

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

---

Case No. 2014-CP-26-08136

---

**RECEIVED**  
AUG 20 2018  
SC Court of Appeals

The Greenbriar Condominium Association, Appellant/Respondent,

v.

Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC, Right Way Construction, Inc., Right Way Group, Inc., RWG, Inc., RWGR, Inc., Craftmaster Manufacturing, Inc. d/b/a CMI, Martin Masonry, Inc., Gary Hunnell d/b/a Grand Strand Roofing, Stock Building Supply, LLC f/k/a Stock Building Supply, Inc., Stock Building Supply, LLC, f/k/a Carolina Builders Corporations, Morningstar Consultants, Inc., LPM Enterprises, Inc. f/k/a Loss Prevention Management, Inc. a/k/a Loss Prevention Managed Home Inspections, Inc., Jeld-Wen, Inc., successor to and/or merger with Craftmaster Manufacturing, Inc. d/b/a CMI, Elite Exteriors, LLC, and South Strand Landscaping, Respondents,

v.

Centex Homes, a Nevada General Partnership, Respondent/Appellant,

v.

Michael Dawson d/b/a Michael Dawson Construction, Inc., General Landscape Maintenance, LLC, Universal Forest Products Shoffner, LLC, Universal Forest Products, Inc., Universal Forest Products Eastern Division, Inc. n/k/a UFP Eastern Division, Inc., Weather Protection Systems, Inc., Grand Strand Roofing & Siding, Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc., Tri-City Insulation and Building Products of Myrtle Beach, Inc., American Residential Services, LLC, Thomas Heating & Cooling, Inc., JS Elite Flooring Company a/k/a JS Elite Tile Company, John Doe, Vance Johnson Plumbing Co., Inc., RJM Plumbing, Inc., Rice Planters Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. successor by merger to Rice Planter Carpets, Inc., The Martin Architectural Group, P.C., The Harman Group, Inc., f/k/a Cagley Harman & Association, Inc., Sunland Fire Protection, Inc., Cohen's Drywall Company, Inc., Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR,

Inc., Builders FirstSource-Southeast Group, LLC, and Georgetown Construction Services, Inc., Respondents,

Of which Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC are the Respondent/Appellants.

---

**INITIAL BRIEF OF APPELLANT/RESPONDENT GREENBRIAR CONDOMINIUM ASSOCIATION**

---

Phillip W. Segui, Jr., Esquire  
Amanda M. Blundy, Esquire  
SEGUI LAW FIRM, PC  
864 Lowcountry Blvd., Ste. A  
Mt. Pleasant, SC 29464

John T. Chakeris, Esquire  
M. Abigail Young, Esquire  
THE CHAKERIS LAW FIRM  
231 Calhoun Street  
Charleston, SC 29401

Shaun W. Cranford, Esquire  
CRANFORD LAW  
P.O. Box 50684  
Columbia, SC 29250

Attorneys for Appellant/Respondent Greenbriar Condominium Association

**TABLE OF CONTENTS**

Table of Authorities .....iv

Statement of Issues on Appeal.....1

Statement of the Case.....2

Facts.....4

Standard of Review..... 8

Arguments.....9

I. Trial Court erred in denying Greenbriar’s Motion for Judgment Notwithstanding the Verdict.....9

    A. The Trial Court should have granted a Judgment Notwithstanding the Verdict on Greenbriar’s allegations of breach of implied warranties and gross negligence.....9

        1. The evidence clearly shows Centex breached the Implied Warranty of Habitability..... 11

        2. It is undisputed that Centex breached the Implied Warranty of Workmanlike Services.....12

        3. Centex’s conduct rises to the level of Gross Negligence.....13

    B. The Trial Court should have granted Judgment Notwithstanding the Verdict on Greenbriar’s claims under the South Carolina Unfair Trade Practices Act.....14

    C. The Trial Court should have granted Judgment Notwithstanding the Verdict on Greenbriar’s Breach of Fiduciary Duty claim.....15

II. The Trial Court erred in denying Greenbriar’s Motion for New Trial Pursuant to SCRCP 59.....17

III. The Trial Court erred in denying Greenbriar’s Motion for New Trial Absolute.....19

IV. The Trial Court erred in denying Greenbriar’s Motion for New Trial Nisi Additur.....21

Conclusion.....22

**TABLE OF AUTHORITIES**

CASES

*Adams v. Duffie*, 244 S.C. 365, 137 S.E.2d 276 (1964).....19

*Bailey v. Peacock*, 455 S.E.2d 690, 318 S.C. 13 (1995).....20

*Carson v. CSX Transp., Inc.*, 400 S.C. 221, 241, 734 S.E.2d 148, 158 (2012).....21-22

*Cole v. South Carolina Electric and Gas, Inc.*,  
355 S.C. 183, 192-3, 584 S.E.2d 405, 410-11 (Ct. App. 2003).....13-14

*Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corp.*,  
349 S.C. 251, 256, 562 S.E.2d 633, 636 (2002);.....16

*Fallon v. Rucks*, 217 S.C. 180, 60 S.E.2d 88, 92 (1950).....19

*Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 561, 658 S.E.2d 80, 89 (2008).....12

*Florence Paper Co. v. Orphan*, 298 S.C. 210, 213, 379 S.E.2d 289, 291 (1989).....14-15

*Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990).....19-20

*Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007).....21-22

*Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 344, 384 S.E.2d, 730, 736 (1989).....12

*Kirkman v. Parex, Inc.*, 369 S.C. 477, 482, 632 S.E.2d 854, 856 (2006).....11-12

*Krepps by Krepps v. Ausen*, 324 S.C. 597, 608, 479 S.E.2d 290, 296 (Ct. App. 1996).....22

*Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc.*,  
397 S.C. 348, 374, 725 S.E.2d 112, 126 (Ct. App. 2012).....16

*McEntire v. Mooregard Exterminating Services, Inc.*,  
353 S.C. 629, 633, 578 S.E.2d 746, 748 (Ct. App. 2003).....19-20

*McMillan v. Oconee Mem'l Hospital, Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006)...9, 11

*Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002).....19

*Pope v. Heritage Communities, Inc.*,  
395 S.C. 404, 414, 717 S.E.2d 765, 770 (Ct. App. 2011).....13-14

<i>Roland v. Heritage Litchfield, Inc.</i> , 372 S.C. 161, 165, 641 S.E.2d 465, 467 (2006).....	11
<i>Russell v. Pilger</i> , 113 Vt. 537, 37 A.2d 403, 414 (1944).....	20
<i>South Carolina State Highway Dep't v. Townsend</i> , 265 S.C. 253, 217 S.E.2d 778 (1975).....	19-20
<i>State v. Council</i> , 355 S.C. 1, 20, 515 S.E.2d 508, 518 (1999).....	17-18
<i>State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms.</i> , 414 S.C. 33, 56, 777 S.E.2d 176, 188 (2015).....	15
<i>Steinke v. South Carolina Dep't of Labor, Licensing &amp; Regulation</i> , 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).....	9
<i>Toole v. Toole</i> , 260 S.C. 235, 195 S.Ed.2d 389 (1973).....	21
<i>Watson v. Ford Motor Co.</i> , 398 S.C. 434, 447 699 S.E.2d 169, 176 (2010).....	17
<i>Wright v. Craft</i> , 372 S.C. 1, 29, 640 S.E.2d 486, 501 (Ct. App. 2006).....	14-15

STATUTES AND RULES

S.C. Code Ann. § 6-9-5 (2003).....	13
S.C. Code Ann. § 39-5-140 (1971).....	14
Rule 59(a), SCRCP.....	17

OTHER AUTHORITIES

Trial Tr. vol. 1.....	9-11, 13-18, 21
-----------------------	-----------------

**STATEMENT OF ISSUES ON APPEAL**

- I. Whether the Circuit Court properly denied Appellant's Post-Trial Motions for Judgment Notwithstanding the Verdict, New Trial, New Trial Absolute, or New Trial Nisi Additur.

