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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
IN THE COURT OF COMMON PLEAS
The Honorable Alexander S. Macaulay, Circuit Court Judge

AND FROM THE OPINION OF THE COURT OF APPEALS
Opinion No. 5601 (--- S.E.2d ----2018 WL 4905772)
Filed October 10, 2018

AND FROM THE SOUTH CAROLINA COURT OF APPEALS
Order Denying Petition for Rehearing
Filed December 13, 2018

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated, Respondents,

v.

IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Defendants.

Of Whom Bostic Brothers Construction, Inc. is the Petitioner.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

The Honorable Alexander S. Macaulay, Circuit Court Judge

Lower Court Case No. 2009-CP-37-00652

Court of Appeals Case No. 2015-000417

Volume I of VI

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated,

Respondents,

v.

IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes,

Defendants.

(Of Whom Bostic Brothers Construction, Inc., is the Appellant)

RECORD ON APPEAL

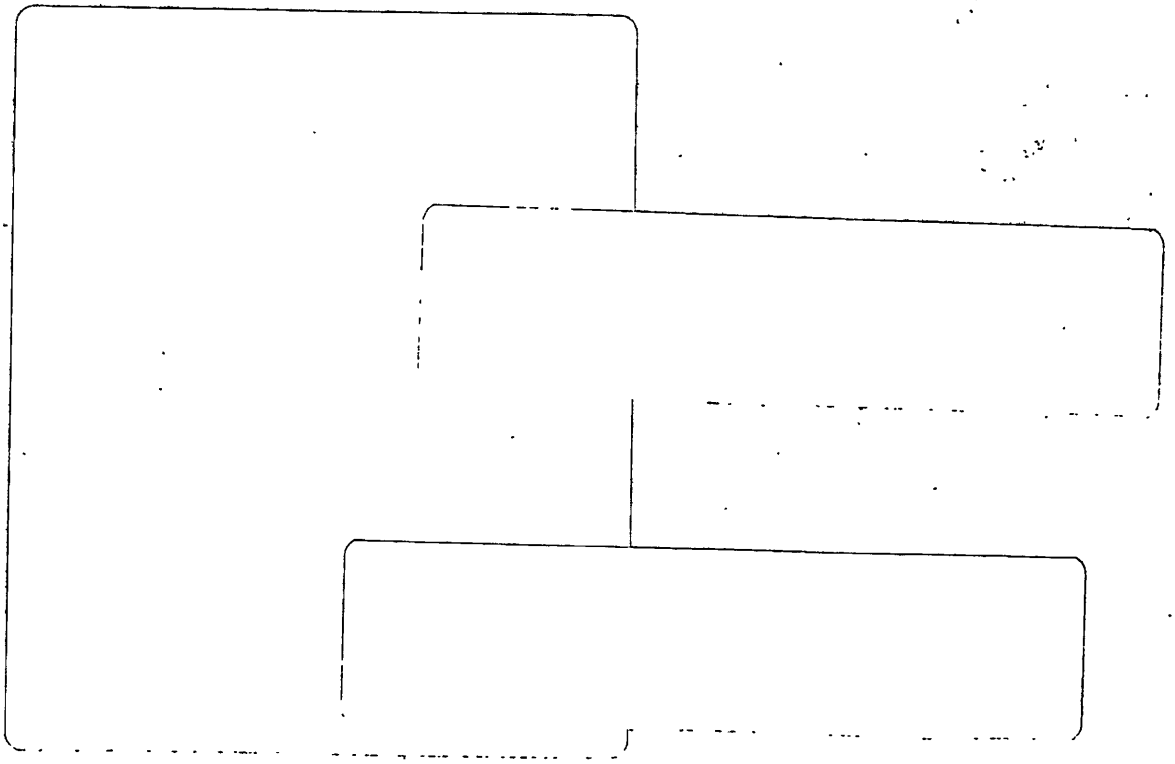
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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, , CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 13 PM 1 32

ORDER DENYING BOSTIC BROTHERS CONSTRUCTION INC'S RULE 59 MOTION TO RECONSIDER

1 of 3

UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 13 PM 1 32

After careful consideration of the record and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Bostic Brothers Construction, Inc.'s Motion, pursuant to Rule 59, SCRCP, [1] is DENIED.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
March 12, 2015

A TRUE COPY
MAR 13 2015
CLERK OF COURT - OCONEE COUNTY

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC.	)	
Plaintiffs,	)	**ORDER GRANTING PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT**
vs.	)	
IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES	)	
Defendants,	)	

This matter comes before the Court based on Plaintiff Stoneledge At Lake Keowee Owners' Association, Inc. ("POA") motion to alter or amend the judgment of the court pursuant to Rules 54, 58, 59(e), and/or 60 of the South Carolina Rules of Civil Procedure ("*SCRCP*"). POA seeks the reformation of the verdict rendered after trial on November 7, 2013 and entered by the Court on November 8, 2013. For the reasons set forth below, POA's motion is hereby GRANTED.

RELEVANT FACTUAL HISTORY

This case was tried before an Oconee county jury over the course of two weeks. The jury returned a verdict in favor of the Plaintiff, awarding damages in the cumulative amount of $5,000,000.00. At the request of counsel for Bostic Brothers Construction, Inc. ("Bostic") during closing arguments, the jury allocated the damages between the three remaining causes of action; negligence against IMK Development Co., LLC ("IMK")/Marick Home Builders, LLC ("Marick"), and Bostic ($3,000,000); breach of implied warranty of service against Marick and Bostic ($1,000,000); and breach of fiduciary duty against IMK, Integrys Keowee Development, LLC ("Integrys"), William

C. Cox, Larry D. Lollis and Rick Thoennes ($1,000,000). This allocation occurred even though POA offered only one damages figure, which was comprised of the costs POA previously incurred to temporarily make repairs and the estimated future cost to repair. POA's damages totaled $6,300,000.

After the verdict, the jury was asked to apportion the damages awarded for the negligence and implied warranty of service causes of action. The jury apportioned the negligence cause of action 60% to Bostic and 40% to Marick/IMK and 70% to Marick and 30% to Bostic on the breach of warranty cause of action.

On November 8, 2013, the Court entered its Form 4 order of judgment, entering judgment against the defendants in the following amounts:

IMK Development Co., LLC	$1,150,000.00
Larry D. Lollis	$200,000.00
William C. Cox	$200,000.00
Integrys Keowee Development, LLC	$200,000.00
Marick Home Builders, LLC	$950,000.00
Bostic Brothers Construction, Inc.	$2,100,000.00
Rick Thoennes	$200,000.00

POA MOTION TO AMEND

Plaintiff subsequently filed this motion for relief on several grounds. First, POA asserts that the Form 4 is contrary to the jury verdict and is contrary to South Carolina law in the manner the apportionment statute was applied and that it apportioned damages for causes of action to which joint and several liability applies. Second, POA contends that the verdict should be reformed so that the amount of the verdict, $5,000,000, is applied to each of the three causes of action asserted by the POA rather than being allocated among the causes of action. Finally, POA asserts that the jury's apportionment with respect to the implied warranty claim be set aside as that cause of action, like the

fiduciary duty cause of action, is not subject to the apportionment statute.

RELEVANT LAW FOR POA MOTION

I. Relief From Judgments Under Rule 60, *SCRCP*

Rule 60(a), *SCRCP* provides in pertinent part:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Generally, a clerical error is defined as a mistake in writing or copying. *See Black's Law Dictionary* 252 (6th ed. 1990). As applied to judgments and decrees, it is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function. *Id.* While a court may correct mistakes or clerical errors in its own process to make it conform to the record, it cannot change the scope of the judgment. *Michel v. Michel,* 289 S.C. 187, 345 S.E.2d 730 (Ct.App.1986).

II. Law Relating To Entry Of Judgments

Under Rule 54, *SCRCP*, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. Drawing from Rule 54, Rule 58, *SCRCP*, states, in relevant part, that:

> (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly prepare the form of the judgment, or direct counsel to promptly prepare the form of judgment, to which may be attached the decision, order or opinion of the court, and after review and approval by the court, the clerk shall promptly enter it.

> Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record. Entry of the judgment should not be delayed for the taxing of costs.

Until written and entered, a court has discretion to modify or amend a ruling. *Ford v. State Ethics Comm'n,* 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) ("The written order is the trial judge's final order and as such constitutes the final judgment of the court.").

III. Law Relating To Amendment of Judgments

Under Rule 59(e), *SCRCP*, a motion "to alter or amend the judgment" may be made within ten days of receipt of written notice of the entry of the order. "A trial court is vested with very limited power to correct a jury verdict which is defective in form, but which in substance clearly and definitively expresses the jury's intentions." *Vinson v. Hartley,* 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct.App.1996). "However, the trial court can correct, reform, or remold such a verdict so as to express the jury's clear and definitely manifested intention." *Id.* "The correction of a jury verdict may be appropriate in those exceptional situations where it is clear there has been a mere ministerial error in reporting the verdict." *Id.; see* 75B Am.Jur.2d *Trial* § 1612 (2007). After the amendment, the verdict must be not what the judge thinks it ought to have been, but what the jury intended it to be. *See* 75B AM.JUR.2D *Trial* § 1886 (1992).

A party seeking amendment of a verdict must lay a proper foundation by a motion for a new trial. *Anderson v. Aetna Casualty & Sur. Co.,* 175 S.C. 254, 178 S.E. 819 (1934). In *South Carolina State Hwy. Dep't v. Miller,* 237 S.C. 386, 117 S.E.2d 561 (1960), the South Carolina Supreme Court addressed amendment of a verdict by the trial court:

> The judge cannot, under the guise of amending the verdict, invade the exclusive province of the jury or substitute his verdict for theirs. After the amendment the verdict must be not merely what the judge thinks it ought to have been, but what the jury intended it to be. Their actual intent, and not his notion of what they ought to have intended, is the thing to be expressed and worked out by the amendment.

Miller, 237 S.C. at 394-95, 117 S.E.2d at 565. *Any* question affecting the verdict should be raised by a motion for a new trial. *Ulmers v. Willingham,* 238 S.C. 503, 120 S.E.2d 859 (1961); *Lites v. Taylor,* 284 S.C. 316, 326 S.E.2d 173 (Ct.App.1985)

FINDINGS AND CONCLUSIONS

For the reasons set forth below, I find that POA's motion should be granted.

IV. POA Proved Damages Totaling $5,000,000 Which Should Not Have Been Allocated Among the Causes of Action

POA offered up evidence of damages that resulted from the cost of prior, emergency repairs and estimates of the future cost to repair. Those damages totaled $6,300,000. Importantly, no party to the case attempted to break down those damages by cause of action. In fact, it is clear that the damages recoverable for all three causes of action are the same: namely, repair costs, both future and past. *See, e.g. Sea Side Villas II Horizontal Prop. Regime v. Single Source Roofing, Corp.*, 64 F. App'x 367, 374 (4th Cir. 2003) (In a construction case, the measure of damages that must be awarded as a result of a builder's negligence is the reasonable cost to repair), *Scott v. Fort Roofing and Sheet Metal Works, Inc.*, 299 S.C. 449, 385 S.E.2d 826, 827 (1989) (the cost of repair or restoration is a valid measure of damages for injury to a building).

In closing, Counsel for POA urged the jury to award all damages in all three causes of action. Conversely, counsel for Bostic argued that the jury should allocate its

award among the three causes of action. The jury elected to allocate the total damages awarded as follows: Negligence - $3M; Breach of Warranty - $1M; Breach of Fiduciary Duty - $1M. This decision of the jury can only be described as arbitrary (and, thus, incorrect) because it was without any evidentiary support as the damages for all three causes of action are the same.

After receipt of the verdict, with the jury still present, counsel for POA asked the Court if the verdict was cumulative and the Court ruled that it was, indeed, cumulative. POA now seeks to have judgment entered in the amount of $5,000,000 on each cause of action since POA sought only one recovery.

The case of *Keeter v Alpine Towers*, 399 S.C. 179, 730 S.E.2d 890 (Ct. App. 2012) is directly on point. In that case the Court of Appeals reversed the trial court which entered judgment against defendants based upon the jury's response to a verdict form asking it to set forth the damages associated with three causes of action. The jury did so, awarding different amounts for the three causes of action. Before the jury was dismissed, the court inquired as to whether the verdict was cumulative and the jury forewoman responded that it was cumulative. In post-trial motions, the plaintiff asked the court to enter judgment in the full amount of the verdict for each cause of action. The trial judge refused, instead requiring the plaintiff to elect his remedy.

In reversing the trial court, the court of appeals found that while Plaintiff in that case had asserted three causes of action, he only sought one remedy: the damages associated with his broken back. Where a plaintiff only seeks one remedy or recovery, no election of remedies is required. *See, Adams v Grant*, 292 S.C. 581, 358 S.E. 2d 142 (Ct. App. 1986). Here, POA sought only one remedy, namely, those costs associated

with past and future repairs, thus, no election of remedies I required.

The verdict form used in *Keeter* was essentially the same used in this case, where the jury was given the ability to write damages for each cause of action. As noted by the Court of Appeals, that verdict form caused confusion. The Court of Appeals then ruled that it is the duty of the Trial Court to ascertain the intent of the jury's verdict by looking at many factors from the pleadings and trial of the case.

This Court has already ruled that the jury's award was cumulative and received no objection from counsel for the defendants. Had they objected to that holding, and desired that the Court question the jury, they should have done so before the jury was dismissed. They did not and, therefore they have waived the right to object to that ruling. *Vigilant Ins. Co. of New York v. McKenney's Inc.*, 524 F. App'x 909, 914 (4th Cir. 2013)(Denying Vigilant's motion for new trial due to waiver of its right to request a new trial because counsel did not bring the asserted inconsistency to the district court's attention before the jury was excused).

