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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

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2024-001424

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Fenwick Commons Homeowners Association, Inc.,

Plaintiff,

-vs-

Portrait Homes - South Carolina, LLC; Portrait Homes-Fenwick Commons, LLC; D.R. Horton, Inc.; Samuel Glover d/b/a Glover's Brickworks; Glover's Brickworks, Inc.; JJA Construction, Inc. d/b/a JJA Framing; JJA Construction, Inc. d/b/a JJA Framing Company; Jose Castillo d/b/a JJA Framing; Jose Castillo d/b/a JJA Framing Company; International Construction Services, Inc.; International Construction Services, Inc., d/b/a International Construction; United Siding Specialists, Inc.; Old Charleston Builders, LLC; Heritage Construction Consultants, Inc.; Robert H. Yarnall d/b/a Heritage Construction Consultants, Inc.; PNL Construction, LLC; Clear Choice Group, LLC; Built Right Construction, LLC; Alfonso Villavicencio d/b/a Alfonso's Painting; Alfonso Painting & Drywall, Inc.; Diria Tawi Painting, Inc.; Juan Luis Sanchez d/b/a Sanchez Brothers Painting; Sanchez Brothers Painting, Inc.; Windward Shutters, LLC, d/b/a Windward Hurricane Shutters, LLC; 84 Lumber Company; **Builders Firstsource - Southeast Group, LLC**; Americo Roofing Concepts, f/k/a Americo Roofing Concepts, f/k/a Americo Roofing Concepts Enterprises, Inc.; Americo Roofing Concepts, Inc. f/k/a American Roofing Concepts; Archer Exteriors, Inc.; and Professional Exteriors, LLC; Luciano Dias Gomes d/b/a Prestige Home Construction; Geraldo Da Cunha; Pablo Rojas Franco; Charles Gunter; Henry A. Palmer; Julio C. Crespo; Brasilican Contracting, LLC; Charles Bowser d/b/a CWB Services; Levi Arruda; Jose Geraldo Dos Reis; Leandro De. Paulo Araujo; Helio A. De Rezende; Vinivius Araujo De Freitas a/k/a Vinicius Araujo; Robert M. Hughes d/b/a Robert's Vinyl Siding; Lucas Rodrigues Barcelos a/k/a Lucas Rodriguez Barcelos; Karla Bazerra; Rodrigo B. Vasconcelos; Rondinely G. Da Silva; Marcio Nunes Da Silva; W&M Vinyl Siding, LLC; Bar Contractors, Inc.; William Construction Services, LLC; and Donald Lee d/b/a Vinyl Siding Specialists, Defendants,

of which Builders FirstSource - Southeast Group, LLC is the Appellant.

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INITIAL BRIEF OF APPELLANT

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**STATEMENT OF ISSUES ON APPEAL**

- I. **Did the Trial Court Err in Granting Summary Judgment Contingent on Plaintiff's Counsel's Consent?**
  
- II. **Did the Trial Court Fail to Appropriately Apply the Law Regarding a Property Regime's Right to Pursue a Construction Defect Claim for Elements the Regime does not Own or have a Duty to Maintain?**

## STATEMENT OF THE CASE

This Appeal is the result of a long and complex construction defect litigation originally filed by the Plaintiff, Fenwick Commons Homeowners Association, Inc. (hereinafter “Fenwick HOA”), on January 24, 2018. In the underlying case, Fenwick HOA sought recovery of damages allegedly occasioned by deficiencies in original construction of the subject project, a townhome community, located on Johns Island, South Carolina. The Fenwick Commons project at issue consists of 80 buildings, containing a total of 160 townhome units.

