're not gonna  
11 make it be a judgment lien against him personally. But  
12 we're going after coverage. That's the whole point of it.

13 MR. IMHOFF: Well, that's right, Your Honor, and that's  
14 what he did in phase two. He did a covenant not to execute  
15 against Thoennes in phase two. He did it a settlement  
16 agreement and release and satisfaction in Section B.

17 He did two different things. He released Thoennes from  
18 the phase one judgment and he kept his insurance claim  
19 against Thoennes in phase two. It's set out here. They're  
20 separated. They're two different things. It was  
21 negotiating -- I, I wasn't involved in negotiating this.  
22 But it was obviously negotiated and gone back and forth.

23 They're two separate things, Your Honor. If it was  
24 only the one thing, if it was only one where it was a  
25 covenant not to execute, then there's no reason to have B

1 and D separately.

2 THE COURT: Say that again please.

3 MR. IMHOFF: If it was only the one, it was only that  
4 he was preserving his right for insurance company --  
5 coverage on phase one and phase two, then why are there two  
6 different sections releasing or having a covenant not to  
7 execute against Mr. Thoennes?

8 It -- there's no reason to have two. It's very clear  
9 that B is a release in phase one and D is a covenant not to  
10 execute in phase two.

11 THE COURT: It is not clear and I disagree with you  
12 distinctly.

13 Mr. Lyles, I'll be glad to hear from you.

14 You need to unmute please, sir.

15 MR. LYLES: All right. Your Honor, you, you understand  
16 our arguments perfectly well. This, this was a -- this was  
17 a vehicle to make sure that we preserved our coverage rights  
18 our or our rights to, to satisfy these judgments with  
19 coverage but to release Mr. Thoennes personally. And, and,  
20 and that's what we did and, and that's why---

21 THE COURT: You received -- now at the time you entered  
22 into this, this settlement agreement, you had already  
23 received -- you'd already obtained a verdict in phase one in  
24 litigation, correct?

25 MR. LYLES: Correct.

1 THE COURT: And you were negotiating an amount for  
2 phase two that everybody could agree upon instead of having  
3 to go litigate that and then go fight the insurance  
4 coverage?

5 MR. LYLES: Correct.

6 THE COURT: Right?

7 MR. LYLES: Correct. And we, and we had the  
8 coverage---

9 THE COURT: Had---

10 MR. LYLES: The coverage action was already going. I  
11 mean we were already three years in.

12 THE COURT: Have you been paid any monies from the  
13 phase one verdict on this fiduciary?

14 MR. LYLES: Not from Mr. Thoennes or his insurance  
15 companies, no, sir. We, we did get some money from Mr.  
16 Lollis which is also the subject of this petition.

17 THE COURT: Well, the Supreme Court ordered, back when  
18 it was on remand, said it's not subject to setoff.

19 MR. LYLES: Correct.

20 THE COURT: And so that's, that's of no force and  
21 effect according to the Supreme Court.

22 So, as far as you were -- you agreed, the way I read  
23 it, is that you agreed that Mr. Thoennes wasn't gonna have  
24 to personally pay this. But you were gonna collect it  
25 however else you could.

1 MR. LYLES: Correct.

2 THE COURT: And you've not been paid a penny?

3 MR. LYLES: No, sir.

4 THE COURT: All right. Mr. Imhoff, I'm just not buying  
5 what you're selling, buddy.

6 MR. IMHOFF: I got that from the beginning, Your Honor.

7 THE COURT: What's that?

8 MR. IMHOFF: I said I got that from the, from the  
9 start, Your Honor.

10 THE COURT: Yeah, I guess you have.

11 But go ahead. I want you to make a record cause I have  
12 a feeling somebody's gonna be looking at this again.

13 So, go ahead and say what you want to but you know  
14 where I'm going.

15 MR. IMHOFF: Yeah, Your Honor. So I, I pointed out  
16 that B and C are different.

17 Your, Your Honor, I would also note that the -- there  
18 was a release, the judgment lien, and that release was, was  
19 for 2 million-dollars. And so now I, I understand that you  
20 are actually going to enter a judgment against Thoennes for  
21 a million dollars. That is released here in October of  
22 2013.

23 And, and, Your Honor, and I would also -- I would also  
24 point out that, in the, the -- there's a question of whether  
25 or not the million dollars, I'm sorry, whatever Lollis paid

1 or Cox paid should be -- act as a setoff, Your Honor. There  
2 was also a judgment.

3 THE COURT: Now, let me ask you this, Jason.

4 If you look at the language of the order from the  
5 Supreme Court in Stoneledge 1, it says specifically that  
6 there's no setoff for a breach of fiduciary, excuse me,  
7 breach of fiduciary duty claim. They say that and I'm bound  
8 by that.