## STATEMENT OF THE CASE

The Greenbriar Condominium Association (hereinafter “Greenbriar”) filed this construction defect action on December 9, 2014, against the contractors who constructed the condominium buildings known as Greenbriar. This matter went to trial against Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., and Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC (hereinafter collectively “Centex”) before the Honorable Clifton B. Newman in Horry County on February 5, 2018. The trial lasted five (5) days and a jury found in favor of Greenbriar on the count of negligence and awarded Greenbriar \$580,000.00. (Judgment of February 9, 2018.)

At the close of Greenbriar’s case-in-chief, it moved for a directed verdict on its causes of action and re-submitted its motion to exclude the testimony of Dr. Ronald Farina (Trial Tr. vol. 1, 451:6-25 February 8, 2018). All motions were denied (Trial Tr. vol. 1, 487:5-7 February 8, 2018). After the trial, the jury found in favor of Centex on the counts of Breach of the Implied Warranty of Habitability, Breach of the Implied Warranty of Workmanlike Services, Gross Negligence, and violation of the South Carolina Unfair Trade Practices Act (Judgment of February 9, 2018; Trial Tr. vol. 1, 860:4-861:22 February 9, 2018).

Following the verdict, Greenbriar filed post-trial motions for Judgment Notwithstanding the Verdict, New Trial, New Trial Absolute, or New Trial Nisi Additur which were argued at hearings on March 6, 2018, and denied orally from the bench. (Post-Trial Mot. Hr’g. Tr. 95:14-97:12 March 6, 2018). Centex filed their own post-trial motions, including a Motion to Reduce Judgment Based on Statute of Repose which was denied on April 2, 2018. (Order Denying Motion to Reduce Judgment Based on Statute of Repose.) Greenbriar appealed the denial of its

post-trial motions on April 4, 2018 (Greenbriar Notice of Appeal), and Centex appealed the denial of its Motion to Reduce Judgment Based on the Statute of Repose on April 27, 2018 (Centex Notice of Appeal). On May 2, 2018 the Court of Appeals consolidated the two appeals.

## FACTS

Greenbriar is a condominium community in North Myrtle Beach, South Carolina, that consists primarily of four (4) residential buildings, each containing eighteen (18) condominium units. Centex developed and constructed the Greenbriar community (Second Am. Compl. at 2-4). Greenbriar filed this construction defect action against Centex and its subcontractors as a result of an engineer's investigation that revealed significant construction defects throughout the Greenbriar community (RTM Engineering, LLC Greenbriar at Barefoot Landing Water Intrusion and Construction Deficiencies Investigation).

At the trial of this matter, Greenbriar's expert, Russell T. Mease, P.E. of RTM Engineering, LLC, testified at length that Centex violated applicable building codes, industry standards, and manufacturers' instructions in the installation of the exterior cladding at Greenbriar and that defective installation has led to water intrusion and damage to the underlying cladding and framing components of the condominium buildings (Trial Tr. vol. 1, 58:24-236:5 February 6-7, 2018). Namely, the installation of cementitious siding and brick abutted to window units without proper sealant joints, lack of appropriate fasteners, and improper installation and integration of through-wall flashings are among the major defects identified by Mr. Mease (*Id.*). Mr. Mease testified that the presence and prevalence of construction defects indicated a "gross dereliction" of Centex's duties to Greenbriar (Trial Tr. vol. 1, 235 February 7, 2018) and that he had seen nearly identical defects at six (6) additional Centex-constructed projects at Barefoot Landing resort (Trial Tr. vol. 1, 230 February 7, 2018).

Greenbriar's repair cost expert, Robert A. Gallagher of Procon & Associates, Inc., testified at trial that the cost to repair the entirety of the defects present at Greenbriar totals \$5,484,213.35 which includes complete removal of the existing cladding elements, inspection

and evaluation of the moisture damage underneath, and replacement and reinstallation of cladding (Trial Tr. vol 1, 382:10-434:25 February 8, 2018; Procon & Associates, Inc. Greenbriar at Barefoot Landing Estimate).

Michael Atwood, president of the Greenbriar Condominium Association Board of Directors, testified at trial that there had been no changes to the construction of the condominium buildings since their original construction (Trial Tr. vol. 1, 283:6-15 February 7, 2018), and that Centex initially set up the Association's reserve fund when it controlled the Condominium Association's Board of Directors (Trial Tr. vol. 1, 298:2-5 February 7, 2018).

When called as witnesses at trial, Centex's corporate witness and expert witness acknowledged the presence of construction defects at the Greenbriar project. Specifically, Centex's corporate representative, Jeremy Martin, agreed that the weather barrier on the buildings were installed improperly and that there was elevated moisture content in the walls (Trial Tr. vol. 1, 322:8-16 February 7, 2018). In fact, Mr. Martin agreed that several photographs identified moisture levels in the exterior walls at Greenbriar that Centex would consider to be "unacceptable" (Trial Tr. vol. 1, 323:3-4 February 7, 2018; Trial Tr. vol. 1, 323:14-17, February 7, 2018; Trial Tr. vol. 1, 324:16-21 February 7, 2018; Trial Tr. vol. 1, 332:4-9 February 7, 2018). Additionally, Mr. Martin testified that the brick veneer as installed could prevent the flashing components from functioning properly (Trial Tr. vol. 1, 334:21-24 February 7, 2018), that the exterior trim was installed in violation of the manufacturer's installation instructions (Trial Tr. vol. 1 336:1-3 February 7, 2018; Trial Tr. vol. 1, 342:11-13 February 7, 2018), and that the installation of the roof shingles violated the building code (Trial Tr. vol. 1, 352:12-19 February 7, 2018). Mr. Martin also agreed the defects at issue are latent (Trial Tr. vol. 1, 359:8-10 February 7, 2018).

In addition to testimony regarding the defects at Greenbriar, Centex's corporate representative, Jeremy Martin, also testified at length about the levels of supervision and oversight Centex performs at its construction sites (Trial Tr. vol. 1, 369:4-372:25 February 7, 2018; Trial Tr. vol. 1, 373:14-23 February 7, 2018; Trial Tr. vol. 1, 719:4-13 February 7, 2018). Though he agreed that Centex was responsible for constructing the condominium buildings in compliance with the building code (Trial Tr. vol. 1, 320:8-17 February 7, 2018), he indicated that he would "not worry" about building code violations that had not yet resulted in any damage to building components (Trial Tr. vol. 1, 368:9-18 February 7, 2018).