Part of the Fenwick Commons project was originally constructed by general contractor Portrait Homes SC, LLC in the 2005 to 2008 time period. In 2011, D.R. Horton, Inc. served as the general contractor and finished the construction of the Fenwick Commons project in 2014. Through discovery, the parties learned and ultimately agreed that Portrait Homes SC, LLC constructed seventy-eight (78) townhome units, D.R. Horton, Inc. constructed fifty-six (56) townhomes units, and twenty-six (26) townhome units were constructed partially by Portrait Homes SC, LLC and partially by D.R. Horton, Inc. *See Exhibit A to Fenwick Commons HOA Memorandum in Opposition to D.R. Horton Motion for Summary Judgment.* The parties refer to the townhome units as “Portrait Only units,” “D.R. Horton Only units,” and “Combo units” respectively. *See Id.*

Fenwick HOA’s claims, as asserted against Appellant Builders FirstSource – Southeast Group, LLC (hereinafter “Appellant” or “BFS”), allege, among other contentions, that BFS improperly installed the windows, flashings, and water resistive barrier at the townhomes. Fenwick HOA further alleges that BFS’ installation work failed to prevent water intrusion and has resulted in water intrusion causing damage to the underlying sheathing and framing components.

Fenwick HOA asserts cause of action against BFS for negligence/gross negligence, breach of warranty, and violation of South Carolina Unfair Trade Practices Act.

The parties learned in discovery that BFS supplied trusses and did not install any components for Portrait Homes. Discovery also confirmed that BFS subsequently supplied and installed miscellaneous framing and window components for D.R. Horton. It is important to note that the only evidence in the record reflects that where BFS performed window installation work, BFS used Fortifiber Fortiflash flexible flashing to install the windows. Of equal importance, discovery also confirmed that Fenwick HOA does not own any townhome units, and it does not have any assignments to pursue claims that belong to the owners of the townhome units.

Fenwick HOA retained professional engineer Robert G. Sisroy to perform forensic engineering services to investigate and document his observations of construction deficiencies and resulting damages. As such, Mr. Sisroy performed destructive testing on various components of the exterior envelope of the townhome units and documented his observations with photographs and hand-written notes. Mr. Sisroy performed multiple days of testing and generated several records summarizing his findings. Mr. Sisroy was deposed extensively by the parties over the course of multiple days in 2019 and 2020. Other than knowing that there were two general contractors, Mr. Sisroy testified that he did not focus his investigation on the differences in the construction entities, i.e. what parties performed what work at what townhome units. *See* Sisroy Dep. 8/28/2019, 30:4-22, 530:19-25, 531:1-3. Mr. Sisroy testified that he made no observations and had no opinions pertaining to the wood framing, roof trusses, floors, walls, or doors of the townhome units. *See* Sisroy Dep. 9/11/2020, 538:5-20. However, as to the construction conditions observed around windows, Mr. Sisroy documented deficiencies including

- improper flexible flashing installation (fish mouthing, not smooth),
- improper integration of flexible flashing with the house wrap (reverse lapped),

- improper house wrap material (perforated and not water proof), and/or
- improper installation of hurricane brackets (bolts not caulked allowing water intrusion and also directing water at j-channel's of windows).

*See* Exhibit 4 to Mr. Sisroy's August 29, 2019, deposition. Mr. Sisroy created a document setting forth a comprehensive list of the townhome units where he performed destructive testing and documented damage resulting from defective construction conditions. *See* Exhibit C to BFS Memorandum in Support of Summary Judgment – Sisroy Dep. 9/11/2020, 541:20-25, 542:1-20. Mr. Sisroy testified that he notated "WNDO" next to the respective townhome unit location where he observed a defect and damage around a window. *See Id.* Mr. Sisroy confirmed in his deposition that he documented damage around twenty-six (26) windows at twenty-four (24) townhome units. *See Id.* at 543:5-25, 544:1-13.

In discovery, D.R. Horton produced vendor spend reports which set forth a comprehensive listing of each of its subcontractor's and supplier's work performed at the Fenwick Commons project. *See* Exhibit B to BFS Memorandum in Support of Summary Judgment. When by cross-referencing Mr. Sisroy's construction defect list and D.R. Horton's vendor spend reports, BFS only performed work at six (6) of the twenty-four (24) townhome units where Mr. Sisroy documented a defect and damage around a window. *See* Exhibit B and Exhibit C to BFS Memorandum in Support of Summary Judgment. Those six (6) townhomes units are: 1117 and 1119 Santa Elena Way, 1415 Widows Ct, 1668, 1654, and 1612 St John's Parrish Way. Each of the six (6) townhome units BFS worked on are "Combo units" which means that Portrait Homes subcontractors partially or fully constructed the townhome units prior to D.R. Horton's acquisition of the townhome units. Thus, the work performed by BFS at the six (6) Combo townhome units was very limited. Specifically, BFS performed the following work:

