

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-8447

MONTCLAIR PROPERTY OWNERS)
ASSOCIATION, INC. AND)
MONTCLAIR PROPERTY OWNERS)
ASSOCIATION BOARD OF)
DIRECTORS FOR AND ON BEHALF)
OF ALL OWNERS OF THE)
MONTCLAIR HORIZONTAL)
PROPERTY REGIME, AS ASSIGNEES)
OF MONTCLAIR ASSOCIATES)
LIMITED PARTNERSHIP, CREMCO,)
LLC AND MONTCLAIR HOMES, LLC)

PLAINTIFFS,)

vs.)

CHURCH CREEK CONSTRUCTION,)
LLC,)

DEFENDANT.)

**MASTER'S FINAL ORDER AND
JUDGEMENT**

2013 NOV 14 AM 9:35
JULIE A. BARNETT
CLERK OF COURT

This is an action for contribution brought against the Defendant, Church Creek Construction, LLC, by the Plaintiffs, Montclair Property Owners Association, Inc. and Montclair Property Owners Association Board of Directors for and on behalf of All Other Owners of the Montclair Horizontal Property Regime, as assignees of Montclair Associates Limited Partnership, CREMCO, LLC and Montclair Homes, LLC. It arises out of underlying construction-defect-related litigation associated with the conversion of an apartment complex into condominium units for sale to the public. As reflected in the case caption, the Plaintiffs bring this contribution action against the Defendant after having been assigned the claim by certain defendants in the underlying case.

The matter was referred on May 6, 2013. The matter came on for a hearing on the merits before this Court, the Master-in-Equity for Charleston County, South Carolina, on July 24, 2013. The evidence of record consists of the parties' stipulation of facts, exhibits presented to the Court by agreement of the parties, certain deposition testimony from the underlying case, and the testimony of live witnesses called during the hearing. After duly considering the evidence, this Court arrives at the following findings of fact and conclusions of law, and renders this Final Order and Judgment.

JURISDICTION AND VENUE

This Court has jurisdiction over the parties and the subject matter of this action and venue is proper herein. By consent order, this case was referred to this Court, and all parties have stipulated that this matter is properly heard and decided by this Court.

FACTS AND PROCEDURAL BACKGROUND

The following facts were agreed upon in the parties' stipulation and/or were established by the additional testimony and evidence received prior to and during the July 24, 2013 hearing. The current contribution case grew out of the settlement of underlying litigation; specifically, a condominium building defect case that will be referred to in this Order as the "underlying case," which was pending in Charleston County, captioned *Montclair Property Owners Association et al. v. Kinney et al.*, and further identified by Case No. 2008-CP-10-6897.

The facts in the underlying case were as follows. The Defendant in this contribution case, Church Creek Construction, LLC (hereinafter "CCC"), a licensed South Carolina contractor, working through subcontractors, did repairs on the common elements of numerous wood frame, multi-family buildings comprising the Montclair condominiums (located in Mount Pleasant, South Carolina) between the Fall of 2003 and the Spring of 2005. The evidence shows

that CCC performed work in some fashion on common elements in the buildings that housed as much as ninety percent (90%) of the total units at the Montclair condominiums.

Evidence was presented that CCC had listed in its various invoices work on buildings that housed 218 of total 240 units. (Exhibits 36, 83 and 46; Hearing Tr. p. 68, line 10 - Hodgin.) This work consisted of some roof repairs, siding/building envelope repairs, and general wood-rot repairs, as well as repair of the firewalls in the attics of many of the buildings. This work was intended to address a scope of work given to CCC by both the owner and condo converter, Montclair Homes, LLC, as well as by the former owner, Montclair Associates Limited Partnership (hereinafter "MALP"), the entity that sold the buildings to the condo converter (Montclair Homes) for ultimate sale to the public. (Dep. of Bruce Kinney, Vol. 1, p. 36, line 23 - p. 39, line 9; p. 49, line 17 - p. 50, line 16; p. 64, line 19 - p. 65, line 2.)