9 MR. IMHOFF: Well, that's right, Your Honor. But I  
10 think there would be a setoff if Lox -- Lollis and Cox paid  
11 on breach of fiduciary duty because, because then it's---

12 THE COURT: Well, then you're gonna have to get the  
13 Supreme Court to tell you that because they're telling me  
14 there's no setoff. And so I have to follow what they say.

15 MR. IMHOFF: Your Honor, I think the -- what they're  
16 saying is there's no setoff for the negligence and warranty  
17 payments because breach of fiduciary duty only went to a  
18 specific group of people. And so there's no -- you can't  
19 take the negligence and warranty payments and apply them to  
20 breach of fiduciary duty. But here---

21 THE COURT: Well, that, that's -- that, that may be.  
22 Let me stop you right there.

23 Mr. Lyles, Mr. Imhoff is making a pretty decent point  
24 that hey, there's no setoff as to the monies paid towards  
25 the breach of warranty or the negligence claims as it

1 applies to the fiduciary. But if there's monies actually  
2 applied and paid under the fiduciary, they should be a  
3 setoff and that sounds correct.

4 MR. LYLES: Well, it, it -- I, I don't know that I  
5 would have disagreed with that in front of the Supreme Court  
6 but I don't think that's what the Supreme Court held and  
7 these---

8 THE COURT: Show me the language in the order where you  
9 construe it differently.

10 MR. LYLES: Well, I don't that -- I don't think that  
11 the Supreme Court order specifically addresses this  
12 question. These, these, these lawyers argued on appeal  
13 successfully that, that the -- that the statute which allows  
14 setoff does not apply to a breach of fiduciary duty claim.  
15 And, and so they, they were able to get the Supreme Court to  
16 order that they, on their negligence and breach of warranty  
17 claim, got the benefit of all of the settlement money that  
18 was paid pretrial and the significance of that is this.

19 The settlement's pretrial. We're not only for -- with  
20 subcontractors. We settled with another developer who'd  
21 been sued for breach of fiduciary duty. We, we sued -- we  
22 settled with the architect who was in on, on different  
23 theories of liability.

24 THE COURT: Well, the, the orders from the, the Supreme  
25 Court say that the figures that they referred to, and this

1 is Stoneledge 2, do not take into accounting settlements  
2 received by the HOA during the pendency of appeal. Not  
3 during---

4 MR. LYLES: Yes, sir.

5 THE COURT: ---pretrial.

6 MR. LYLES: It, it, it does say that and they, they --  
7 I have been -- I have scratched my head about that language  
8 and, and all I can think is that Justice James wanted to  
9 leave that question open for you.

10 THE COURT: Oh, great. Thank you.

11 MR. LYLES: Yes, sir. But, but I, but I think that the  
12 statute governing setoff precludes a setoff for a breach of  
13 fiduciary -- a breach of fiduciary duty claim.

14 THE COURT: Let's -- let me -- did, did anybody include  
15 that -- the opinion in their filings?

16 MR. IMHOFF: Yes, Your Honor. It's Exhibit A to ours.

17 THE COURT: Exhibit A?

18 MR. IMHOFF: I can put it up on the screen if you want  
19 me to share it.

20 THE COURT: Yeah, pull that up and pull the language  
21 up. Well, here you go. My law clerk's bringing it to me.

22 Pull the -- where's the language in there that says  
23 that there's no setoff for the, for the fiduciary?

24 I'm just looking at my notes and I don't have it in  
25 front of me.

1 MR. IMHOFF: It's pretty long but this is the last  
2 part, Your Honor.

3 THE COURT: Right. I know it is. So I mean I'm trying  
4 to --.

5 Mr. Lyles, do you know where it is in the, in the  
6 opinion?

7 MR. LYLES: Yes, sir. Yes, sir.

8 MR. IMHOFF: It's on the---

9 MR. LYLES: It's, it's actually---

10 MR. IMHOFF: It's on the screen, Your Honor.

11 MR. LYLES: It's actually on---

12 THE COURT: It's where?

13 MR. LYLES: He says it's on -- it's on Page 10 of our  
14 memorandum and, and---

15 THE COURT: No, I'm talking about the actual order from  
16 the Supreme Court.

17 MR. LYLES: Yes, sir.

18 MR. IMHOFF: It's on the screen, Your Honor.

19 MR. LYLES: I, I quoted that in, in, in -- at length.

20 THE COURT: Yeah.

21 MR. LYLES: And what they say is the Courts of Appeals  
22 correctly held, but is discussed above for the incorrect  
23 reason, that the breach of fiduciary duty against -- verdict  
24 against Thoennes was not subject to setoff.

