

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Waverly at Hamlin Plantation Townhome
Association, Inc.,

v.

John Wieland Homes and
Neighborhoods of the Carolinas, Inc., et
al,

PLAINTIFF

DEFENDANT

FORM 4

FILED
2017 Jul 26
JSA
JAN 26
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JUL 26 2017
CLERK OF COURT

JUDGMENT IN A CIVIL
CASE NO 2013-CP-10-03326

BY

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:

This case was before the Court on January 17, 2017 for a hearing on Defendant George Medina A/K/A JMC Construction, LLC A/K/A JMC Construction, Inc.'s Supplemental Motion for Summary Judgment as to the Cross-Claims Asserted by the John Wieland Homes Entities or in the Alternative For a Motion to Bifurcate the Equitable Indemnity Cross-Claims Asserted by the John Wieland Homes Entities, filed January 17, 2017. "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRPC. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id. "Summary judgment is not appropriate where

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SC Court of Appeals

further inquiry into the facts of the case is desirable to clarify the application of the law. . . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Based on arguments of the parties presented at the hearing and the memoranda submitted, this Court finds that a question of fact exists. Therefore, Defendant's Motion for Summary Judgment is heard and respectfully denied.

As to Defendant's alternative request to bifurcate the equitable indemnity Cross-Claim asserted by the John Wieland Home entities, the Motion is heard and granted with further instruction that the John Wieland Cross-Claim is to be bifurcated in its entirety. SCRPC Rule 42 governs the consolidation and separation of trials and states;

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

SCRPC 42. Further, "[a] motion seeking bifurcation of the issues of liability and damages . . . is addressed to the sound discretion of the trial court pursuant to Rule 42(b), SCRPC." Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). "Trial judges have discretion as to whether to bifurcate a trial. . . . A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Wright v. Hiester Constr. Co., Inc., 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010). See also, The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc., 418 S.C. 142, 153, 791 S.E.2d 152, 158 (Ct. App. 2016), reh'g denied (Oct. 21, 2016).

The Court, finding bifurcation will neither prejudice the parties and finding that bifurcation of the John Wieland Cross-Claims will promote convenience and be conducive to expedition and economy grants Defendant's Motion in the Alternative for Bifurcation of the John Wieland Equitable Cross-Claims with further instruction that the entire claim will be bifurcated. In its Motion, Defendant JMC seeks to bifurcate only the equitable indemnity claim. However, "when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims." Johnson v. S.C. Nat. Bank, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). The Court having found that the bifurcation of only the equitable claim would be contrary to precedent, orders that the Cross-Claim asserted by John Wieland be bifurcated in its entirety. Accordingly, Defendants Motion as to Bifurcation is granted with further instruction that the John Wieland Cross-Claims are to be bifurcated in its entirety.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

2128
Judge Code

1/25/17
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:

Ivon Keith McCarty Esq., John C. Hayes Esq.,
Mary Margaret Noland, Esq.

PLAINTIFF

Andrew N. Cole, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Phyllis Norton