

EXHIBIT N

**4/18/17 Builders FirstSource-Southeast Group,
LLC's Supplemental Memorandum with
Remaining Grounds for Consideration in BFS's
post-trial motion.**

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April 18, 2017

Federal Express

The Honorable Julie J. Armstrong
Clerk of Court
Charleston County Courthouse
100 Broad Street, #106
Charleston, SC 29401

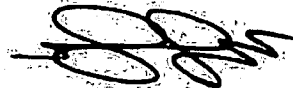
RE: One Bell Hall Property Owners Association Inc., et al. v. Builders FirstSource
Southeast Group LLC, et al.
Civil Action No. 2012-CP-10-07594
Our File No. 00350/01800

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter please find the original and one copy of a Supplemental Memorandum with Remaining Grounds for Consideration in BFS's Post-Trial Motion. Please return a clocked-in copy to us.

By copy of this letter, we are hereby serving counsel with a copy of this document.

Very truly yours,



Michael J. Anzelmo

MJA:ckh
Enclosures

cc: Justin Lucey, Esquire (via FedEx, Email, and Hand Delivered at Hearing)
Dabny Lynn, Esquire (via FedEx, Email, and Hand Delivered at Hearing)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

One Bell Hall Property Owners) Civil Action No. 2012-CP-10-07594
Association Inc. and Marvin T. Meek)
and Frances E. Hill, individually, and on)
behalf of all others similarly situated,)

Plaintiffs,)

vs.)

Builders FirstSource Southeast Group)
LLC, et al.,)

Defendant.)

Supplemental memorandum with
remaining grounds for consideration
in BFS's post-trial motion

JULIE J. ARMSTRONG
CLERK OF COURT

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Defendant Builders FirstSource Southeast Group LLC ("BFS") submits this supplemental memorandum in support of its post-trial motion to address the remaining grounds in the motion. Defendant Builders FirstSource Southeast Group LLC ("BFS") agreed to withdraw several grounds set forth in its post-trial motion filed September 13, 2016.¹ As a result, BFS submits this supplemental memorandum that sets forth the remaining arguments from the initial post-trial motion for ease of reference. BFS kept the initial numbering from the initial post-trial motion in this supplemental filing because that tracks how the parties and Court have been communicating about the matter.

The remaining issues in BFS's post-trial motion are as follows:

¹ BFS withdraws the items numbered 1, 2, 3, 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 from the post-trial motion.

A. Review of Denial of BFS's Motion for Judgment Notwithstanding the

Verdict:

5. Plaintiffs failed to establish any alleged defect in the manufacture or design of the windows that would support a claim under a theory of strict product liability or breach of warranty.

6. Plaintiffs failed to establish any alleged defect in the manufacture or design of the windows which proximately caused any alleged injuries or damages to Plaintiffs and any product liability theory.

7. Plaintiffs failed to establish any feasible alternative design for the windows as required to establish a design defect claim for a product liability claim as required by *Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5 (2010).

12. The evidence is insufficient to support or raise a jury issue on any of Plaintiffs' claims asserted against the Defendant and judgment should be entered in favor of the Defendant as a matter of law.

25. Defendant is entitled to judgment because (a) Plaintiffs failed to prove any defective condition in that the testing presented was conducted improperly, (b) the improper testing created leaks in windows that had otherwise met expectations, and (c) the windows were evaluated by implementing incorrect standards by which to evaluate windows installed for longer than six months (the windows has been installed for over eight years).

26. Defendant is entitled to judgment as a matter of law because the evidence demonstrated that the windows were damaged after arrival on the job site and also during delivery, handling, or storage.

27. Defendant is entitled to judgment in its favor as a matter of law on the basis of set-off as Plaintiffs have already recovered amounts in excess of the verdict from other parties in settlement of claims for the same damages which Plaintiffs claimed were the joint and several responsibility of settling co-defendants.

B. BFS withdraws the New Trial, New Trial Absolute, Thirteenth Juror, and New Trial Remittitur arguments found on pages 6-12 of the Motion in full.

