

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Palmetto Pointe at Peas Island)
Condominium Property Owners)
Association, Inc. and Elizabeth A.)
Bushey, individually, and on behalf)
of all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
Tri-County Roofing, Inc., et al.)
)
Defendants.)

IN THE COURT OF COMMON
PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No.: 2015-CP-10-00955

ORDER

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SC Court of Appeals

This matter arises from a two-week construction defect jury trial in May 2019, in which Plaintiffs obtained a verdict against Defendant Tri-County Roofing, Inc. (“TCR”) in the amount of \$7,000,000, including \$500,000 in punitive damages. Following post-trial motions, this Court entered judgment on July 23, 2019, in the amount of \$5,330,000 after applying certain set-offs.

TCR appealed. The South Carolina Court of Appeals affirmed this Court’s rulings in part but granted an additional \$500,000 set-off for a post-trial settlement.

On certiorari, the South Carolina Supreme Court affirmed the Court of Appeals on set-off allocation and granted TCR an additional \$1,000,000 set-off for a pre-trial covenant-not-to-execute, resulting in a final principal judgment amount of \$3,830,000. The Supreme Court remitted the matter to this Court for calculation and entry of the amended judgment with applicable post-judgment interest.

Following remittitur, Plaintiffs sought entry of judgment and for immediate disbursement of the \$1,000,000.00 supersedeas bond. In response, TCR moved to stay disbursement pending resolution of a related insurance coverage action.

Plaintiffs maintain the judgment far exceeds the bond amount and that the purpose of the bond is to protect the judgment holder from loss through delay or nonperformance. Plaintiffs contend that because TCR's appeals have concluded, they are entitled to immediate payment of the bond proceeds in partial satisfaction of the judgment.

TCR opposes immediate disbursement because it cannot bind the Lloyd's Market subscribing insurers, which serve as the guarantor of the appellate bond. Instead, TCR has moved to stay enforcement of the bond until the related declaratory judgment action—Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380—is resolved.¹ TCR contends that the bond is backed by its insurer, that Plaintiffs have released TCR from any personal liability (leaving insurance proceeds as the sole potential source of payment), and that forcing payment now would impair the insurer's rights before coverage issues are decided. Having

¹ This case is currently under a scheduling order with a "Trial Not Before" date of November 13, 2025. This is considered an old case in Charleston County and no further scheduling orders will be considered absent extraordinary circumstances.

reviewed the submissions and concordant argument, and considered the equities, the Court finds and orders as follows:

FINDINGS

1. Judgment Amount and Interest

Pursuant to the South Carolina Supreme Court's decision and remittitur, the principal judgment against TCR is \$3,830,000.00. After post-verdict settlements totaling \$2,250,000.00, the remaining principal is \$1,580,000.00. Post-judgment interest calculated under S.C. Code Ann. § 34-31-20(B) totals \$1,906,317.70 through July 31, 2025, making the total judgment as of that date \$3,486,317.70.

2. Release of TCR from Personal Liability

Upon information and belief, through previous agreement, Plaintiffs have released TCR from any individual or personal liability for the judgment balance. The present dispute concerns only funds sought from the remaining not-settling insurers, which are the subscribing insurers of Certain Underwriters at Lloyd's London.

3. Pending Declaratory Judgment Action

Plaintiffs have filed Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Certain Underwriters at Lloyd's London, et al., Case No. 2021-CP-10-04380, seeking a declaration of the remaining insurers'

coverage obligations. That case is set for trial no earlier than November 13, 2025.

4. Purpose of Supersedeas Bond

In South Carolina, a supersedeas bond exists to ensure funds are available to satisfy the judgment when due. Ordinarily, the bond would become due and subject to disbursement upon remittitur of the case by the appellate court and entry of judgment by the trial court. With that said, where the defendant has no personal liability for the judgment, the defendant's insurers are the guarantors of the bond, and there has not been an adjudication of the companion coverage action (which was brought by Plaintiffs), the equitable and prudent course is to preserve the bond proceeds within the custody of the Court until the coverage dispute is finally adjudicated, thereby ensuring that the funds remain available for satisfaction of the judgment should Plaintiffs prevail, while safeguarding the insurer's due process rights and avoiding the potential for disbursements that may not be recoverable.

5. Defendant's Insurers' Proposed Resolution

The subscribing insurers agree to deposit \$1,000,000.00—the bond amount—into the Charleston County Clerk of Court's registry, in an interest-bearing account, pending resolution of the coverage action. This arrangement:

- Secures funds for Plaintiffs if they prevail, with accrued interest;
- Preserves funds for return to insurers if coverage is denied in whole or part;
- Avoids the need for post-payment recovery actions.

ORDER

Based upon the foregoing, it is ordered:

1. Entry of Judgment

Judgment is entered in favor of Plaintiffs and against TCR in the amount of \$3,486,317.70 as of July 31, 2025, inclusive of post-judgment interest.

2. Deposit into Registry

Within **10** days of entry of this Order, the subscribing insurers for TCR shall deposit \$1,000,000.00 with the Charleston County Clerk of Court. The Clerk shall place the funds into an interest-bearing account pursuant to Rule 67, SCRPC.

3. Release of Existing Appellate Bond

Upon deposit of the \$1,000,000.00 into the registry of the Court in accordance with Paragraph 2 above, the existing supersedeas bond posted by TCR's subscribing insurers in connection with its appeal shall be cancelled/released. The Clerk is directed to discharge the surety and close the bond on the Court's records.

4. **Retention and Disbursement**

The funds shall remain in the registry until the earlier of:

- a. Final resolution (including appeals) of Case No. 2021-CP-10-04380; or
- b. 120 Days from the Issuance of this Order.

If Plaintiffs prevail in the coverage action, the funds and accrued interest shall be disbursed to them in accordance with that judgment. If coverage is denied in whole or in part, the funds (or applicable portion) shall be returned to the insurers.

If the coverage case is not reached within 120 days of this Order, TCR shall disburse funds.

5. **Preservation of Rights**

This Order does not adjudicate the merits of the coverage action and preserves all rights of the parties therein.

IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Presiding Judge of the Ninth Judicial Circuit

Dated: _____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Palmetto Pointe at Peas Island Condominium Property Owners A ,
plaintiff, et al VS Island Pointe LLC , defendant, et al
Case Number: 2015CP1000955
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764