25 THE COURT: So, what did the Court of Appeals hold?

1 MR. LYLES: That Thoennes got no benefit for any money  
2 that was paid in settlement.

3 THE COURT: They say that's right however they did it  
4 for the wrong reason?

5 MR. LYLES: Correct.

6 THE COURT: Okay. Mr. Imhoff, how do you explain that  
7 away?

8 MR. IMHOFF: Your Honor, Your Honor, I'm, I'm  
9 struggling with that a little bit myself. I'm going back  
10 through the -- I'm going -- I'm getting -- I'm going back  
11 through the argument, Your Honor, and I think what it says  
12 is that the act does not, does -- specifically bars setoff  
13 and fiduciary duty but I can't find it.

14 Here it is, Your Honor. The provisions of Subsection  
15 15-38-20(g) prohibiting the application of setoff to breach  
16 of fiduciary duty, duty are in derogation of this common law  
17 principle. He may be right.

18 THE COURT: I think he is right actually. In fact, I  
19 know he's right. Well, I shouldn't say I know it but I  
20 would suspect that he is right. So, let me get you guys  
21 back up on my screen.

22 MR. IMHOFF: So, does that -- but I will say, Your  
23 Honor, so whatever Cox and Lollis paid and IMK and IK, there  
24 was also a judgment against those parties for negligence.  
25 So, if it's not gonna be applied to the -- to, to breach of

1 fiduciary duty. It should go to negligence. That's not  
2 barred.

3 THE COURT: Yeah, I don't disagree with that.

4 Mr. Lyles, do you really disagree with that?

5 MR. LYLES: I, I want to make sure.

6 Jason, would you say that again for me so I can make  
7 sure I understand what you're saying?

8 MR. IMHOFF: Yeah, I went back and looked at the --.

9 MR. LYLES: Before I agree to that.

10 MR. IMHOFF: -- at the verdict form and IMK, and all of  
11 these were math amalgamated, was hit with a 3 million-dollar  
12 negligence judgment. And so---

13 MR. LYLES: Okay.

14 MR. IMHOFF: ---if it doesn't go to breach of fiduciary  
15 duty, and I, and I don't -- I haven't seen the settlement  
16 agreements I don't think. So, I'm not sure where it was  
17 put, whether it was put on breach of fiduciary duty,  
18 negligence, or the whole thing. But whatever settlements  
19 should go to negligence if not breach of fiduciary duty.

20 MR. LYLES: Okay.

21 MR. IMHOFF: I just don't know.

22 MR. LYLES: I, I completely disagree.

23 THE COURT: You do disagree?

24 MR. LYLES: Yes, sir.

25 THE COURT: Okay. Hang on for one second.

1 (Pause.)

2 THE COURT: Okay. So, Mr. Lyles, why do you disagree?

3 MR. LYLES: Well, as, as I understand their argument,  
4 and, and what, what they are arguing, that the person who,  
5 who settled with me was a fellow by the name of Larry  
6 Lollis. Larry was one of the developers, and, and by the  
7 time the jury verdict came, Larry was, Larry was on the  
8 verdict form under the breach of fiduciary duty claim only.  
9 Larry settled with me --

10 THE COURT: Okay.

11 MR. LYLES: -- to satisfy that judgment.

12 THE COURT: And he wasn't part of the other judgments  
13 for negligence or implied warranty?

14 MR. LYLES: Correct. That's exactly right.

15 THE COURT: Mr. Imhoff, how in the world can you claim  
16 benefit from, from those causes of action when he's paying  
17 only for a judgment that is for fiduciary duty?

18 MR. IMHOFF: Your Honor, I would ask to see what the  
19 release says because Larry Lollis was a, was a member of IMK  
20 and IK. And if you, if you -- and the judgment in the, in  
21 the trial, all of them were amalgamated, Your Honor. They  
22 were all put together from the top IMK---

23 THE COURT: I understand what amalgamated means. Go  
24 ahead.

25 MR. IMHOFF: So, so -- I mean depending on what the

1 release says, and it may be that the release with Larry  
2 Lollis also released IK and IMK, and if that---

3 THE COURT: Well, it would seem to me that you would  
4 have read that already before we're here today, right?

5 MR. IMHOFF: I don't think we have it, Your Honor.

6 THE COURT: Why not?

7 I mean we're talking about lots of money here. So I  
8 can't imagine that you're not covering all bases.

9 MR. IMHOFF: Well, Your Honor, this hasn't been in  
10 liti -- this has been on appeal for years and years and  
11 years. We have asked, and I think you ordered Mr. Lyles to  
12 produce that, but I have no vehicle to get it. If he---

13 THE COURT: Mr. Lyles, do you have those releases?

14 MR. LYLES: Yes, sir, I do. And I -- if, if you asked  
15 me to produce it, I, I -- that completely escaped me. I'm  
16 happy to produce it.