Centex's expert witness, Robert Carter, admitted that he had no evidence of the existence of any building code-compliant fasteners in the HardiePlank siding at Greenbriar (Trial Tr. vol. 1, 577:9-23 February 8, 2018) and that the installation of the siding contained additional deviations from the manufacturer's installation instructions (Trial Tr. vol. 1, 582:8-11 February 8, 2018). Mr. Carter agreed that some of the wall flashings were improperly integrated with other building materials (Trial Tr. vol. 1, 588: 11-25 February 8, 2018), and the installation of the brick veneer façade violated industry standards and the building code (Trial Tr. vol. 1, 589:4-16 February 8, 2018). He also testified that he could not identify a single piece of exterior trim that had been installed in compliance with the manufacturer's installation instructions and applicable building code (Trial Tr. vol. 1, 593:5-25 February 8, 2018). Mr. Carter agreed with Greenbriar's expert witness that the installation of the flashings at the roof to wall intersections at Greenbriar had been accomplished improperly and were causing damage to the buildings (Trial Tr. vol. 1, 503:23-504:9 February 8, 2018), and that the roofs above the secondary entrances on the buildings needed to be repaired (Trial Tr. vol. 1, 509:15-23 February 8, 2018).

Additional testimony by Mr. Carter during Centex's case in chief included his opinions that the failure of the homeowners at Greenbriar to properly maintain the exteriors of the condominium buildings had led to the majority of the water intrusion issues present at Greenbriar (Trial Tr. vol. 1, 542:3-7 February 8, 2018) and that technical building code violations did not necessarily require repair (Trial Tr. vol. 1, 497:16-500:10 February 8, 2018). Further, Centex called a statistics expert, Dr Ronald Farina, who testified that Greenbriar's engineering expert Mr. Mease's building component sample size was insufficient to reach conclusions that the deficiencies he identified were present throughout the community and warranted a complete de-clad and repair of the exteriors of all buildings (Trial Tr. vol. 1, 661:3-662:13 February 9, 2018). Dr. Farina opined that the ASTM standard used by Mr. Mease in his investigation was statistically inappropriate (Trial Tr. vol. 1, 630:3-6 February 8, 2018), but admitted he had never conducted a building envelope investigation (Trial Tr. vol. 1, 676:4 February 8, 2018) and couldn't evaluate Mr. Mease's engineering findings (Trial Tr. vol. 1, 678:20-25 February 8, 2018).

## STANDARD OF REVIEW

The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and that decision will not be disturbed absent an abuse of discretion. *S.C. State Highway Dep't v. Clarkson*, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976). In reviewing a denial of a motion for a new trial, the appellate courts must consider the testimony and reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (1996). The standard of review of the grant or denial of a motion for a new trial extends substantial deference to the trial court, and the trial court's decision will not be disturbed on appeal unless the ruling is wholly unsupported by the evidence or based on an error of law. *Limehouse v. Hulsey*, 2911 S.C. App. LEXIS 124, 29 (Ct. App. 2011) (citing *Stevens v. Allen*, 336 S.C. 439, 446, 520 S.E.2d 625, 628-29 (Ct. App. 1999).).

**I. Trial Court erred in denying Greenbriar’s Motion for Judgment Notwithstanding the Verdict.**

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Steinke v. South Carolina Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). These motions should be denied when more than one inference may be drawn from the evidence or the inferences drawn are in doubt. *McMillan v. Oconee Mem’l Hospital, Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006).

**A. The Trial Court should have granted a Judgment Notwithstanding the Verdict on Greenbriar’s allegations of breach of implied warranties and gross negligence.**

The record of the trial of this matter is replete with testimony and evidence of construction defects present at Greenbriar, and the agreement by Centex’s representative and expert witness indicates the Trial Court should have granted Judgment Notwithstanding the Verdict on Greenbriar’s allegations of breach of implied warranties and gross negligence.

At the trial of this matter, Centex’s fact witnesses and expert witnesses failed to deny and agreed that construction defects are present at the Greenbriar buildings. In fact, on several instances Jeremy Martin, representative for Centex, agreed that the photographs of Greenbriar taken by Greenbriar’s expert Mr. Mease depicted construction defects. Mr. Martin agreed that the Tyvek weather barrier was installed improperly and that there was elevated moisture content in the walls (Trial Tr. vol. 1, 322:8-16 February 7, 2018), and agreed several times that the conditions at Greenbriar included elevated moisture levels at several locations that Centex considered “unacceptable” (Trial Tr. vol. 1, 323:3-4 February 7, 2018; Trial Tr. vol. 1, 323:14-17 February 7, 2018; Trial Tr. vol. 1, 324:16-21 February 7, 2018; Trial Tr. vol. 1, 332:4-9 February

7, 2018). Mr. Martin further testified that conditions present in the brick veneer at Greenbriar could prevent the water management system from working properly (Trial Tr. vol. 1, 334:21-24 February 7, 2018) and that the exterior composite wood trim was installed in violation of the manufacturer's installation instructions (Trial Tr. vol. 1 336:1-3 February 7, 2018; Trial Tr. vol. 1, 342:11-13 February 7, 2018). In addition, Mr. Martin confirmed the installation of the asphalt roof shingles was accomplished in violation of the applicable building code (Trial Tr. vol. 1, 352:12-19 February 7, 2018).

Adding to Mr. Martin's testimony was Centex's expert witness Robert Carter, who testified that he had not seen one single fastener in the HardiePlank siding at Greenbriar that met the minimum standards as set forth by the building code (Trial Tr. vol. 1, 577:9-23 February 8, 2018). Mr. Carter also confirmed deviations from the siding manufacturer's installation instructions (Trial Tr. vol. 1, 582:8-11 February 8, 2018) and agreed that certain flashings were improperly lapped with other building materials (Trial Tr. vol. 1, 588: 11-25 February 8, 2018). He agreed that the entirety of the brick veneer was installed in violation of industry standards and building code requirements (Trial Tr. vol. 1, 589:4-16 February 8, 2018) and that every single piece of exterior composite wood trim was installed in violation of the manufacturer's installation instructions and the applicable building code (Trial Tr. vol. 1, 593:5-25 February 8, 2018). Mr. Carter also agreed with Greenbriar's expert Mr. Mease that the kickout flashings at the roof to wall intersections on the condominium buildings were improperly installed and causing damage (Trial Tr. vol. 1, 503:23-504:9 February 8, 2018) and that the gabled roofs above the secondary entrances needed to be repaired (Trial Tr. vol. 1, 509:15-23 February 8, 2018).

**1. The evidence clearly shows Centex breached the Implied Warranty of Habitability.**

The testimony regarding the conditions of the Greenbriar condominiums indicates that Centex breached the implied warranty of habitability when it failed to construct the buildings free of defects. Whether a house is habitable for purposes of the implied warranty of habitability is defined as “[t]he condition of a building in which inhabitants can live free of serious defects that might harm health and safety.” *Roland v. Heritage Litchfield, Inc.*, 372 S.C. 161, 165, 641 S.E.2d 465, 467 (2006). It is predicated on the fact that the seller receives a fair price for the sale of the home, and it is the innocent purchaser who should be protected from defective construction. *Kirkman v. Parex, Inc.*, 369 S.C. 477, 482, 632 S.E.2d 854, 856 (2006).

