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Apr 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case No. 2018-CP-26-00307

Wedgewood Condominium Association,

Respondent,

vs.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc.,

Of which Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC are the Appellant.

vs.

Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; Frank Harris d/b/a Frank Harris Construction a/k/a F. Harris Construction a/k/a Harris Drywall; Builders FirstSource – Southeast Group, LLC; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc. f/k/a Carolina Builders Corporation; Michael D. Brownlee d/b/a Carolina Drywall & Interiors; Carolina Drywall & Interior, Inc. a/k/a Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc.; Roof Doctor of the Carolinas, Inc.; John D. Frazier d/b/a and/or a/k/a Roof Doctor and/or Roof Doctor of the Carolinas and/or Roof Doctor of the Carolinas, Inc.; Steven Bosch d/b/a The Roofer Man; Tri-City Insulation and Building Products of Myrtle Beach, Inc.; Martin Mata d/b/a Martin Masonry; Martin Masonry, Inc.; BR Brick & Masonry, Inc.; BR Brick & Masonry, LP f/k/a BR Brick & Masonry, Inc.; Unicon Concrete, LLC; Seno's Cleaning Service; Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. successor by merger to Rice Planter Carpets, Inc.; Carpets By Kendall, Inc.; Reliable Floor Systems, Inc.; TNT Painting; Paint with Pride a/k/a Painting with Pride; William Evans d/b/a Top Notch Painters; Morningstar Consultants Inc.; MI Windows and Doors, LLC; Michael Dawson d/b/a Michael Dawson Construction, and Inc.; Vereen Concrete Co. Inc.; AK Construction Inc. a/k/a AK Framing and Siding Co.; AK United, Inc. f/k/a AK Construction Inc.

Respondents.

AMENDED NOTICE OF APPEAL

Centex Homes, a Nevada General Partnership, Balfour Beatty Construction, LLC as alleged successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC (collectively referred to as “Centex”) appeal the following orders of the Honorable Carmen T. Mullen: (1) Order Granting Summary Judgment to MI Windows and Doors, LLC and to Stock Building Supply, LLC f/k/a Stock Building Supply Inc. f/k/a Carolina Builders Corporation on December 1, 2022 and (2) Form 4 Order Denying Centex’s Motion to Reconsider Stock Building Supplies Grant of Summary Judgment on March 17, 2023. Appellants received written notice of entry of Order Denying Motion to Reconsider on March 17, 2023. Copies of the subject orders are attached hereto.

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April 26, 2023

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Docket No.: 2018-CP-26-307

WEDGEWOOD CONDOMINIUM)
ASSOCIATION,)
)
Plaintiffs,)

v.)

CENTEX HOMES, A NEVADA)
GENERAL PARTNERSHIP,)
BALFOUR BEATTY)
CONSTRUCTION, LLC AS)
SUCCESSOR BY MERGER TO)
CENTEX CONSTRUCTION)
COMPANY, INC., AND CENTEX)
CONSTRUCTION, LLC, CRESCENT)
ENGINEERING, INC.,)

**ORDER GRANTING SUMMARY
JUDGMENT TO MI WINDOWS AND
DOORS, LLC AND TO STOCK
BUILDING SUPPLY, LLC F/K/A
STOCK BUILDING SUPPLY INC.
F/K/A CAROLINA BUILDERS
CORPORATION**

Defendants.)

CENTEX HOMES, A NEVADA)
GENERAL PARTNERSHIP,)
)
Third-Party Plaintiffs,)

v.)

RIGHT WAY CONSTRUCTION, INC.)
A/K/A RWG, INC. A/K/A RIGHT WAY)
GROUP, INC. A/K/A RWGR, INC.,)
FRANK HARRIS D/B/A FRANK)
HARRIS CONSTRUCTION A/K/A F.)
HARRIS CONSTRUCTION A/K/A)
HARRIS DRYWALL, BUILDERS)
FIRSTSOURCE – SOUTHEAST)
GROUP, LLC, STOCK BUILDING)
SUPPLY, LLC F/K/A STOCK)
BUILDING SUPPLY, INC. F/K/A)
CAROLINA BUILDERS)
CORPORATION, MICHAEL D.)
BROWNLEE D/B/A CAROLINA)
DRYWALL & INTERIORS,)
CAROLINA DRYWALL & INTERIOR,)

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SC Court of Appeals

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entered on their behalf and against Third-Party Plaintiffs Centex Homes, A Nevada General Partnership, Balfour Beatty Constructions, LLC as Successor by Merger to Centex Construction Company, Inc. and Centex Construction LLC (“Centex”) on all third-party claims against MIWD and Stock. Pursuant to Rule 54(b) SCRPC, the court specifically determines that this is a final judgment as to MI Windows and Doors, LLC and Centex, and as to Stock Building Supply, LLC, and Centex, and that further it is a final judgment as to fewer than all the parties, and the court finds there is no just reason for delay, enforcement or both.