As held by the Court of Appeals in *Keeter*, since the jury's award was cumulative, and the jury intended to award the POA $5,000,000, and since the damages for all three cause of action asserted by POA are the same, the total amount of the verdict should be entered for each of POA's causes of action.

V. Apportionment

The jury apportioned fault on the negligence and breach of warranty. This was a mistake.

With respect the breach of warranty claims, the South Carolina Supreme Court's decision in *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730, 737 (1989) makes it clear that the warranty claims created in *Kennedy* are separate and apart from the tort claims also available to aggrieved property owners. The warranty claims are not tort claims and, thus, are not subject to the Contribution Among Torfeasors Act.

In the present case, only the negligence claim is subject to the Act. Importantly, the Act itself limits it applicability only to joint torfeasors whose negligence is less than 50 percent. Tortfeasors whose negligence is greater than 50 percent are jointly and severally liable for the entire negligence award.

Applying the Act to the negligence award against the parties in this case yields the following: Bostic is jointly and severally responsible for the entire negligence award because the jury adjudged Bostic 60 percent negligent; Marick/IMK is entitled to a 40 percent apportionment of the negligence award because of the jury's finding that Marick/ IMK were only 40 percent negligent.[1]

VI. Set Off

Set off is an equitable remedy within the discretion of the Court. *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998). The purpose of set off is to prevent a plaintiff from obtaining a windfall or double recovery. *Ellis v. Oliver*, 335 S.C. 106, 113, 515 S.E.2d 268, 272 (Ct. App. 1999).

[1] IMK and Marick were considered one defendant for purposes of the negligence claim. Thus, it is improper to allocate the damages between them for that claim and they are each liable for the negligence award against them.

In the present case, the Plaintiff secured prior to the trial of Phase I of the project settlements with other parties in the amount of $2,800,000. The court, in its discretion, concludes that this amount should be divided equally among the three causes of action for which the jury returned an award. The set off amount shall be $933,333.33 for each cause of action.

Applying the proper percentages, after the set off, the Form 4 should be amended and reflect the following:

Negligence

Bostic	$4,066,666.67 ($5M - $933,333.33 – No apportionment because greater than 50% negligent)
IMK/Marick	$1,626,666.66 ($5M - $933,333.33 x .40 (apportionment))

Breach of Implied Warranty

Bostic	$4,066,666.67 ($5M - $933,333.33)
Marick	$4,066,666.67 ($5M - $933,333.33)

Breach of Fiduciary Duty

IMK	$4,066,666.67 ($5M - $933,333.33)
IK	$4,066,666.67 ($5M - $933,333.33)
Cox	$4,066,666.67 ($5M - $933,333.33)
Lollis	$4,066,666.67 ($5M - $933,333.33)
Thoennes	$4,066,666.67 ($5M - $933,333.33)

CONCLUSION

For the forgoing reasons, the Court grants the Plaintiff's Motion and Orders the clerk to issue an Amended Judgment consistent with the amounts outlined under Section VI of this Order.

LYLES & LYLES, LLC

By: _____

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November 18, 2013
Charleston, South Carolina

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, ET AL. V. IMK DEVELOPMENT, ET AL.
CASE NO.: 2009-CP-37-0652

CERTIFICATE OF SERVICE

I, Holly Hansen, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, do hereby certify that I have this date, electronically mailed a true and correct copy of the **Plaintiffs' Motion for Rule to Show Cause as to Ludwig Corporation, LLC** to the following counsel of record:

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Attorneys for Carl Catoe Construction, Inc.

By: Mark Rt

This 18 day of November, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, , CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 01

OREDER DENYING DEFENDANTS' POST-TRIAL MOTIONS

1 of 2

UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 01

Defendants Marick Home Builders, LLC, Rick Thoennes, IMK Development Co., LLC, Integrys Keowee, LLC, William C. Cox, and Larry D. Lollis timely made post-trial motions including motions for JNOV pursuant to Rule 50; Alter/Amend; New Trial, New Trial Absolute, New Trial Nisi Remittitur, Set off, and Election of Remedies.

After careful consideration of the record, along with the and filings and able arguments of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motions, pursuant to Rules 50 and 59, SCRCP, are hereby DENIED.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
January 21, 2015

A TRUE COPY
JAN 22 2015
CLERK OF COURT - OCONEE COUNTY

Recd 1-7-13

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association Inc, et al
PLAINTIFF(S)

IMK Development Co, LLC, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

s/Alexander S. Macaulay
Circuit Court Judge

2063
Judge Code

08/28/2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of August, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 29th day of August, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles, Jr.	Michael B. T. Wilkes
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, BRADFORD D. SECKINGER, JOHN LUDWIG, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, M GROUP CONSTRUCTION AND DEVELOPMENT, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO

ORDER GRANTING DEFENDANTS CLEAR VIEW CONSTRUCTION, LLC AND MICHAEL FRANZ'S MOTION FOR SEPARATE TRIALS AND SCHEDULING ORDER

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 AUG 28 P 3:35

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AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC, INC., D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY, MILLER/PLAYER & ASSOCIATES,

Defendants,

This matter came before the Court on the Motion of Defendants Clear View Construction, LLC ("Clear View") and Michael Franz (collectively hereinafter "Clear View Defendants") for Separate Trials. This litigation involves a dispute regarding the construction of the Stoneledge at Lake Keowee townhome community located on Lake Keowee in Oconee County, South Carolina ("Stoneledge"). The case was recently set for trial commencing on October 28, 2013.

The Court conducted a hearing on this Motion on July 24, 2013. Michael B.T. Wilkes appeared on behalf of Clear View, and Robert T. Lyles appeared on behalf of the Plaintiffs.

Stoneledge consists of eighty (80) townhomes developed during two phases of construction. Phase I of Stoneledge consists of townhomes numbered 1 through 37. Phase II of Stoneledge consists of townhomes numbered 41 through 43, and 55 through 94. The Plaintiffs, which include the unit owners and the Stoneledge at Lake Keowee Owners' Association

(hereinafter "Plaintiffs"), have brought claims against numerous parties involved in the development, design, construction, and sale of the townhomes at Stoneledge.

Phase I of Stoneledge was developed by Keowee Townhouses, LLC. Miller/Player & Associates ("MPA") prepared the architectural drawings for Phase I construction and determined that the 2000 International Residential Code applied to Phase I construction. The majority of Phase I construction was permitted by general contractor Bostic Brothers Construction ("Bostic"), and constructed utilizing Bostic's subcontractors, from August, 2002 to June, 2005. Certificates of Occupancy were issued for Phase I townhomes 5-8, 10, 18-19, 21-23, and 36-37 from August 29, 2003 to June 6, 2005.

Phase II of Stoneledge was developed by IMK Development Co. ("IMK"), a company owned in part by Marick Home Builders, LLC ("Marick"), the general contractor for Phase II. MPA also prepared architectural drawings for Phase II and determined that the 2003 International Residential Code applied to Phase II construction. Marick utilized completely different subcontractors for Phase II construction than had been used by Bostic in Phase I. Certificates of Occupancy for all Phase II townhomes were issued from December, 2006 through August, 2009.

Clear View was a limited liability company dissolved on March 10, 2009. Michael Franz was a member of Clear View prior to dissolution and termination. Clear View was one of Marick's subcontractors, providing services related to the stonework for townhomes in Phase II from July, 2006 through August, 2007. Clear View Defendants' involvement in the construction of Stoneledge, much like other subcontractor defendants, was limited to solely one phase of the project.

Clear View Defendants moved for separate trials of the claims concerning Phase I and Phase II pursuant to Rules 18(c) and 42(b) of the South Carolina Rules of Civil Procedure. For the reasons stated below, Clear View Defendants' Motion is granted; and the parties shall abide by the Scheduling Order incorporated herein. Subject to the provisions of the included Scheduling Order, a trial of Phase I claims shall proceed on October 28, 2013.

STANDARD FOR ORDERING SEPARATE TRIALS

Trial judges are afforded broad discretion to bifurcate issues and order separate trials. *See Giles v. Parker*, 304 S.C. 69, 403 S.E.2d 130 (Ct. App. 1991). Rule 18(c) of the South Carolina Rules of Civil Procedure allows the Court to make such orders as will prevent a party from being delayed or put to unnecessary expense by the joinder of independent or disassociated claims, and may order separate trials to prevent prejudice. Similarly, Rule 42(b) of the South Carolina Rules of Civil Procedure provides that the Court "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counter-claim or any third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues." A single trial of all issues in a case in a single proceeding is not a mode of trial to which parties are entitled as a matter of right. *Flagstar Corp., v. Royal Surplus Lines*, 341 S.C. 68, 73, 533 S.E.2d 331, 333 (2000).

ANALYSIS

Clear View Defendants moved for separate trials on the grounds that separate trials for the claims concerning townhomes in Phase I and Phase II will prevent prejudice and unnecessary expense, which Clear View Defendants and other similarly situated parties will suffer in a combined trial of both phases of construction. After carefully considering the factual

circumstances and legal issues pertaining to Clear View Defendants' Motion, this Court exercises the discretion provided to it by Rules 18(c) and 42(b) of the South Carolina Rules of Civil Procedure to order separate trials for Phase I and Phase II.

The alleged construction defects at issue in this matter will require extensive testimony and evidence regarding experts' investigations, repair estimates, the parties' scope of work, and alleged damages. Phase I and Phase II were constructed by different contractors and subcontractors, which will present a jury with the difficult task of following and analyzing the evidence as it applies to each party's involvement in the project. Separate trials of the two phases will eliminate the potential for defendants to be prejudiced should a jury confuse and incorrectly apply evidence concerning Phase I townhomes to parties who performed work solely on Phase II townhomes, or vice versa.

Further complicating a single trial for Phase I and Phase II could be the application of separate liability frameworks. It appears that all Phase II townhomes did not reach substantial completion until after July 1, 2005; if so, S.C. Code Ann. § 15-38-15 (1976) applies to Phase II. Under S.C. Code Ann. § 15-38-15, joint and several liability will not apply to claims against Phase II defendants, who are not found to be more than fifty percent at fault for the same damages. S.C. Code Ann. § 15-38-15 will not apply to claims concerning a number of Phase I townhomes for which Certificates of Occupancy were issued before July 1, 2005.

A single trial of all claims concerning Phase I and Phase II will require lengthy testimony from numerous witnesses. A single trial will subject parties such as Clear View Defendants to the unnecessary expense of participating in trial during the presentation of evidence concerning Phase I development and construction, in which they had no involvement. Furthermore, a single trial probably cannot be completed during the currently scheduled two-week term of court

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commencing October 28, 2013. Given the distinctions between Phase I and Phase II, separate trials for each phase will not result in injustice. *See Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000).

Finally, this Court notes that Marick has appealed four (4) orders granting summary judgment to a number of its subcontractors on Marick's cross-claims concerning Phase II construction. Marick's noticed its first appeal on October 12, 2012 and subsequently appealed the remaining orders on June 6, 2013. These appeals concern solely Phase II issues and claims; therefore, as Plaintiffs suggested to the Court in their Brief in Response to Marick's Request for Stay filed with the Court on October 29, 2012, a Phase I trial may proceed unimpeded by appeals concerning Phase II. This court does not rule herein on whether Phase II proceedings are stayed or otherwise affected by Marick's appeal.

Based upon the information presented to the Court and a review of the applicable law, this Court finds that separate trials for the claims concerning Phase I and Phase II will serve the purposes of Rules 18(c) and 42(b), SCRCP.

The Court hereby grants Clear View Defendants' Motion for Separate Trials of claims concerning Phase I and Phase II of Stoneledge. The parties are hereby ordered to comply with the Scheduling Order incorporated as part of this Order below.

SCHEDULING ORDER

A. Phase I Trial

The trial of Phase I claims will proceed on October 28, 2013. This order amends and replaces the May 9, 2013 Third Amended Scheduling Order. The parties to the Phase I trial shall abide by the following deadlines:

1. All dispositive motions shall be filed by: September 21, 2013;

2. Pre-trial briefs and voir dire forwarded to trial judge by: October 7, 2013;

3. Trial readiness conference with trial judge conducted by: October 8, 2013;

4. Witness and exhibit lists exchange and motions in limine by: October 21, 2013;

5. Counsels' exhibit conference conducted by: October 23, 2013;

6. Exhibits pre-marked and a complete list provided to Clerk by: October 25, 2013; and

7. Trial Date: October 28, 2013.

B. Phase II Trial

The trial of Phase II claims will proceed not before February 1, 2014; unless all Phase I claims are dismissed on or before September 2, 2013. **If all Phase I claims are dismissed by September 2, 2013, the trial of Phase II claims will commence on October 28, 2013, and the Phase II parties shall abide by the Phase I Scheduling Order stated above.** If all Phase I claims are not dismissed by September 2, 2013 the Phase II parties shall abide by the following deadlines, which shall be established after Phase II has been set for trial on or after February 1, 2014:

1. All dispositive motions shall be filed by: January 3, 2014;

2. Pre-trial briefs and voir dire forwarded to trial judge by: Fifteen Days Before Trial;

3. Trial readiness conference with trial judge conducted by: Fourteen Days Before Trial;

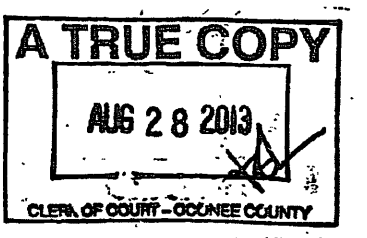
4. Witness and exhibit lists exchange and motions in limine by: Seven Days Before Trial;

5. Counsels' exhibit conference conducted by: Five Days Before Trial;

6. Exhibits pre-marked and a complete list provided to Clerk by: Three Days Before Trial; and

7. Specially set Trial Not Before: February 1, 2014.

7 of 8



IT IS SO ORDERED.

