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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Charleston County
Court of Common Pleas
The Honorable Jennifer B. McCoy
Circuit Court Judge

Circuit Court Case No. 2016-CP-10-03783

Court of Appeals Case No. 2021-001050
Opinion No. 6099 (S.C. Ct. App. filed Feb. 12, 2025)

Appellate Case No. 2025-001224

The Retreat at Charleston National County Club Home Owners Association, Inc., and
The Retreat at Charleston National Country Club Horizontal Property Regime.....Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, individually; Builders FirstSource-Southeast Group, LLC; Builders FirstSource, Inc; Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually; Charleston Exteriors, LLC; ECC Contracting, LLC; Hurley Services, LLC; McDaniel Construction Co., LLC; AC Construction Corp.; AC Construction, Inc.; L&G Construction Group, LLC; Liollio Architecture; JC Contractors, LLC; Soto & Vasquez Construction, LLC; Costa De Oliverira Construction, LLC; Solesmar Jesus De Oliverira; Wilson Lucas Sales d/b/a Miracle Siding; Miracle Siding, LLC; Royal Homes of SC, Inc.; Collen Batissa; Christopher Batissa; Norma Ferreira Bruno; Mendez Construction, LLC; Juan Garza Ramos, individually; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin, individually; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin, individually; Carlos Marroquin Construction; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario SalgadoDefendants

Builders FirstSource-Southeast Group, LLC.....Third-Party Plaintiff, Appellant,

v.

Pohlman Quality Contractors; Pohlman Quality Exteriors; Palmetto Trim and Renovation; Edward Bruce Witham; and East Coast Carpentry.....Third-Party Defendants,

Of which, Palmetto Trim and Renovation; Hurley Services, LLC; ECC Contracting, LLC; East Coast Carpentry; AC Construction, Inc.; WS Contractors, LLC; Pohlman Quality Exteriors, Inc.; and L&G Construction Group, LLC are theRespondents

**RESPONDENTS ECC CONTRACTING, LLC’S, EAST COAST CARPENTRY,
PALMETTO TRIM AND RENOVATION, AC CONSTRUCTION, INC., WS
CONTRACTORS, LLC, HURLEY SERVICES, LLC, AND POHLMAN QUALITY
EXTERIORS’ OPPOSITION TO THE NATIONAL ASSOCIATION OF
HOMEBUILDERS AND THE HOME BUILDERS ASSOCIATION OF SOUTH
CAROLINA’S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES5

INTRODUCTION6

ARGUMENT6

I. THE NATIONAL ASSOCIATION OF HOMEBUILDERS AND THE HOME BUILDERS ASSOCIATION OF SOUTH CAROLINA’S AMICUS BRIEF IS DUPLICATIVE OF BFS’S ARGUMENTS7

II. THE NATIONAL ASSOCIATION OF HOMEBUILDERS AND THE HOME BUILDERS ASSOCIATION OF SOUTH CAROLINA ARE ADVOCATES OF BFS, NOT A FRIEND OF THE COURT10

CONCLUSION13

TABLE OF AUTHORITIES

Cases

Alexander v. Hall, 64 F.R.D. 152, (D.S.C. 1974)11

Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., 409 S.C. 487, 763 S.E. 2d 19 (2014)8

Leigh v. Engle, 535 F. Supp 418, 420 (N.D. Ill. 1982)12

Ryan v. Commodity Futures Trading Comm’n, 125 F.3d 1062, 1063 (7th Cir. 1997)10, 11

South Carolina Electric & Gas Co. v. Utilities Construction Company, 244 S.C. 79, 135 S.E.2d 613 (1964)8