17 THE COURT: I don't remember doing that either.

18 But I'm not saying I didn't, Jason.

19 But you need to give those to him.

20 MR. LYLES: Be glad to.

21 THE COURT: And let me ask this.

22 As an officer of the Court, do those -- what do those  
23 releases purport to do?

24 MR. LYLES: Well, he, he -- Mr. Lollis releases  
25 himself. He releases Mr. Cox and he releases, my

1 recollection is, he releases IMK and he releases IK because  
2 those were his entities and -- or the entities that he was  
3 involved in, which were all---

4 THE COURT: So in---

5 MR. LYLES: ---as I recall, as I recall, were subject  
6 to the breach of fiduciary duty claim.

7 THE COURT: Say that again, the last thing you said  
8 please.

9 MR. LYLES: Yes. Yes, sir, those entities were subject  
10 to the breach of fiduciary duty claim.

11 THE COURT: But they were also subject to the  
12 negligence and implied warranties too, weren't they?

13 MR. LYLES: I, I think -- I think IMK was.

14 MR. IMHOFF: Just---

15 THE COURT: According to my notes, the -- you had  
16 Bostic, IMK, Marick had a negligence 3 million-dollar  
17 verdict against them. The implied warranty was against  
18 Bostic and Marick in the amount of a million. Then the  
19 breach of fiduciary duty was IMK, IK, Thoennes, Lollis, and  
20 Cox for a million.

21 MR. LYLES: Yes, sir. Yes, sir.

22 THE COURT: So what specifically -- I mean does the  
23 language in the release say this goes to the breach of  
24 fiduciary duty claim only?

25 MR. LYLES: It, it was a breach of fiduciary release---

1 THE COURT: I---

2 MR. LYLES: ---and I'm---

3 THE COURT: Does it say that, Robert?

4 MR. LYLES: Judge, I've got to pull it up. I, I really  
5 and truly---

6 THE COURT: Okay. All right.

7 MR. LYLES: I just have to get it and I'll, and I'll  
8 produce it to, to Jason and I'll produce it obviously to the  
9 Court.

10 THE COURT: All right. Let's do this.

11 I think the language of that release will pretty  
12 much -- will, will determine what the, the argument is on  
13 that issue.

14 But, Jason, your first argument that this was a total  
15 release is denied. It's not. And it's only as to -- meant  
16 to be as to personal liability for Thoennes but otherwise  
17 stands. You're not entitled to credit for any monies paid  
18 for the fiduciary claim because there's no setoff. However,  
19 these other monies, depending on this release, may be  
20 credited to the other claims depending on the outcome of  
21 that release.

22 I mean does everybody pretty much -- while you don't  
23 agree, Jason, I understand but you understand what my ruling  
24 is?

25 MR. IMHOFF: I understand your ruling, Your Honor.

1 THE COURT: And can you two get together and look at  
2 your releases and probably put your heads together and  
3 figure it out I think?

4 MR. LYLES: Yes, sir.

5 MR. IMHOFF: Yes, Your Honor.

6 THE COURT: All right. Well, do that. If you have a  
7 problem with it, let me know but, Mr. Lyles, I'm gonna ask  
8 you to draw me up an order today --

9 MR. LYLES: Yes, sir.

10 THE COURT: -- from -- incorporating what I'm ruling  
11 and then saying that you two will get together on the  
12 release, and if it can't be resolved, then it will be  
13 brought back before me.

14 MR. LYLES: Yes, sir.

15 THE COURT: All right, guys. I appreciate it. Y'all  
16 have a good day.

17 MR. LYLES: Thank you, judge.

18 MR. IMHOFF: Thank you, Your Honor.

19 THE COURT: Take care. Bye-bye.

20

21 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Oconee County, South Carolina, on the 16<sup>th</sup> day of September, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 3<sup>rd</sup>, 2022



PAMELA E. GREEN, Court Reporter

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

---

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

---

Civil Action No.: 2009-CP-37-0652

Appellate Case No. 2022-001581

Paul W. Hund, III, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White, Stoneledge at Lake Keowee Owners' Association, Inc., Respondents

v.

IMK Development Co., LLC, Marick Home Builders, LLC, and Rick Thoennes, Defendants,

Of whom Marick Home Builders, LLC and Rick Thoennes are Appellants.

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**PROOF OF SERVICE**

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The undersigned, Stacey P. Canaday of Tupper Grimsley Dean & Canaday, PA, Attorney for Appellants **Marick Home Builders, LLC, and Rick Thoennes**, hereby avers that on the 19th day of December 2022, a true and accurate copy of this **Return to Motion to Certify Case for Review by The South Carolina Supreme Court** was served via electronic mail using the email addresses listed in the Attorney Information System as follows:

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By: s/ Stacey P. Canaday

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December 23, 2022

Beaufort, South Carolina