Judge Alexander S. Macaulay

Walhalla, South Carolina

August 28, 2013.

FILED OCONEE, SC
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CLERK OF COURT
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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC. ET AL

PLAINTIFF(S)

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THONNES

DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 PM 12 50

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiff on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00 (See Attached Verdit Form and Apportionment Form for more specific details.) All partles have 10 days to submit post-trial motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This trial encompassed Phase 1 of Stoneledge only.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owner's Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund,III, Ruth E. Isaac, Michael D.	IMK Development Cp., LLC	$1,150,000.00

Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White		
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Larry D. Lollis	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc. C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	William C. Cox	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Integrys Keowee Development, LLC	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Marick Home Builders, LLC	$ 950,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Bostic Brothers Construction, Inc.	$2,100,000.00

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP- 37-00652

Stoneledge at Lake Keowee Owners' Assoc., Inc., et al
PLAINTIFF(S)

IMK Development Co., LLC, et al
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See Page 1

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc.,Inc.,C.Dan Carson,Jeffrey J.Dauler, Joan W. Davenport,Michael Furnari,Donna Furnari,Jessy B.Grasso,Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isacc,Michael D. Plourde, MaryLouPlourde,Carol C.Pope Xxxx

For Clerk of Court Office Use Only

This judgment was entered on the 08th day of November, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 08th day of November, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher, Cynthia Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Renee Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., *ET AL*	)	
Plaintiffs,	)	**VERDICT FORM**
vs.	)	
IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES,	)	
Defendants,	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars ($ 3,000,000.00)

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders , LLC ,we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

one million dollars ($ 1,000,000.00)

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

a. ✓ Plaintiff

_____ Defendant IMK Development Co., LLC

b. ✓ Plaintiff

_____ Defendant Integrys Keowee Development, LLC

c. ✓ Plaintiff

_____ Defendant Rick Thoennes

d. ✓ Plaintiff

_____ Defendant William C. Cox

e. ✓ Plaintiff

_____ Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one million dollars ($1,000,000.00)

Morris R. Cobb

MORRIS R. COBB, Foreman

Walhalla, South Carolina
November 7, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All Others Similarly Situated	)	Civil Action No.: 2009-CP-37-0652
Plaintiffs,	)	APPORTIONMENT FORM
vs.	)	
IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes,	)	
Defendants.	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

Using the combined **negligence** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	40 %
Bostic Brothers Construction, Inc.	60 %
Total	**100%**

Using the combined breach of **implied warranty of workmanlike service** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	70 %
Bostic Brothers Construction, Inc.	30 %
Total	**100%**

Morris R. Cobb

MORRIS R. COBB, Foreman

Walhalla, South Carolina
November 7, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association Inc, et al

PLAINTIFF(S)

IMK Development Co LLC, et al

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

s/Alexander S. Macaulay	2063	01/21/2015
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of January, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of January, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason M. Imhoff
Cynthia Buck Brown
Alan R. Belcher

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF OCONEE	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED Plaintiffs, VS. IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, , CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL,	**OREDER DENYING DEFENDANTS' POST-TRIAL MOTIONS**

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 01

UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 01

Defendants Marick Home Builders, LLC, Rick Thoennes, IMK Development Co., LLC, Integrys Keowee, LLC, William C. Cox, and Larry D. Lollis timely made post-trial motions including motions for JNOV pursuant to Rule 50; Alter/Amend; New Trial, New Trial Absolute, New Trial Nisi Remittitur, Set off, and Election of Remedies.

After careful consideration of the record, along with the and filings and able arguments of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motions, pursuant to Rules 50 and 59, SCRCP, are hereby DENIED.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
January 21, 2015

A TRUE COPY
JAN 22 2015
CLERK OF COURT - OCONEE COUNTY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-0652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

Stoneledge at Lake Keowee Owners' Association, Inc., et al.
PLAINTIFF(S)

IMK Development Co., LLC et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiffs on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00. At trial these verdicts were ruled to be cumulative and are reflected as such herein (See Attached Verdit Form and Apportionment Form for more specific details). Plaintiff Stoneledge at Lake Keowee Owners' Association is responsible for disbursements of monies collected to its respective owners on a pro rata basis. This order hereby amends the prior Form 4C order filed on November 8, 2013. Additionally, this judgment shall be backdated to the filing date of the original Form 4C order, November 8, 2013.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Negligence: Bostic Brothers Construction, Inc.	$2,144,088.23

Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Home Builders, LLC and IMK Development Co.	$857, 635.29
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Warranty: Bostic Brothers Construction, Inc.	$643,226.47
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Homebuilders, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Fiduciary Duty: IMK Development Co.	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Integrys Keowee Development, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Rick Thoennes	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	William C. Cox	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Larry D. Lollis	$2,144,088.23

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

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

Circuit Court Judge

2063
Judge Code

1/21/15
Date

A TRUE COPY
JAN 30 2015
CLERK OF COURT - OCONEE COUNTY

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher
Cynthia Buck Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAR 0 3 2015
SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, Seventh Judicial Circuit

Case No. 2009-CP-37-00652

Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated.....Plaintiffs,

Of whom, Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated.....Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates, John Ludwig, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders First Source Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry/Player & Associates..... Defendants,

Of whom, Bostic Brothers Construction, Inc. .....Appellant.

NOTICE OF APPEAL

Bostic Brothers Construction, Inc. ("Appellant") appeals these certain Orders of the Honorable Alexander S. Macaulay:

1. Order denying Appellant's Motion for Directed Verdict at the close of Plaintiffs' case during trial;

2. Order denying Appellant's Motion for Directed Verdict at the close of Defendants' case during trial;

3. Final Judgment, Apportionment Form, and Jury Verdict Form filed November 8, 2013 (attached hereto as "Exhibit A");

4. Form 4 and accompanying Order Denying Defendants' Post-Trial Motions filed on January 22, 2015 (attached hereto as "Exhibit B"). Appellants received written notice of the entry of this order on January 27, 2015, ostensibly denying Defendant Bostic Brothers Construction, Inc.'s Post Trial Motions, which are as follows[1]:

   a. Bostic Brothers Construction Inc.'s First Post Trial Motion: Motion for Judgment Notwithstanding the Verdict;

   b. Bostic Brothers Construction, Inc.'s Second Post Trial Motion: Motion for Set Off;

   c. Bostic Brothers Construction, Inc.'s Third Post Trial Motion: Motion for a New Trial Absolute; and

   d. Bostic Brothers Construction, Inc.'s Fourth Post Trial Motion: Motion for a New Trial Nisi Remittitur.

5. Form 4 Judgment filed January 30, 2015, amending prior Form 4 Judgment filed November 8, 2013. Appellants received written notice of the entry of this judgment on February 4, 2015 (attached hereto as "Exhibit C").

[1] Bostic Brothers Construction, Inc. filed its Post Trial Motions on November 18, 2013.

February 26, 2015

Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
Attorneys for Appellant

OTHER COUNSEL OF RECORD:

Robert T. Lyles, Jr., Esquire
Lyles & Lyles, LLC
P. 0. Box 773
Charleston, SC 29402
843-577-7730
Attorneys for Respondents

Cynthia Buck Brown, Esquire
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Harper, Lambert & Brown, PA
PO Box 908
Greenville, SC 29602
864-235-5535
-and-
Wallace K. Lightsey, Esquire
Wyche Burgess Freeman & Parham, PA
PO Box 728
Greenville, SC 29602
864-242-8207
Attorneys for IMK Development Co.; LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis

Jason M. Imhoff, Esquire
Chad M. Graham, Esquire
The Ward Law Firm, P.A.
P.O Box 5663
Spartanburg, SC 29304
843-582-3075
Attorneys for Marick Home Builders, LLC and Rick Theonnes

EXHIBIT A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 PM 12:08

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC. ET AL

PLAINTIFF(S)

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THONNES

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiff on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00 (See Attached Verdit Form and Apportionment Form for more specific details.) All parties have 10 days to submit post-trial motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: This trial encompassed Phase 1 of Stoneledge only.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owner's Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund,III, Ruth E. Isaac, Michael D.	IMK Development Cp., LLC	$1,150,000.00

SCRCP Form 4C (03/2013)

Cert Copies Mailed To All Parties

Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White		
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Larry D. Lollis	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc. C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	William C. Cox	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Integrys Keowee Development, LLC	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Marick Home Builders, LLC	$ 950,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Bostic Brothers Construction, Inc.	$2,100,000.00

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP- 37-00652

Stoneledge at Lake Keowee Owners' Assoc., Inc., et al
PLAINTIFF(S)

IMK Development Co., LLC, et al
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other.

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other.

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See Page 1

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc., C.Dan Carson, Jeffrey J Dauller, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Robert P. Hayes, Lucy H. Hayes, Lynn H. Hendrix, D. Max Paul W. Hunt, III, Ruth E. Isaac, Michael D. Plourde, Meryl on P Plourde, Carol C. Pope, Stephen J. Taylor, Patte J. Taylor, Robert White, Nancy E. Grasso	Rick Thoennes	$ 200,000.00

Additional names (plaintiffs, defendants, lienholders, taxpayers) and addresses referenced in the order:

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

Circuit Court Judge

2063
Judge Code

11/08/13
Date

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 PM 12:48

SCRCP Form 4C (03/2013)

Page3

For Clerk of Court Office Use Only

This judgment was entered on the 08th day of November, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 08th day of November, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher, Cynthia Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Renee Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	TENTH JUDICIAL CIRCUIT
Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All Others Similarly Situated Plaintiffs, vs. IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Defendants	Civil Action No.: 2009-CP-37-0652 APPORTIONMENT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9:09

Using the combined **negligence** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	40 %
Bostic Brothers Construction, Inc.	60 %
Total	**100%**

Using the combined breach of **implied warranty of workmanlike service** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	70 %
Bostic Brothers Construction, Inc.	30 %
Total	**100%**

Morris R. Cobb

MORRIS R. COBB, Foreman

Walhalla, South Carolina
November 7, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., *ET AL*	)	
Plaintiffs,	)	**VERDICT FORM**
vs.	)	
IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES,	)	
Defendants,	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

 ✓ **Plaintiff**

 _____ Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

 ✓ Plaintiff

 _____ Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars ($ 3,000,000.00)

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

__✓__ Plaintiff

_____ Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders, LLC ,we, the jury, unanimously find for the:

__✓__ Plaintiff

_____ Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

one million dollars ($1,000,000.00)

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

a. __✓__ Plaintiff

_____ Defendant IMK Development Co., LLC

b. __✓__ Plaintiff

_____ Defendant Integrys Keowee Development, LLC

c. __✓__ Plaintiff

_____ Defendant Rick Thoennes

d. ✓ Plaintiff

_____ Defendant William C. Cox

e. ✓ Plaintiff

_____ Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one million dollars ($1,000,000.00)

Morris R. Cobb

MORRIS R. COBB, Foreman

Walhalla, South Carolina
November 7, 2013

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association Inc, et al.

PLAINTIFF(S)

IMK Development Co LLC, et al

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

s/Alexander S. Macaulay
Circuit Court Judge

2063
Judge Code

01/21/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of January, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of January, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason M. Imhoff
Cynthia Buck Brown
Alan R. Belcher

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. FLOURDE, MARY LOU FLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCHINSON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 02

ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS

UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 02

Defendants Marick Home Builders, LLC, Rick Thoennes, IMK Development Co., LLC, Integrys Kebwee, LLC, William C. Cox, and Larry D. Lollis timely made post-trial motions including motions for JNOV pursuant to Rule 50; Alter/Amend; New Trial; New Trial Absolute; New Trial Nisi Remittitur, Set off, and Election of Remedies.

After careful consideration of the record, along with the and filings and able arguments of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motions, pursuant to Rules 50 and 59, SCRCP, are hereby DENIED.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY

Walhalla, South Carolina
January 21, 2015

A TRUE COPY
JAN 22 2015
CLERK OF COURT - OCONEE COUNTY

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-0652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

Stoneledge at Lake Keowee Owners' Association, Inc., et al.
PLAINTIFF(S)

IMK Development Co., LLC et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiffs on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00. At trial these verdicts were ruled to be cumulative and are reflected as such herein (See Attached Verdit Form and Apportionment Form for more specific details). Plaintiff Stoneledge at Lake Keowee Owners' Association is responsible for disbursements of monies collected to its respective owners on a pro rata basis. This order hereby amends the prior Form 4C order filed on November 8, 2013. Additionally, this judgment shall be backdated to the filing date of the original Form 4C order, November 8, 2013.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Negligence: Bostic Brothers Construction, Inc.	$2,144,088.23

Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Home Builders, LLC and IMK Development Co.	$857, 635.29
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Warranty: Bostic Brothers Construction, Inc.	$643,226.47
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Homebuilders, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Fiduciary Duty: IMK Development Co.	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Integrys Keowee Development, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Rick Thoennes	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	William C. Cox	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Larry D. Lollis	$2,144,088.23

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

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

Circuit Court Judge

2063
Judge Code

1/21/15
Date

A TRUE COPY
JAN 30 2015
CLERK OF COURT - OCONEE COUNTY

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher
Cynthia Buck Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, Seventh Judicial Circuit

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Case No. 2009-CP-37-00652

Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated.....Plaintiffs,

Of whom, Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated..... Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates, John Ludwig, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders First Source Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry/Player & Associates..... Defendants,

Of whom, Bostic Brothers Construction, Inc.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy of it in the United States Mail, First Class postage prepaid, on February 26, 2015, addressed to Respondents' attorneys of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, PO Box 773, Charleston, SC 29402 (attorney for Plaintiffs), Cynthia Buck Brown, Esquire and R. Patrick Smith, Esquire, Harper Lambert & Brown, PA. PO Box 908, Greenville, SC 29602 AND Wallace K. Lightsey, Esquire Wyche Burgess Freeman & Parham, PA, PO Box 728, Greenville, SC 29602 (attorney for IMK Development Co., LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis), Jason M. Imhoff, Esquire, Chad M. Graham, Esquire, The Ward Law Firm, P.A., P.O. Box 5663, Spartanburg, SC 29304 (attorneys for Marick Home Builders, LLC and Rick Thoennes). Copies of the Orders are attached hereto.

Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
Attorneys for Appellant

OTHER COUNSEL OF RECORD:

Robert T. Lyles, Jr., Esquire
Lyles & Lyles, LLC
P. 0. Box 773
Charleston, SC 29402
843-577-7730
Attorneys for Respondents

Cynthia Buck Brown, Esquire
R. Patrick Smith, Esquire
Harper, Lambert & Brown, PA
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-and-

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SC Court of Appeals

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Jason M. Imhoff, Esquire
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P.O Box 5663
Spartanburg, SC 29304
843-582-3075
Attorneys for Marick Home Builders, LLC and Rick Theonnes

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 2 AM 10 31

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, Seventh Judicial Circuit

Case No. 2009-CP-37-00652

Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated.....Plaintiffs,

Of whom, Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated..... Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates, John Ludwig, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders First Source Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry/Player & Associates..... Defendants,

Of whom, Bostic Brothers Construction, Inc. .....Appellant.

NOTICE OF APPEAL

Bostic Brothers Construction, Inc. ("Appellant") appeals these certain Orders of the Honorable Alexander S. Macaulay:

1. Order denying Appellant's Motion for Directed Verdict at the close of Plaintiffs' case during trial;

2. Order denying Appellant's Motion for Directed Verdict at the close of Defendants' case during trial;

3. Final Judgment, Apportionment Form, and Jury Verdict Form filed November 8, 2013 (attached hereto as "Exhibit A");

4. Form 4 and accompanying Order Denying Defendants' Post-Trial Motions filed on January 22, 2015 (attached hereto as "Exhibit B"). Appellants received written notice of the entry of this order on January 27, 2015, ostensibly denying Defendant Bostic Brothers Construction, Inc.'s Post Trial Motions, which are as follows[1]:

   a. Bostic Brothers Construction Inc.'s First Post Trial Motion: Motion for Judgment Notwithstanding the Verdict;

   b. Bostic Brothers Construction, Inc.'s Second Post Trial Motion: Motion for Set Off;

   c. Bostic Brothers Construction, Inc.'s Third Post Trial Motion: Motion for a New Trial Absolute; and

   d. Bostic Brothers Construction, Inc.'s Fourth Post Trial Motion: Motion for a New Trial Nisi Remittitur.

5. Form 4 Judgment filed January 30, 2015, amending prior Form 4 Judgment filed November 8, 2013. Appellants received written notice of the entry of this judgment on February 4, 2015 (attached hereto as "Exhibit C").

[1] Bostic Brothers Construction, Inc. filed its Post Trial Motions on November 18, 2013.

February 26, 2015

Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
Attorneys for Appellant

OTHER COUNSEL OF RECORD:

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Lyles & Lyles, LLC
P. 0. Box 773
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843-577-7730
Attorneys for Respondents

Cynthia Buck Brown, Esquire
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864-235-5535
-and-
Wallace K. Lightsey, Esquire
Wyche Burgess Freeman & Parham, PA
PO Box 728
Greenville, SC 29602
864-242-8207
Attorneys for IMK Development Co., LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis

Jason M. Imhoff, Esquire
Chad M. Graham, Esquire
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P.O Box 5663
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843-582-3075
Attorneys for Marick Home Builders, LLC and Rick Theonnes

EXHIBIT A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 PM 12 18

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC. ET AL

PLAINTIFF(S)

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THONNES

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiff on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00 (See Attached Verdit Form and Apportionment Form for more specific details.) All parties have 10 days to submit post-trial motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : This trial encompassed Phase 1 of Stoneledge only.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owner's Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund,III, Ruth E. Isaac, Michael D.	IMK Development Cp., LLC	$1,150,000.00

SCRCP Form 4C (03/2013)

Cert Copies Mailed To All Parties

Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White		
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Larry D. Lollis	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc. C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	William C. Cox	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Integrys Keowee Development, LLC	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Marick Home Builders, LLC	$ 950,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Issac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Bostic Brothers Construction, Inc.	$2,100,000.00

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP- 37-00652

Stoneledge at Lake Keowee Owners' Assoc., Inc., et al
PLAINTIFF(S)

IMK Development Co., LLC, et al
DEFENDANT(S)

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: See Page 1

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc., C.Dan Carson, Jeffrey J.Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B.Grasso, Robert P. Hayes, Lucy H. Hayes, Tyler Jennings Box, Paul W. Hund, Jill Ruth E. Isaac, Michael D. Plourde, Marylou Plourde, Carol C. Pope, Stephen Taylor, Betty J. Taylor, Robert White, Nancy E. Grasso	Rick Thoennes	$ 200,000.00

Abstract Description of Property (Include tax map information and address references in the order)

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

Circuit Court Judge

2063
Judge Code

11/08/13
Date

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 PM 12:48

SCRCP Form 4C (03/2013)

Page3

For Clerk of Court Office Use Only

This judgment was entered on the 08th day of November, 2013, and a copy mailed first class or placed in the appropriate attorney's box on this 08th day of November, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher, Cynthia Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Renee Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All Others Similarly Situated	)	Civil Action No.: 2009-CP-37-0652
	)	
	)	APPORTIONMENT FORM
Plaintiffs,	)	
vs.	)	
	)	
IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes,	)	
	)	
Defendants	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

Using the combined **negligence** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	40 %
Bostic Brothers Construction, Inc.	60 %
Total	**100%**

Using the combined breach of **implied warranty of workmanlike service** that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	70 %
Bostic Brothers Construction, Inc.	30 %
Total	**100%**

Morris R. Cobb, Foreman

Walhalla, South Carolina
November 7, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., *ET AL*	)	
Plaintiffs,	)	**VERDICT FORM**
vs.	)	
IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES,	)	
Defendants,	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

 ___✓___ Plaintiff

 _____ Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

 ___✓___ Plaintiff

 _____ Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars ($3,000,000.00)

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders , LLC ,we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

one million dollars ($ 1,000,000.00)

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

a. ✓ Plaintiff

_____ Defendant IMK Development Co., LLC

b. ✓ Plaintiff

_____ Defendant Integrys Keowee Development, LLC

c. ✓ Plaintiff

_____ Defendant Rick Thoennes

d. ✓ Plaintiff

_____ Defendant William C. Cox

e. ✓ Plaintiff

_____ Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one millin dollars ($1,000,000.00)

Morris R. Cobb

MORRIS R. COBB, Foreman

Walhalla, South Carolina
November 7, 2013

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association Inc, et al

PLAINTIFF(S)

IMK Development Co LLC, et al

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other.

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

s/Alexander S. Macaulay
Circuit Court Judge

2063
Judge Code

01/21/2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of January, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of January, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason M. Imhoff
Cynthia Buck Brown
Alan R. Belcher

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) FOR THE TENTH JUDICIAL CIRCUIT
CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

JMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCHINSON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 02

ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS

UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 02

Defendants Marick Home Builders, LLC, Rick Thoennes, IMK Development Co., LLC, Integrys Keowee, LLC, William C. Cox, and Larry D. Lollis timely made post-trial motions including motions for JNOV pursuant to Rule 50; Alter/Amend; New Trial, New Trial Absolute; New Trial Nisi Remittitur, Set off, and Election of Remedies.

After careful consideration of the record, along with the and filings and able arguments of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendants' Motions, pursuant to Rules 50 and 59, SCRCP, are hereby DENIED.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY

Walhalla, South Carolina
January 21, 2015

A TRUE COPY
JAN 22 2015
CLERK OF COURT - OCONEE COUNTY

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-0652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

Stoneledge at Lake Keowee Owners' Association, Inc., et al.
PLAINTIFF(S)

IMK Development Co., LLC et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiffs on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00. At trial these verdicts were ruled to be cumulative and are reflected as such herein (See Attached Verdit Form and Apportionment Form for more specific details). Plaintiff Stoneledge at Lake Keowee Owners' Association is responsible for disbursements of monies collected to its respective owners on a pro rata basis. This order hereby amends the prior Form 4C order filed on November 8, 2013. Additionally, this judgment shall be backdated to the filing date of the original Form 4C order, November 8, 2013.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Negligence: Bostic Brothers Construction, Inc.	$2,144,088.23

Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Home Builders, LLC and IMK Development Co.	$857, 635.29
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Warranty: Bostic Brothers Construction, Inc.	$643,226.47
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Homebuilders, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Fiduciary Duty: IMK Development Co.	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Integrys Keowee Development, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Rick Thoennes	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	William C. Cox	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Larry D. Lollis	$2,144,088.23

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

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

Circuit Court Judge

2063
Judge Code

1/21/15
Date

A TRUE COPY
JAN 30 2015
CLERK OF COURT, OCONEE COUNTY

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher
Cynthia Buck Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, Seventh Judicial Circuit

---

Case No. 2009-CP-37-00652

Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated.....Plaintiffs,

Of whom, Stoneledge At Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All others similarly situated.....Respondents,

v.

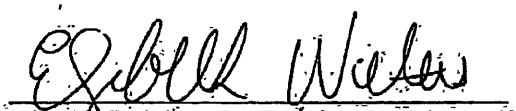
IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates, John Ludwig, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders First Source Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry/Player & Associates..... Defendants,

Of whom, Bostic Brothers Construction, Inc.....Appellant.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 2 AM 10 31

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy of it in the United States Mail, First Class postage prepaid, on February 26, 2015, addressed to Respondents' attorneys of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, PO Box 773, Charleston, SC 29402 (attorney for Plaintiffs), Cynthia Buck Brown, Esquire and R. Patrick Smith, Esquire, Harper Lambert & Brown, PA. PO Box 908, Greenville, SC 29602 AND Wallace K. Lightsey, Esquire Wyche Burgess Freeman & Parham, PA, PO Box 728, Greenville, SC 29602 (attorney for IMK Development Co., LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis), Jason M. Imhoff, Esquire, Chad M. Graham, Esquire, The Ward Law Firm, P.A., P.O. Box 5663, Spartanburg, SC 29304 (attorneys for Marick Home Builders, LLC and Rick Thoennes). Copies of the Orders are attached hereto.



Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
Attorneys for Appellant

OTHER COUNSEL OF RECORD:

Robert T. Lyles, Jr., Esquire
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P. 0. Box 773
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Attorneys for Respondents

Cynthia Buck Brown, Esquire
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PO Box 908
Greenville, SC 29602
864-235-5535
-and-

Wallace K. Lightsey, Esquire
Wyche Burgess Freeman & Parham, PA
PO Box 728
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Attorneys for IMK Development Co., LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis

Jason M. Imhoff, Esquire
Chad M. Graham, Esquire
The Ward Law Firm, P.A.
P.O Box 5663
Spartanburg, SC 29304
843-582-3075
Attorneys for Marick Home Builders, LLC and Rick Theonnes

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAR 20 2015
SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, Seventh Judicial Circuit

Case No. 2009-CP-37-00652
Ct. App. No. 2015-000417

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated, Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates; Bradford D. Seckinger; John Ludwig, William C. Cox, Larry D. Lollis, Rick Thoennes, M. Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Upstate Utilities, Inc., Southern Basements, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles; Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez; Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, Defendants,

Of Whom Bostic Brothers Construction, Inc. is the Appellant.

SECOND AMENDED NOTICE OF APPEAL

Bostic Brothers Construction, Inc. ("Appellant") appeals these certain Orders of the Honorable Alexander S. Macaulay:

1. Order denying Appellant's Motion for Directed Verdict at the close of Plaintiffs' case during trial;

2. Order denying Appellant's Motion for Directed Verdict at the close of Defendants' case during trial;

3. Final Judgment, Apportionment Form, and Jury Verdict Form filed November 8, 2013 (attached hereto as "Exhibit A");

4. Form 4 and accompanying Order Denying Defendants' Post-Trial Motions filed on January 22, 2015 (attached hereto as "Exhibit B"). Appellants received written notice of the entry of this order on January 27, 2015, ostensibly denying Defendant Bostic Brothers Construction, Inc.'s Post Trial Motions, which are as follows[1]:

   a. Bostic Brothers Construction Inc.'s First Post Trial Motion: Motion for Judgment Notwithstanding the Verdict;

   b. Bostic Brothers Construction, Inc.'s Second Post Trial Motion: Motion for Set Off;

   c. Bostic Brothers Construction, Inc.'s Third Post Trial Motion: Motion for a New Trial Absolute; and

   d. Bostic Brothers Construction, Inc.'s Fourth Post Trial Motion: Motion for a New Trial Nisi Remittitur.

5. Form 4 Judgment filed January 30, 2015, amending prior Form 4 Judgment filed November 8, 2013. Appellants received written notice of the entry of this judgment on February 4, 2015 (attached hereto as "Exhibit C").

6. Order Denying Bostic Brothers Construction Inc.'s Rule 59 Motion to Reconsider filed March 13, 2015. Appellants received written notice of the entry of this order on March 16, 2015 (attached hereto as "Exhibit D").

[1] Bostic Brothers Construction, Inc. filed its Post Trial Motions on November 18, 2013.