United States v. Michigan, 940 F.2d 143 (6th Cir. 1991)11

Voices for Choices v. Ill. Bell Tel. Co., 339 F.3d 542 (7th Cir. 2003)8

Statutes

S.C. Code Ann. § 32-2-109, 10

Rules

Rule 213, SCACR6

Sup. Ct. R. 37.17

Other Authorities

16 S.C. Jur. Brief of Amicus Curiae § 26, 7

3B C.J.S. Amicus Curiae § 111

INTRODUCTION

Respondents, ECC Contracting, LLC, East Coast Carpentry, Palmetto Trim and Renovation, Hurley Services, Inc., AC Construction, Inc., WS Contractors, LLC, and Pohlman Quality Exteriors, Inc., (collectively the “Respondents”), oppose the Motion for Leave to file Amicus Curiae brief filed by the National Association of Home Builders (“NAHB”) and the Home Builders Association of South Carolina (“HBASC”). The motion filed by NAHB and HBASC should be denied because the proposed amicus brief merely restates the legal arguments made by Appellant, Builders FirstSource-Southeast Group (“BFS”), offers no unique information or perspective that has not or could not be raised by BFS itself, and NAHB and HBASC attempt to enter this matter as an advocate rather than as a neutral friend of the Court.

ARGUMENT

Rule 213 of the South Carolina Appellate Court Rules governs the filing of amicus curiae briefs. Rule 213 provides, in part, that:

A brief of an amicus curiae may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties.

Rule 213, SCACR.

The traditional and long-held role of an amicus curiae is to “advise the judge of law not already known to the judge or brought to his attention by the parties.” See 16 S.C. Jur. Brief of Amicus Curiae § 2. As such, a desirable brief, brings matters to the Court’s attention that have not been, and could not be, fully explored by the parties. Conversely, leave should be denied when the proposed brief is merely repetitive, or when the amicus curiae act as an advocate for one party.

In this case, NAHB and HBASC's proposed amicus brief merely reiterates and extends BFS's arguments and seeks the same outcome through nearly identical reasoning. NAHB and HBASC's proposed amicus brief reveal that they are not an impartial friend of the court, but, rather, a proxy for BFS. Grant NAHB and HBASC's motion would prejudice the Respondents by effectively allowing BFS and its allies two briefs or double the page limits. For the reasons set forth below, NAHB and HBASC's Motion for leave to file an amicus curiae brief should be denied.

I. THE NATIONAL ASSOCIATION OF HOMEBUILDERS AND THE HOME BUILDERS ASSOCIATION OF SOUTH CAROLINA'S PROPOSED AMICUS BRIEF IS DUPLICATIVE OF BFS'S ARGUMENTS

Although NAHB and HBASC identify their general industry interest in this case, they fail to distinguish their arguments from those already advanced by BFS in any substantive way. A proper amicus brief will bring matters to the court's attention that have not been fully explored by the parties. See, 16 S.C. Jur. Brief of Amicus Curiae § 2 ("At common law, the role of an amicus curiae was to advise the judge of law not already known to the judge or brought to his attention by the parties."); see, e.g., Sup. Ct. R. 37.1 (stating that an amicus brief should bring a relevant matter not addressed by the parties to the Court's attention and that lack of purpose is a burden to the Court). NAHB and HBASC's proposed amicus brief is, in reality, a repackaged version of BFS's legal arguments.

NAHB and HBASC contend that their brief will assist the Court by focusing on the following legal challenges to the Court of Appeals' Opinion: (1) misapplication and departure of indemnity precedent; (2) misinterpretation of the Concord and Cumberland decision; and (3) improper unconscionability framework. But these are the very issues which have been fully and vigorously briefed by BFS and Respondents. The proposed amicus brief adds nothing new for the Court's consideration. NAHB and HBASC cite the same precedent highlighted by BFS,

occasionally substituting a different case or example, but ultimately advancing a legal analysis that is functionally identical. To the extent the proposed amicus brief includes a case not found in BFS's Petition for a Writ of Certiorari, the point is cumulative, not additive, and could have easily been raised by BFS in its own briefs. See Voices for Choices v. Ill. Bell Tel. Co., 339 F.3d 542, 545 (7th Cir. 2003) ("While the amicus briefs sought to be filed in this case contain a few additional citations not found in the parties' briefs and slightly more analysis on some points, essentially they cover the same ground the appellants, in whose support they wish to file, do.").