The Plaintiffs argued that there were three (3) primary "groups" of defendants in the underlying case for purposes of analyzing the facts under the contribution statutes. They were: (1) Montclair Homes, the direct converter and seller of the condominium units to the public; (2) the MALP and CREMCO group that sold the apartment complex to Montclair Homes to be converted; and (3) the construction group comprised of CCC and its subcontractors, Roger Lockey and Larry Elsey d/b/a/ ECI Construction.

The condominium converter, Montclair Homes, through its managing member, Bruce Kinney, testified (Dep. of Bruce Kinney, Vol. 1, p. 101, line 3 - p. 102, line 17) that it knew CCC was a licensed South Carolina contractor and that CCC had assured Montclair Homes that it could fix the various things it wanted addressed, which were noted in a report prepared by Montclair Homes' architect that was admitted into evidence by agreement. (Exhibit 5.) Likewise, CCC working directly for MALP, the seller of the property, agreed with MALP to

repair certain firewall code deficiencies in the buildings that had been discovered by MALP's engineers during a property condition assessment just prior to sale to Montclair Homes.

The Plaintiffs presented live testimony and evidence by way of an expert engineer and by the president of the Board that the property was found by the owners after it was turned over in the 2005 timeframe to be in very poor condition, with deficiencies noted in the CCC firewall repairs, siding repairs, and CCC repairs to the common elements. In the underlying case, Plaintiffs' experts testified that repair costs sufficient to bring the buildings to a "good condition" (as was noted in Exhibit 5) would be in excess of \$12,000,000.

The Plaintiffs' expert testified in this hearing and in the underlying case that the building codes adopted and in effect for repair work done by CCC in the 2003-2005 timeframe were violated by CCC. These violations in CCC's attempted repairs of the buildings occurred both on the exterior building envelopes and on the interior firewalls in the attics. Both of these areas where CCC did work were to areas which were described as common elements by the Plaintiffs' Master Deed. For example, the Plaintiffs' expert, Derek Hodgin, P.E., testified that the 2000 International Building Code was in effect for the exterior repairs (Hearing Tr. p. 62 - Hodgin) and Mr. Hodgin showed photos (Exhibits 266 and 103E) that showed step flashing and code-required weather resistant barrier wrap missing where new Georgia Pacific siding was replaced in the 2004 timeframe by CCC (Hearing Tr. pp. 77-78 - Hodgin), which appears to have caused additional building damage and wood rot since the time of the repairs by CCC in 2004, and which new damage will have to be ultimately repaired again by the Plaintiffs. (Hearing Tr. p. 78 - Hodgin.) The Plaintiffs' expert also testified that the building codes in effect had not been complied with on CCC's attempted firewall repairs. (Hearing Tr. pp.83-84; pp. 88-89 - Hodgin; Exhibits 290 and 291.)

CCC claimed it was given a very limited scope of work by Montclair Homes on the exterior and did what was required to "take it back to good wood" and it also did what was necessary to fix wood rot and other problems that were either found on the list of problems to be repaired given to it by the condominium converter, Montclair Homes, and firewall repair list given to it by the previous owner, MALP. The Plaintiffs presented expert testimony that the work done by CCC to the common elements during the conversion mentioned above was deficient, directly caused property damage and that CCC and its subcontractors failed to perform in a workmanlike fashion and/or failed to comply with the applicable building codes in effect for the time period of the conversion work. CCC did not hire an expert for the underlying case nor present any expert testimony in this hearing regarding the repairs it performed. Instead, it relied on the deposition testimony from the underlying case, primarily of Roger Lockey and Larry Elsey who were the hands on subcontractors working for CCC on the repairs.