| Address                      | Scope of Work   |
|------------------------------|---|
| 1) 1117 Santa Elena Way      | Install three (3) window screens.   |
| 2) 1119 Santa Elena Way      | Supply seven (7) window screens and one (1) window.   |
| 3) 1415 Widows Ct            | Install fifteen (15) window screens, one (1) top glass, one (1) top glass glazing bead, one felt weather strip, four (4) tilt latches, and one (1) bottom strip for bottom of sash. |
| 4) 1668 St Johns Parrish Way | Install ten (10) window screens and one (1) bottom sash.<br><br>Supply twenty (20) 2x4 #2, one (1) 2x6 treated, six (6) 2x6 #2, and one (1) 1.88"x54.6yd Tyvek tape.                |
| 5) 1654 St Johns Parrish Way | Install ten (10) window screens and one (1) top glass.  |
| 6) 1612 St Johns Parrish Way | Install fourteen (14) window screens and two (2) tilt latches.  |

See BFS records (ProBuild sales order acknowledgements).<sup>1</sup>

<sup>1</sup> BFS purchased ProBuild in July 2015. See [BFS Completes ProBuild Purchase, Moves to No. 1 | ProSales Online \(prosalesmagazine.com\)](https://www.prosalesmagazine.com/news/deals/bfs-completes-probuild-purchase-moves-to-no-1_o) [https://www.prosalesmagazine.com/news/deals/bfs-completes-probuild-purchase-moves-to-no-1\\_o](https://www.prosalesmagazine.com/news/deals/bfs-completes-probuild-purchase-moves-to-no-1_o)

In addition to the supply and/or installation of the foregoing miscellaneous window components, the D.R. Horton vendor spend reports also provide that BFS performed unspecified framing work at

- 1119 Santa Elena Way for \$675.00
- 1415 Widows Court for \$760.00 and \$280.00
- 1668 St. John's Parrish Way for \$345.00
- 1654 St. John's Parrish Way for \$300.00
- 1612 St. John's Parrish Way for \$300.00

*See Exhibit B to BFS Memorandum in Support of Summary Judgment.* However, as noted above, Mr. Sisroy testified that he made no observations and had no opinions pertaining to the wood framing of the townhome units. *See Sisroy Dep. 9/11/2020, 538:5-20.*

While BFS performed work at the project, Mr. Sisroy did not document **any** defects in or resulting damages from the work performed by BFS. As such, BFS filed a motion for summary judgment against Fenwick HOA on July 3, 2024. In addition to the lack of evidentiary basis, BFS moved for summary judgment premised on Fenwick HOA's lack of standing to pursue claims for purported deficiencies in the windows. BFS filed a memorandum in support of its motion for summary judgment on July 19, 2024. Fenwick HOA filed a memorandum in opposition on July 19, 2024.

The BFS motion was heard on July 26, 2024, by Special Referee, retired circuit court judge, the Honorable J.C. Nicholson, Jr.<sup>2</sup> William H. Cox, III appeared on behalf of BFS and Phillip W. Segui, Jr. appeared on behalf of Fenwick HOA. The hearing was conducted via Zoom and there

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<sup>2</sup> On January 18, 2022, the Honorable Paul M. Burch entered an Order appointing Judge Nicholson to serve as special referee to hear all pretrial matters and pretrial motions given the complex nature of the case after discussion with and agreement by counsel for all parties present during a January 7, 2022 motions hearing.

was not a court reporter present for the hearing. Following the oral arguments and presentation of evidence by the parties' counsel, Judge Nicholson granted summary judgment to BFS but conditioned the summary judgment contingent on BFS obtaining Fenwick HOA's "consent" and submitting a consent order of dismissal.

On August 1, 2024, the parties informed Judge Nicholson that there was disagreement as to the ruling and no consent order of dismissal would be filed. Instead, the parties submitted competing proposed orders. Notwithstanding Fenwick HOA's failure to submit any evidence to preclude summary judgment and carry its burden under Rule 56 of the South Carolina Rules of Civil Procedure, Judge Nicholson signed the proposed order of Fenwick HOA which only granted BFS summary judgment for locations where BFS only installed window screens.