As the developer of the condominiums at Greenbriar (Trial Tr. vol. 1, 313:16-19, February 6, 2018), Centex impliedly warranted to the Greenbriar homeowners that the condominium units would be free of serious defects. *Roland* at 165, 641 S.E.2d at 467. As detailed by Greenbriar’s expert witness Russell Mease (Trial Tr. vol. 1, 58-235 February 6-7, 2018) and confirmed by Centex’s designee and expert witness, the condominiums at Greenbriar are filled with construction defects and resulting damage.

When evaluating a motion for judgment notwithstanding the verdict, if the evidence lends itself to more than one inference, the motion should be denied. *McMillan* at 564, 626 S.E.2d at 886. In addition to hours of testimony from Greenbriar’s own expert witness detailing the vast amount of defects and damages, the record is replete with admissions and agreements on the part of Centex and its expert witnesses that there are significant construction defects present at Greenbriar and that those defects have caused and are causing damage to the buildings. Even viewed in the light most favorable to Centex, the presence and effects of these defects cannot be

denied and Greenbriar should be protected from that defective construction. *Kirkman* at 482, 632 S.E.d at 856.

The only inference that could possibly be drawn from the evidence of the defects and damage present at Greenbriar is that Centex breached the implied warranty of habitability. The Trial Court erred in denying Greenbriar's Motion for Judgment Notwithstanding the Verdict on the claim of breach of implied warranty of habitability.

**2. It is undisputed that Centex breached the Implied Warranty of Workmanlike Services.**

In addition to the breach of the implied warranty of habitability, the presence of construction defects at Greenbriar indicates Centex also breached the implied warranty of workmanlike services. Those who participate in the construction of a residential structure impliedly warrant that their work is performed in a workmanlike manner and with suitable materials. *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 344, 384 S.E.2d, 730, 736 (1989). In constructing a home, a builder warrants that the home is fit for its intended use as a dwelling, that the home was constructed in a workmanlike manner, and that the home is free of latent defects. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 561, 658 S.E.2d 80, 89 (2008).

Similar to Greenbriar's cause of action for breach of the implied warranty of habitability, the vast amount of evidence and testimony presented at the trial of this matter demonstrates Centex's clear breach of the implied warranty of workmanlike services. In constructing the condominium units at Greenbriar, Centex impliedly warranted that the work done would be in a workmanlike manner (*Kennedy* at 344, 384 S.E.2d at 736) and free of latent defects (*Fields* at 561, 658 S.E.2d at 89). In addition to agreeing that several defects and significant resulting damage are present at Greenbriar, Centex's representative Mr. Martin also testified that those

defects are latent (Trial Tr. vol. 1, 359:8-10 February 7, 2018). The prevalence of these latent defects in the condominium buildings constructed by Centex and the obvious failure to construct the condominium buildings in a workmanlike manner are clear evidence that Centex breached the implied warranty of workmanlike services. No other inference may be drawn from the evidence and testimony presented on this subject, and the Trial Court erred in denying Greenbriar's Motion for Judgment Notwithstanding the Verdict on the claim of breach of implied warranty of workmanlike services.

### **3. Centex's conduct rises to the level of Gross Negligence.**

Centex's violation of the building code, industry standards, and manufacturer's installation requirements together with its multiple layers of on-site supervision during construction can only mean that Centex was grossly negligent. South Carolina statutory law requires compliance with and enforcement of building codes. S.C. Code Ann. § 6-9-5 (2003). Evidence of a violation of a statute or regulation may constitute evidence of gross negligence. *Cole v. South Carolina Electric and Gas, Inc.*, 355 S.C. 183, 192-3, 584 S.E.2d 405, 410-11 (Ct. App. 2003). Gross negligence is the intentional conscious failure to do something which is incumbent upon one to do. *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 414, 717 S.E.2d 765, 770 (Ct. App. 2011).

In addition to hours of testimony detailing the type and prevalence of building code, industry standard, and manufacturer's installation instruction violations present at Greenbriar, Greenbriar's expert Russell Mease also testified that those defects evidenced a "gross dereliction of Centex's responsibilities and duties to the HOA," (Trial Tr. vol. 1, 235 February 7, 2018) and that he had seen the same defects at six (6) other projects constructed by Centex in Barefoot Landing resort (Trial Tr. vol. 1, 230 February 7, 2018). Centex's undisputed failure to obey the

statutory requirements to comply with local building codes is evidence that its conduct constitutes gross negligence. *Cole* at 192-3. Further, the testimony from Centex's representative regarding the various levels of supervision and monitoring at Centex construction projects (Trial Tr. vol. 1, 369:4-372:25 February 7, 2018; Trial Tr. vol. 1, 373:14-23 February 7, 2018; Trial Tr. vol. 1, 719:4-13 February 7, 2018), that he agreed that Centex had to conform to the building code (Trial Tr. vol. 1, 320:8-17, February 7, 2018), and that he would "not worr[y]" about a building code violation that had not yet caused any damage (Trial Tr. vol. 1, 368:9-18 February 7, 2018) gives rise to the inference that the failure to ensure the condominium components' compliance with applicable building codes can only have been intentional and conscious, meaning Centex's conduct was grossly negligent. *Pope* at 414, 717 S.E.2d at 770. The Trial Court erred in denying Greenbriar's Motion for Judgment Notwithstanding the Verdict on the claim of gross negligence.

**B. The Trial Court should have granted Judgment Notwithstanding the Verdict on Greenbriar's claims under the South Carolina Unfair Trade Practices Act.**

The testimony that Centex's negligent actions are capable of repetition and have in fact been repeated should have led the Trial Court to grant Judgment Notwithstanding the Verdict on the claims under the South Carolina Unfair Trade Practices Act. Any person who suffers any loss as a result of unfair trade practices may bring an action under the South Carolina Unfair Trade Practices Act. S.C. Code Ann. § 39-5-140 (1971). In the context of the Unfair Trade Practices Act, an adverse impact on public interest may be based on a private injury. *Florence Paper Co. v. Orphan*, 298 S.C. 210, 213, 379 S.E.2d 289, 291 (1989). A deceptive act that has the potential for repetition constitutes an impact on public interest. *Wright v. Craft*, 372 S.C. 1, 29, 640 S.E.2d 486, 501 (Ct. App. 2006). The potential for repetition may be shown by demonstrating that the same kind of action has occurred in the past, or that the company's procedures give rise to a

potential for repetition of the deceptive act. *Id.* at 31, 640 S.E.2d 486 at 502. A deceptive trade practice has been defined as one which has the tendency to deceive. *State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharms.*, 414 S.C. 33, 56, 777 S.E.2d 176, 188 (2015).