Elsey was a partner with Kevin Molony in the CCC venture and was also a subcontractor to CCC on the Montclair job. Elsey acted for CCC mainly as a supervisor in the field directing crews. Lockey was a carpenter and was paid by Elsey and/or CCC to do primarily exterior repair work on the buildings at Montclair. (Dep. of Roger Lockey, p. 6, lines 8-17; p. 7, lines 4-11; p. 7, lines 18-23.) It is noted and was stipulated by the parties that these two subcontractors or employees of CCC paid \$525,000 to buy their peace in the underlying case in May 2012. CCC was not released as a part of that settlement and the parties specifically reserved the right to go to trial against the remaining entities. (Stipulations of Fact, ¶ 10.) It was admitted in testimony of Kevin Molony, one of the principals of CCC that a general contractor is responsible for the work of his subcontractors.

In the final settlement, which occurred in the October 2012 timeframe as trial of the underlying suit was starting, \$3,000,000 was paid by Montclair Homes and MALP. That \$3,000,000 broke down as follows: \$1,600,000 was paid by Montclair Homes and \$1,400,000 was paid by MALP. CCC did not contribute to this settlement and to date has not paid any money for the releases but has benefitted in that its liability was extinguished. (Exhibits 284 and 285.)

The Court has reviewed the releases from the aforementioned settlements and the documents assigning the instant contribution claim to the Plaintiffs, all of which are exhibits to the parties' stipulation of facts. The parties stipulated and this Court has determined that the right to proceed in contribution in favor of MALP, CREMCO, and Montclair Homes as against CCC for paying to extinguish CCC's liability was assigned to the Plaintiffs as a part of the overall settlement. In late December of 2012, the Plaintiffs brought this contribution action as assignee of the contribution right that existed in favor of MALP, CREMCO, and Montclair Homes when they originally paid the \$3,000,000 for the release of all remaining parties in the underlying case.

The live witness testimony presented during the July 24, 2013 hearing and the additional evidence of record has given this Court a full view of the nature of the underlying case and the settlements. The Court now makes the following findings of fact and conclusions of law concerning contribution.

FINDINGS OF FACT

1. The Court finds the real property, buildings, and all activities that gave rise to this case and to the underlying case occurred in Charleston County. Also, that the parties have consented to this reference and that this Court has the jurisdiction to enter this Final Order and

Judgment. Further, the Court finds the evidence presented supports the stipulations of fact entered into by the parties and it adopts by reference all stipulations of fact agreed to and filed with this Court and makes the same a part hereof.

2. The Court finds, and it was not disputed at the hearing, that CCC performed and supervised construction-related activities on the exteriors of the buildings at Montclair for the converter group, Montclair Homes, and did firewall repairs for MALP, the seller of the apartments to Montclair Homes, for the apartment-to-condominium conversion between the Fall of 2003 and the Spring of 2005. The Court, having reviewed the complaint and evidence of record, finds that it is appropriate to adopt the Plaintiffs' view that there were three (3) "groups" of defendants, each group having members with common interests for purposes of applying contribution law in an equitable fashion. The Court finds these groups to be the "Converter Group," the "Seller of the Apartments Group," and the "Construction Group." The Court finds as a fact that the last invoice from Roger Lockey/CCC for repair work is dated April 8, 2005, as referenced in Exhibit 36. The Court finds these repaired areas of the buildings were common elements and were areas that the Plaintiffs in the underlying suit claimed were in substandard and damaged condition due, in part, to defective repairs by CCC. The Court also notes the last units were sold to the public in the May 2005 timeframe and all construction and conversion activity had taken place by that date.

3. The Court finds that the Plaintiffs alleged in their Third Amended Complaint in the underlying case (Exhibit 283) deficient and negligent construction causing property damage to them against CCC, MALP, and Montclair Homes. (Hearing Tr. p. 36, lines 7-21 -- Laddaga.) The Court finds that at the time of the release of CCC in November 2012, there was no less than seven (7) separate defendants left which, but for the releases, would have gone to a jury trial with



a real possibility that joint and several liability would be established. For purposes of this analysis, all of these defendants were members of three (3) groups: the MALP group (seller of the apartments to the converter); the Montclair Homes group (seller of the condos to the public); and CCC group (the construction group including already settled Lockey, Elsey and ECI). All seven (7) of these defendants which could have been found by a jury to be liable did logically and equitably fit into one of these three groups.

