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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Charleston County
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 May 21, 2025)

Supreme Court Case No. 2025-001224

The Retreat at Charleston National Country 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 Oliveira Construction, LLC; Solesmar Jesus De Oliveria; 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 Salgado,Defendants,

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

v.

Pohlman Quality Contractors; Pohlman Quality Exteriors; Palmetto Trim and Renovation; 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 the Respondents.

MOTION TO SUPPLEMENT RECORD ON APPEAL / APPENDIX

s/ Stephen P. Hughes

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Attorneys for Appellant Builders FirstSource-Southeast
Group, LLC

Appellant/Petitioner Builders FirstSource-Southeast Group, LLC (“BFS”), hereby moves the Court to supplement the record on appeal with exhibits of deposition testimony from fact witnesses. Specifically, BFS seeks to supplement the record with deposition testimony from BFS fact witness Bill Crabtree and ECC Contracting, LLC’s Rule 30(b)(6) designee Rod Assis.

This motion arises from Respondents’ contentions that they were “labor-only subcontractors” to BFS at the Retreat at Charleston National project. See e.g. Pohlman Brief, p. 1, Hurley Brief, p. 1. This motion also arises from Respondents’ contentions that BFS was responsible for supervision of the work performed by the Respondent subcontractors. See e.g. ECC and AC Construction Briefs.

BFS believes that justice requires the record on appeal to be supplemented by the deposition testimony of these fact witnesses as the lower courts’ decisions were based in part on allegations regarding the parties’ scopes of work. BFS does not believe that supplementing the record with the deposition testimony from these fact witnesses will prejudice any party to this appeal as the parties’ arguments on appeal are based on the evidence obtained by the parties’ in discovery.

A. Bill Crabtree

The parties, including Respondents, deposed Bill Crabtree on October 15, 2019. See Exhibit A, Deposition of Bill Crabtree, p. 1. Mr. Crabtree testified, in relevant part, that he was the install sales manager for BFS in 2001 for around 12 to 14 years and in 2015 he became the general manager for BFS’s Summerville, South Carolina location. See Exhibit A, Deposition of Bill Crabtree, p. 10, ll. 16-20; p. 12, ll. 20-23. As it relates to construction of the Retreat at Charleston National project, Mr. Crabtree testified that Respondent subcontractors, who installed windows, were responsible for installing the window components pursuant to the manufacturers’

instructions. See Exhibit A, Deposition of Bill Crabtree, p. 60, ll. 18-22. Mr. Crabtree also testified that BFS did not supply the fasteners and that the Respondent subcontractors, who installed windows, were responsible for supplying their own fasteners. See Exhibit A, Deposition of Bill Crabtree, p. 60, ll. 23-25, p.61, ll. 1-3. Mr. Crabtree testified that Hurley installed house wrap, windows, and exterior doors at the project. See Exhibit A, Deposition of Bill Crabtree, pp. 113-114. Mr. Crabtree testified that Rooster Cannon [of BFS] inspected Hurley's work to see if it was complete, not that it was correct. See Exhibit A, Deposition of Bill Crabtree, p. 115, ll. 4-15. Mr. Crabtree also testified that Hurley performed good work most of the time and that it knew how to do the work it was hired to perform. See Exhibit A, Deposition of Bill Crabtree, p. 115, ll. 16-21. Mr. Crabtree testified further in response to ECC's counsel examination regarding BFS's expectations of the window installation subcontractors, more details regarding his prior testimony as to BFS's inspections of the work performed by the subcontractors. See Exhibit A, Deposition of Bill Crabtree, pp. 116-120. As to AC Construction, Mr. Crabtree testified that it performed framing installation at the project that included roof felt and house wrap and that's the way it is on every job between BFS and AC Construction. See Exhibit A, Deposition of Bill Crabtree, p. 124. In response to AC Construction's examination, Mr. Crabtree reiterated that AC Construction's framing work included installation of house-wrap and that Hurley installed house-wrap for a couple of buildings due to the framing subcontractor being replaced. See Exhibit A, Deposition of Bill Crabtree, p. 125, ll. 2-18.

B. Rod Assis

The parties, including Respondents, deposed Mr. Rod Assis on July 16, 2019. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 1. Mr. Assis testified that the windows and doors that ECC installed were selected by the builders or the architect. See Exhibit B, Deposition of Rod

Assis 30(b)(6) ECC, p. 37, ll. 13-15. Mr. Assis also testified that with respect to installing windows into the building envelope where house-wrap is already installed, ECC is not going to install a product on top of something that it knows is wrong. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 39, ll. 7-16. Moreover, Mr. Assis testified that in terms of installing the windows, the manufacturer of the window determines whether ECC installs the windows with screws or nails. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 42, ll. 2-6. Mr. Assis testified that the window installation instructions are normally attached to every window. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 42, ll. 7-9. With respect to windows, Mr. Assis testified that BFS only supplied the window, tape, and caulk and that ECC provides the fasteners. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 42, ll. 16-22. Mr. Assis testified that ECC determines what type of fastener to use from review of the South Carolina [building] code and manufacturer instructions with the latter being attached to the window itself. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 42, ll. 23-25, p. 43, ll. 1-10. Regarding ECC's installation of the window fasteners, in terms of fastener spacing on the window nailing flange, Mr. Assis testified that it depends on the manufacturer's instructions included on the window packaging. See Exhibit B, Deposition of Rod Assis 30(b)(6) ECC, p. 43, ll. 11-23.