Centex constructed and sold condominium units containing latent defects at the Greenbriar project (Trial Tr. vol. 1,359:8-10 February 7, 2018). The latent nature of the defects at Greenbriar indicates only Centex could have possibly known they were present, as Centex (rather than the homeowners purchasing units at Greenbriar) was the party present during construction. The construction and sale of condominiums containing latent defects is a trade practice with the tendency to deceive, making it a deceptive trade practice. *State el rel. Wilson* at 56, 777 S.E.2d at 188. Because Centex has repeated this deceptive act, as evidenced by testimony that Greenbriar's expert has investigated six (6) other Centex projects containing similar defects (Trial Tr. vol. 1, 230 February 6, 2018), its conduct affects the public interest. *Wright* at 29, 640 S.E.2d at 501. This adverse effect on the public interest is evidence that Centex has violated the South Carolina Unfair Trade Practices Act. *Florence Paper Co.* at 213, 379 S.E.2d at 291. As Centex has not disputed the existence or latent nature of the construction defects at Greenbriar, no other inference may be reasonably drawn. The Trial Court erred in denying Greenbriar's Motion for Judgment Notwithstanding the Verdict on the claim of breach of the South Carolina Unfair Trade Practices Act.

**C. The Trial Court should have granted Judgment Notwithstanding the Verdict on Greenbriar's Breach of Fiduciary Duty claim.**

The undisputed testimony that Centex failed to deliver the common elements of the Greenbriar condominiums to the Condominium Association in good repair is clear evidence that Centex breached the fiduciary duty it owed to the Greenbriar Condominium Association. The developer of a planned development owes a fiduciary duty to the property association to ensure

that the common areas are in good repair at the time they are conveyed to the property owners' association, or to provide the association with funds sufficient to effectuate any needed repairs to those areas. *Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corp.*, 349 S.C. 251, 256, 562 S.E.2d 633, 636 (2002); *Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc.*, 397 S.C. 348, 374, 725 S.E.2d 112, 126 (Ct. App. 2012).

Clearly, Centex failed to convey the common areas of the Greenbriar condominium community to the property owners' association in "good repair" as evidenced by the plethora of evidence regarding pervasive construction defects and resulting damage (*see supra* Section I.A.). Michael Atwood, president of the Greenbriar Condominium Owners Association Board of Directors since approximately 2005, testified that there have been no changes in the construction of the buildings at Greenbriar since initial construction by Centex (Trial Tr. vol. 1, 283:6-15 February 7, 2018), meaning the owners at Greenbriar have not put themselves in their current position. Mr. Atwood further testified that it was Centex who initially set up the Condominium Association's reserve fund when it controlled the Board of Directors before transferring control to the homeowners (Trial Tr. vol. 1, 298:2-5 February 7, 2018). Since it is obvious that Centex did not leave the common areas in good repair when it transferred control of the Board of Directors to the owners at Greenbriar, it had a duty to fund the Association's reserves to make repairs to the defective common areas. *Concerned Dunes West Residents, Inc.* at 256, 562 S.E.2d at 636. Centex's failure to adequately fund the reserves is a breach of the fiduciary duty it owed to the Greenbriar homeowners. *Id.* Since the defects and lack of funding in the reserves remain undisputed by Centex, no other inference can be reasonably drawn. The Trial Court erred in denying Greenbriar's Motion for Judgment Notwithstanding the Verdict on the claim of breach of fiduciary duty.

## **II. The Trial Court erred in denying Greenbriar's Motion for New Trial Pursuant to SCRPC 59.**

The Trial Court should have refused to qualify Centex's statistics witness as an expert during the trial of this matter and should have granted a new trial based on the lack of reliability of the witness's testimony. South Carolina Rule of Civil Procedure 59 permits a Court to grant a new trial "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State." Rule 59(a), SCRPC. Appellate courts in this state have previously held that the admissibility of expert testimony is within the discretion of the Trial Court, and a new trial will be granted upon a showing that the Trial Court abused its discretion. *Watson v. Ford Motor Co.*, 398 S.C. 434, 447 699 S.E.2d 169, 176 (2010). The South Carolina Rules of Evidence require that scientific expert testimony be able to assist the trier of fact, be proffered by a qualified expert witness, and be reliable. *Id.* at 446, 699 S.E.2d at 176. The reliability of a scientific expert opinion depends on four factors: the publication of peer review of the technique, prior application of the method to the type of evidence involved in the case, quality control procedures used to ensure reliability, and the consistency of the method with recognized scientific laws and procedures. *State v. Council*, 355 S.C. 1, 20, 515 S.E.2d 508, 518 (1999).

Greenbriar's expert Russell Mease consistently testified that the only appropriate testing and sampling standards by which a forensic engineer should evaluate a structure for water intrusion are contained in ASTM E2128-12, *Standard Guide for Evaluating Water Leakage of Building Components* (Trial Tr. vol. 1, 100 February 6, 2018). Additionally, Centex's expert witness Robert Carter agreed he was unaware of any other standard for making forensic evaluations of building components for water leakage (Trial Tr. vol. 1, 605:4-9 February 7, 2018). At trial, Centex called a statistical consultant, Dr. Ronald Farina, to provide expert testimony regarding purported flaws in Mr. Mease's testing and sampling procedures (Trial Tr.

vol. 1, 625 February 8, 2018). Dr. Farina claimed ASTM E-2128 could not be used to make estimates, and as such did not use it in reaching his conclusions regarding Mr. Mease's sample size (Trial Tr. vol. 1, 630:3-6 February 8, 2018). Instead, Dr. Farina testified that he utilized ASTM E122, *The Standard Practice for Calculating Sample Size to Estimate with Specified Tolerable Error the Average for a Characteristic of a Reliable Process*, but admitted that E122 "doesn't mention anywhere about how to evaluate water leakage of building walls" and that E122 doesn't even "mention 'building walls' or 'leakage' anywhere." (Trial Tr. vol. 1, 670:9-25 February 8, 2018; Trial Tr. vol. 1, 671:1-6 February 8, 2018). Dr. Farina further testified that he had never conducted a building envelope investigation (Trial Tr. vol. 1, 676:4 February 8, 2018), had never been to the Greenbriar project (Trial Tr. vol. 1, 676:5-8 February 8, 2018), and "can't evaluate the engineering results of Mr. Mease" or "whether or not it was improper" (Trial Tr. vol. 1, 678:20-25 February 8, 2018).

Dr. Farina's opinions on statistical analysis fail to meet the *Council* factors as they do not apply to the type of evidence involved in a construction defect case and are inconsistent with testing procedures specifically prescribed for a water intrusion construction defect analysis. *Council* at 20, 515 S.E.2d at 518. Mr. Mease identified ASTM E-2128 as the only acceptable method to evaluate the conditions of the buildings at Greenbriar. Dr. Farina's statistical methods do not comply with ASTM E-2128 and therefore do not apply to construction defect analyses. In fact, Dr. Farina's methods are in direct opposition to the ASTM E-2128 standards, meaning they are inconsistent with recognized scientific laws and procedures surrounding construction defect evaluations and unreliable. *Id.*

Based on the abundance of testimony from multiple qualified expert witnesses regarding the appropriate testing procedures, the Trial Court abused its discretion in qualifying Dr. Farina

as an expert witness and permitting him to testify regarding his statistical analysis. Greenbriar was unfairly prejudiced by the admission of Dr. Farina's testimony and should be granted a new trial based on South Carolina Rule of Civil Procedure 59.