March 17, 2015

Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
Attorneys for Appellant

COUNSEL OF RECORD:

Robert T. Lyles, Jr., Esquire
Lyles & Lyles, LLC
P. O. Box 773
Charleston, SC 29402
843-577-7730
Attorney for Respondents

EXHIBIT A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 PM 12:50

STONELEDGE AT LAKE KEOWEE OWNERS ASSOCIATION, INC. ET. AL.

IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENES

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Para. 2 for additional information.

☐ **ACTION DISMISSED (CHECK ONE):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (settled); ☐ Other.

☐ **ACTION STRICKEN (CHECK ONE):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration order; ☐ Lack of prosecution; ☐ Other.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK ONE):** ☐ Affirmed ☐ Reversed ☐ Remanded ☐ Other.

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (format order to follow) ☐ Statement of Judgment: by the Court: Jury found for the Plaintiff on the cause of action for negligence as to Defendants Bottie Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00 Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00 (See Attached Verdit Form and Apportionment Form for more specific details.) All parties have 10 days to submit post-trial motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: This trial encompassed Phase 1 of Stoneledge only.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owner's Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund,III, Ruth E. Isaac, Michael D.	IMK Development Co., LLC	$1,150,000.00

SCRCP Form 4C (03/2013)

Cert Copies Mailed To All Parties

Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White		
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Larry D. Lollis	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc. C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	William C. Cox	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Integrys Keowee Development, LLC	$ 200,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Merick Home Builders, LLC	$ 950,000.00
Stoneledge at Lake Keowee Owners' Assoc., Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White	Bostic Brothers Construction, Inc.	$2,100,000.00

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Assoc., Inc., et al
PLAINTIFF(S)

IMK Development Co., LLC, et al
DEFENDANT(S)

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

☒ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration; subject to pending motion to confirm, vacate or modify arbitration award; ☐ Other

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT FROM A PROBATE COURT: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED that [illegible] (formal prior motion) is [illegible] by the Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be satisfied. If not applicable, indicate N/A in one of the boxes below.

Judgment in Favor of (Plaintiff(s) Listed Below)	Judgment Against (Defendant(s) Listed Below)	Amount to be Satisfied (If Applicable)
Stoneledge at Lake Keowee Owners Assoc., Inc., et al	Rick Theonnes	$ 200,000.00

Robert White, Nancy [illegible]

This judgment information sheet must be completed by the party submitting the order to the court. Failure to do so may subject the party to a fine pursuant to Rule 5(j), SCRCP. Any party may submit a corrected form may be submitted by any party at any time. Upon receipt of the corrected form, the clerk shall immediately enter the information into the judgment index. Any party may request a certified copy of the judgment roll or additional abstracts of judgment, subject to applicable fees, at any time after the judgment is entered in the clerk's office. Note: The Judgment Roll consists of the following papers filed in the action: summons, pleadings, any offer of judgment and proof of service thereof, and the judgment.

[illegible] Circuit Court Judge

2013
Judge Code

11/20/13
DATE

FILED OCONEE, SC
2013 NOV 22 PM 12:22
BEVERLY H. WHITFIELD
CLERK OF COURT

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the 08th day of November, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 08th day of November, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Robert J. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Luff, Alan Belcher, Cynthia Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly E. Whitfield

CLERK OF COURT

Court Reporter: Pearce Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	TENTH JUDICIAL CIRCUIT
Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Davler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy B. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually and on Behalf of All Others Similarly Situated Plaintiffs, vs. IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Defendants	Civil Action No.: 2009-CP-37-0652 APPORTIONMENT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

Using the combined negligence that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage of that negligence is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	40 %
Bostic Brothers Construction, Inc.	60 %
Total	100%

Using the combined breach of implied warranty of workmanlike service that proximately caused the plaintiffs' injuries as one hundred percent (100%), what percentage is attributable to each defendant? [The percentage must add up to 100%.]

IMK Development Co., LLC/Marick Home Builders, LLC	70 %
Bostic Brothers Construction, Inc.	30 %
Total	100%

Melvin S. Dean, Foreman

Walhalla, South Carolina
November 7, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., *ET AL*	)	
Plaintiffs,	)	
vs.	)	
IMK DEVELOPMENT CO., LLC, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS-KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES,	)	
Defendants.	)	

VERDICT FORM

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 NOV 8 AM 9 09

1. On the cause of action for negligence as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

____ Defendant

On the cause of action for negligence as to the Defendants IMK Development Co., LLC, and Marick Homebuilders, LLC, we, the jury, unanimously find for the:

✓ Plaintiff

____ Defendants

If you find for the Plaintiff on the negligence cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of negligence.

three million dollars ($3,000,000.00)

After you have completed the above, please respond to Number 2, below.

2. On the cause of action for breach of warranty of workmanlike service as to the Defendant Bostic Brothers Construction, Inc., we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

On the cause of action for breach of warranty of workmanlike service as to the Defendant Marick Homebuilders , LLC ,we, the jury, unanimously find for the:

✓ Plaintiff

_____ Defendant

If you find for the Plaintiff on the breach of warranty of workmanlike service cause of action as to any of the above Defendants, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of warranty of workmanlike service.

[illegible] ($ 1,000,000.00)

After you have completed the above, please respond to Number 3 below.

3. On the cause of action for breach of fiduciary duty as to the following Defendants we, the jury, unanimously find for the:

a. ✓ Plaintiff

_____ Defendant IMK Development Co., LLC

b. ✓ Plaintiff

_____ Defendant Integrys Keowee Development, LLC

c. ✓ Plaintiff

_____ Defendant Rick Thoennes

d. ✓ Plaintiff

_____ Defendant William C. Cox

e. ✓ Plaintiff

_____ Defendant Larry D. Lollis

If you find for the Plaintiff as to any of the of the above Defendants on the breach of fiduciary duty on this cause of action, please set forth the amount of actual damages resulting to the Plaintiff as a result of the breach of fiduciary cause of action.

one million dollars ($1,000,000.00)

Morris K. Cobb, Foreman

Walhalla, South Carolina
November 7, 2013

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-37-00652

Stoneledge at Lake Keowee Owners Association Inc, et al

PLAINTIFF(S)

IMK Development Co LLC, et al

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Court Order for additional information.

☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 41(b), SCRCP (Failure); ☐ Other

☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding Arbitration; ☐ Lack of Jurisdiction/Venue; ☐ Failure to confirm, vacate or modify Arbitration Award; ☐ Other

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED (1) See attached order (Formal title not required) ☐ Statement of judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment In Favor Of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To Be Enrolled ($ Amount Or N/A)
N/A	N/A	$N/A
		$
		$

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

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

s/Alexander S. Macaulay
Circuit Court Judge

2063
Judge Code

01/23/2015
Date

SCRCP Form 4C (03/2013)

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of January, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of January, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason M. Imhoff
Cynthia Buck Brown
Alan R. Belcher

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield
CLERK OF COURT

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY I. DAUER, JOAN W. DOUGHERTY, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY B. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HOND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CATOR G. POPE, STEVEN B. TAYLOR, BETTIE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

JMC DEVELOPMENT CO., LLC, STONE TOWNHOUSES, LLC, LODWICK CORPORATION, LLC, SDH FUNDING, LLC, MEDALLION AT KEOWEE, LLC, NORTH KEOWEE, LLC, DEVELOPMENT, LLC, VENTURE HOME BUILDERS, LLC, BLACK BROTHERS CONSTRUCTION, INC., MICHAEL KEITH & COMPANY, KEITH HARVEY, JOHN D. WILD CONSTRUCTION, LLC, MIKE FRITZ, MIKE CONTRACTOR, MICHAEL FORKA, CHRONICLE BUILDERS, FIRST SOURCE SOUTHEAST GROUP, MARK ORBIN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRISE A/K/A COMPTON ENTERPRISE, GUNTER HEATING & AIR, ALL PRO HEATING A/C & REFRIGERATION, LLC, COLE PRO WATERPROOFING, HERWARD BUILDING SERVICES, INC., LINSEY HUBERT A/K/A HUBERT SOS CONSTRUCTION, INC., CARL CATOR CONSTRUCTION, INC., T.O. CONSTRUCTION, LLC, DREFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ARMANDO AVALOS CRUZ, HERBERTO ACEVES HERNANDEZ, MARTIN HERNANDEZ ACEVES, FRANCISCO VILLALOBOS LOPEZ, ANTONIO MARTINEZ RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTIEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2 02

ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS

UNISTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERARDO JARAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, BARON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION

Third-Party Defendants.

FILED: OCONEE, S.C.
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 22 PM 2:02

Defendants Mariek Home Builders, Inc., Kirk Hopkins, IMS Development Co., LLC, Integrys Kebwell, Inc., William D. Cox, and Larry D. Lollis timely made post-trial motions including motions for JNOV pursuant to Rule 50, Alter/Amend, New Trial, New Trial Absolute, New Trial Nisi Remittitur, Set off, and Election of Remedies.

After careful consideration of the record, along with the oral and written arguments of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact as to any matter considered. Accordingly, the Defendants' Motions, pursuant to Rules 50 and 59, SCRCP, are hereby DENIED.

AND, IT IS SO ORDERED.

Walhalla, South Carolina
January 21, 2015

A TRUE COPY
JAN 22 2015
CLERK OF COURT - OCONEE COUNTY

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-0652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

Stoneledge at Lake Keowee Owners' Association, Inc., et al.
PLAINTIFF(S)

IMK Development Co., LLC et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiffs on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00. At trial these verdicts were ruled to be cumulative and are reflected as such herein (See Attached Verdit Form and Apportionment Form for more specific details). Plaintiff Stoneledge at Lake Keowee Owners' Association is responsible for disbursements of monies collected to its respective owners on a pro rata basis. This order hereby amends the prior Form 4C order filed on November 8, 2013. Additionally, this judgment shall be backdated to the filing date of the original Form 4 Order, November 8, 2013.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Negligence: Bostic Brothers Construction, Inc.	$2,144,088.23

Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Home Builders, LLC and IMK Development Co.	$857, 635.29
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Warranty: Bostic Brothers Construction, Inc.	$643,226.47
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Homebuilders, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Fiduciary Duty: IMK Development Co.	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Integrys Keowee Development, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Rick Thoennes	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	William C. Cox	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Larry D. Lollis	$2,144,088.23

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

FILED OCONEE CO.
JAN 30 2018
BEVERLY H. WARD CLERK OF COURT
BY _____ DC

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

Circuit Court Judge

2063 — Judge Code

1/23/18

A TRUE COPY
JAN 30 2018
Page
CLERK OF COURT - OCONEE COUNTY

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher
Cynthia Burke Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly M. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

EXHIBIT D

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) FOR THE TENTH JUDICIAL CIRCUIT
) CASE NUMBER: 2009-CP-37-0652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

Plaintiffs,

vs.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, JOHN LUDWIG, , CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL,

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 13 PM 1 32

ORDER DENYING BOSTIC BROTHERS CONSTRUCTION INC'S RULE 59 MOTION TO RECONSIDER

UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC INC. D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY,

Defendants;

BOSTIC CONSTRUCTION, INC.,

Third-Party Plaintiff

vs.

SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,

Third-Party Defendants.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 13 PM 1 32

After careful consideration of the record and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Bostic Brothers Construction, Inc.'s Motion, pursuant to Rule 59, SCRCP, [1] is DENIED.

AND, IT IS SO ORDERED.

ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
March 12, 2015

A TRUE COPY
MAR 13 2015
CLERK OF COURT - OCONEE COUNTY

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Alexander S. Macaulay, Presiding Judge, Seventh Judicial Circuit

---

Case No. 2009-CP-37-00652
Ct. App. No. 2015-000417

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated, Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates; Bradford D. Seckinger; John Ludwig, William C. Cox, Larry D. Lollis, Rick Thoennes, M. Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Upstate Utilities, Inc., Southern Basements, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles; Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez; Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry, Defendants,

Of Whom Bostic Brothers Construction, Inc. is the Appellant.

PROOF OF SERVICE

I certify that I have served the Second Amended Notice of Appeal on Respondents by depositing a copy of it in the United States Mail, First Class postage prepaid, on March 17 2015, addressed to Respondents' attorneys of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, PO Box 773, Charleston, SC 29402.

Also served by the same means are the following: Cynthia Buck Brown, Esquire and R. Patrick Smith, Esquire of Harper Lambert & Brown, PA, P.O. Box 908, Greenville, SC 29602 (attorneys for IMK Development Co., LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis), Jason M. Imhoff, Esquire and Chad M. Graham, Esquire of The Ward Law Firm, P.A., P.O. Box 5663, Spartanburg, SC 29304 (attorneys for Marick Home Builders, LLC and Rick Thoennes).

Copies of the Orders are attached hereto as Exhibits A through D.

Elizabeth Wieters

Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, SC 29401
Telephone: (843) 720-3460
Facsimile: (843) 720-3458
Attorneys for Appellant

Robert T. Lyles, Jr., Esquire
Lyles & Lyles, LLC
P. O. Box 773
Charleston, SC 29402
843-577-7730
Attorney for Respondents

Cynthia Buck Brown, Esquire
R. Patrick Smith, Esquire
Harper, Lambert & Brown, PA
PO Box 908
Greenville, SC 29602
864-235-5535
Attorneys for IMK Development Co., LLC, Integrys Keowee Development, LLC, William C. Cox, and Larry Lollis

Jason M. Imhoff, Esquire
Chad M. Graham, Esquire
The Ward Law Firm, P.A.
P.O. Box 5663
Spartanburg, SC 29304
843-582-3075
Attorneys for Marick Home Builders, LLC and Rick Theonnes

H|B|S HALL BOOTH SMITH, P.C.

