

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

David P. Caraker, Jr., Circuit Court Judge

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Case No. 2024-CP-26-04023  
Appellate Case No. 2026-000730

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Linda Acker, Plaintiff,

v.

Westgate Myrtle Beach, LLC, Respondent,

AND

Westgate Myrtle Beach, LLC, Respondent,

v.

Home Depot U.S.A., Inc., Appellant

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**RESPONDENT WESTGATE MYRTLE BEACH, LLC'S NOTICE OF NON-  
OPPOSITION WITH CLARIFICATION OF FACTUAL DISAGREEMENTS**

**INTRODUCTION**

Pursuant to Rule 240, SCACR, Respondent Westgate Myrtle Beach, LLC (hereinafter, "Westgate") hereby submits this Notice of Non-Opposition with Clarification of Factual Disagreements in response to Appellant Home Depot U.S.A., Inc.'s (hereinafter, "Home Depot") Motion for Leave to File a Rule 60(b) Motion and to Stay Appeal Pending Resolution of Rule 60(b) Motion.

**RECEIVED**  
**Apr 20 2026**  
**SC Court of Appeals**

## **STATEMENT OF POSITION**

Westgate does not oppose Home Depot's request for leave to file a Rule 60(b) motion in the lower court or the request to stay this appeal pending resolution of that motion. However, Westgate disagrees with certain factual assertions made by Home Depot in its memorandum in support of its motion and wishes to preserve its objections to those factual representations for the record.

### **CLARIFICATION OF FACTUAL DISAGREEMENTS**

While Westgate does not oppose the procedural relief requested by Home Depot, Westgate expressly disagrees with and does not concede the following factual assertions contained in Home Depot's memorandum:

1. Westgate disputes that Home Depot's first actual notice of the lawsuit occurred on February 04, 2026, when Home Depot received Westgate's notice of the default damages hearing.
2. Westgate disputes Home Depot's suggestion that it did not receive proper service of the Third-Party Summons and Complaint. Westgate's agent properly served the Third-Party Summons and Complaint in accordance with South Carolina law, and Home Depot's failure to respond was not due to lack of proper service.
3. Westgate disputes Home Depot's characterization that its Third-Party Complaint only sought damages due to the board installation in Plaintiff's unit, not all fifty-four units. The damages awarded by the lower court were properly supported by the evidence and reflected Westgate's damages that resulted from Home Depot's acts and/or omissions.
4. Westgate disputes Home Depot's assertion that the judgment is based on a "mistake in fact or potential representations by Westgate". Westgate made no misrepresentations to the lower court and presented evidence supporting each component of the damages awarded.

5. Westgate disputes Home Depot's contention that the judgment is void based on the negligence cause of action. Westgate's negligence claim is legally viable and supported by South Carolina law, and the damages awarded were properly calculated based on all viable causes of action presented.

### **PRESERVATION OF RIGHTS**

By not opposing the procedural relief requested in Home Depot's motion, Westgate does not waive, and expressly preserves, all rights to:

1. Contest the factual assertions made by Home Depot in any Rule 60(b) proceedings before the lower court;
2. Oppose any Rule 60(b) motion on substantive grounds;
3. Present evidence and argument regarding the propriety of the default judgment and the damages awarded; and
4. Appeal any order granting relief under Rule 60(b), should such relief be granted.

### **CONCLUSION**

For the foregoing reasons, Westgate Myrtle Beach, LLC, does not oppose Home Depot U.S.A., Inc.'s motion for leave to file a Rule 60(b) motion and to stay this appeal pending resolution of that motion. However, Westgate expressly disagrees with Home Depot's factual assertions as set forth above and preserves all rights to contest Home Depot's factual assertions in subsequent proceedings.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,  
COLLINS & LACY, P.C.

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**NOTICE OF NON-OPPOSITION WITH  
CLARIFICATION OF FACTUAL  
DISAGREEMENTS**

April 20, 2026  
Columbia, South Carolina