In addition to the above, reconsideration should issue and JNOV should be granted because this Court improperly denied BFS's directed verdict motion and submitted Plaintiffs' claims to the jury as set forth in detail below:

A motion for JNOV should be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998). The trial judge may reverse when a review of the record discloses no evidence which reasonably supports the factual finding necessary to sustain the verdict. Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993). While the Court is concerned with the existence of evidence, not its weight, Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003), and may not decide credibility issues or to resolve conflicts in the testimony or the evidence, Id. at 320, 585 S.E.2d at 274, JNOV is warranted when there is no evidence to support the ruling or where the ruling is

controlled by an error of law. Hinkle v. National Cas. Ins. Co., 354 S.C. 92, 579 S.E.2d 616 (2003).

Plaintiffs' claims of strict liability and breach of warranty fail for failure to submit proof of defect as required by Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). At trial, BFS moved for directed verdict because Plaintiffs' failed to carry their burden of proof as to defect. Plaintiff did not carry its burden because, inter alia, Plaintiffs failed to introduce any evidence of feasible alternative design for the windows, as required by South Carolina law, that would have stopped the claimed leakage. Thus, this Court should reconsider the denial of JNOV and enter judgment in favor of BFS.

Plaintiffs' claims of strict product liability and breach of warranty contain a common element of proof; both require plaintiff to demonstrate that the product was in a defective condition. Madden v. Cox, 284 S.C. 574, 579, 328 S.E.2d 108, 112 (Ct. App. 1985). Plaintiffs presented inadequate expert testimony or other record evidence to establish that BFS delivered windows – its only activity with respect to the project— which contained a manufacturing or design defect at the time of their delivery. At best, Plaintiffs' evidence showed that the windows ordered and shipped by BFS (it did not manufacture, design, install, or maintain the windows) leaked years after they had been installed.

Whether proceeding on a theory of manufacturing or design defect Plaintiffs failed to offer evidence of the particular defect, whether in manufacturer or design, that caused the window to leak. As to design defect in particular, Plaintiffs produced

no evidence of any feasible alternative design for the windows, as required by South Carolina law, that would have stopped the claimed leakage. Branham v. Ford Motor Co., 390 S.C. 203, 701 S.E.2d 5 (2010). Because Plaintiff offered no evidence of and failed to identify any particular manufacturing or design defect in the windows as delivered by BFS, judgment should be entered in favor of BFS on both the strict liability and breach of warranty claims.

Also, the Court also erred in submitting the matter to the jury because the very testing used to establish the windows leaked was improper. The testing protocol used by Plaintiffs' expert to test the windows for leakage specifically referenced AAMA standard 511 as the appropriate testing standards for windows that has been installed for more than six months. Plaintiffs' expert did not utilize this standard. Thus, in addition to there being no evidence that the windows contained a specific manufacturing or design defect, there was no competent evidence demonstrating that the windows leaked under the types of conditions existing in Mt. Pleasant as to weather patterns and the way in which the windows were installed by others.

Moreover, this Court should reconsider the denial of BFS's JNOV motion because Plaintiffs presented evidence to the jury of testing on the windows that did not replicate substantially similar conditions to which the windows were exposed while installed and which was designed for windows of a different age and not exposed to conditions similar to those of the windows in this case which had been installed for over eight years. Thus, Plaintiffs failed to submit competent evidence of defect.

Conclusion

Wherefore, BFS requests that the Court reconsider its denial of BFS's JNOV motion and grant judgment in favor of BFS.

Respectfully submitted,

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April 18, 2017

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

One Bell Hall Property Owners Association) Civil Action No. 2012-CP-10-07594
Inc. and Marvin T. Meek and Frances E. Hill,)
individually, and on behalf of all others)
similarly situated,)

Plaintiffs,)

vs.)

Builders FirstSource Southeast Group LLC,)
et al.,)

Defendant.)

CERTIFICATE OF SERVICE

NY
JULIE J. ARMSTRONG
CLERK OF COURT

2017 APR 19 PM 1:13

FILED

I, the undersigned attorney of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Builders FirstSource Southeast Group LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **Supplemental Memorandum with Remaining Grounds for Consideration in BFS's Post-Trial Motion**

Counsel Served: Via Federal Express for Delivery on 4/19/17, Courtesy Email on 4/18/17, and Hand Delivered at Hearing on 4/20/17

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