Elizabeth F. Wieters
P: (843) 720-3463
E: ewieters@hallboothsmith.com

40 Calhoun Street, Suite 550
Charleston, SC 29401
W: www.hallboothsmith.com
P: (843) 720-3460 F: (843) 720-3464

March 17, 2015

RECEIVED
MAR 20 2015
SC Court of Appeals

The Honorable Beverly Whitfield
Oconee County Clerk of Court
Post Office Box 678
Walhalla, SC 29691

RE: Stoneledge v. Bostic Brothers Construction
C. A. No: 2009-CP-37-0652
Ct. App. No.: 2015-000417

Dear Ms. Whitfield:

Enclosed for filing with regard to the above-referenced matter, please find the following:

1. Amended Notice of Appeal;
2. Second Amended Notice of Appeal;
3. Copies of the orders and judgments that have been reduced to writing and are being challenged on appeal (Exhibits A, B, C, and D);
4. Proof of Service of the Amended Notice of Appeal on the Respondents;
5. Proof of Service of the Second Amended Notice of Appeal on the Respondents; and
6. Our copy of correspondence to the South Carolina Court of Appeals.

I have included extra copies and would appreciate your returning these filed copies to our office in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Elizabeth F. Wieters

EFW/slf
Enclosures
cc: Robert T. Lyles, Jr. Esq,
Jason M. Imhoff, Esq.
Cynthia Buck Brown, Esq.
The Honorable Alexander S. Macaulay
The Honorable Jenny Abbot Kitchings

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF OCONEE)	CASE NUMBER: 2009-CP-37-652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B.GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU K. PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, ROBERT WHITE, individually, and on behalf of all others similarly situated,	**SUMMONS FOR FIRST AMENDED COMPLAINT** (Jury Trial Demanded)
Plaintiffs,	
vs.	
IMK DEVELOPMENT CO., LLC.; KEOWEE TOWNHOUSES, LLC; LUDWIG CORPORATION, LLC; SDI FUNDING, LLC; MEDALLION AT KEOWEE, LLC; INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC.; BOSTIC BROTHERS CONSTRUCTION, INC.; and, MILLER/PLAYER & ASSOCIATES;	
Defendants.	

FILED OCONEE SC
2010 FEB -9 P 4:47
BEVERLY H. WHITFIELD
CLERK OF COURT

TO: ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the First Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina 29402, within thirty (30) days after the service hereof,

exclusive of the day of such service, and if you fail to answer the First Amended Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the First Amended Complaint and will seek a default judgment against you.

Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street
Post Office Box 773 (29402)
Charleston, South Carolina 29401
(843) 577-7730
rtl@lylesfirm.com

ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina

Feb. 3, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF OCONEE)	CASE NUMBER: 2009-CP-37-652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B.GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU K. PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, ROBERT WHITE, individually, and on behalf of all others similarly situated,	**FIRST AMENDED COMPLAINT** (Jury Trial Demanded)
Plaintiffs,	
vs.	
IMK DEVELOPMENT CO., LLC.; KEOWEE TOWNHOUSES, LLC; LUDWIG CORPORATION, LLC; SDI FUNDING, LLC; MEDALLION AT KEOWEE, LLC; INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC.; BOSTIC BROTHERS CONSTRUCTION, INC.; and, MILLER/PLAYER & ASSOCIATES;	
Defendants.	

FILED OCONEE SC
BEVERLY H. BURRELL
CLERK OF COURT
2010 FEB -9 P 4:42

NOW COME, the Plaintiffs above-named, individually, and on behalf of all others similarly situated, complaining against the above-named Defendants, as follows:

CLASS ALLEGATIONS

1. Plaintiff Stoneledge at Lake Keowee Owners' Association, Inc. ("Stoneledge HOA") is a corporation organized and existing pursuant to the laws of the State of South Carolina and

conducts business in Oconee County, South Carolina. The Stoneledge HOA was created on May 24, 2005, pursuant to the South Carolina Horizontal Property Regime Act.

2. The Master Deed and Amended and Restated By-Laws dated November 1, 2005, recorded on November 30, 2005 at Book 1464, Page 33-65 (and are incorporated herein by reference) impose upon the Stoneledge HOA an obligation to maintain, repair, and replace components of the townhomes at Stoneledge.

3. The above-named Plaintiffs (hereinafter the "Individual Owners"), are owners of townhomes located in Phase I and/or II of the townhome community known as Stoneledge at Lake Keowee (hereinafter "the Project"), and have all suffered injury and damage, or will suffer injury or damage, as a direct and proximate result of the acts of the above-named Defendants.

4. The Project is located in Oconee County, South Carolina.

5. The Individual Owners bring this action individually and pursuant to Rule 23 of the *South Carolina Rules of Civil Procedure*, on behalf of a class of individuals and/or entities composed of each and every other owner at the Project (hereinafter the other owners at the Project sometimes shall be referred to collectively as "Class Plaintiffs").

6. For class action purposes, the Individual Owners allege that:

a. The class is sufficiently numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to the class;

c. The claims of the Individual Owners are typical of the claims of the class;

d. The Individual Owners will fairly and adequately protect the interest of the class; and

e. The amount in controversy exceeds One Hundred and No/100 Dollars ($100.00) for each member of the class.

7. Venue is proper in this Court because the principal place of business of one or more of the Defendants is in Oconee County, the property at issue is located in Oconee County, and the actions and/or inaction of the Defendants resulting in this lawsuit occurred in Oconee County.

FACTUAL ALLEGATIONS

8. The Defendant, IMK Development Co., LLC ("IMK"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. IMK developed and put certain of the Stoneledge townhomes into the stream of commerce.

9. Defendant Keowee Townhouses, LLC ("Keowee"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Keowee developed and put certain of the Stoneledge townhomes into the stream of commerce.

10. Defendant Ludwig Corporation, LLC ("Ludwig"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Ludwig developed and put certain of the Stoneledge townhomes into the stream of commerce.

11. Defendant SDI Funding, LLC ("SDI"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in business in Oconee County, South Carolina.

12. Defendant Medallion at Keowee, LLC ("Medallion"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Medallion has or will put certain of the Stoneledge townhomes into the stream of commerce.

13. Defendant Integrys Keowee Development, LLC ("Integrys"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Integrys placed certain of the Stoneledge townhomes into the stream of commerce.

14. Defendant Marick Home Builders, LLC ("Marick"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was licensed as a South Carolina residential builder, and was engaged in the business of residential home building in Oconee County, South Carolina. Marick acted as the general contractor for certain of the townhomes at the Project. Marick, acting in concert with IMK, placed certain of the Stoneledge townhomes into the stream of commerce.

15. Defendant Bostic Brothers Construction, Inc. ("Bostic"), upon information and belief, is a corporation organized and existing pursuant to the laws of a state other than South Carolina which was, at all times referred to herein, doing business in Oconee County, South Carolina as a

general contractor. Bostic acted as the general contractor for certain of the townhomes at the Project. Bostic, acting in concert with Keowee, put certain of the Stoneledge townhomes into the stream of commerce. (Marick and Bostic shall be referred to herein as "Contractors.") (IMK, Keowee, Ludwig, SDI, Medallion, Integrys, Marick, and Bostic shall hereinafter collectively be referred to as "Developers.")

16. Defendant Miller/Player & Associates ("MPA"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of architecture in Oconee County. MPA acted as the architect for certain of the townhomes at the Project.

17. The Plaintiffs are informed and believe that IMK was the alter ego of Defendant Marick and/or Integrys in that Marick and/or Integrys totally dominated and controlled IMK and IMK manifested no separate interest of its own and functioned solely to achieve the goals of Marick and/or Integrys and their principals.

18. Because IMK was the alter ego of Marick and/or Integrys, to separate the corporate entities promotes wrong and injustice and would contravene the public policy of South Carolina.

19. Additionally or alternatively, IMK and Marick and/or Integrys are corporate siblings whose interests and activities are so amalgamated as to blur the distinction between the three entities. Because of this amalgamation of interests and activities, IMK and Marick and/or Integrys should be treated as one and the same and be held jointly liable on all theories of liability asserted herein, including Breach of the Implied Warranty of Habitability, Breach of the Implied Warrant of Workmanlike Service, Negligence, and Breach of Fiduciary Duty. Unless specifically stated

otherwise, references to IMK, Marick, and/or Integrys when used herein, mean each and all of those entities.

20. The Plaintiffs are informed and believe that Ludwig was the alter ego of Defendant SDI in that SDI totally dominated and controlled Ludwig and Ludwig manifested no separate interest of its own and functioned solely to achieve the goals of SDI and its principals.

21. Because Ludwig was the alter ego of SDI, to separate the corporate entities promotes wrong and injustice and would contravene the public policy of South Carolina.

22. Additionally or alternatively, SDI and Ludwig are corporate siblings whose interests and activities are so amalgamated as to blur the distribution between the three entities. Because of this amalgamation of interests and activities, SDI and Ludwig should be treated as one and the same and be held jointly liable on all theories of liability asserted herein, including Breach of the Implied Warranty of Habitability, Breach of the Implied Warrant of Workmanlike Service, Negligence, and Breach of Fiduciary Duty. Unless specifically stated otherwise, references to SDI and Ludwig when used herein, mean each and both of those entities.

23. The Plaintiffs have became aware of certain problems at the townhomes at the Project, including, but not limited to, water intrusion through the exterior cladding of the townhomes which has resulted in severe rot and deteriorated components of the Project.

24. Repairs and investigation to date at the Project have revealed this non-exhaustive list of problems within the Project:

a. Inadequate and/or improper flashing at numerous locations;

b. Inadequate and/or improper use of building paper and other building components;

c. Inadequate and/or improper attachment and/or installation of building components; and,

d. Improper site work.

25. The problems at the Project, including those identified in the preceding Paragraph, and those described in the remaining paragraphs, have resulted in water intrusion and have caused physical injury to the tangible property of others. Upon information and belief, the exposure to the same or general harmful conditions has resulted in rot and other physical damage to the components of the townhomes at the Project.

26. Plaintiffs reported the problems at the Project to some or all of the Defendants who have failed and refused to investigate the problems or to repair them.

27. Upon information and belief, there are other latent defects at the Project that have yet to be uncovered and can only be uncovered through additional investigation and testing at the Project.

28. To date, Plaintiffs have expended significant sums in attempting to repair certain townhomes, and will continue to incur costs and expenses to investigate the pervasive deficiencies and to correct them. The repair of the deficiencies will also deprive the owners of the townhomes at the Project, including the Class Plaintiffs, of the use and enjoyment of their townhomes and will also result in the diminution in value of their townhomes because of the stigma associated with the deficiencies.

29. As a result of the above-referenced problems, and those yet to be discovered, Plaintiffs have or will suffer the following damages:

a. Cost to investigate the problems at the Project, and the individual townhomes within the Project;

b. The cost to develop a comprehensive repair for the Project, including the individual townhomes at the Project;

c. The cost of accessing, repairing, and replacing all defective and/or unsuitable and damaged components at the Project and the individual townhomes within the Project;

d. The diminished market value of the townhomes at the Project;

e. Damages associated with the loss of use of the units at the Project while repairs are undertaken; and

f. Such other damages as may result from the conduct of the Defendants.

30. Some or all of the damages outlined in the preceding paragraph are common to all Class Plaintiffs and, in whole or in part, the Stoneledge HOA.

FOR A FIRST CAUSE OF ACTION
(Breach of Warranty: Developers)

31. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

32. In acting as the developers of the Project and placing the individual townhomes into the stream of commerce, Developers provided an implied warranty of habitability to each owner at the Project and for the benefit of the HOA.

33. The above-referenced problems (and any subsequently-discovered problems) with the Project, and the townhomes within the Project, establish that this warranty has been breached by the Developers.

34. As a direct and proximate cause of the Developers' breach of the warranty of habitability, the Plaintiffs have been and will continue to be damaged as set forth herein.

35. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their breach of warranty of habitability in such amount as will be proven at trial.

FOR A SECOND CAUSE OF ACTION
(Negligence: Developers)

36. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

37. The Developers owed a duty to the Plaintiffs to ensure that the Project was designed and constructed using a qualified architect and builder.

38. Additionally, the Developers retained control over the Board of the Stoneledge HOA up and until September, 2008, during such time Developers had a duty to inspect, repair, and maintain components of the Project and to access funding needs and to make provisions for adequate funding.

39. The conditions uncovered to date at the Project establish that the Developers breached their duties to the Plaintiffs in that the defective conditions were not investigated or repaired and insufficient funds existed to effect such repairs was in place at the time control of the Stoneledge HOA was transferred to the owners.

40. As a direct and proximate cause of the Developers' negligence and gross negligence, the Plaintiffs have suffered damages and the Plaintiffs will continue to suffer additional damages.

41. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their negligence and gross negligence in such amount as will be proven at trial, including punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty: Developers)

42. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

43. A special relationship exists between the Developers and the Plaintiffs based on the following:

a. The Developers developed the project;

b. The Developers funded the design and construction of the Project;

c. The Developers selected the builder and designer and others for the Project;

d. The Developers marketed and sold the units at the Project and placed them into the stream of commerce; and,

e. The Developers controlled the Stoneledge HOA until September, 2008.

44. Plaintiffs reposed special confidence in the Developers resulting in their owing to the Plaintiffs a fiduciary duty to accomplish the following non-exhaustive list of particulars:

a. To fund adequately the design, construction, and upkeep of the Project;

b. To select a qualified designer and builder for the Project;

c. To ensure that the builder and designer produced a quality product free from the types of defects that currently exist at the Project;

d. To establish sufficient capital reserves for the Association at its inception to address the maintenance and repairs at the Project;

e. To maintain and upkeep all unsold units at the Project and the common areas of the Project; and,

f. To ensure that at the time control of the Board of Directors of the Stoneledge HOA was turned over to the owners, in September 2008, that the components of the townhomes which the Stoneledge HOA is obligated to repair, maintain, and replace, were in reasonable condition, free of defects.