4. The Court finds that, in April 2012, there was a partial settlement by the Plaintiffs. CCC's subcontractors Elsey, ECI and Lockey settled out for \$525,000, as is stipulated to by the parties. The Court finds the total amount of all settlements after all settlements had extinguished all claims was \$3,525,000. Of this total amount paid, \$3,000,000 was paid under releases that extinguished the liability of CCC. The Court finds that the settlement of \$525,000 by the subcontractors by its terms did not affect the Plaintiffs' right to proceed forward against the remaining defendants, MALP, Montclair Homes, and CCC. The Plaintiff did proceed until final settlement for \$3,000,000 occurred in the October/November 2012 timeframe with these remaining parties.

5. The Court finds that the work of CCC was negligent and caused consequential damage to Plaintiff's property other than to the work itself and that the negligent construction work combined and concurred with the negligence of the other two defendant groups and contributed to the Plaintiffs' indivisible damages. Plaintiffs established by expert testimony that CCC's work in many areas of the exteriors of the building envelope and also in the repair of the firewalls was deficient and violated the building codes in effect for the time period when CCC performed repairs through its subcontractors. This was established to the satisfaction of the Court by a preponderance of the evidence. The Court notes negligent repairs of the firewalls did



affect a life safety system within the buildings. The Court finds that many of the areas of the exteriors of the buildings will need to be repaired again after the CCC repairs, including the repair of consequential damage, and that the firewalls will need to be redone, all at a considerable expense to the Plaintiffs. The Court finds that the Defendant CCC did not present any alternative cost of repair estimate and that the Plaintiffs' cost to repair the buildings was in the \$12,000,000 range.

6. The Court finds that the Plaintiffs did have viable causes of action still existing upon which they were proceeding to trial in the underlying case at the time of settlement in November 2012. Some of the causes of action sounded in tort and were for deficient construction with all three groups of defendants alleged to have been jointly and severally responsible. Indeed, these were the most significant causes of action in light of the evidence of record. The Plaintiffs' Second and Ninth causes of action this Court finds were common to all defendants and sounded in tort for negligent construction causing property damage and were being pursued at the time the final settlement occurred in the underlying case. This Court is convinced that the release which CCC had the benefit of by virtue of the payment by MALP and Montclair Homes had substantial value to CCC. Had a verdict been rendered below in tort for negligent construction, CCC and the other defendants would have faced substantial common liability but for their liability being extinguished by settlement.

CONCLUSIONS OF LAW

This Court concludes as a matter of law it is directed by statute and case law to decide the facts and determine final judgment as per S.C. Code Ann. §§15-38-10 to -70 and under principles of equity what amount, if any, CCC is responsible for by way of contribution to the previous settlement which took place in the underlying case. The Court concludes that

contribution under the pre-July 2005 contribution statutes controls this Court's decision. The Court notes that, after July 2005, the contribution statutes added a section, §15-38-15. This Court notes §15-38-15 by its effective date mandate did not apply to the facts in the underlying case as causes of action and all operative facts occurred prior to July of 2005. This Court finds the facts of this case to clearly establish the underlying deficient construction had all taken place well before the change in the law in July of 2005 and therefore our contribution laws as they existed before the July 2005 legislative change apply to the facts in this case.¹

The Court concludes as a matter of law that since the pre-July 2005 statutes apply, no allocation analysis is required as exists in the "new" §15-38-15 statute; however, the Court is required under the pre-July 2005 contribution statutes to "apply principles of equity" and a "pro-rata analysis." (emphasis added). This Court concludes under §15-38-20, entitled "Right of Contribution," that the following general principles apply to the facts of this case: "where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them." Also, the statutes pre-July 2005 indicate that this Court should attempt to use a pro-rata approach to determine what the non-contributing tortfeasor should pay by way of contribution.