Moreover, despite claiming industry-wide impact, NAHB and HBASC fail to supply any real-world examples, data, or substantive analysis regarding the effect the Court of Appeals' decision will have on the construction industry. This case is particular to BFS's subcontractor agreement. The absence of supporting evidence underscores that their proposed amicus brief merely reiterates BFS's position, offering the same broad policy assertions already advanced by BFS.

NAHB and HBASC's motion and proposed brief presuppose that there is a possibility of a finding that Respondents were solely negligent in this case, such that BFS may recover from them in indemnity. There is no potential for such an outcome in this case. This case does not involve the types of relationships involved in the two cases NAHB and HBASC focus on, South Carolina Electric & Gas Co. v. Utilities Construction Company, 244 S.C. 79, 135 S.E.2d 613 (1964) (owner of electric utility franchise and contractor) and Ashley II of Charleston, LLC v. PCS Nitrogen, Inc., 409 S.C. 487, 763 S.E.2d 19 (2014) (former owner of property and current owner). The relationship between the parties here is subcontractor (BFS) and sub-subcontractor (Respondents); moreover, BFS is a licensed general contractor whereas most of Respondents are unlicensed

contractors.¹ Whereas a property owner has no hand in construction activities, an upstream contractor does, particularly where the upstream contractor is a licensed general contractor utilizing unlicensed subcontractors. A general contractor bears independent and concurrent liability to a property owner for construction defects.

The settlements among the parties to the underlying case and this appeal underscores the fact that BFS is seeking to be indemnified against its own negligence, prohibited by the Anti-Indemnity Statute, S.C. Code Ann. §32-2-10, or for its concurrent negligence, unsupported by its subcontractor agreement due to its failure to satisfy the “clear and unequivocal” standard. Respondent WS Contractors, LLC (“WSC”), for example, settled with plaintiffs in this matter and in doing so procured an issue release in favor of BFS. BFS has not and cannot bear any liability to plaintiffs on account of WSC’s negligence. In continuing to pursue indemnity from WSC in light of this settlement, BFS is necessarily seeking to be indemnified for its sole negligence which is not permitted under South Carolina law. This is not a position home builder associations should support, but, more importantly, it is a situation that the Legislature has said will not stand in South Carolina.

Not only are the primary cases which the proposed amicus curiae cite distinguishable, but also, they fail to address the full scope of the Court of Appeals’ Opinion, notably omitting any discussion on the Court of Appeals’ ruling on South Carolina’s Anti-Indemnity Statute, S.C. Code Ann. §32-2-10. This is further evidence that NAHB and HBASC’s contribution serves only as an unnecessary distraction from the primary arguments presented by the parties to this appeal.

¹ BFS bears full responsibility for any violations of the building code by its unlicensed subcontractors. S.C. Code Ann. §40-11-270(E) (“(E) Licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee’s licensure group and license classification or subclassification; provided, the licensee provides supervision. The licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee.”).

Furthermore, they spend an unnecessary amount of time arguing that the authors of the Concord & Cumberland opinion at both the Circuit Court and Court of Appeals have misinterpreted their own opinions.²

The role of amicus curiae is not to bolster a party's arguments, but to assist the Court by offering perspectives unavailable from the parties themselves. In this instance, the proposed brief submitted by NAHB and HBASC constitutes partisan advocacy that merely reiterates BFS's arguments. As courts have recognized, amicus briefs that merely duplicate a party's arguments "are an abuse" and add no value to judicial decision-making. See Ryan v. Commodity Futures Trading Comm'n, 125 F.3d 1062, 1063 (7th Cir. 1997). For the reasons stated above, the Respondents oppose NAHB and HBASC's Motion for leave to file an amicus curiae brief. The proposed brief does not offer independent or objective analysis that would aid the Court's considerations of the issues; rather, it functions as an additional advocacy brief for BFS under the guise of an amicus submission. Accordingly, NAHB and HBASC's Motion for leave to file an amicus curiae brief should be denied.