45. The deficiencies uncovered to date, which all existed on or before September 2008, establish that the Developers breached their fiduciary duty to the Plaintiffs.

46. As a direct and proximate cause of the Developers' breaches of fiduciary duties, the Plaintiffs have suffered damages and will continue to suffer additional damages.

47. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their breach of fiduciary duty in such amount as will be proved at trial, including punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty: Contractors)

48. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

49. The Contractors, by virtue of their role in the construction of the Project, extended to the Plaintiffs a warranty of workmanlike service in regard to the construction of the townhomes within the Project.

50. The above-referenced problems (and any subsequently-discovered problems) at the Project establish that this warranty has been breached by the Contractors.

51. As a direct and proximate result of the Contractors' breach of the warranty of workmanlike service, the Plaintiffs have been and will continue to be damaged as described herein.

52. Plaintiffs are entitled to a judgment against the Contractors because of their breach of warranty of workmanlike service in such amount as will be proved at trial.

FOR A FIFTH CAUSE OF ACTION
(Negligence: Contractors)

53. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

54. The Contractors, by virtue of their role in the construction of the Project, owed a duty to the Plaintiffs to retain, coordinate, and supervise competent subcontractors, and to accomplish such construction in accordance with all applicable codes, applicable industry standards, and any and all manufacturer literature/instructions, and, when applicable, to conform such construction to whatever design documents existed at the time of constructing the Project and the townhomes within the Project.

55. The above-referenced problems (and any subsequently-discovered problems) with the Project establish that the Contractors breached their duty in regard to these responsibilities which has proximately caused the deficiencies at the Project.

56. The violation of applicable building codes and the willful, reckless, and wanton failure to comply with the applicable standards establishes gross negligence on the part of the Contractors.

57. As a direct and proximate cause of the Contractors' negligence and gross negligence, the Plaintiffs have been and will continue to be damaged as described herein.

58. Plaintiffs are entitled to a judgment against the Contractors based on their negligence and gross negligence in such amount as will be proved at trial, including punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Negligence: MPA - Architect)

59. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

60. Defendant MPA was negligent, and/or grossly negligent in its design and inspection of the Project in one or more of the following particulars:

a. failure to adequately design a waterproofing system so as to prevent water infiltration into the interior portions of the building;

b. improper design of waterproofing of the exterior of the building and non-existent or improper design of flashing;

c. inadequate inspection and acceptance of defective or non-conforming construction work;

d. failure to design and insure construction in compliance with applicable building codes State and Federal laws and regulations and acceptable building practices; and,

e. failure to properly specify appropriate materials to be used in the construction of the Project.

61. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant MPA, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Express and Implied Warranty: MPA - Architect)

62. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

63. Defendant MPA expressly and impliedly warranted that its design of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

64. Defendant MPA further expressly and impliedly warranted that the plans and specifications prepared for the Project were suitable and fit for use in constructing the Project, and that the building, when complete, would be free of design defects.

65. The plans and specifications as provided by MPA were not suitable or appropriate for their intended purpose, and as a result of MPA's breach of warranties by designing the Project with severe structural and water intrusion problems, Plaintiffs are entitled to such actual damages as this Court may deem appropriate.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendants on the above causes of action in such amounts as may be proven at trial, including consequential and punitive damages, the costs of this action, including attorney's fees, and for such other relief as the court deems just and proper.

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ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina

Feb. 3, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B.GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU K. PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, ROBERT WHITE, individually, and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	
IMK DEVELOPMENT CO., LLC.; KEOWEE TOWNHOUSES, LLC; LUDWIG CORPORATION, LLC; SDI FUNDING, LLC; MEDALLION AT KEOWEE, LLC; INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC.; BOSTIC BROTHERS CONSTRUCTION, INC.; and, MILLER/PLAYER & ASSOCIATES;	)	**AFFIDAVIT OF H. ROSS CLEMENTS, AIA**
Defendants.	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 FEB -9 P 4:43

PERSONALLY APPEARED BEFORE ME, H. Ross Clements, AIA, who being first duly sworn, deposes and says:

1. I am a professional architect licensed in the State of South Carolina. I am employed by Construction Science and Engineering, Inc. (CSE) and I am not a party to this litigation.

2. I hold a Bachelor of Architecture degree from the University of Tennessee. My Curriculum Vitae is attached to this affidavit and further describes my experience.

3. I am qualified to make this affidavit based on my professional education, knowledge, training, and experience.

4. As part of my investigation in this matter, I have reviewed four (4) sets of architectural drawings related to the Stoneledge residential development that is the subject of this litigation. The development is located on Lake Keowee in West Union, South Carolina.

5. Additionally, as part of my investigation in this matter, I have reviewed photographs and field notes prepared by Derek A. Hodgin, P.E. of CSE. Mr. Hodgin's photographs and field notes demonstrate the damage that exists at the Stoneledge residential development.

6. Each of the four (4) sets of drawings was prepared by the architectural firm of Miller/Player & Associates Architects and Planners, Ltd. (MPA) of Greenville, SC. Based upon my review of the drawings, MPA is considered to be the architectural firm of record for the subject structures.

7. Two (2) of the sets of drawings appear to be development sets or preliminary. They are dated "Issue: 08-14-02" and "Issue: 05-16-05." These sets of drawings are not signed or sealed by the architect.

8. One (1) set of drawings is dated "Issue: 12-23-05." The set also has revision dates of "1-19-06" and "2-20-06." Hand written across the title page, the set of drawings states "For Construction 3-17-06." This set of drawings is not signed or sealed by the architect.

9. One (1) set of drawings is for the clubhouse and is dated "Issue: 4-12-06." This set of drawings is signed and sealed by the architect.

10. Based on the information above, my opinions within this affidavit pertain to the architectural information and details contained within the sets of documents described in item numbers 8 and 9 of this affidavit.

11. In my professional opinion, MPA failed to adequately detail the required flashing of window and door installations. Additionally, MPA failed to adequately detail the transition between dissimilar cladding materials.

12. Furthermore, in my professional opinion, MPA provided sections that do not correlate to the section cut locations on the elevation sheets. For instance, section 2/A6 does not accurately depict the section cut locations where it is referenced on Sheets A5 and A19.

13. MPA failed to reference on the clubhouse plans or elevations, where section cuts 1, 2, 7, 8, and 9 of Sheet CH-4 were taken. Furthermore, the exterior wall section cuts 1, 2, 7, 8, and 9 illustrate and note different exterior wall sheathing materials and thicknesses. Section cuts 1/CH-4 and 2/CH-4 call for ½" OSB and 5/8" OSB exterior wall sheathing, respectively.

14. The window installation details 7, 8, and 9 of sheet CH-4 call for 5/8" GYP.BD exterior wall sheathing, with ¾" OSB as the exterior finish cladding. However, the ¾" OSB is graphically depicted as 1" STUCCO like details 1 and 2 of CH-4.

15. Upon information and belief, the details provided and/or omitted by MPA contain violations of the applicable building code and industry standards. As such, the construction drawings are not acceptable for the purpose of preventing water intrusion into the building envelope and living spaces of the subject structures.

16. In my professional opinion, I believe a reasonably prudent architect in similar circumstances would have prepared drawings that more accurately detail the window and door flashings and the integration of building materials. Therefore, in my professional opinion, these errors and omissions by MPA constitute a breach of the professional standard of care of a licensed architect.

FURTHER AFFIANT SAYETH NOT.

H. Ross Clements, AIA

Sworn to and subscribed before me
this 22 day of ~~November, 2009~~ Jan., 2010

(L.S.)
Notary Public for South Carolina
My commission expires: 2/13/19.

CONSTRUCTION SCIENCE AND ENGINEERING, INC.

FORENSIC AND STRUCTURAL ENGINEERING • CONSTRUCTION SCIENCE • ROOF CONSULTING

H. ROSS CLEMENTS, AIA, NCARB, CDT

Forensic Architect

Ross Clements received his Bachelor of Architecture degree from the University of Tennessee and is currently a registered architect. In design, Mr. Clements has worked on several project types, including healthcare and retail projects, renovations to educational facilities, retail shopping centers, multi-unit townhomes and apartment projects. Additionally, Mr. Clements has produced construction documents and provided construction administration services. In forensics, Mr. Clements has provided expert witness services, property condition assessments, roof consulting, deficient construction reports, and building code reviews for a variety of commercial, multi-family, and residential buildings.

Education

- Bachelor of Architecture, University of Tennessee, 2001
- Numerous - Building Envelope, Code Analysis, and Accessibility Seminars

Registration / Certifications

- Registered Architect, South Carolina and Tennessee
- NCARB Certificate, National Council of Architectural Registration Boards
- Construction Documents Technologist, Construction Specifications Institute
- Certified Post-Disaster Safety Assessment Evaluator, California Emergency Management Agency (CalEMA)
- Level I – Certified Third Party EIFS Inspector and Certified Moisture Analyst, Exterior Design Institute
- Level II – Certified Building Envelope Inspector, Exterior Design Institute
- Basic Thermography Training - RestCon
- Eagle Scout, Boy Scouts of America

Previous Experience

- Batson Architects, Architect, 2004 - 2006
- Larry Woods and Associates, Intern Architect, 2001 – 2004
- Colco Fine Woods & Tools, 1999 - 2001
- Spears Architects, Summer 1999

Previous Experience (Cont.)

- Agnew & Mifsud Architects, Summer 1999
- Philmont Scout Ranch, Ranger 1998 and Maintenance 1996.

Professional Organizations

- AIA, The American Institute of Architects
- NCARB, National Council of Architectural Registration Boards
- EDI, Exterior Design Institute

Publication

- "Just the Facts," an article for the *YAF Connection*, American Institute of Architects, June 2007. Re-run by the *AIA Center for Building Science and Performance Newsletter*, October 2007. Re-run by the *AIA KnowledgeNet*, November 2007.
- "Be Prepared: Registration = Opportunity," an article for *AIArchitect*, American Institute of Architects, September 2007.

Principal Areas of Practice:

- Deficient Construction
- Building Envelopes
- ADA Accessibility
- Roof Systems
- Construction Administration

218 EAST MAIN STREET • WESTMINSTER, SOUTH CAROLINA 29693
PHONE: (864) 647-1065 FACSIMILE: (864) 647-1076

ADA Accessibility

- Performed Analysis of Existing Educational Facilities for ADA Accessibility Upgrades and Provided Design Solutions, Nashville, Tennessee
- Performed Analysis of Existing Boardwalks for ADA Accessibility Upgrades and Provided Design Solutions for New Accessible Boardwalks, Hilton Head and Myrtle Beach, South Carolina
- Performed Analysis of Existing Accessible Parking Area and Parking Stops Related to a Trip and Fall Incident, Myrtle Beach, South Carolina

Building Envelopes

- Exterior Insulation and Finish System (EIFS) Failure Investigation, Charleston, South Carolina
- Numerous Conventional Stucco Investigations, Hilton Head, Taylors, Mount Pleasant, and Greer, South Carolina
- Property Condition Assessment of Multi-Family Structures, Mount Pleasant, South Carolina
- Investigation of Various Brick Veneer Cladding Failures, North and South Carolina
- Investigation of Residential Brick Veneer Collapse, Greer, South Carolina
- Investigation of Water Intrusion Thru Vinyl Clad Windows, Daufuskie Island, South Carolina
- Investigation of Medium Density Fiberboard (MDF) Siding Failures, South Carolina
- Investigation of Medium Density Fiberboard (MDF) Trim Deterioration, Hilton Head, South Carolina
- Investigation of ELFS Cladding and Windows at Public Buildings, Beaufort, South Carolina

Building Envelopes (Cont.)

- Investigation of Degrading Cast-In-Place Concrete Columns, North Myrtle Beach, South Carolina
- Performed Building Envelope Survey for Multi-Family Condominiums, Little River, South Carolina
- Investigation of Water Intrusion at ELFS Clad Hotel Building, Greenville, South Carolina
- Investigation of Alleged Brick Veneer Failures Related to Blasting, Nashville and Kingsport, Tennessee

Roof Systems

- Investigation of Metal Roof for Commercial Warehouse, Daniel Island, South Carolina
- Investigation of Alleged Hail Damage to Residential Roofs, South Carolina
- Investigation of Wind Damage to Residential Roofs, South Carolina and Georgia
- Investigation of Water Intrusion at Internal Gutters, Both Residential and Commercial Projects, North and South Carolina
- Investigation of Water Intrusion at an Underground Building in the NC Zoo, Asheboro, North Carolina
- Investigation of Fire Damaged Residential Roof Framing and Designed Repair, Anderson, South Carolina
- Investigation of Fire Damaged Residential Roof Framing and Designed Repair, Greenville, South Carolina
- Investigation of Metal Roof Deterioration for Multiple Residences, Pawley's Island, South Carolina

Deficient Construction

- Investigation of Improper Construction at a Single-Family Residence in North Myrtle Beach, South Carolina
- Investigation of Improper Integration of Flashing and Weather Barrier on a Residence in Simpsonville, South Carolina
- Investigation of Alleged Improper Construction at a Residence in Anderson, South Carolina
- Investigation of Water Intrusion Through a Basement Wall, Greer, South Carolina
- Investigation of Improper Construction at a Residential Log Structure, Conway, South Carolina
- Investigation of Alleged Improper Installation of Mobile Homes, Conway and Myrtle Beach, South Carolina
- Investigation of Improper Wood Framing, Buckled Dry-Wall and Interior Finishes on a Residence in Simpsonville, South Carolina
- Investigation of Improper Framing and Foundations on a Residence in Simpsonville, South Carolina
- Investigation of Improper Flashing on the Patios of Multi-Family Apartment Buildings, Little River, South Carolina
- Investigation of Seawall Failure, Hilton Head, South Carolina
- Investigation of French Drain Failure and Designed Repair for Sub-Surface Moisture Migration, Conway, South Carolina
- Conducted Destructive Testing on Brick Clad Multi-Family Townhomes, Murrell's Inlet, South Carolina
- Investigated Brick Failures and Provided Liability Apportionment Services for Military Building, Parris Island, South Carolina

Deficient Construction (Cont.)