BFS timely moved for reconsideration of the August 1, 2024, Order. On August 2, 2024, the Court issued a Form 4 Order denying the BFS's motion for reconsideration. Judge Nicholson filed the August 1, 2024, Order and August 2, 2024, Form 4 Order on August 5, 2024. BFS filed its notice of appeal on August 9, 2024. Appellant BFS filed a consent motion for extension of time on August 30, 2024. By letter dated September 3, 2024, the Court advised the parties to this appeal that it had received the notice of appeal and provided filing instructions and the case caption for the appeal. By Order dated September 5, 2024, the Court extended Appellant's initial brief and designation of matter deadline to October 7, 2024. This brief follows.

### **STANDARD OF REVIEW**

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), S.C.R.C.P.: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to

judgment as a matter of law. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 114–15, 410 S.E.2d 537, 545 (1991).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Id.* With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility “may be discharged by ‘showing’—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case.” *Id.* (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). The moving party need not “support its motion with affidavits or other similar materials *negating* the opponent's claim.” *Id.* (quoting *Celotex* at 323) (emphasis in original).

Once the moving party carries its initial burden, the opposing party **must**, under Rule 56(e), “do more than simply show that there is some metaphysical doubt as to the material facts” *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis added)). Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings. *Id.* Materials used to refute a motion for summary judgment must be those which would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175 (Ct. App. 2002).

Further, Rule 56(c): “**mandates** the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial. In such a situation, there can be ‘no genuine issue as to material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Baughman*, 306 S.C. 101, 116 (1991), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (emphasis added).

## ARGUMENTS

### **I. The Trial Court Erred by Granting Summary Judgment Contingent on the Non-moving Party's Consent.**

During the July 26, 2024, motion hearing, BFS carried its initial burden by identifying that there is an absence of evidence to support Fenwick HOA's claims against BFS for the work BFS performed.

BFS explained that Mr. Sisroy testified that he had no criticism of the trusses and that was the only work performed by BFS for Portrait Homes. Further, BFS explained that while Mr. Sisroy documented approximately twenty-four (24) townhomes where he observed a defect and resulting damage around a window, none of the work implicated by Mr. Sisroy was performed by BFS. Mr. Sisroy observed the same components – hurricane brackets and window flexible flashing - were installed in the same inappropriate manner causing similar damages at each of the twenty-six (26) windows he investigated at twenty-four (24) townhomes. First, BFS did not perform any work related to hurricane bracket installation. Portrait Homes' subcontractor Windward Shutters performed the hurricane bracket installation work and Plaintiff had already settled its claims with Portrait Homes and Windward Shutters at the time of the motion hearing. Second, BFS did not perform any work whatsoever at eighteen (18) of the twenty-four (24) townhomes. Portrait Homes' subcontractor JJA Framing performed the installation of windows and corresponding flexible flashing at all Portrait Homes' units and all Combo units. BFS explained that it performed limited work at the six (6) townhomes documented by Mr. Sisroy, but none of the BFS work – installation of window screens, tilt latches, glass, and sashes - was actually implicated by Mr. Sisroy. Therefore, BFS argued that Plaintiff did not have any evidence to support its claims against BFS.

In response, Fenwick HOA agreed that it was not pursuing claims against BFS for the work BFS performed for Portrait Homes – supply of trusses. Further, as explained in Section II below, Fenwick HOA conceded that it was not pursuing claims against BFS for defective supply or defective installation of windows, a component with a “glass surface.” Accordingly, Fenwick HOA limited its claims against BFS for damages caused by defective installation of flexible flashing around the windows.

To support its claims for defective flexible flashing installation against BFS, Fenwick HOA presented evidence included in its Memorandum in Opposition: Mr. Sisroy’s deposition testimony citations that the window “installation protocol was inadequate and resulted in water intrusion problems due to improper flashing.” *See* page 1, Fenwick HOA Memorandum in Opposition. Fenwick HOA also presented two photographs for which it believed to provide an “illustrative example” of the defective flexible flashing installation work performed by BFS. *See* Id. at page 2. The two photographs Fenwick HOA presented were produced by Mr. Sisroy and document the destructive testing he performed at the right lower corner of a window located at 1117 Santa Elena Way. While this type of evidence may be sufficient to create a question of material fact and preclude summary judgment for Portrait Homes, JJA Framing, or even D.R. Horton, it does not do so for BFS. That is because the photographs do not portray the work performed by BFS at 1117 Santa Elena Way.