### **III. The Trial Court erred in denying Greenbriar's Motion for New Trial Absolute.**

Based on the evidence presented to the jury, Greenbriar asserts that verdict in favor of Centex on gross negligence, breach of implied warranties, violation of the Unfair Trade Practices Act, and breach of fiduciary duty is unjustified and, in the alternative to a granting a new trial, the Trial Court should have granted a New Trial Absolute.

"It is well settled in this state that the trial judge has the authority and responsibility to grant a new trial when, in his judgment, the verdict of the jury is contrary to the fair preponderance of the evidence..." *Adams v. Duffie*, 244 S.C. 365, 137 S.E.2d 276 (1964). South Carolina's Thirteenth Juror Doctrine "entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" *Norton v. Norfolk Southern Ry. Co.*, 350 S.C. 473, 478, 567 S.E.2d 851,854 (2002) (quoting *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (citing *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975))). It is in the trial judge's discretion to grant a new trial absolute in a law case "upon his disapproval of the verdict on factual grounds." *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 258, 217 S.E.2d 778, 781 (1975) (internal citations omitted). Such "discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them..." *Fallon v. Rucks*, 217 S.C. 180, 60 S.E.2d 88, 92 (1950).

"The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been

termed granting a new trial upon the facts." *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990) (citing *S.C. Highway Dep't. v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). As the South Carolina Court of Appeals made clear in 2003, "the question of whether the evidence is legally sufficient to support a verdict - a question of law - is totally different from the question of whether a fair preponderance of the evidence supports a verdict - a question involving the exercise of discretion...." *McEntire v. Mooregard Exterminating Services, Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (Ct. App. 2003) (citing *Russell v. Pilger*, 113 Vt. 537, 37 A.2d 403, 414 (1944)). The Court need not provide reasons nor must it make specific factual findings for setting aside the verdict. See *Bailey v. Peacock*, 455 S.E.2d 690, 318 S.C. 13 (1995). Plaintiff "does not assert a claim to have the verdict set aside as a matter of law, or of right, but ask the court, as a matter of discretion, to grant [their] motion." *Russell v. Pilger*, 113 Vt. 537, 37 A.2d 403, 414 (1944). "It may well be that a party's evidence makes a case for the jury while it is so outweighed by the countervailing evidence that, in the exercise of its discretion, the trial court should not hesitate to set aside a verdict in his favor." *McEntire*, 578 S.E.2d at 748 (citing *Russell v. Pilger*, 37 A.2d at 414).

For the reasons set forth above regarding the Trial Court's denial of Greenbriar's Motion for New Trial pursuant to Rule 59, as well as the clear evidence showing repeated instances of gross negligence, breach of implied warranties, violation of the South Carolina Unfair Trade Practices Act, and breach of fiduciary duty as detailed above, the verdict in this case is contrary to a fair preponderance of the evidence. A New Trial is appropriate in light of the overwhelming amount of evidence to support findings of gross negligence, breach of implied warranties, violation of the South Carolina Unfair Trade Practices Act, and breach of fiduciary duty in this

matter as to the construction of the Greenbriar project. The Trial Court erred in denying Greenbriar's Motion for New Trial Absolute based on the Thirteenth Juror Doctrine.

**IV. The Trial Court erred in denying Greenbriar's Motion for New Trial Nisi Additur.**

The plethora of testimony regarding the prevalence of and damage caused by the construction defects present at Greenbriar and cost to correct them by Greenbriar's repair estimator should have led the trial court to grant a new trial nisi additur when the jury's verdict was significantly less than the cost to repair. "The trial court may grant a new trial nisi additur . . . when it finds the verdict is merely inadequate." *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). The grant of a new trial nisi additur is within the discretion of the trial court and requires the trial judge to consider the adequacy of the verdict given the evidence presented. *Id.* A jury's failure to award damages consistent with its liability allocation may be grounds for a new trial nisi additur. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 241, 734 S.E.2d 148, 158 (2012). The test to determine whether to set aside an excessive or inadequate verdict is whether the verdict is "so shocking as to manifestly show the jury was moved by considerations not founded on the evidence and/or the instructions of the trial judge." *Krepps by Krepps v. Ausen*, 324 S.C. 597, 608, 479 S.E.2d 290, 296 (Ct. App. 1996) (citing *Toole v. Toole*, 260 S.C. 235, 195 S.Ed.2d 389 (1973)).

As previously stated, Greenbriar's forensic expert testified at length about the construction defects at Greenbriar (see Trial Tr. vol. 1, 58-235 February 6-7, 2018), and these defects remain undisputed by both Centex's representative and expert witness (*see supra* Section I.A.). Greenbriar's repair estimator Robert Gallagher testified that the cost to repair the defects and resulting damage at Greenbriar totals \$5,484,213.35 (Trial Tr. vol. 1, 434:6-14 February 7,

2018). Following the conclusion of evidence and deliberations, the jury found that Centex had been negligent and awarded Greenbriar \$580,000.00 (Judgment of February 9, 2018).

The jury's damages award does not comport with its negligence finding. The jury found that Centex breached a duty it owed to Greenbriar and proximately caused damage, and that damage simply cannot be remedied with the jury's award of a fraction of Greenbriar's repair estimate. The award is not only simply inadequate, it is grossly inadequate to compensate Greenbriar for the damage it has suffered as a result of Centex's negligence, and the Trial Court should have granted a new trial nisi additur. *Howard* at 154, 654 S.E.2d at 883. Had the award been clearly founded upon the evidence, the jury would have awarded Greenbriar the full amount of the repair estimate, and its failure to do so warrants setting aside the judgment. *Krepps* at 608, 479 S.E.2d at 296. Further, since the jury found that Centex negligently constructed the buildings at Greenbriar, it should have awarded Greenbriar the entirety of its estimate, and the failure to do so warrants a new trial nisi additur. *Carson v. CSX Transp., Inc.*, at 241, 734 S.E.2d at 158.

### CONCLUSION

In this matter, the clear preponderance of the evidence regarding the extent and damage caused by the construction defects at Greenbriar supports a finding for Greenbriar on all counts, and the Trial Court erred in failing to grant Greenbriar a judgment notwithstanding the verdict, new trial, new trial absolute, or new trial nisi additur.

August 17, 2018



Phillip W. Segui, Jr.  
Amanda M. Blundy  
SEGUI LAW FIRM, PC  
864 Lowcountry Blvd., Suite A  
Mt. Pleasant, SC 29464  
(843) 884-1865  
Email: [psegui@seguilawfirm.com](mailto:psegui@seguilawfirm.com)  
[ablundy@seguilawfirm.com](mailto:ablundy@seguilawfirm.com)

- AND -

John T. Chakeris  
M. Abigail Young  
THE CHAKERIS LAW FIRM  
231 Calhoun Street  
Charleston, SC 29401  
(843) 853-5678  
Email: [john@chakerislawfirm.com](mailto:john@chakerislawfirm.com)  
[abby@chakerislawfirm.com](mailto:abby@chakerislawfirm.com)

- AND -

Shaun W. Cranford  
CRANFORD LAW  
P.O. Box 50684  
Columbia, SC 29250  
(803) 779-6444  
Email: [shaun@cranfordlawfirm.com](mailto:shaun@cranfordlawfirm.com)

Attorneys for Appellant/Respondent Greenbriar  
Condominium Association

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

---

Case No. 2014-CP-26-08136

---

**RECEIVED**  
AUG 20 2018  
SC Court of Appeals

The Greenbriar Condominium Association, Appellant/Respondent,

v.

Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC, Right Way Construction, Inc., Right Way Group, Inc., RWG, Inc., RWGR, Inc., Craftmaster Manufacturing, Inc. d/b/a CMI, Martin Masonry, Inc., Gary Hunnell d/b/a Grand Strand Roofing, Stock Building Supply, LLC f/k/a Stock Building Supply, Inc., Stock Building Supply, LLC, f/k/a Carolina Builders Corporations, Morningstar Consultants, Inc., LPM Enterprises, Inc. f/k/a Loss Prevention Management, Inc. a/k/a Loss Prevention Managed Home Inspections, Inc., Jeld-Wen, Inc., successor to and/or merger with Craftmaster Manufacturing, Inc. d/b/a CMI, Elite Exteriors, LLC, and South Strand Landscaping, Respondents,

v.

Centex Homes, a Nevada General Partnership, Respondent/Appellant,

v.

Michael Dawson d/b/a Michael Dawson Construction, Inc., General Landscape Maintenance, LLC, Universal Forest Products Shoffner, LLC, Universal Forest Products, Inc., Universal Forest Products Eastern Division, Inc. n/k/a UFP Eastern Division, Inc., Weather Protection Systems, Inc., Grand Strand Roofing & Siding, Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc., Tri-City Insulation and Building Products of Myrtle Beach, Inc., American Residential Services, LLC, Thomas Heating & Cooling, Inc., JS Elite Flooring Company a/k/a JS Elite Tile Company, John Doe, Vance Johnson Plumbing Co., Inc., RJM Plumbing, Inc., Rice Planters Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. successor by merger to Rice Planter Carpets, Inc., The Martin Architectural Group, P.C., The Harman Group, Inc., f/k/a Cagley Harman & Association, Inc., Sunland Fire Protection, Inc., Cohen's Drywall Company, Inc., Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR,

Inc., Builders FirstSource-Southeast Group, LLC, and Georgetown Construction Services, Inc., Respondents,

Of which Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC are the Respondent/Appellants.

---

**PROOF OF SERVICE**

---

I certify that I have served the Initial Brief of Appellant/Respondent Greenbriar Condominium Association on all parties by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2018 addressed to their attorneys of record, listed as follows:

Steven A. Meckler, Esquire  
Christian H. Staples, Esquire  
Shumaker, Loop & Kendrick, LLP  
101 S. Tryon Street, Suite 2200  
Charlotte, NC 28280  
(704) 945-2187

Attorney for Craftmaster Manufacturing, Inc. d/b/a CMI and Jeld-Wen, Inc., successor to and/or merger with Craftmaster Manufacturing, Inc. d/b/a CMI

Theodore Parker, III, Esquire  
Jacqueline K. Dixon Phillips, Esquire  
Carlton Bowers, Esquire  
Parker Nelson & Associates, Chtd.  
211 King St., Suite 202  
Charleston, SC 29401  
(843) 727-2500

Attorneys for Stock Building Supply, LLC f/k/a Carolina Builders Corporation and Stock Building Supply, LLC f/k/a Stock Building Supply, Inc.

Thomas C. Hildebrand, Jr., Esquire  
F. Elliotte Quinn, IV, Esquire  
Will G. DesChamps, IV, Esquire  
Parker Poe Adams & Bernstein LLP  
200 Meeting St., Suite 301  
Charleston, SC 29401  
(843) 727-2650

Attorneys for Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc. and Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC

E. Glenn Elliott, Esquire  
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.  
P. O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787  
Attorney for Gary Hunnell d/b/a Grand Strand Roofing and Grand Strand Roofing and Siding

Theodore L. Manos, Esquire  
Michael Wright, Esquire  
Robertson Hollingsworth Manos & Rahn  
550 King Street, Suite 300  
Charleston, SC 29403  
(843) 723-6470  
Attorneys for Right Way Construction, Inc., Right Way Group, Inc., RWG, Inc., and RWGR, Inc.

Sarah Elizabeth Wetmore, Esquire  
Madison Suttie, Esquire  
Carlock Copeland & Stair  
40 Calhoun St, Suite 400  
Charleston, SC 29401  
(843) 727-0307  
Attorneys for The Harman Group, Inc. f/k/a Cagley Harman & Association, Inc. and Weather Protection Systems, Inc.

Shanna Stephens, Esquire  
W. Coleman Lawrimore, Esquire  
Anderson Reynolds & Stephens LLC  
P.O. Box 87  
Charleston, SC 29402  
(843) 723-0185  
Attorneys for Carolina Drywall and Interiors a/k/a Carolina Drywall Contractors, Inc.

H. Mark Hamlet, Esquire  
Nicole Slaughter, Esquire  
Hamlet & Associates, PLLC  
5215 Junction Park Circle, Suite 202  
Wilmington, NC 28412  
(910) 777-5995  
Attorneys for Vance Johnson Plumbing Co., Inc.

G. Troy Thames, Esquire  
Ian Bowers, Esquire  
Wilson Jones Carter & Baxley, PA.  
421 Wando Park Blvd., Suite 100

Mt. Pleasant, SC 29464  
(843) 284-0694  
Attorneys for Vance Johnson Plumbing Co., Inc.

David Black, Esquire  
Howell, Gibson & Hughes, P.A.  
P.O. Box 40  
Beaufort, SC 29901  
(843) 522-2414  
Attorney for Builders FirstSource-Southeast Group, LLC

Christina A. Bisset, Esquire  
McAngus Goudelock & Courie, L.L.C.  
P.O. Box 77368  
Myrtle Beach, SC 29578  
(843) 848-6000  
Attorney for Sunland Fire Protection Inc.

Reed Teague, Esquire  
John Rogers, Esquire  
The Ward Law Firm, P.A.  
233 South Pine Street  
Spartanburg, SC 29302  
(864) 573-8500  
Attorney for JS Elite Flooring Company a/k/a JS Elite Tile Company

James M. Saleeby, Jr., Esquire  
Preston B. Dawkins, Jr., Esquire  
Aiken, Bridges, Elliott, Tyler & Saleeby, P.A.  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787  
Attorneys for Morningstar Consultants, Inc.

Drew Butler, Esquire  
John Horton Guerry, Esquire  
Richardson Plowden & Robinson, P.A.  
40 Calhoun Street, Suite 220  
Charleston, SC 29401  
(843) 805-6550  
Attorney for All Heating and Cooling Service Corp.

Emily R. Gifford, Esquire  
Richardson Plowden  
P.O. Box 7788  
Columbia, SC 29202

(803) 771-4400  
egifford@richardsonplowden.com  
Attorney for The Martin Architectural Group, P.C.

