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SC Court of Appeals

Sent Via U.S. Mail

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 refiled opinion in The Retreat at Charleston National Country Club Home Owners Association, Inc., et al. v. Winston Carlyle Charleston National, LLC, et al., Op. No. 6099 (S.C. Ct. App. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 36) is pertinent and significant to the issues in this appeal.

The refiled opinion does not appear to affect the grounds identified Blue Ridge’s supplemental citation dated February 12, 2025, which addressed this Court’s initial opinion in the referenced case. That letter is incorporated herein by reference as if restated herein.

In Retreat, this Court found that BFS sought indemnification for its own negligence based upon a review of the allegations of the complaint. Id. at p. 58. Likewise, in this case D.R. Horton seeks indemnification for its own negligence because, here, the plaintiff did not sue any defendants other than D.R. Horton.

In this case, as in Retreat, the trial court found the indemnity provision at issue to be inherently confusing. See id. The contracts here may be different from those in Retreat, but they must nevertheless meet the Retreat standard.

In Retreat, this Court took issue with “a disguised indemnity provision for defense costs.” Id. at p. 60. This Court also held that such provisions violate public policy established in Section 32-2-10

of the South Carolina Code. Id. at pp. 61-63. Here, it appears undisputed that D.R. Horton seeks indemnity for its defense costs.

Blue Ridge objects to the characterization in D.R. Horton's response letter dated April 25, 2025 that "insurance is at the center of this case." That statement is argumentative and factually inaccurate.

Finally, Blue Ridge agrees that Retreat at Charleston re-affirms prior law. It was brought to this Court's attention pursuant to Rule 208(b)(7)'s mandate that this Court be advised of pertinent and significant authorities.

Respectfully submitted,

s/Timothy J. Newton

Timothy J. Newton

TJN/