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Nov 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge
Case No. 2018-CP-26-00307

Appellate Case No. 2023-001132

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 Engineering, Inc., Defendants.

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..... Appellants

and

Centex Homes, a Nevada General Partnership, Third Party Plaintiff

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 First Source – South East 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 Services; 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.; and AK United, Inc. f/k/a AK Construction Inc., Third Party Defendants.

**WEDGEWOOD CONDOMINIUM ASSOCIATION'S REPLY TO
APPELLANTS' RETURN TO RESPONDENT'S
MOTION TO STRIKE AND TO STAY BRIEFING**

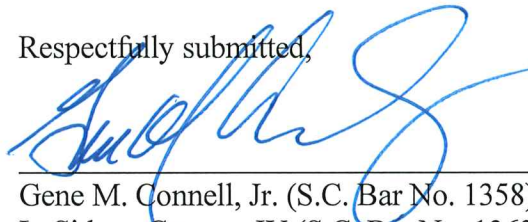
Wedgewood Condominium Association, replying to Appellants' Return to Respondent's Motion to Strike and Stay Briefing, would respectfully offer the following additional argument.

1. Centex's designation of a motion for summary judgment and memorandum, along with an order granting in part and denying in part Centex's motion for summary judgment are not relevant to the appeal. First, neither party has appealed the order granting in part and denying in part the summary judgment. Second, the motion for summary judgment and memorandum contains references to over seventy-five (75) exhibits, many of which were not introduced into the trial and are not in evidence. Centex attempts to offer this information in the record because Centex realizes it has preservation of error issues when it made its motion for directed verdict at the close of this trial. Centex is trying to get in the backdoor what it did not get in the front door during the trial. A denial of the motion for summary judgment decides nothing and adds nothing to either the record or to the issues which are being appealed. It is black letter law in South Carolina that a motion for summary judgment which is denied is never appealable and thus, it should not be part of the record. Centex's counsel realizes this in part because it only adds the motion with memorandum which references the seventy-five (75) exhibits but does not include all the exhibits which are thousands of pages, which are irrelevant to what happened at the trial.

2. Centex also argues that it is following the appellate court rules which require Centex to include a statement of the case and mandate a concise history of the proceedings. In fact, Centex's statement of the case is deficient and leaves out many of the essential elements which are required by SCACR 208(b)(1)(C) such as a concise history of the proceedings, the date of commencement of the action, the nature of case, the date of trial, the mode of trial, and instead cherry-picks portions of the trial court record, including contested testimony, which Centex realizes should not be considered.

A record on appeal must only contain documents which an appellate court can consider in making a decision. Accordingly, this Court should strike from the record matters which are irrelevant to the appeal, such as the motion for summary judgment and memorandum, which lists 75 exhibits and the order partially denying and partially granting summary judgment, as those issues have nothing to do with how the case was tried before the jury or whether the appropriate motions were made for directed verdict or at the conclusion of the trial.

Respectfully submitted,



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November 22, 2023

**Attorneys for Respondent Wedgewood
Condominium Association**

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and

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v.

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Frank Harris d/b/a Frank Harris Construction a/k/a F. Harris Construction a/k/a Harris Drywall;
Builders First Source–South East 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 Services; 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.; and AK United, Inc. f/k/a AK Construction Inc., Third Party Defendants.

PROOF OF SERVICE

PERSONALLY appeared before me, Barbara A. Smith, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of **Wedgewood Condominium Association’s Reply to Appellants’ Return to Respondent’s Motion to Strike and to Stay Briefing** on the 22nd day of November, 2023, by depositing a copy of same in the United States Mail, postage prepaid, to:

Thomas C. Hildebrand, Jr., Esquire
William G. DesChamps, IV, Esquire
Paul N. Nybo, Esquire
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Bush Seyferth PLLC
100 W Big Beaver Road, Suite 400
Troy, MI 48084



Barbara A. Smith

SWORN AND SUBSCRIBED before me,
this 22nd day of November, 2023.



Notary Public for South Carolina
My Commission Expires: 1-22-29

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

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November 22, 2023

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The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Appellate Case No. 2023-001132
Wedgewood Condominium Association v. Centex Homes, et al.
C/A No. 2018-CP-26-00307
Our File No. 2018-0272C

Dear Ms. Kitchings:

Enclosed please find Wedgewood Condominium Association's Reply to Appellants' Return to Respondent's Motion to Strike and to Stay Briefing, and Proof of Service in the above-captioned matter.

By copy of this letter, we hereby serve said Reply on counsel of record.

Should you have any questions or need anything further at this time, please do not hesitate to contact me.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr./bas
Enclosures

cc w/enc.: Thomas C. Hildebrand, Jr., Esq.
William G. DesChamps, IV, Esq.
Paul N. Nybo, Esq.
Katon E. Dawson, Jr., Esq.
Jeffrey A. Turner, Esq. (Pro Hac Vice)
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