Joseph S. McCue, Esquire  
Collins & Lacy, P.C.  
P.O. Box 12487  
Columbia, SC 29211  
(803) 256-2660  
Attorney for Tri-City Insulation and Building Products of Myrtle Beach, Inc.

David R. Sligh, Esquire  
Turner Padgett Graham & Laney, P.A.  
P.O. Box 2116  
Myrtle Beach, SC 29578  
(843) 213-5500  
Attorney for RJM Plumbing, Inc. and Third Party Thomas, Inc., Improperly Designated as  
Thomas Heating & Cooling, Inc.

K. Michael Barfield, Esquire  
D. Summers Clarke, Esquire  
Danyelle Young, Esquire  
Barnwell Whaley Patterson & Helms LLC  
Post Office Drawer H  
Charleston, SC 29402  
(843) 577-7700  
Attorneys for Georgetown Construction Services, Inc.

Carrie A. Fox, Esquire  
Aiken Bridges  
P.O. Drawer 1931  
Florence, SC 29503  
(843) 669-8787  
Attorney for General Landscape Maintenance

Nate Fata, Esquire  
Fata Law  
P.O. Box 16620  
Surfside Beach, SC 29587  
(843) 238-2676  
Attorney for General Landscape Maintenance

Jeff Ross, Esquire  
Philip P. Cristaldi, Esquire  
Ross, Cangelosi & Associates  
1100 Queensborough Boulevard, Suite 201

Mt. Pleasant, SC 29464  
(843) 329-4040  
Attorneys for Martin Masonry, Inc.

Eugene P. Corrigan III, Esquire  
Law Office of Eugene P. Corrigan, III, LLC  
P.O. Box 1702  
Charleston, SC 29402  
(843) 327-7187  
Attorney for Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. successor  
by merger to Rice Planter Carpets, Inc.

Bonum S. Wilson, III, Esquire  
Brandon T. Reeser, Esquire  
Wilson & Heyward, LLC  
P.O. Box 13177  
Charleston, SC 29422  
(843) 762-4567  
Attorneys for Elite Exteriors, LLC

O. Carlysle Edwards, Esquire  
McAngus Goudelock & Courie, LLC  
P.O. Box 650007  
Mt. Pleasant, SC 29465  
(843) 576-2900  
Attorney for Cohen's Drywall Company, Inc.


Sarah E. Wetmore, Esquire  
Clinton Magill, Esquire  
Carlock, Copeland & Stair, LLP  
40 Calhoun Street, Suite 400  
Charleston, SC 29401  
(843) 727-0307  
Attorneys for Michael Dawson d/b/a Michael Dawson Construction, Inc.

James A. Bruorton, IV, Esquire  
Timothy J.W. Muller, Esq.  
Rosen, Rosen & Hagood, LLC  
P.O. Box 893  
Charleston SC 29402  
(843) 577-6726  
Attorney for Universal Forest Products, Shoffner, LLC, Universal Forest Products, Inc., and  
Universal Forest Products Eastern Division, Inc. n/k/a UFP Eastern Division, Inc.

Michael D. Freeman, Esquire  
Griffith, Sharp & Liipfert, LLC

P.O. Drawer 570  
Beaufort, SC 29901  
(843) 521-8801  
Attorney for American Residential Services, LLC

John K. Toay  
215 Sugar Loaf Lane  
Murrells Inlet, SC 29576  
Pro Se Defendant LPM Enterprises, Inc. f/k/a Loss Prevention Management, Inc. a/k/a Loss  
Prevention Managed Home Inspections, Inc.



Phillip W. Segui, Jr.  
SEGUI LAW FIRM, PC  
864 Lowcountry Blvd., Suite A  
Mount Pleasant, SC 29464  
(843) 884-1865  
Email: [psegui@seguilawfirm.com](mailto:psegui@seguilawfirm.com)

August 17, 2018  
Charleston, South Carolina

Insert shipping document here

RT B20  
104  
6  
15:00  
08:20  
E

ORIGIN ID: RBWA (843) 884-1865  
PHILLIP W. SEGUI, JR.  
884 LOWCOUNTRY BLVD.  
SUITE A  
MT. PLEASANT, SC 29464  
UNITED STATES US

SHIP DATE: 17AUG18  
ACTWGT: 1.00 LB  
CAD: 1671832/INET4040

BILL SENDER

TO HONORABLE JENNY ABBOTT KITCHINGS  
SOUTH CAROLINA COURT OF APPEALS  
CLERK OF COURT, SC COURT OF APPEALS  
1220 SENATE STREET  
COLUMBIA SC 29201

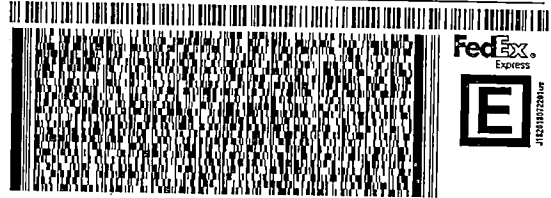
(803) 734-1890  
INV. NO.:

REF: GREENBRIAR

DEPT:

Extremely Urgent

55211339DC45

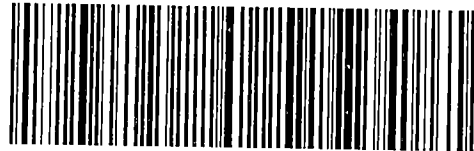


MON - 20 AUG 3:00P  
STANDARD OVERNIGHT

TRK# 7729 9958 8125  
0201

XH USCA

29201  
SC-US CAE

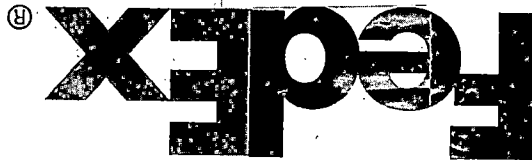


RECEIVED

AUG 20 2018

SC Court of Appeals

Express



**SEGUI LAW FIRM PC**

864 Lowcountry Boulevard  
Suite A  
Mount Pleasant, SC 29464

T 843-884-1865

Phillip W. Segui, Jr.  
psegui@seguilawfirm.com

August 17, 2018

**Via Federal Express**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

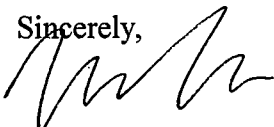
RE: The Greenbriar Condominium Association v. Centex Homes, a Nevada General Partnership, et al.  
Civil Action No.: 2014-CP-26-08136  
Appellate Case No.: 2018-000597

Dear Ms. Kitchings:

Please find enclosed the original and one (1) copy each of the Initial Brief of Appellant/Respondent Greenbriar Condominium Association and Appellant/Respondent Greenbriar Condominium Association's Designation of Matter to be Included in the Record on Appeal. If you would, please file the originals with the Court and return a file-stamped copy thereof to my office in the enclosed self-addressed, stamped envelope.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

  
For Phillip W. Segui, Jr.

PWS/ay

Enclosures

cc: John T. Chakeris, Esquire (w/enclosure) - via electronic mail only  
Shaun W. Cranford, Esquire (w/enclosure) - via electronic mail only  
All counsel of record (w/enclosure) - via U.S. Mail

**RECEIVED**

AUG 20 2018

SC Court of Appeals