

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2024-CP-26-04023

LINDA ACKER,)

Plaintiff,)

vs.)

WESTGATE MYRTLE BEACH,)
LLC,)

Defendant.)

RECEIVED

Apr 20 2026

SC Court of Appeals

February 9, 2026
(DAMAGES HEARING AS TO THIRD-
PARTY DEFENDANT HOME DEPOT, USA)

WESTGATE MYRTLE BEACH,)
LLC.,)

Third-Party Plaintiff,)

vs.)

HOME DEPOT U.S.A., INC.,)

Third-Party Defendant.)

B E F O R E:

Honorable David P. Caraker, Jr.
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Andrew T. Smith, Esquire
Attorney for Westgate Myrtle Beach, LLC

Kay H. Richardson
Circuit Court Reporter

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I N D E X

FEBRUARY 9, 2026

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E X H I B I T S

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(No exhibits were marked or admitted.)

1 **FEBRUARY 9, 2026**

2 **ON THE RECORD - 10:12 A.M.**

3 THE COURT: The next matter I have on my list here is
4 Linda Acker vs. Westgate Myrtle Beach, LLC.

5 MR. SMITH: Good morning, Your Honor.

6 THE COURT: Good morning. How are you?

7 MR. SMITH: I'm doing all right. Andrew Smith with
8 Collins & Lacy representing Westgate Myrtle Beach, LLC.

9 This is an odd one. Westgate was ---

10 THE COURT: It kind of is with no players nor attorneys.

11 MR. SMITH: So, Westgate, my client was the defendant in
12 a lawsuit. During the course of that lawsuit, we tendered our
13 defense and indemnity to Home Depot repeatedly, served it on
14 their registered agent, actually heard back from their TPA at
15 one point. They never actually responded to our tender
16 letters. So, we filed a third-party complaint against Home
17 Depot, served them via registered mail, got a return on it
18 showing that they were served and they never answered. In the
19 meantime, we settled the case with Plaintiff. That case has
20 been dismissed. There's been a stipulation of dismissal
21 filed, but we moved to hold Home Depot in default. That was
22 granted, and so we've moved for this damages hearing. Our
23 damages are entirely liquidated, so I don't have anybody to
24 put on the stand, but I've got an affidavit of attorney's
25 fees. The original release that's been executed by all

1 parties as well as the contract under which we sought to -- we
2 sought indemnity from Home Depot.

3 We're asking that you award a judgment in the amount of
4 \$144,650.97 for my client, and I'm able to walk through where
5 we got that number from and present those documents to you if
6 you'd like me to do that.

7 THE COURT: Yes, sir. Do you have it so I can follow
8 along?

9 MR. SMITH: Yes, Your Honor. I printed a lot of things,
10 because I wasn't sure if Home Depot would show up or not with
11 counsel, so I was prepared to argue this on default as well.

12 And we have served notice of this hearing, Your Honor,
13 via certified mail. We served notice of this hearing on Home
14 Depot as well. And we know that they are able to receive
15 filed documents at that address because one of our -- all
16 three of our tender letters went to that same registered
17 agent, and we did hear from Home Depot's TPA at that time.

18 THE COURT: All right.

19 MR. SMITH: Okay, Your Honor. I'm going to pass up our
20 affidavit of attorney's fees and costs, the contract for
21 services under which we sought our third-party complaint. The
22 original release showing the settlement amount and an email
23 exchange between myself and Plaintiff's counsel showing that
24 that settlement was paid.

25 THE COURT: All right. Thank you, sir.

1 MR. SMITH: I will go through the timeline again really
2 quick just to lay it out because I think it's informative and
3 helpful to see the lengths that we went to get Home Depot
4 involved in this case.

5 This contract for services that you have was executed in
6 November of 2019 between my client and Home Depot for Home
7 Depot to come in and provide cabinetry work within my client's
8 resort here in Myrtle Beach. In September of 2022, the
9 plaintiff of the underlying lawsuit was injured when a piece
10 of that cabinetry fell off of a cabinet and struck her foot.
11 She had several x-rays and CT scans, nothing was broken. It
12 seems to have been a soft tissue issue injury, but she did
13 accrue several thousand dollars in medical damages.

14 Plaintiff sent a letter to us advising us of the injury
15 and then we were retained in December of 2022. Throughout the
16 course of our investigation pre-suit, we realized there was
17 this agreement between my client and Home Depot saying that
18 Home Depot was supposed to perform this work, and specifically
19 as part of this contract was supposed to attach the cabinetry
20 with hardware. They were supposed to use screws to screw in
21 some decorative plates. When we investigated, the plate that
22 fell off on the back had no screws in it. It had been glued
23 on and just stuck. And so, the issue became they -- at that
24 point we thought breached their contract by not using hardware
25 to install these. And so, we sent a tender letter and said,

