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SC Court of Appeals

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Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29211

Re: Zitek v. IBP Asset, LLC, et al.
Appellate Case No. 2023-001401
Our File No.: 6035-0008

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, Respondent IBP Assets, LLC d/b/a Blue Ridge Building Products (hereinafter “Blue Ridge”) provides the following supplemental citation.

This Court’s ruling in The Retreat at Charleston National Country Club Home Owners Association, Inc., et al. v. Winston Crlyle Charleston National, LLC, et al., Op. No. 6099 (S.C. Ct. App. filed Feb. 12, 2025) (Howard Adv. Sh. No. 7 at 7) is pertinent and significant to the issues in this appeal.

Specifically, Retreat at Charleston reaffirms that the “clear and unequivocal” common law standard governs the interpretation of the indemnity agreement at issue. See Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018). This affects D.R. Horton’s first and second issues on appeal and Blue Ridge’s responsive arguments III and IV in its Amended Final Brief.

Retreat at Charleston also controls with respect to Blue Ridge’s argument that Appellant D.R. Horton, Inc.’s position violates Section 32-2-10 of the South Carolina Code. Retreat at Charleston speaks to Blue Ridge’s arguments that its subcontract did not clearly and unequivocally impose a duty to defend regardless of fault and that D.R. Horton’s claims do not entitle it to an immediate defense. (Blue Ridge arguments V and VI.)

Retreat at Charleston’s holding regarding severability is material to D.R. Horton’s fourth issue on appeal. (See Blue Ridge argument IX.)

Finally, Retreat at Charleston raises additional sustaining grounds based on unconscionability and collateral estoppel.

Respectfully submitted,

s/Timothy J. Newton

Timothy J. Newton

TJN/