Under the pre-July 2005 statutes, §15-38-30 lists the factors for determining pro rata liability of tortfeasors as follows: "In determining the pro rata shares of tortfeasors in the entire liability (1) their relative degrees of fault shall not be considered; (2) if equity requires, the

¹ This Court spent a considerable amount of time determining what "common liability" is under the statute. As stated at trial, the issue before the Court is "what is the common liability?" This Court concludes that if the S.C. Contribution Among Tortfeasors Act has any meaning, that it would apply under these facts under the pre-2005 statute. In the event the post-2005 statute applies, the Court concludes there would be no liability under these facts.



collective liability of some as a group shall constitute a single share; and (3) principles of equity applicable to contribution generally shall apply.”

In this case, the Court has found that viable claims existed against all of the “groups” of defendants. There were three groups of defendants, and the Elsey, ECI and Lockey subcontractors clearly belonged to the “Construction” group. The right of contribution exists only in favor of a tortfeasor [or group] who [have] paid more than [their] pro rata share of the common liability, and their [paying groups] total recovery is limited to the amount paid by [them] in excess of [their] pro rata share. Also, this section states, “No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.”

The Court first finds that extinguishment of a tortfeasor’s potential liability is a prerequisite and the statute states a tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable. The Court finds that in the November 2012 settlement, CCC’s liability was extinguished for a total payment of \$3,000,000. The parties have so stipulated and therefore this statutory requirement has been met.

Applying the above plain statutory language, the Court believes an analysis of the facts of this case turn on the question of what was the “common liability,” which was clearly extinguished. Said another way, what common liability did CCC face that was extinguished and what limits are placed on its payment back to those who extinguished that common liability in CCC’s favor.

At the contribution trial, the Plaintiffs raised several possible ways to analyze the “common liability” CCC faced. Had CCC proceeded to jury trial in the underlying case, the

common liability could have been substantially more than the \$3,000,000, which was ultimately paid in extinguishing CCC's liability. The Plaintiffs discussed at the hearing before this Court the analysis that the best evidence of what common liability was extinguished is the total of both settlements divided by the three groups giving credit for the \$525,000 already paid by the Construction group (Elsey and Lockey). That analysis ends with each group on a pro rata basis being responsible for \$1,175,000 ($\$3,525,000$ divided by 3 groups = $\$1,175,000$). Under that analysis, since the Construction group had already, through Elsey and Lockey paid \$525,000, that group would owe an additional \$650,000. If it "paid back" to MALP and Montclair Homes in contribution an additional \$650,000, then each group would have contributed \$1,175,000. As it now stands, MALP paid \$1,400,000, Montclair Homes paid \$1,600,000, and the Construction group (exclusive of CCC) paid only \$525,000 and needed an additional contribution of \$650,000. The Court believes, however, the correct interpretation of the contribution act as it applies in these facts lies within a careful reading of §15-38-20 (b).

Section 15-38-20 is entitled "Right of contribution." Section "B" reads:

(B) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

The Court emphasizes that the limit on contribution in this section is a recovery by the tortfeasor to the amount in excess of his pro rata share. This Court believes the limit in this case to be whatever the excess is above the "common liability" pro rata share. Since the words "common liability" in this same section seem to refer to the amount actually paid for the settlement from which the contribution right is created. It would seem to follow, and this Court finds that the \$3,000,000 settlement is the only settlement that gave rise to any contribution



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claim. The parties have, in fact, so stipulated that the subcontractor settlement (\$525,000) did not refer in any way to contribution. Therefore, within the facts of our case, the term "common liability" would equate to the amount paid for the global release which finally extinguished everyone's liability in this case for \$3,000,000.