Contrary to the evidence Fenwick HOA presented, the relevant evidence in the record confirms that BFS only supplied and installed three (3) window screens at 1117 Santa Elena Way. *See Exhibit B – D.R. Horton entry for BFS work performed at 1117 Santa Elena Way and corresponding sales order acknowledgement.* BFS explained to the trial court that there has been

no testimony criticizing the installation of the window screens supplied and installed by BFS at 1117 Santa Elena Way, much less that any damages are resulting therefrom.

On rebuttal, Fenwick HOA stated that it was not prepared to address this argument and had no further evidence to present. Accordingly, Judge Nicholson granted BFS summary judgment for 1117 Santa Elena Way.

Per Judge Nicholson's request, BFS moved onto the next location at issue - 1119 Santa Elena Way. BFS presented the relevant invoicing records for 1119 Santa Elena Way which evidence that BFS only **supplied** seven (7) window screens and one (1) window. *See* BFS records. BFS stressed that the invoicing records do not evidence that BFS installed any window components at 1119 Santa Elena Way. Further, BFS explained that the improperly installed flexible flashing Mr. Sisroy observed at 1119 Santa Elena Way was installed in the same manner as that documented at all of the other twenty-three (23) townhomes. Moreover, BFS pointed out that the flexible flashing at issue at 1119 Santa Elena Way was Blue Linx. The Blue Linx flexible flashing is easily distinguishable and identifiable because the product's name is printed in large advertisement thereon. BFS highlighted that the manner of installation and the flexible flashing product itself are two critical facts because all of the evidence in the record establishes that where BFS installed a window, BFS only used Fortiflash flexible flashing manufactured by Fortifiber. Equally importantly, BFS noted that forensic engineer Jason Gregorie documented with photographs where BFS did install a window, the flexible flashing was installed in the correct weather-lapped configuration. BFS argued that there is no evidence that BFS installed the one window it supplied, but even if it did install one window, the window investigated by Mr. Sisroy was not installed by BFS because the manner of installation was different, and the material used to install the window was also different from what BFS used to install windows at the project.

BFS submitted that Fenwick HOA had no evidence to support its claims against BFS for 1119 Santa Elena Way.

In response, Fenwick HOA posed a hypothetical question that it may be possible that a BFS subcontractor used Blue Linx flexible flashing to install the window documented by Mr. Sisroy at 1119 Santa Elena Way. **This hypothetical question is not relevant admissible evidence that would create a genuine issue of material fact for trial against BFS.** Instead, Fenwick HOA only attempted to cast “metaphysical doubt” as to the material facts in the record which establish that BFS did not install a window at 1119 Santa Elena Way and where BFS did install a window, it only used Fortifiber Fortiflash flexible flashing. It should be noted that Fenwick HOA had over six and one-half years to conduct discovery to investigate their hypothetical question but failed to do so. Fenwick HOA’s hypothetical question response runs afoul of *Baughman* and does not meet the burden required of the non-moving party under Rule 56.

Rather than rendering a decision on the motion as required by the Rule, Judge Nicholson requested that BFS meet with Fenwick HOA to figure out what claims remained and submit a consent order of dismissal. Judge Nicholson’s bench ruling effectively made summary judgment contingent on the non-moving party’s consent. These actions and the August 1, 2024, Order ignore the basic provisions of Rule 56. It was an error for the trial court to make its summary judgment ruling contingent on the non-moving party’s consent.

Because Fenwick HOA failed to carry its burden, this Court must reverse the trial court and enter summary judgment for BFS. In the alternative, this Court must reverse and remand that a new hearing be held where Fenwick HOA must come forward with relevant and admissible evidence that creates a genuine question of material fact for trial against BFS.

**II. The Court Ignored the Law Limiting the Standing of a Property Regime in Construction Defect Cases to only the Elements the Regime Owns or Must Maintain.**

During the motion hearing, BFS also argued that it was entitled to summary judgment on the basis that Fenwick HOA does not have standing to assert claims for damages allegedly resulting from BFS' supply and installation of windows.

A property regime only has standing to bring an action for construction defects in elements that the regime owns or has a duty to maintain. *Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle*, 287 S.C. 287, 288, 337 S.E.2d 887, 888 (1985); *Queens Grant Villas Horizontal Property Regimes v. Daniel International Corp.*, 335 S.E.2d 365 (S.C.1985); *Roundtree Villas Association v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d 46 (1984).

Windows are not a common element by law that a property regime owns or must maintain. *See* S.C. Code Ann. Section 27-31-20.

Here, the governing documents do not provide that windows are a common element that Fenwick HOA owns or must maintain. *See* Exhibit A to BFS Memorandum in Support. Moreover, "glass surfaces" are specifically excluded from Fenwick HOA exterior maintenance obligations for the townhome units. *See* *Id.* at p. 10. Fenwick HOA does not own any townhome units, nor has it received any necessary assignments from any owners to bring claims for construction defects in the townhome units' windows.

During the hearing, Fenwick HOA conceded that they were not bringing claims against BFS for defective "glass surfaces," i.e., product defect claims for the windows. Instead, Fenwick HOA submitted that its claims against BFS were limited to improper installation of flexible flashings at the windows. Fenwick HOA argued that "flashings" are an "exterior building surface" for which it is charged with maintaining and repairing. *See* Fenwick HOA Memorandum page 1.

Fenwick HOA's exterior maintenance obligation on the townhome units is limited as follows:

1. Paint and/or stain the exterior of the residential unit.
2. Repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs (excluding those planted by an Owner), grass, walks, mailboxes, fences installed by Association, exterior post lights (excluding electricity therefor), and other exterior improvements.
3. Such exterior maintenance shall not include glass surfaces.

See Exhibit A, page 10 to BFS Memorandum in Support.

Contrary to its assertion, the governing document simply does not provide that Fenwick HOA must maintain or repair "flashing" of any nature, much less the self-adhered flexible flashing installed around the windows. Moreover, the Fortifiber Fortiflash flexible flashing BFS installed around the windows is not an "exterior building surface." At all sides of the window, BFS' Fortifiber Fortiflash flexible flashing is covered by the building's exterior cladding which included vinyl siding. At the head of the window, BFS' Fortifiber Fortiflash flexible flashing is covered by water-resistive barrier, caulk, cementitious trim, and aluminum gauge flashing. To argue that BFS' Fortifiber Fortiflash flexible flashing is an "exterior building surface" is simply not correct.

Therefore, Judge Nicholson erred by not granting BFS summary judgment as a matter of law because Fenwick HOA lacks standing to assert claims against BFS for construction defects in the flexible flashing at the windows, an element that the regime does not own and does not have a duty to maintain.

CONCLUSION

Because the trial court granted summary judgment contingent on the non-moving party's consent and because the trial court ignored the plain language of the governing documents, Appellant hereby requests that this Court REVERSE the August 1, 2024, Order and GRANT summary judgment to BFS. Alternatively, the Appellant requests that this Court REVERSE the August 1, 2024, Order and REMAND for a new hearing.



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Fenwick Commons Homeowners Association, Inc.,

Plaintiff,

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Portrait Homes - South Carolina, LLC; Portrait Homes-Fenwick Commons, LLC; D.R. Horton, Inc.; Samuel Glover d/b/a Glover's Brickworks; Glover's Brickworks, Inc.; JJA Construction, Inc. d/b/a JJA Framing; JJA Construction, Inc. d/b/a JJA Framing Company; Jose Castillo d/b/a JJA Framing; Jose Castillo d/b/a JJA Framing Company; International Construction Services, Inc.; International Construction Services, Inc., d/b/a International Construction; United Siding Specialists, Inc.; Old Charleston Builders, LLC; Heritage Construction Consultants, Inc.; Robert H. Yarnall d/b/a Heritage Construction Consultants, Inc.; PNL Construction, LLC; Clear Choice Group, LLC; Built Right Construction, LLC; Alfonso Villavicencio d/b/a Alfonso's Painting; Alfonso Painting & Drywall, Inc.; Diria Tawi Painting, Inc.; Juan Luis Sanchez d/b/a Sanchez Brothers Painting; Sanchez Brothers Painting, Inc.; Windward Shutters, LLC, d/b/a Windward Hurricane Shutters, LLC; 84 Lumber Company; **Builders Firstsource - Southeast Group, LLC**; Americo Roofing Concepts, f/k/a Americo Roofing Concepts, f/k/a Americo Roofing Concepts Enterprises, Inc.; Americo Roofing Concepts, Inc. f/k/a American Roofing Concepts; Archer Exteriors, Inc.; and Professional Exteriors, LLC; Luciano Dias Gomes d/b/a Prestige Home Construction; Geraldo Da Cunha; Pablo Rojas Franco; Charles Gunter; Henry A. Palmer; Julio C. Crespo; Brasilican Contracting, LLC; Charles Bowser d/b/a CWB Services; Levi Arruda; Jose Geraldo Dos Reis; Leandro De. Paulo Araujo; Helio A. De Rezende; Vinivius Araujo De Freitas a/k/a Vinicius Araujo; Robert M. Hughes d/b/a Robert's Vinyl Siding; Lucas Rodrigues Barcelos a/k/a Lucas Rodriguez Barcelos; Karla Bazerra; Rodrigo B. Vasconcelos; Rondinely G. Da Silva; Marcio Nunes Da Silva; W&M Vinyl Siding, LLC; Bar Contractors, Inc.; William Construction Services, LLC; and Donald Lee d/b/a Vinyl Siding Specialists, Defendants,

of which Builders FirstSource - Southeast Group, LLC is the Appellant.

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CERTIFICATE OF SERVICE

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The undersigned counsel hereby certifies that they have served the foregoing “**INITIAL BRIEF OF APPELLANT**” upon Respondent’s counsel, John T. Chakeris, Alicia D. Pullano, and Phillip W. Segui, Jr., via electronic mail only to [john@chakerislawfirm.com](mailto:john@chakerislawfirm.com), [alicia@chakerislawfirm.com](mailto:alicia@chakerislawfirm.com), and [psegui@seguilawfirm.com](mailto:psegui@seguilawfirm.com) on this 7<sup>th</sup> day of October 2024.

Respectfully submitted,

HOWELL, GIBSON & HUGHES, P.A.

By: /s/William H. Cox, III  
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*Attorney for Builders FirstSource-Southeast  
Group, LLC, Defendant and Appellant.*

## Breanna Wicht

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**From:** Breanna Wicht  
**Sent:** Monday, October 7, 2024 3:15 PM  
**To:** 'psegui@seguilawfirm.com'; 'john@chakerislawfirm.com'; 'alicia@chakerislawfirm.com'  
**Cc:** Witt Cox; 'christi@chakerislawfirm.com'  
**Subject:** Service of Initial Brief & Designation of Matter {Appeal No. 2024-001424}{Fenwick Commons vs. Builders FirstSource }  
**Attachments:** 636722.pdf; 636723.pdf  
**PM Message ID:** 645292

Counsel,

Please find attached the Initial Brief of Appellant and Appellant Builders FirstSource – Southeast Group, LLC’s Designation of Matter to be Included on Appeal in the above referenced matter.

*With Kind Regards,*

**Breanna N. Wicht**

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October 7, 2024

VIA EMAIL ONLY

South Carolina Court of Appeals  
Post Office Box 11629  
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Re: Fenwick Commons Homeowners Association, Inc. vs. Portrait Homes-  
South Carolina, Builders FirstSource Southeast Group, LLC, et al  
Appellate Case No. 2024-001424

Dear Sir or Madam:

Please find enclosed herewith for filing the Initial Brief of Appellant and Appellant Builders FirstSource – Southeast Group, LLC's Designation of Matter to be Included on Appeal with regard to the above referenced matter. I would appreciate your filing same and returning a clocked copy to me via email.

Should you have any question or concern as to the matters set forth herein, please feel free to contact me.

With kindest regards, I am

HOWELL, GIBSON AND HUGHES, P.A.

*s/William H. Cox, III*

William H. Cox, III

WHC/bw  
Enclosures

cc: John T. Chakeris, Esquire  
Alicia D. Pullano, Esquire  
Phillip W. Sequi, Jr., Esquire