MIWD was not a subcontractor of Centex for the Wedgewood project, and no written contract existed between them. MIWD sold certain window and sliding glass door products to one of Centex’s suppliers, Stock, and Centex’s subcontractors installed the products subject to Centex’s supervision. No subcontract existed between Centex and Stock for the Wedgewood project.

Centex abandoned its originally filed third-party claims against MIWD and Stock for negligence, breach of contract, and breach of warranty, pursuant to the holding in Stoneledge at Lake Keowee Owners’ Assoc., Inc. v. Clear View, 776 S.E.2d 426 (S.C. Ct. App. 2015). In doing so, Centex acknowledged it had no independent cause of action against MIWD, Stock, and most of the other subcontractors apart from an equitable indemnity claim. Centex also dismissed the contractual indemnity claim because it did not have a contract with MIWD.

No Evidence of MIWD Product Defects

In pursuit of a product defect claim the Association or Centex must establish a defect in the product which has caused damage. Bragg v. Hi-Ranger, Inc., 319 S.C. 531, 539, 462 S.E.2d 321, 326 (Ct. App. 1995). This case requires the technical and specialized knowledge of construction experts to determine whether MIWD products were in a defective state either in design or in manufacturing at the time they left the control of MIWD.

S.C. Code Ann. § 15-73-30 incorporates by reference the comments to section 402A of the Restatement (Second) of Torts (1965), which explains:

367 S.C. 653, 657, 627 S.E.2d 733, 736 (2006). See also Bragg v. Hi-Ranger, Inc., 319 S.C. 531, 539, 462 S.E.2d 321, 326 (Ct. App. 1995) (“in order to find liability under any products liability theory, the plaintiff must show: (1) he was injured by the product [...]”). The homeowners in Wilson alleged they suffered an economic loss by purchasing a defective anchor tie down system for their mobile homes but they did not offer any evidence of damages caused by the allegedly faulty tie down system. The Court held that “the Homeowners need[ed] to show that the product delivered was not, in fact, what was promised and they have not shown that” and, accordingly, summary judgment in favor of the product manufacturers was appropriate. 367 S.C. at 659. The homeowners received merchantable tie down systems because there was no evidence that they did not receive exactly what they bargained for when they purchased the tie down systems. Similarly, neither the Association nor Centex have offered evidence that they received windows with manufacturing or design defects which existed at the time the products left MIWD’s control and which later caused damage due to as-manufactured or as-designed defects.

Plaintiff’s expert has no opinion that a design defect was present in the products. (Clements Deposition, Vol. 2, page 276), and Centex offers no affirmative evidence of design defect and has proffered no feasible alternative design to the MIWD window and sliding glass products, so summary judgment is proper. In Branham v. Ford Motor Co., 390 S.C. 203, 220, 701 S.E.2d 5, 14 (SC 2010), the court held that “the exclusive test in a product liability design case is the risk-utility test with its requirement of showing a feasible alternative design.” Specifically, the Court held that the

plaintiff will be required to point to a design flaw in the product and show how his alternative design would have prevented the product from being unreasonably dangerous. This presentation of an alternative design must include consideration of the costs, safety and functionality associated with the alternative design.

390 S.C. at 225.

Plaintiff’s expert Mr. Clements testified as follows:

Q. As part of what you were asked to do, at any point in time did you develop any alternative design for any of the windows or sliding glass door products that were installed at the Wedgewood project?

A. No.

Clements Deposition, Vol 2, page 390.

In the absence of any evidence of alleged product design or manufacturing defect, there is no basis to support a claim against MIWD or Stock for product liability. Thus, those parties are entitled to judgment as a matter of law on all claims of Centex asserted in its First through Fourth Third-Party Claims.

Furthermore, as the experts' opinions have concluded the window products were field mulled there is an absence of evidence to create a question of fact on this issue further warranting judgment as a matter of law to MIWD and Stock.

Fogged Glass

The Regime documents show that the window products and the fogged window panes therein were not a common element of the property, and this claim can only be brought by the individual homeowners and not the POA. Further, any remedy for fogged IGUs at Wedgewood is a matter subject to the terms and conditions of MIWD's written warranty. MIWD has disclosed documents in discovery showing that Wedgewood homeowners have in the past sought warranty remedies for glass issues. Furthermore, it is undisputed that a fogged IGU does not cause damage to the structures and does not violate the building code. (Clements Deposition, Vol 2, page 381; Vol. 4, pages 637-38). MIWD is entitled to judgment as a matter of law for claims for fogged glass.

Stock's Status

As to Stock, there is no evidence Stock acted in any other capacity than as a supplier of windows to Centex, and Stock is entitled to judgment as a matter of law. Alternatively and in addition, the Court adopts the additional arguments made by MIWD and Stock in their summary judgment motion and supplemental memorandum.

Therefore, this Court grants summary judgment to MIWD and Stock Building Supply.

IT IS SO ORDERED.

Beaufort, South Carolina

November _____, 2022

Judge Carmen T. Mullen

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Horry Common Pleas

Case Caption: Wedgewood Condominium Association VS Centex Homes ,
defendant, et al
Case Number: 2018CP2600307
Type: Order/Summary Judgment

So Ordered

s/Carmen T Mullen 2142

Wedgewood Condominium Association

Centex Homes

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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
- 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:

Based on the memorandums submitted and without a hearing, Centex's Motion to Reconsider Stock Building Supplies grant of Summary Judgment is hereby denied.

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ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

SC Court of Appeals

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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (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.**

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Horry Common Pleas

Case Caption: Wedgewood Condominium Association VS Centex Homes ,
defendant, et al
Case Number: 2018CP2600307
Type: Order/Form 4

So Ordered

s/Carmen T Mullen 2142

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Case No. 2018-CP-26-00307

Centex Homes, a Nevada General Partnership,
Balfour Beatty Construction, LLC as successor
by merger to Centex Construction Company, Inc.
and Centex Construction, LLC

Appellant,

vs.

Stock Building Supply, LLC f/k/a Stock
Building Supply Inc. f/k/a Carolina
Builders Corporation et. al.,

Respondents.

PROOF OF SERVICE

I hereby certify that on the 17th day of April, 2023, I have served the NOTICE OF APPEAL on Respondents via U.S. Mail, postage prepaid, and email, and all other parties via email to the following addresses:

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April 17, 2023

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Apr 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

Case No. 2018-CP-26-00307

Wedgewood Condominium Association,

Respondent,

vs.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc.,

Of which Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC are the Appellant.

vs.

Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; Frank Harris d/b/a Frank Harris Construction a/k/a F. Harris Construction a/k/a Harris Drywall; Builders FirstSource – Southeast Group, LLC; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc. f/k/a Carolina Builders Corporation; Michael D. Brownlee d/b/a Carolina Drywall & Interiors; Carolina Drywall & Interior, Inc. a/k/a Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc.; Roof Doctor of the Carolinas, Inc.; John D. Frazier d/b/a and/or a/k/a Roof Doctor and/or Roof Doctor of the Carolinas and/or Roof Doctor of the Carolinas, Inc.; Steven Bosch d/b/a The Roofer Man; Tri-City Insulation and Building Products of Myrtle Beach, Inc.; Martin Mata d/b/a Martin Masonry; Martin Masonry, Inc.; BR Brick & Masonry, Inc.; BR Brick & Masonry, LP f/k/a BR Brick & Masonry, Inc.; Unicon Concrete, LLC; Seno's Cleaning Service; Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. successor by merger to Rice Planter Carpets, Inc.; Carpets By Kendall, Inc.; Reliable Floor Systems, Inc.; TNT Painting; Paint with Pride a/k/a Painting with Pride; William Evans d/b/a Top Notch Painters; Morningstar Consultants Inc.; MI Windows and Doors, LLC; Michael Dawson d/b/a Michael Dawson Construction, and Inc.; Vereen Concrete Co. Inc.; AK Construction Inc. a/k/a AK Framing and Siding Co.; AK United, Inc. f/k/a AK Construction Inc.

Respondents.

PROOF OF SERVICE

I hereby certify that on the 26th day of April, 2023, I have served the AMENDED NOTICE OF APPEAL on Respondents via U.S. Mail, postage prepaid, and email, and all other parties via email to the following addresses:

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April 25, 2023