This Court notes that at common law there was no right of contribution as among joint tortfeasors and therefore contribution statutes have long been determined to be in derogation of common law. Being in derogation of common law, our courts require strict construction of the statutes and a strict reading of the language of §15-38-20. G&P Trucking v. Parks Auto, 357 S.C. 82, 591 S.E.2d 42 (Ct. App. 2003); *see also* Cowden Enterprises, Inc. v. East Coast Millwork Distributors, 363 S.C. 540, 611 S.E.2d 259 (Ct. App. 2005). This Court also notes that only a settlement which gives rise to the extinguishing of liability can allow a joint tortfeasor to have contribution as against another joint tortfeasor who does not contribute to the settlement but who nevertheless has its joint liability extinguished. Said differently, in order for a tortfeasor to recover in contribution from another joint tortfeasor, extinguishment of non-contributing joint tortfeasor's liability must have resulted directly from settlement itself. G&P Trucking, 357 S.C. 82, 591 S.E.2d 42. Furthermore, the law favors settlements over trials. The statute does not require a jury verdict to determine contribution among tortfeasors.

Under the facts of this case, no contribution rights arose from the settlement of the subcontractors in April 2012. Members of the Construction group paid \$525,000 and the parties agreed that those releases were only intended to buy peace for those subcontractors. Those releases did not extinguish CCC's liability. The second settlement in October/November 2012 was different. Three Million Dollars was paid by two of the remaining three defendant (groups) and they in effect bought a release for all three groups for their potential joint common liability



including the non-contributing joint tortfeasor CCC. That was by a strict reading of the statutes the “common liability” out of which we determine pro-rata shares and the amount of appropriate contribution.

In weighing the evidence, the Court finds that CCC and its subcontractors did in fact conduct negligent construction activities on multiple parts of the common elements of these buildings and did contribute to causing the Plaintiffs’ significant consequential property damage. Therefore, this Court finds CCC was a joint tortfeasor with MALP and Montclair Homes and finds the overall November 2012 settlement to have been a fair and reasonable settlement in light of significant potential liability all three groups of remaining defendants faced at trial. Equity would demand some contribution back to those who paid to extinguish CCC’s liability.

A section of the contribution statutes both pre and post July 2005 in our state require this Court to deal with a potential set-off under the facts in this case. The Court finds that §15-38-50 entitled “Effect of Release” must be applied if the Court so determines. That statute provides:

§15-38-50. Effect of release; covenant not to sue, or not to enforce judgment.

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

- (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
- (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

First, this Court is aware that the affirmative defense of “set-off” was not pled as an affirmative defense in this case by CCC. Normally, affirmative defenses must be pled or they are waived. Rule 8(c), SCRPC; Wright v. Craft, 372 S.C. 1, 21, 640 S.E.2d 486, 497 (Ct. App.

2006) (“The failure to plead an affirmative defense is deemed a waiver of the right to assert it.”). Section 15-38-50, however, provides a set-off by operation of law. See Ellis v. Oliver, 355 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999). Therefore, the set-off arising from the settlement of the subcontractors of \$525,000 must be applied to reduce the claim against CCC from the contribution it is being asked to make which grew out of the \$3,000,000 settlement.

If analyzed as if no other settlement had occurred, then the “pro rata share” of the \$3,000,000 for each group would be \$1,000,000. However, because the statute requires a set-off and also because the equities favor that the \$525,000 should be credited to the Construction group’s payment of its fair share of the common liability, the \$525,000 early sub-contractor settlement amount must be subtracted from the \$1,000,000 “pro rata” Construction group’s share (final settlement) leaving a fair and equitable contribution balance of \$475,000.

