

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald

Case No. 2008-CP-10-7217

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MAY 3 2012

SC Court of Appeals

Meeting Street at Tennyson Row Horizontal Property Regime by Meeting Street at Tennyson Row Homeowners Association, Inc. Respondent/Appellant,

v.

Meeting Street Builders, LLC;
Meeting Street Companies, LLC;
MS Tenn Towns, LLC;
Builder Management Group, Inc. Appellants/Respondents.

Respondent/Appellant Meeting Street at Tennyson Row Horizontal Property Regime by Meeting Street at Tennyson Row Homeowners Association, Inc.'s Reply to Appellants/Respondents' Response in Opposition to Motion to File Consolidated Response Brief and Cross-Appeal Brief

NOW COMES, Respondent/Appellant Meeting Street at Tennyson Row Horizontal Property Regime by Meeting Street at Tennyson Row Homeowners Association, Inc. ("Tennyson Row HOA") and files its Reply to Appellants/Respondents' Response in Opposition of Motion to File Consolidated Response Brief and Cross-Appeal Brief and shows the Court the following:

Given the substantial overlap of both parties' grounds for appeal, including issues related to previously settled parties, expert testimony of window standards, and damages, judicial economy,

clarity of briefing and avoidance of duplication would be best accomplished by allowing Tennyson Row HOA to file a single consolidated response and cross-appeal brief.

ARGUMENT

In their Response in Opposition, Appellants/Respondents (“Meeting Street Parties”) assert that Tennyson Row HOA should not be permitted to file a consolidated response and cross-appeal brief because “the two sides are not likely to raise the same issues on appeal” and further state that an “apparent absence of overlap” necessitates separate briefing. In support of this argument, the Meeting Street Parties cite to the grounds upon which they based their Motion for New Trial Absolute or, in the Alternative, Motion for Trial Nisi Remittitur or Judgment Notwithstanding the Verdict (attached as Exhibit 1 to the Response in Opposition) in comparison to the grounds of appeal listed in Tennyson Row HOA’s Notice of Cross-Appeal.

Although the Meeting Street Parties have not definitively identified the grounds upon which they base their appeal, they do not expressly exclude any contained in Exhibit 1 and further state that they believe their arguments will include:

1. treatment of defendants on the verdict form. More particularly described by the Meeting Street Parties to be based upon the trial court’s preclusion of settled parties from the verdict form after evidence was admitted at trial that the dismissed “sixteen Defendants were the proximate cause of the alleged construction defects and Plaintiff’s alleged damages” (Exhibit 1, p.2);
2. the submission of punitive damages;
3. expert costs as damages to the jury; and
4. certain testimony by Tennyson Row HOA’s experts. With respect to the grounds upon which

this issue is appealed, Exhibit 1 further describes the purported trial court error as permitting Tennyson Row HOA's expert to testify as to window labels "in direct contradiction to the standards governing said labeling." (Exhibit 1, p.3).

Specifically, in its Notice of Cross-Appeal, Tennyson Row HOA states that it is appealing the trial court's ruling granting the Meeting Street Parties' Motion to Compel Plaintiff's Election of Remedies, and further the oral evidentiary rulings of the trial court in:

- a. allowing the admission of hearsay evidence by Defendant's expert(s);
- b. allowing the admission of expert testimony related to inapplicable standards in direct contradiction of applicable law; and
- c. allowing Appellants/Respondents to introduce circumstantial evidence of Plaintiff's settlement with other parties while precluding Respondent/Appellant's reference to dismissed Defendants as "settled" parties and precluding any testimony to put the Defendant's settlement evidence in context.

The foregoing lists of grounds upon which the appeals are based clearly indicate an overlap of many issues raised by each party, one of the most obvious of which is the trial court's treatment of settled parties (respectively, items 1 and c above). While the Meeting Street Parties assert that the trial court erred by precluding settled parties from being listed on the jury verdict form after introduction of evidence related to each settled party's scope of work, Tennyson Row HOA argues that same evidence related to these settled parties should not have been admitted to begin with, or without the context of additional information related to each party's settlement. These issues plainly overlap and it would be duplicative and unnecessary to present them in separate briefs.

Another strikingly similar issue raised by both parties is that of the admission of expert testimony related to window labeling standards (respectively, items 4 and b above). The Meeting Street Parties argue that the trial court erred by permitting Tennyson Row HOA's expert to testify regarding window labels because it claims such testimony contradicted the standards governing labeling. Similarly, Tennyson Row HOA argues that the trial court erred by permitting the Meeting Street Parties' expert to testify to window standards which contradicted the applicable law. Thus, a necessary portion of both briefs will focus on which window standards were applicable to the case and the question of whether either expert testified in accordance therewith.

Additionally, the Meeting Street Parties have raised issues related to the affirmation of an award of punitive damages, and submission of evidence related to loss of use damages and expert investigation costs to the jury. Likewise, Tennyson Row HOA has appealed the trial court's order requiring it to elect its remedies and in support of such argument will necessarily address what evidence was submitted to support a full award under each cause of action submitted to the jury, including that related to punitive, loss of use, and expert investigation damages.

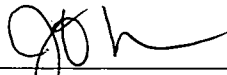
CONCLUSION

Judicial economy will be best served if Tennyson Row HOA is permitted to file a single brief addressing these substantially overlapping issues, the briefed issues will consequently be clearer, and duplicative briefing will be avoided.

(SIGNATURE ON FOLLOWING PAGE)

Respectfully Submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:  _____

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May 1, 2012

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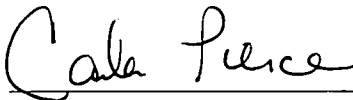
PROOF OF SERVICE

I, Carla Pierce, hereby certify that I have this date served a copy of the attached and
foregoing Reply to Appellants/Respondents' Response in Opposition of Motion to File
Consolidated Response Brief and Cross-Appeal Brief, on all parties by depositing same in the
United States Mail with sufficient postage attached, addressed as follows:

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(843) 722-3366

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May 1, 2012
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Reply to:
P.O. Box 806
Mt. Pleasant, SC 29465

May 1, 2012

Via U.S. Mail

The Honorable Tanya Gee
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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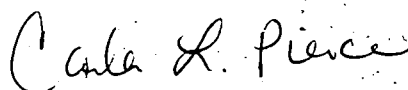
Re: Meeting Street at Tennyson Row Homeowners Association, Inc. v. Meeting Street
Builders, LLC, et al.
Case No.: 2008-CP-10-7217

Dear Ms. Gee:

Enclosed herewith for filing, please find an original and six (6) copies of the Reply to Appellants/Respondents' Response in Opposition to Motion to File Consolidated Response Brief and Cross-Appeal Brief in the above-referenced matter. Please return a file-stamped copy to our office in the self-addressed stamped envelope enclosed for your convenience.

Thank you for your assistance in this matter. Please feel free to contact me should you have any questions or concerns.

Sincerely,



Carla L. Pierce

/clp
Enclosures

cc: All Counsel of Record (Via U.S Mail and Email)