II. THE NATIONAL ASSOCIATION OF HOME BUILDERS AND THE HOME BUILDERS ASSOCIATION OF SOUTH CAROLINA ARE ADVOCATES OF BFS, NOT A FRIEND OF THE COURT

The Latin phrase *amicus curiae* means "friend of the court," not "friend of a party." Alexander v. Hall, 64 F.R.D. 152, 155 (D.S.C. 1974). At common law, the role of an amicus was to assist the court by presenting legal insights not otherwise raised by the parties. See 3B C.J.S. Amicus Curiae § 1 (explaining that an amicus provides neutral information "on some matter of law in regard to which the court might be doubtful or mistaken" rather than offering "a highly

² Judge Newman was the author of the Concord and Cumberland opinion at the Circuit Court level and the original Circuit Court opinion in the Builders First Source v MI Windows & Doors, et al., which is the basis of the Collateral estoppel ruling in this case. Judge Thomas was the author of the Concord and Cumberland Court of Appeals opinion and a concurring member of the Panel on this opinion.

partisan account of the facts”). Courts consistently reject amicus briefs that function as partisan advocacy rather than neutral assistance. See Ryan v. Commodity Futures Trading Comm’n, 125 F.3d 1062, 1063 (7th Cir. 1997) (“The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants’ briefs, in effect merely extending the length of the litigant’s brief. Such amicus brief should not be allowed. They are an abuse.”); see also, United States v. Michigan, 940 F.2d 143, 164-65 (6th Cir. 1991) (defining a true amicus as “an *impartial* friend of the court – *not an adversary party in interest in the litigation*”).

The NAHB and HBASC are not friends of the Court; they are friends of BFS. BFS is a member of all local homebuilder associations in South Carolina:

The Charleston Homebuilders Association³
The Hilton Head Home Builders Association⁴
Horry Georgetown Builders Association⁵
The Building Industry Association of Central South Carolina (BIA), formerly the Home Builders Association of Greater Columbia⁶
The Homebuilders Association of Greenville⁷

All of which are affiliated with the National Association of Home Builders (NAHB) and the Home Builders Association of South Carolina (HBASC)⁸. Further as the Horry County Home Builder’s Association explains on their website, “Membership in the Horry Georgetown Home Builders Association is \$550.00. **This amount enrolls you as a member in three associations, HGHBA, Home Builders Association of South Carolina (HBA of SC) and the National**

³ [https://business.hbacharleston.com/list/member/builders-firstsource-923#:~:text=4451%20Arco%20Lane%20N%20Charleston,\(843\)%20696%2D8473](https://business.hbacharleston.com/list/member/builders-firstsource-923#:~:text=4451%20Arco%20Lane%20N%20Charleston,(843)%20696%2D8473)

⁴ <https://database.hhahba.com/list/member/builders-firstsource-2153#:~:text=Categories,www.bldr.com>

⁵ <https://hghba.com/directory/>

⁶ [https://business.biaofcentralsc.com/list/member/builders-firstsource-79340#:~:text=1827%20Augusta%20Hwy%20Lexington%20SC,\(803\)%20957%2D4362](https://business.biaofcentralsc.com/list/member/builders-firstsource-79340#:~:text=1827%20Augusta%20Hwy%20Lexington%20SC,(803)%20957%2D4362)

⁷ <https://members.hbaofgreenville.com/directory/Details/builders-first-source-2249277>

⁸ HHI: <https://hhahba.com/about-us/>

CHS <https://www.hbacharleston.com/meet-the-team/>

Columbia: <https://biaofcentralsc.com/about-the-bia/>

Greenville: <https://hbaofgreenville.com/affiliations/>

Association of Home Builders (NAHB). Staff members on all three levels are available to help you with your professional needs.⁹

Here, NAHB and HBASC are clearly aligned with BFS. Their proposed brief mimics BFS's arguments so closely that it could just as easily have been authored by BFS's counsel. They expressly seek the same goal and relief—the Supreme Court to grant Writ of Certiorari and reverse the Court of Appeals' decision—using nearly identical legal reasoning. By doing so, they reveal themselves as partisans advocating for BFS, not neutral amici offering independent assistance or objectively discussing the issues in this appeal.

While NAHB and HBASC claim to be concerned with preserving established principles of contract law and risk allocation mechanisms in the construction industry, their proposed amicus brief is a one-sided argument in favor of BFS. Courts have made clear that when an amicus acts as an advocate for a litigant rather than as an impartial advisor, leave to file should be denied. See Leigh v. Engle, 535 F.Supp 418, 420 (N.D. Ill. 1982) (“if the proffer comes from an individual with a partisan, rather than impartial view, the motion for leave to file an amicus brief is to be denied, in keeping with the principle that an amicus must be a friend of the court and not a friend of a party to the cause.”). Permitting NAHB and HBASC to file a proposed brief that is indistinguishable from BFS's legal analysis transforms the amicus role into a lobbying tool rather than an instrument of judicial assistance. Their submission is neither neutral nor independent. It is, instead, a biased brief disguised as an amicus filing that merely serves to strengthen positions already advanced by BFS. This Court already has access to the relevant legal principles and industry standards through the parties' briefs, making NAHB and HBASC's participation unnecessary for this Court's full understanding of the issues at stake in this specific dispute.

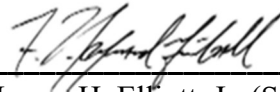
⁹ <https://hghba.com/membership/>

Because NAHB and HBASC's proposed amicus curiae brief is duplicative, partisan, and devoid of any neutral assistance to the Court, they do not qualify as proper amici. As such, their Motion for Leave to File an Amicus Curiae Brief should be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the National Association of Home Builders and Home Builders Association of South Carolina's Motion for Leave to File Amicus Curiae Brief.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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Of which, Palmetto Trim and Renovation; Hurley Services, LLC; ECC Contracting, LLC; East Coast Carpentry; AC Construction, Inc.; WS Contractors, LLC; Pohlman Quality Exteriors, Inc.; and L&G Construction Group, LLC are theRespondents

PROOF OF SERVICE

The undersigned hereby certifies that on this 8th day of October, 2025, a copy of RESPONDENTS ECC CONTRACTING, LLC’S, EAST COAST CARPENTRY, PALMETTO TRIM AND RENOVATION, AC CONSTRUCTION, INC., WS CONTRACTORS, LLC, HURLEY SERVICES, LLC, AND POHLMAN QUALITY EXTERIORS’ OPPOSITION TO THE NATIONAL ASSOCIATION OF HOMEBUILDERS AND THE HOME BUILDERS ASSOCIATION OF SOUTH CAROLINA’S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF was served on counsel of record, by Electronic Mail, addressed to the following:

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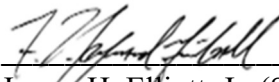
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October 8, 2025

VIA E-MAIL (supctfilings@sccourts.org)

The Honorable Patricia A. Howard
Clerk of Court, S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29201

RECEIVED
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SC Court of Appeals

**RE: The Retreat at Charleston National Country Club HOA and HPR v. ECC Contracting, LLC, et al
Appellate Case No. 2025-001224
RPR File No.: 889-230**

Dear Ms. Howard:

Enclosed for filing, please find *Respondents ECC Contracting, LLC's, East Coast Carpentry, Palmetto Trim And Renovation, AC Construction, Inc., WS Contractors, LLC, Hurley Services, LLC, and Pohlman Quality Exteriors' Opposition to The National Association of Homebuilders and The Home Builders Association of South Carolina's Motion For Leave to File Amicus Curiae Brief.*

By copy of this correspondence, we are serving all counsel of record with a copy of the enclosed documents by e-mail. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



F. Heyward Grimball

FHG/mlj

Enclosures: *As stated herein.*

cc: The Honorable Jenny Abbott Kitchings, Clerk of Court for the SC Court of Appeals (via e-mail at ctappfilings@sccourts.org);
All counsel of record by last known email addresses