CCC contends it only “touched” 65% of the buildings. However, this was sufficiently rebutted in the Court’s opinion by the Plaintiffs’ experts that CCC touched slightly in excess of 90% of the buildings. The Plaintiffs introduced evidence that CCC’s own invoices indicated it worked on buildings housing 218 of 240 units, or slightly over 90%. (Exhibits 83 (“Units worked on by CCC”) and 43 (“Firewall repairs by Mark Ackerman”).) This Court finds the Plaintiffs’ evidence to be compelling and of greater weight as it includes actual invoices from CCC demonstrating where it worked. This Court therefore declines to deduct 10% from the amount of fair contribution CCC should pay.

The release which extinguished CCC’s liability was purchased in the context of a possible joint and several liability. This Court’s analysis becomes one of what is CCC’s share pro rata. Only after the change in the law after July of 2005 does the analysis shift to what was the percent of its liability to the common liability for purposes of determining contribution. It is

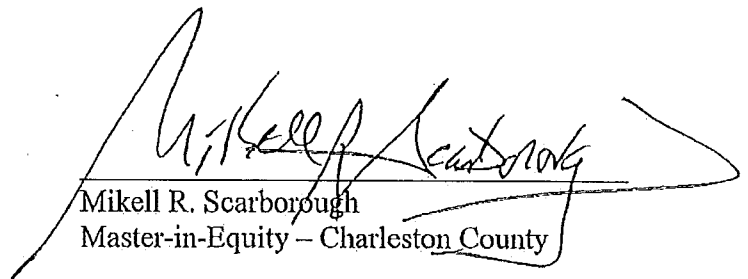
clear that although the causes of action arose near the time of a change in the law on how a construction defendant's contribution share is arrived at, the facts of this case were still clearly under the old joint and several format and therefore must be decided accordingly. The Plaintiffs in the underlying case would have been entitled to a joint and several verdict. Clearly, all events took place pre-July 2005, and CCC would not have had the benefit of an allocation analysis brought in by the contribution statute change post July of 2005.

JUDGMENT

Having reviewed the evidence in light of the Uniform Contribution Among Tortfeasors Act as it existed pre-July 2005, and having applied the applicable law and principles of equity to the stipulated and established facts before it, the Court hereby awards the Plaintiffs the sum of \$475,000 as against Defendant Church Creek Construction, LLC. The clerk is hereby

ORDERED to enter and enroll judgment for the Plaintiffs in the amount of \$475,000.00 against Church Creek Construction, LLC in accordance with this decision.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master-in-Equity - Charleston County

Charleston, South Carolina

Dated: Nov. 13, 2013

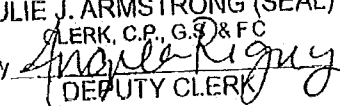
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JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & FC
By 
DEPUTY CLERK

Exhibit B

STATE OF SOUTH CAROLINA
 COUNTY OF Charleston
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP- 10 - 8447

Montclair Property Owners Association

Church Creek Construction

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Defendant's Rule 59 (e) Motion to Reconsider is respectfully denied.

INFORMATION FOR THE PUBLIC INDEX

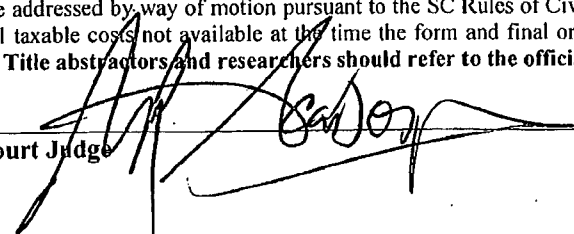
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



3062

Judge Code

5/6/2014

Date

FILED
 2014 MAY -9 AM 10:05
 JULIE J. ARTHUR-STRONG
 CLERK OF COURT

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF Charleston
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-8447

Montclair POA, Inc.

Church Creek Construction, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Montclair Property Owners Association, Inc.	Church Creek Construction, LLC	\$475,000.00
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

[Signature]

3062
 Judge Code

11/13/2013
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: