THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, Presiding Judge Seventh Judicial Circuit

Appellate Case No.: 2016-001459
On Certiorari to the Court of Appeals of South Carolina
Unpublished Opinion No. 2016-UP-168—Filed April 6, 2016

Nationwide Mutual Insurance Company,
and Gilliam Construction Company, Inc.....Respondents,

v.

Eagle Windows & Doors,Inc.....Petitioner

BRIEF OF RESPONDENTS

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QUESTIONS PRESENTED BY PETITIONER

I. Did the Court of Appeals err in holding that Eagle was a mere continuation of its predecessor corporation because there was no commonality of ownership?

II. Did the Court of Appeals err in holding that Eagle abandoned the issue of whether Nationwide failed to prove a manufacturing defect or design

STATEMENT OF THE CASE

This is an appeal of a judgment on a cause of action for contribution. The case was tried non-jury. The original litigation that preceded the present case was commenced by Renaul Abel and Karen Abel against Gilliam Construction Company, Inc., ("Gilliam") alleging defective construction and/or materials in a home built for them by Gilliam in Landrum, South Carolina at the Cliffs of Glassy in 1999. That case was transferred to arbitration and the material suppliers and subcontractors for the home were invited to participate in the arbitration, which they each declined.

The arbitration claim was settled in 2006 prior to an arbitration trial. The settlement, which exceeded $245,000, was paid by Gilliam and its insurer, Nationwide Mutual Insurance Company ("Nationwide"). Thereafter, Gilliam and Nationwide ("Respondents") brought a contribution action against the various subcontractors and materials providers to recover settlement amounts paid to the Abels, which included monetary payments, repairs and funds expended, and a waiver of amounts due to Gilliam on the 1999 contract. As to Eagle Window & Door, Inc. (hereinafter "Eagle", "Eagle Window & Door" or "Petitioner") Respondents alleged that it manufactured and sold defective windows which allowed water intrusion into the Abels' home. The contribution Complaint was filed on January 26, 2007.

Petitioner's defense asserted that the manufacturer of the windows, Eagle & Taylor Company, d/b/a Eagle Window & Door, Inc., no longer existed and was immune to suit due to a 2002 bankruptcy order selling the assets of Eagle & Taylor Company, d/b/a Eagle Window & Door, Inc. to EWD Acquisition Co., now doing business as Eagle Window & Door, Inc.

On December 9, 2013, a bench trial was conducted in Spartanburg County before the Honorable J. Mark Hayes. After hearing the evidence submitted at trial, the lower court, by

order dated April 29, 2014, found in favor of the Respondents and awarded a judgment that included pre-judgment interest. (Appendix p. 4) On May 27, 2014, Petitioner filed a Notice of Appeal. The Appellate Court found in favor of Respondents.

On June 16, 2014, Petitioner filed a Motion for Certification to the South Carolina Supreme Court. By order of the Supreme Court of South Carolina dated August 6, 2014, Petitioner's Motion for Certification was denied. The South Carolina Court of Appeals heard oral arguments on November 12, 2015. The Court of Appeals by unpublished opinion filed April 6, 2016 affirmed the decision of the lower court as modified. The Court of Appeals denied Eagle's Petition for Rehearing. This Petition for Writ of Certiorari followed.

The following facts and documents were stipulated to at trial:

1. Affidavit of Stephen Perry (Appendix p. 410);
2. Eagle's Answers to Respondents' Interrogatories date 10/28/2011 (Appendix p. 428);
3. Corrected affidavit of Andrew Wickham (Appendix p. 424);
4. Eagle Window and Door websites dated 09/06/2007, 04/17/2007, and 09/06/2007 (Appendix pp. 440-446); and
5. Eagle Window's responses to Respondents' Request to Admit dated October 18, 2011 (Appendix pp. 405-409).

Those documents include the following information:

A. Eagle Website

The business presently known as Eagle Windows was founded as Cardaco and Company in 1886. It progressed "through this vast series of name changes" and "eventually became Caradco in 1958." At the time "it remained one of the largest Window and Door Manufactures in the

country . . . ." Thereafter, Eagle was sold to Masco Corporation in 1987 and then to American Architectural Products Corporation in 1996. In 2000, Eagle moved to a brand new 39,000 square foot manufacturing facility and continued manufacturing aluminum clad wood windows and doors. In 2001, American Architectural Products Corporation filed for bankruptcy and sold "it's only profitable company" to Linsalata Capital Partners in April of 2002. (Appendix pp. 440-442).

During this time period, President and CEO, David Beeken worked at Eagle from high school through present day, including guiding Eagle through the bankruptcy of 2002. "Throughout this tumult, one of Eagle's consistent aspects has been Beeken's leadership and commitment. His guidance has kept employees motivated and eager to make Eagle soar." (Appendix pp. 445-46).

Linsalata "to a great extent takes a handoff approach to running a successful companies like Eagle Window & Door." "We work closely with management teams in developing and buying into the strategies, but it is up to management to utilize that strategy and manage that capital wisely to grow the business...without the appropriate level of autonomy it would be difficult for the team to approach that". (Appendix pp. 443-444).

B. Affidavit of Stephen B. Perry

The Affidavit of Stephen B. Perry indicated that he personally met with and was the successful bidder to purchase Eagle and Taylor doing business as Eagle Window and Door Inc., on April 15, 2002 through EWD Acquisition Company. On April 30, 2002, EWD Acquisition Company changed its name back to Eagle Window and Door Inc. Prior to the sale David Beeken was the president of Eagle Window and Door Inc., Charles Daoud was the executive vice president of Eagle Window and Door Inc., Steven R. Stoppelmoor was the vice president of finance for Eagle Window and Door, Inc., Ronald Vander Weerd was the vice president of

engineering for Eagle Window and Door, Inc., and Andrew Wickham was the controller for Eagle Window and Door, Inc. All of those individuals remained in their positions during and after the sale. Further David Beeken was added as a director of Eagle Window and Door, Inc. David Beeken, Charles Daoud, Ronald Vander Weerd, and Andrew Wickham were also shareholders. (Appendix pp. 410-423)

C. Affidavit of Andrew Wickham

The corrected Affidavit of Andrew Wickham indicated that he is the financing business integration manager for Eagle Window and Door Manufacturing, Inc. formerly known as EWD Acquisition Company and Eagle Window and Door. Again, Mr. Wickham's Affidavit indicated that Charles Daoud, Ronald Vander Weerd, Steven R. Stoppelmoor, David Beeken and Andrew Wickham were all officers of Eagle prior to and after the sale. David Beeken also became a director of Eagle Window and Door, Inc., sometime prior to January 27, 2003. (Appendix pp. 424-427)

D. Discovery

Petitioner's responses to requests for admissions dated October 18, 2011 admit that Mr. Beeken was the president of Eagle and Taylor Company doing business as Eagle Window and Door Inc., from 2000 through May 6, 2002. (Appendix pp. 405-409). After May 6, 2002, Mr. Beeken was the president of Eagle Window and Door, Inc. and subsequently became the president of Eagle Window and Door Manufacturing, Inc. when it changed its name again on April 1, 2007. Mr. Beeken has been the president of Eagle Windows & Doors, Inc, in every incarnation, from 2000 to present. (Appendix pp. 405-409).

The application form and certificate of authority of the Secretary of State of Iowa indicated that EWD Acquisition Company was created on April 10, 2002. It indicated that

David Beeken, Charles Daoud, Steven R. Stoppelmoor, Ronald Vander Weerd, Gregory Taber, and Andrew Wickham were all directors and officers of EWD Acquisition Company. (Appendix pp. 405-409).

Petitioner's Answers to Interrogatories dated October 28, 2011, indicate that the above officers and directors were officers and directors from 2000 through the present day. (Appendix pp. 436-439). Those discovery responses also indicated that David Beeken, Andrew Wickham, Ronald Vander Weerd, Charles Daoud, and Steven R. Stoppelmoor were shareholders of Eagle Windows prior to and after the sale of the company.

E. Testimony

In addition to the documents admitted by stipulation, Respondents called three witnesses: Phillip Gilliam, Cindy Thomas, and Randy Still.

1. Testimony of Phillip Gilliam

Phillip Gilliam is the owner of Gilliam Construction Company. Mr. Gilliam testified about his construction contract with Renual Abel, the issues with the home, and the subsequent lawsuit and arbitration. He testified that he purchased windows which were manufactured by Eagle Windows and Doors at the direction of Mr. Abel. (Appendix pp. 528-562). Based upon his investigation, the investigation of experts, and water testing done on the house, it was determined that the windows purchased from Eagle Windows and Doors were defective and leaking. (Supp. R.p 9-10) Mr. Gilliam testified that his contract with Mr. Abel required him to provide the Abels with a house free from defects. (Appendix p. 534). As the home contained defective windows, he was forced to defend himself in arbitration and ultimately settled the case. During the arbitration proceedings, Eagle Windows and Doors was offered an opportunity to participate and defend its Windows. They refused to do so. (Appendix p. 535).

During the investigation, testing was done on the windows. Eagle Windows and Doors was invited to attend and participate. (Appendix p. 537). Eagle Windows and Doors sent a technician who did not participate but observed the water testing. (Appendix p. 538). That person made no suggestions, complaints, or otherwise criticized the water testing at all. (Appendix p. 538). The results of the water testing on the windows indicated that the windows were defective and leaked. (Appendix p. 537). Due to the defective windows water was able to migrate behind the stucco on the home and destroyed and damaged framing and sheathing on the home. (Appendix p. 539). A substantial repair was necessary to repair the home due to those windows. (Appendix pp. 539-540). Instead of removing and replacing all of the windows, the stucco, and the damaged framing of the home a scope of repair was created to repair any damaged framing and sheathing and install a copper window dam which would collect and expel any water running through the windows to the outside of house. Mr. Gilliam testified that this was a much cheaper, efficient and reasonable manner to repair the issues with the windows. (Appendix p. 541).

Mr. Gilliam further testified that any repair of the stucco and the window rough openings was necessitated due to the defective and leaking windows. (Appendix pp. 541-542). Further, Mr. Gilliam testified that he and his company fulfilled their obligations as a general contractor because they did not know and could not have known that the windows selected by Mr. Abel were defective and would leak. (Appendix p. 543). He testified that the windows were installed pursuant to code and industry-standard and the installation of the stucco was installed and applied pursuant to industry-standard. (Appendix p. 542). Based upon his investigation and analysis, Mr. Gilliam testified that he attributed 100% fault for the repair to the defective windows and attributed no-fault for the repair to Gilliam or any other party. (Appendix p. 543).

Mr. Gilliam testified that his investigation revealed that Eagle no longer considered itself Eagle. Despite his knowledge of the construction industry and the materials used therein, he had never been notified at any point until after the lawsuit was filed that Eagle had been "sold" to a new company and no longer honored its products manufactured prior to that sale or honored the warranties on those products. (Appendix pp. 528-562).

2. Testimony of Randy Still

Randy Still testified on behalf of Respondents although he was originally hired by the Abels to testify against Gilliam Construction. (Appendix p. 242). Randy Still is a professional engineer who worked with H2L Consulting Engineers. After giving his education, experience and qualifications, he was admitted as an expert in residential construction, building products, and building envelopes. (Appendix pp. 241-242). Counsel for Eagle made no objection to Mr. Still's qualifications as an expert.

Mr. Still testified that he was hired by Karen and Renaul Abel to investigate the allegations of construction defects at the Abel house. During his investigation a water test was performed on the windows to determine if they were leaking. (Appendix p. 245). The manufacturer of the windows, Eagle was invited to participate. (Appendix p. 245). Although a representative of Eagle attended the water testing they did not participate or add any observations or suggestions. The water testing on the windows revealed that the windows leaked, were defective, and caused damage to the framing and sheathing behind the stucco. (Appendix pp. 246-251). Based upon that investigation and testing Mr. Still offered testimony that the windows were defective. (Appendix p. 249). He further testified that damage occurred due to the leaking windows which necessitated removal of stucco to repair the windows and damaged framing, repairs to the rough opening windows, and repair to damaged sheathing.

Mr. Still also testified that Gilliam Construction did not breach any construction standard which caused any of the damages at the Abel household. He testified that a general contractor has a duty to oversee, coordinate, and supervise sub-contractors. The general contractor also has the obligation to select and purchase quality non-defective materials. In his opinion, Mr. Still believed that Gilliam construction could not have suspected or known that the windows selected by Abel were defective and leaking. He testified that the defective windows were 100% at fault for all of the damage to the Abel house. (Appendix pp. 256-257, 270-271).

Randy Still testified that reports of other experts, including Construction Science and Engineering and Summit Engineering, supported his findings. Both of those reports found that the windows were leaking and caused the damages. Randy still introduced photographs of the leaking windows, the installation of the windows, and the damage caused by the windows. (Appendix pp. 239-273).

STANDARD OF REVIEW

The standard of review for the Court of Appeals required as follows: "In an action at law, on appeal of the case tried without a jury, findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings; the rule is the same where the judge's findings are made with or without a reference." Const. Art. 5, § 5; Code 1962, §§ 15-122, 15-123; *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). "In an action at law tried without a jury, the trial judge's findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence." *Mathis v. Brown & Brown of S. Carolina, Inc.*, 389 S.C. 299, 698 S.E.2d 773 (2010). The Court of Appeals properly decided the issues below within the

scope of its review, and no special or important issue merits a review of the Court of Appeals' decision by the Supreme Court.

ARGUMENT

I. The Court of Appeals properly held that Eagle was a mere continuation of its predecessor corporation and thus subject to successor liability.

The Court of Appeals and the Circuit Court properly found that Eagle was a mere continuation of its predecessor corporation based upon all of the evidence, including the fact that Eagle itself considers itself to be the same company before and after the sale. In South Carolina, a Plaintiff may maintain a state-based product liability claim under a successor liability theory against a successor corporation which purchased a predecessor's assets in a voluntary sale approved by the Federal Bankruptcy Court. *Simmons v. Marklift Industries, Inc.*, 366 S.C. 308, 622 S.E.2d 213 (2005); *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924). The South Carolina Supreme Court in *Brown* stated:

In the absence of a statute, a successor or purchasing company ordinarily is not liable for the debts of a predecessor or selling company unless (1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrants a finding of a consolidation or merger of the two corporations, (3) the successor company was a mere continuation of the predecessor, or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims. *Id.* at 123 S.E.2d 97 (emphasis added). The test used to determine whether a successor corporation is a mere continuation of its predecessor was set forth in *Simmons v. Marklift Industries, Inc.*, 366 S.C. 308, 313, 622 S.E.2d 213, 216 (2005). That court held that a successor corporation is a mere continuation of its predecessor corporation when the predecessor and successor corporations have substantially the same officers, directors, or

shareholders. *Simmons v. Marklift Industries, Inc.*, 366 S.C. 308, 313, 622 S.E.2d 213, 216 (2005). The Court of Appeals properly applied the *Simmons* standard.

At the trial of this case, the Circuit Court heard testimony and received evidence establishing that Petitioner's pre- and post-bankruptcy corporations had many of the same officers, directors, and shareholders and ruled that, "The predecessors and successor Eagle companies shared directors, officers, and shareholders" as a finding of fact. David Beeken, Andrew Wickham, Ronald Vander Weerd, Charles Daoud, and Steven R. Stoppelmoor were shareholders of Eagle Windows prior to and after the sale of the company. (Appendix pp. 4-23). Eagle's President, David Beeken, was the President of Eagle prior to and after the sale. (Appendix pp. 4-23). Further, prior to and after the sale, the following individuals were officers of Eagle: Charles A. Daoud, David Beeken, Steven R. Stoppelmoor, Ronald Vander Weerd and Andrew Wickham. (Appendix pp. 3-23).

Thus, post-sale, of the eight officers appointed to lead Eagle, five of the eight were officers of pre-sale Eagle, including President, Vice President, Vice President of Finance, Vice President of Engineering and Controller. Further, David Beeken, Charles Daoud, Steven R. Stoppelmoor, Ronald Vander Weerd, Gregory Taber, and Andrew Wickham were directors of Petitioner pre- and post-bankruptcy. As the evidence supported the lower court's findings, the Court of Appeals properly upheld the same.

What appears lost in the decade of litigation surrounding this case is the intent of the continuation exception to successor liability. The mere continuation exception seeks to prohibit corporations from changing hats for the purpose of escaping debts and liabilities if the predecessor and successor corporation are just a mere continuation of the same entity. In other words, purchasers of products should not be barred from seeking redress for damages caused by

those products because a distant board of detached investors is playing a shell game with the long distance ownership of the corporation.

As stated by Eagle's own marketing materials nothing changed at Eagle through its numerous ownership changes since 1886 and it considered itself autonomous from both AAPC and Linsalata. Petitioner broadcast in its marketing material that Linsalata "to a great extent takes a hands off approach to running a successful company like Eagle". "We work closely with management teams in developing and buying into the strategies, but it is up to management to utilize that strategy and manage that capital wisely to grow the business...without the appropriate level of autonomy it would be difficult for the team to approach that".

Petitioner did not consider Linsalata as the face of Eagle, but simply another parent company in a long list of parent companies. Eagle represented itself as consistent, stable, and able to make it through this "vast series of name changes" due to its President's "leadership and commitment." That President, Mr. Beeken, is the same president that runs it today. Eagle continues to occupy the same space, manufacture the same products with the same employees, and markets, manufactures, and continues to sell the same products under the same company name. Petitioner accepted the goodwill and name recognition of the Eagle Window brand but has specifically attempted to extinguish any potential liability arising from that goodwill despite its complete failure to notify owners of Eagle windows manufactured, marketed, and sold prior to April 2002 that it no longer honored those products or claimed them as its own.

This is the most important fact lost in this decade of litigation: Eagle, itself, considers itself to be the same company today as the day it sold windows to the owner and the builder of the home at the heart of this litigation. It is only through corporate shuffling and dealing that Eagle is able to use the legal system to deny in this litigation the very fact it advertises and

markets all over the country – Eagle is the same stable and trusted company as always despite a "vast series of name changes". Eagle's public position, contrasted with its legal position, is and should be the heart of this case. To a purchaser of products, unaware of the legal intricacies of corporate products successor liability law, it appears that Eagle is the same 100 year old stable heartland company, run by the same people, and directed by the same people.

The intent of the exceptions to corporate liability law; promotion of fairness and justice, cannot be determined with a rigid adherence to whether the Court intended to use "and" or "or" or which of the myriad of factors other courts in different jurisdictions utilize in determining the bright line rules. In this case, the officers, directors, and some of the owners of the predecessor and successor corporations remained the same. More importantly, the corporation intentionally, actively, and widely promoted the fact that it was and is the same stable company today as before its multiple sales. That fact cannot be ignored and thrown out regardless of the factors or tests this court ultimately adopts. Eagle is, for all intents and purposes, exactly the same company before and after the sale according to its own marketing materials and public pronouncements.

Justice Burnett stated "[t]he corporate fiction and the rules surrounding it have been of inestimable service in the affairs of business, but they must be applied in such a manner as to promote justice, not to hinder or defeat it." Id. at 323 (citing *Long v Carolina Baking Co.*, 190 S.C. 367, 377, 3 S.E.2d 46, 50 (1939)). Justice Burnett, citing another case with similar facts cited the strong language used by that Court:

> The [successor's] position does not appeal to us; it is an attempt to dodge the damages that [the plaintiff] has sustained by a quirk and technical question of law, and smacks too much of a skin game, and hand stacked and dealt to dealer from the bottom of the deck...By its action [the successor] has allowed the [predecessor] to go out of existence and now proposes to let the [plaintiff] whistle for his money, and by its technicality, which would besmirch the character of any honest man, smacks its lips and licks its chops and congratulates itself on its shrewdness in avoiding its payment of a just claim.

Simmons v. Mark Lift Indus., Inc., 366 S.C. 308, 318, 622 S.E.2d 213, 218 (2005) at 318 (citing *Brabham v. Southern Express Co.*, 124 S.C. 157, 117 S.E. at 368 (1922)).

This decision is in line with the majority of other jurisdictions and comports with the doctrines of fairness and justice. Justice Burnett strenuously opined that the stroke of a corporate pen or blind adherence to unfair rules out of touch with modern realities did not promote justice or allow intelligent adjudication of issues which touched upon the Bankruptcy Court's perceived jurisdiction.

Although the *Simmons* court denied Justice Burnett's request for clarification, it is important to note that it analyzed many of the elements cited by Justice Burnett. That court recorded that the predecessor corporation only operated the manufacturing facility for several months and then closed the plant. It then relocated the assets and equipment to another state. Only three employees of the predecessor continued with the successor and none were officers or directors. Further, the successor corporation operated under a different name than the predecessor corporation and both were defendants in the lawsuit.

This case is substantially different as Eagle is both the successor and predecessor corporation and both corporations bear the same name. Additionally, the evidence reflects that there was no change in operation, facilities, name, or products at Eagle. The directors and officers were and still are essentially the same even through yet another sale.

Eagle, by the stroke of a pen, attempted to end its liability globally, totally, and permanently although there was no financial need to do so. Eagle was not forced into bankruptcy by economics, but rather was dragged though it by its parent company's bankruptcy. As such, the ordinary purpose of bankruptcy was not present for Eagle. Ordinarily bankruptcy's purpose is to provide the debtor with a fresh start, freeing it from the obligations and

responsibilities consequent upon financial misfortune so that it may continue to survive. CJS Bankruptcy § 2. In this case, Eagle was American's only profitable company. Eagle did not require the intervention of the Bankruptcy Court or the protection afforded by it. Therefore, it should not be allowed to use its parent company's fortuitous bankruptcy as a sword with which to severe its entire pre-bankruptcy obligations.

Petitioner's argument on this writ - that *Simmons* requires a finding that the mere continuation doctrine requires overlap of officers, directors, **and** shareholders - is moot and without merit. As the court found that officers, directors, and shareholders were shared between the corporations, the analysis is unnecessary. (Appendix pp. 4-23). It is clear in this case that each of the requirements is satisfied and Eagle, in fact, did continue its operation with all of the same leaders, employees, facilities, products, designs, and marketing materials. The lower court found that the analysis of whether the *Brown* and *Simmons* courts intended overlap of officers and directors or officers or directors was unnecessary because Nationwide and Gilliam proved, and Petitioner did not refute, that officers, directors, and shareholder continued in the successor corporation from the predecessor corporation. Therefore, the lower court properly found that Petitioner's commonality of officers, directors, and shareholders in both the predecessor and successor was sufficient to satisfy the mere continuation exception and deem it liable in this action. The Court of Appeals properly held that this evidence supported the lower court's findings because (1) Eagle used the same name, location, employees, products, and advertising, and/or (2) post-sale Eagle appointed five of pre-sale Eagle's eight officers, including the President and CEO, Executive Vice President, Vice President of Finance, Vice President of Engineering, and Controller. The decision comports with both the *Simmons* decision and the promotion of fairness and justice.

Because the Court of Appeals' opinion follows and properly applies the *Simmons* reasoning, the decision of the Appellate Court must be upheld.

II. The Court of Appeals properly held that Eagle abandoned the issue of whether Nationwide failed to prove a manufacturing defect or design.

The Court of Appeals determined that, while Respondents did not plead a design defect, they did allege that Eagle shared "a common liability to Plaintiffs in the underlying action." Under Rule 15(b), SCRCP, and based upon the evidence admitted by stipulation at the trial of this case, and as detailed more fully in the Counter Statement of the Case, the lower court tried the issue of design defect by consent of all parties and found ample evidence in the record, specifically the testimony of Mr. Still and Mr. Gilliam that a defect existed.

The Court of Appeals went one step further in properly deciding that Eagle abandoned this issue on appeal. While Eagle did list this matter in a long list of issues on appeal, it completely failed to argue the issue in its brief. Eagle somehow claims that it is entitled to have the Court sift through the record on appeal and discover its argument in a memorandum to the circuit court below. This is not, however, how the appeal process works. Eagle must argue the issue in its brief and point the Court of Appeals directly to evidence in support of its argument in the record on appeal in order for the appellate court to consider it. This is clearly delineated by the Court in repeated holdings. *See, e.g.*, *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006)(holding that "[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."). There is not provision that an issue is not abandoned as long as it was once argued at some point below. Raising the point below and obtaining a ruling on the issue preserves the issue for appeal; it is then incumbent upon the appealing party to raise the issue on appeal AND argue the issue to the appellate court.

CONCLUSION

For the reasons stated herein, the Court of Appeals' opinion does not merit review on a Writ of Certiorari.

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July 21,2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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PROOF OF SERVICE

I certify that I have served Respondents, Nationwide Mutual Insurance Company and Gilliam Construction Company, Inc.'s Brief of Respondents on G. Dana Sinkler and Ainsley Fisher Tillman, attorneys for Petitioner Eagle Windows & Doors, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on July 24, 2017, addressed as follows:

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