1 hey, under this contract, you have a duty to indemnify us and
2 provide us a defense. We would like you to do that. We think
3 a lawsuit is coming forward. We didn't hear anything back
4 from Home Depot, and a couple of months later we sent a second
5 demand or a second tender letter to them. Both of these were
6 sent to the Executive Vice President of Supply Works, which is
7 a Home Depot subsidiary, and it's under the Home Depot
8 umbrella. In the second letter, we advised them of a pre-suit
9 demand that we had gotten from the plaintiff, and sent them
10 the contract, our investigative information showing the injury
11 and how it occurred. On March 28th, so a week after that
12 second letter, we got a one-page letter back from Home Depot's
13 TPA saying, hey, we're gonna look at this; we'll let you know.
14 We did not hear anything back from that, and the lawsuit was
15 eventually filed by Plaintiff's counsel in June of that year.
16 On June 27th, so 16 days after the lawsuit was filed, we sent
17 a third tender letter to Home Depot and said, We've advised
18 you of this injury, we've advised you of the demand, we're now
19 advising you that there has been a complaint filed. If you
20 don't come in and at least give us an answer, we're gonna file
21 the third-party complaint against you. We heard nothing, we
22 went into settlement negotiations with Plaintiff. We did
23 settle that case with Plaintiff. As part of that settlement,
24 Plaintiff agreed to allow us to amend our answer to assert
25 these third-party claims. We executed the settlement that you

1 have, Your Honor, on March 27th of 2025; that was for \$13,500.
2 And on April 25th, so less than a month later, we filed and
3 served our third-party complaint against Home Depot. We filed
4 it on April 9th, it was served on April 25th. Service was
5 affected on the 29th. We received back via certified mail
6 saying that it had been served on Home Depot's registered
7 agent, and we heard nothing. We then filed for default. An
8 order of default was entered on June 25th of last year, and
9 then we subsequently made the motion for damages hearing
10 underlies why we're here today. We served notice of this
11 hearing on Home Depot's registered agent at that same address
12 that we had sent the letters to where we had finally gotten a
13 response back and who they had registered with through the
14 Secretary of State.

15 So, Your Honor, we're asking that the attorney's fees and
16 costs of this underlying suit be included in a judgment
17 against Home Depot, as well as the settlement amount. And as
18 a third aspect of that and part of the reason why I handed up
19 that contract for services is we're asking that the money
20 spent by my client to Home Depot for those services also be
21 included in the damages because at this point Home Depot has
22 violated that contract in at least two separate ways. One,
23 they refused to indemnify, hold harmless my client, even
24 though it was explicitly laid out, a second -- related to that
25 is they refused to even communicate with us at any point. And

1 a third is that we contracted for them to do this cabinetry by
2 putting these screws into the wall or into the cabinets, and
3 they didn't do that, and it led to somebody being hurt. The
4 only way that we're gonna be able to go back and fix all of
5 that is if we do -- if we deconstruct what we paid them to do
6 that they didn't do.

7 And so, we're asking that the \$28,915.26 in attorney's
8 fees, which the affidavit lays out and does not include
9 today's hearing and the travel; the \$13,500 in the settlement
10 amount; and then the \$102,235.71 that was spent to contract
11 with Home Depot be included in that judgment.

12 THE COURT: Am I assuming then if I award damages for you
13 guys having to go back and now fix what you say they didn't do
14 properly in the first place, and there's no second lawsuit
15 coming for some sort of breach of warranty of anything like
16 that between you and Home Depot that this will take care of
17 that ---

18 MR. SMITH: This would take care of that. The goal by my
19 client in bringing this third-party was to not have to have a
20 second action. We thought in this case, because it's the only
21 time somebody has been injured that we have seen, we could
22 through discovery figure out the extent to which they hadn't
23 screwed those things into the wall without the destructive
24 testing or pulling everything off and seeing, that was one of
25 the goals of bringing this was to depose somebody that was

1 there or that oversaw that work and we -- we have no clue the
2 extent. But, to answer your question, Your Honor, there
3 wouldn't be a second case brought for that. This third-party
4 complaint was that case to remedy that whole issue, but we
5 attached it to Plaintiff's case because it was the only one
6 that was pending.

7 THE COURT: Has Westgate inspected all of the work? Have
8 they gone behind Home Depot and inspected the work, and have
9 they seen that all the cabinets that they installed suffer
10 from that same flaw?

11 MR. SMITH: They haven't, and the reason why is in order
12 to figure that out, you have to destroy the work that was
13 done. And so, it's all of the units in a two-unit -- or two-
14 building area in this resort. They would have to take them
15 all out of commission, destroy those cabinets, then hire
16 somebody to come in and refix it. So, even if they had been
17 screwed in or put in correctly, the only way to find that out
18 would be to pull those cabinets off and destroy the work that
19 was done.

20 THE COURT: Okay. All right.

21 Anything further?

22 MR. SMITH: No, Your Honor; nothing further.

23 RULING OF THE COURT:

24 THE COURT: All right, sir. All right. We'll grant
25 your motion, sir, if you'll get an order into my queue that

1 lays everything out, we'll get that signed and get it right
2 back out to you.

3 MR. SMITH: Thank you, Your Honor. We'll absolutely do
4 that.

5 THE COURT: Yes, sir.

6 **ADJOURNED - 10:22 A.M.**

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Linda Acker v. Westgate Myrtle Beach, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on February 9, 2026.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

April 15, 2026.