

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FENWICK COMMONS HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

PORTRAIT HOMES-SOUTH CAROLINA, LLC, PORTRAIT HOMES-FENWICK COMMONS, LLC, D.R. HORTON, INC., et al.,

Defendants.

) IN THE COURT OF COMMON
) PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO: 2018-CP-10-330

) **ORDER GRANTING**
) **DEFENDANTS ALFONSO**
) **VILLAVICENCIO D/B/A**
) **ALFONSO'S PAINTING AND**
) **ALFONSO PAINTING &**
) **DRYWALL, INC.'S MOTION FOR**
) **SUMMARY JUDGMENT**
) **AGAINST**
) **D.R. HORTON, INC.**

This matter comes before the Court on Defendants Alfonso Villavicencio d/b/a Alfonso's Painting and Alfonso Painting & Drywall, Inc. (hereinafter "Alfonso" for ease) Motion for Summary Judgment on the cross claims asserted against them by D.R. Horton, Inc. This Court issued a very similar Order for other Defendants on March 28, 2022, and sees no need to regurgitate the factual and procedural background in this Order. For the reasons set forth below, the Court GRANTS Alfonso's Motion for Summary Judgment.

Alfonso has resolved the claims against them filed by Plaintiffs and all the Portrait Homes Defendants/Entities in this matter. All that remains against Alfonso's are claims filed by D.R. Horton, Inc. Alfonso's first argues that they are entitled to summary judgment as to D.R. Horton's negligence and breach of warranty claims because these claims are merely disguised claims for equitable indemnity. The Court agrees.

"The character of an action is primarily determined by the allegations contained in the complaint." *Stoneledge at Lake Keowee Owners' Ass'n v. Builders' First-Source Southeast Grp.,*

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413 S.C. 630 (Ct. App. 2015) citing Seebaldt v. First Fed. Sav. & Loan Ass'n, 269 S.C. 691, 692, 239 S.E.2d 726, 727 (1977). In *Stoneledge*, the Court of Appeals found that a general contractor's claims against its subcontractors for negligence, breach of contract, and breach of warranty were subject to summary judgment in favor of the subcontractors because those claims were merely disguised claims for equitable indemnity. *Stoneledge*, 413 S.C. at 639, 776 S.E.2d at 439. The *Stoneledge* court found that the general contractor's claims against its subcontractors arose only when it faced potential liability for the property owner's damages and incurred defense costs. *Id.* at 637, 438. I find that D.R. Horton's claims for negligence and breach of warranties do not arise independently from Plaintiff's claims against D.R. Horton. They arise solely from D.R. Horton's need to defend itself against Plaintiff's claims and are therefore disguised indemnity claims pursuant to *Stoneledge*. Therefore, Alfonso is entitled to summary judgment on D.R. Horton's negligence and breach of warranty claims.

Secondly, Alfonso argues that they are entitled to summary judgment as to D.R. Horton's claim for equitable indemnity because no special relationship existed between D.R. Horton and Alfonso, who was a subcontractor of Portrait Homes. The Court agrees.

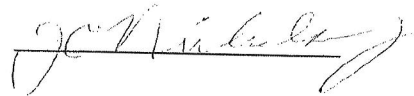
To support a claim for equitable indemnity, the "existence of some special relationship between the parties must be established." *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 492, 544 S.E.2d 634, 637 (Ct. App. 2001). The relationship between the parties must be "beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing." *Rock Hill Telephone Co., Inc. v. Globe Communications, Inc.*, 611 S.E.2d 235, 237, 363 S.C. 385 (2005).

In this case, Alfonso performed work at the subject property as a subcontractor of Portrait Homes. Alfonso did not perform any work at the property under the direction of D.R. Horton

and did not have any contract with them. Based upon the above facts, the Court finds that D.R. Horton has failed to show that a special relationship existed between Alfonso and D.R. Horton sufficient to support a claim for equitable indemnity. Therefore, Alfonso is entitled to summary judgment on D.R. Horton's equitable indemnity claim.

For the reasons set forth herein, Alfonso's motion for summary judgment is GRANTED.

IT IS SO ORDERED!



Retired Judge J.C. Nicholson, Jr.

Court Appointed Special Referee

July 30, 2024