- Investigation of Improper Installation of Brick Veneer at Multi-Family Condominium Buildings, Mt. Pleasant, South Carolina
- Investigation of Displaced Brick Masonry Chimney, Germantown, Tennessee
- Investigation of Displaced and Cracked Stone Masonry Chimney, Atlanta, Georgia
- Investigation of Alleged Deficient Construction at a Multi-Family Condominium Project, Mt. Pleasant, South Carolina
- Investigation of Alleged Deficient Construction at a Multi-Family Condominium Project, Hilton Head Island, South Carolina

Construction Administration

- Provided CA Services for Numerous ADA Accessibility Projects at Existing Educational Facilities, Nashville, Tennessee
- Provided CA Services for the Repair of Deficient Construction at Various Multi-Family Condominium complexes in Myrtle Beach, South Carolina
- Provided CA Services for the Repair of Degraded Thresholds and Deck Coatings at a Hi-Rise Condominium Building in North Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2009-CP-37-652

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU K. PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, ROBERT WHITE, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

IMK DEVELOPMENT CO., LLC; KEOWEE TOWNHOUSES, LLC; LUDWIG CORPORATION, LLC; SDI FUNDING, LLC; MEDALLION AT KEOWEE, LLC; INTEGRYS KEOWEE DEVELOPMENT, LLC; MARICK HOME BUILDERS, LLC; BOSTIC BROTHERS CONSTRUCTION, INC.; and, MILLER/PLAYER & ASSOCIATES;

Defendants.

FILED
BEVERLY C. HITCHCOCK
CLERK OF COURT
OCONEE, SC
2010 JUN -7 P 3:23

BOSTIC CONSTRUCTION, INC.'S ANSWER TO THE FIRST AMENDED COMPLAINT (Jury Trial Requested)

COMES NOW Bostic Construction, Inc., incorrectly named in the Summons for and First Amended Complaint as Bostic Brothers Construction, Inc. ("Bostic") and in response to the First Amended Complaint of the Plaintiff would allege unto this Honorable Court as follows:

AS A FIRST DEFENSE

1. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 through 3 of the First Amended Complaint and, therefore, denies the same and further denies that its conduct was the direct and proximate couse of any injuries.

2. Bostic admits the allegations contained in Paragraph 4 of the First Amended Complaint upon information and belief.

3. The allegations contained in Paragraph 5 of the First Amended Complaint constitute legal conclusions to which no response is required.

4. The allegations contained in Paragraph 6 of the First Amended Complaint, including all subparts, constitute legal conclusions to which no response is required. To the extent the allegations in said paragraph may be construed so as to impose liability upon Bostic, those allegations are denied.

5. The allegations contained in Paragraph 7 of the First Amended Complaint constitute legal conclusions to which no response is required. To the extent the allegations in said paragraph may be construed so as to require a response from Bostic, it would lack knowledge and information sufficient to form a belief as to their truth and, therefore, would deny the same.

6. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 8 – 14 of the First Amended Complaint and, therefore denies the same.

7. Bostic would admit only so much of the allegations contained in Paragraph 15 of the First Amended Complaint as could be construed to allege that it served as general contractor

for certain townhomes on the Project. Further responding, Bostic would show that it is a former North Carolina corporation that has been fully discharged in the United States Bankruptcy Court for the Middle District of North Carolina. Any remaining allegations contained in said paragraph inconsistent with the above admissions are hereby denied.

8. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 16- 25 of the First Amended Complaint, including all subparts, and, therefore, denies the same. Further responding, Bostic specifically denies any allegations contained in said paragraphs, including all subparts, that could in any way seek to impose liability upon Bostic.

9. Bostic denies the allegations contained in Paragraph 26 of the First Amended Complaint as to Bostic.

10. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 27 - 30 of the First Amended Complaint, including all subparts, and, therefore, denies the same. Further responding, Bostic specifically denies any allegations contained in said paragraphs, including all subparts, that could in any way seek to impose liability upon Bostic.

11. In response to Paragraph 31 of the First Amended Complaint, Bostic restates and realleges its responses in Paragraphs 1 – 10 above as if fully set forth herein verbatim.

12. The allegations contained in Paragraphs 32 – 47 of the First Amended Complaint, including all subparts, do not concern Bostic. To the extent the allegations contained in said paragraphs and subparts could in any way be construed so as to impose liability upon Bostic, they are denied.

13. In response to Paragraph 48 of the First Amended Complaint, Bostic restates and realleges its responses in Paragraphs 1 – 12 above as if fully set forth herein verbatim.

14. The allegations contained in Paragraph 49 of the First Amended Complaint constitute legal conclusions to which no response is required. To the extent the allegations contained in said paragraph could in any way be construed to impose liability upon Bostic, they are denied.

15. Bostic denies the allegations contained in Paragraph 50 of the First Amended Complaint.

16. Bostic denies the allegations contained in Paragraph 51 of the First Amended Complaint as to Bostic.

17. Bostic denies the allegations contained in Paragraph 52 of the First Amended Complaint as to Bostic.

18. In response to Paragraph 53 of the First Amended Complaint, Bostic restates and realleges its responses in Paragraphs 1 – 17 above as if fully set forth herein verbatim.

19. Bostic admits the allegations contained in Paragraph 54 of the First Amended Complaint.

20. Bostic denies the allegations contained in Paragraph 55 of the First Amended Complaint as to Bostic.

21. Bostic denies the allegations contained in Paragraph 56 of the First Amended Complaint.

22. Bostic denies the allegations contained in Paragraph 57 of the First Amended Complaint.

23. Bostic denies the allegations contained in Paragraph 58 of the First Amended Complaint.

24. In response to Paragraph 59 of the First Amended Complaint, Bostic restates and realleges its responses in Paragraphs 1 – 23 above as if fully set forth herein verbatim.

25. In response to Paragraphs 60 – 65 of the First Amended Complaint, including all subparts, Bostic would show that the allegations contained in said paragraphs do not pertain to Bostic and, therefore, no response is required. To the extent the allegations contained in said paragraphs could in any way be construed so as to impose liability upon Bostic, those allegations are denied.

26. Bostic denies the allegations contained in the wherefore clause.

27. Bostic denies each and every allegation contained in the First Amended Complaint not otherwise expressly admitted, modified or explained herein.

AS A SECOND DEFENSE

28. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs' claims against this Defendant are barred by the doctrine of waiver, estoppel and/or laches.

AS A THIRD DEFENSE

29. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that if it acted or failed to act as alleged in the First Amended Complaint, which is specifically denied, there were separate and intervening acts or failure to act on the part of persons or entities other than this Defendant which are the sole and proximate cause of the Plaintiffs' damages and serve as a complete bar to any recovery against this Defendant.

AS A FOURTH DEFENSE

30. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs' claims against this Defendant are barred or must be reduced because even if this Defendant was negligent, grossly negligent, reckless and willful as alleged, which is specifically denied, any negligence, gross negligence, recklessness and willfulness by this Defendant must be measured against the negligence, gross negligence, recklessness, wantonness, willfulness of one or more of the entities other than this Defendant to include the Plaintiffs and other Defendants or entities and individuals not party to this suit, over whom this Defendant had no control, in failing or refusing to exercise reasonable care in the design, development and construction of the project.

AS A FIFTH DEFENSE

31. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs and/or its agents or others inspected, approved and ratified all work performed by this Defendant. Furthermore, the Plaintiffs or others knew or should have known if any of this Defendant's work was not in accordance with the plans and specifications and in a workmanlike manner. Accordingly, this Defendant pleads the applicable statute of limitations or statutes of repose as a complete bar to all of the Plaintiffs' claims.

AS A SIXTH DEFENSE

32. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs have failed to state a claim upon which relief can be granted and, therefore, the Plaintiffs' First Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure.*

AS A SEVENTH DEFENSE

33. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that any express warranty allegedly provided by this Defendant has expired.

AS AN EIGHTH DEFENSE

34. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that any implied warranties have been properly disclaimed.

AS A NINTH DEFENSE

35. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs have failed to mitigate their damages; therefore, their claims are barred in whole or in part.

AS A TENTH DEFENSE

36. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

AS AN ELEVENTH DEFENSE

37. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that the Plaintiffs failed to give proper notice to this Defendant of the alleged defects or deficiencies in this Defendant's work, if any and, therefore, their claim is barred.

AS A TWELFTH DEFENSE

38. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that pursuant to the doctrine of comparative negligence, the

negligence and/or recklessness of the Plaintiffs were greater that any negligence which may be established against this Defendant, and therefore, the Plaintiffs are barred from recovery.

AS A THIRTEENTH DEFENSE

39. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show that pursuant to the doctrine of comparative negligence, the negligence and/or recklessness of the Plaintiffs were greater than any negligence, if any, which may be established against this Defendant, and therefore, the Plaintiffs are barred from recovery. It further alleges that any injury and damage sustained by the Plaintiffs were due to and caused by the negligence and/or willfulness of the Plaintiffs, combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of this Defendant, and that any amount of recovery awarded to the Plaintiffs for the alleged injuries and damages shall be reduced by the Court based on the percentage of negligence and/or willfulness attributed to the Plaintiffs.

AS A FOURTEENTH DEFENSE

40. Further responding to the First Amended Complaint and as an affirmative defense, Bostic would show the claim of the Plaintiffs for punitive damages against this Defendant cannot be sustained, because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the resident, wealth, and corporate status of the Defendant, (4) is permitted to award punitive damages under a standard for determining liability

for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate the Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the South Carolina constitutional provisions providing for due process and equal protection, and would be improper under the common law and public policies of the State of South Carolina.

AS A FIFTEENTH DEFENSE

41. Further responding to the First Amended Complaint, Bostic would plead discharge in bankruptcy as an affirmative defense.

AS A SIXTEENTH DEFENSE

42. Further responding to the First Amended Complaint, Bostic would reserve the right to assert any additional affirmative defenses that are or may become available throughout the pleading and discovery process.

This the 21 day of June, 2010.

LAW OFFICES OF ALAN BELCHER

Alan R. Belcher, Jr.
234 Seven Farms Drive, Suite 115
Daniel Island, SC 29492
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
	)	
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	)	SUMMONS Third-Amended Complaint
Plaintiffs,	)	
VS.	)	
IMK DEVELOPMENT, CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, BRADFORD D. SECKINGER, JOHN LUDWIG, WILLIAM COX, LARRY D. LOLLIS, RICK THOENNES, M GROUP CONSTRUCTION AND DEVELOPMENT, LLC, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRSTSOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING AND AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES,	)	

FRANCISO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, MJG CONSTRUCTION AND HOMEBUILDERS, INC., D/B/A MJG CONSTRUCTION, KMAC OF THE CAROLINAS, INC., EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., VINCENT MORALES MASONRY, AND MILLER/PLAYER & ASSOCIATES,	)
Defendants,	)

TO: ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Third Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina 29402, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third Amended Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Third Amended Complaint and will seek a default judgment against you.

LYLES & LYLES, LLC

By: Catherine Bryan

Robert T. Lyles, Esquire
Catherine H. Bryan, Esquire
342 East Bay Street
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Charleston, South Carolina 29401
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Attorneys for Plaintiffs

April 3, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF OCONEE)	CASE NUMBER: 2009-CP-37-652
Stoneledge at Lake Keowee Owners' Association Inc.; C. Dan Carson; Jeffrey J. Dauler; Joan W. Davenport; Michael Furnari; Donna Furnari; Jessy B. Grasso; Nancy E. Grasso; Robert P. Hayes; Lucy H. Hayes; Ty Hix; Jennifer D. Hix; Paul W. Hund, III; Ruth E. Isaac; Michael D. Plourde Mary Lou K. Plourde; Carol C. Pope; Steven B. Taylor; Bette J. Taylor; and Robert White, individually, and on behalf of all others similarly situated,)	**THIRD AMENDED COMPLAINT** (Jury Trial Demanded)
Plaintiffs,)	
vs.)	
IMK Development Co., LLC; Keowee Townhouses, LLC; Ludwig Corporation, LLC; SDI Funding, LLC; Medallion at Keowee, LLC; Integrys Keowee Development, LLC; Marick Home Builders, LLC; Bostic Brothers Construction, Inc. Miller/Player & Associates; Bradford D. Seckinger; John Ludwig; William Cox; Larry D. Lollis; Rick Thoennes; M Group Construction and Development, LLC; Mel Morris; Joe Bostic; Jeff Bostic; Clear View Construction, LLC; Michael Franz; MHC Contractors; Miguel Porras Choncoas; Builders FirstSource Southeast Group; Mike Green; Southern Concrete Specialties; Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises; Gunter Heating and Air; All Pro Heating, A/C & Refrigeration, LLC; Coleman Waterproofing; Heyward Electrical Services, Inc.; Tinsley Electrical, LLC; Hutch N Son Construction, Inc.; Upstate Utilities, Inc.; Southern Basements, Inc.; Carl Catoe Construction, Inc.; T.G. Construction, LLC; Delfino Construction; Francisco Javier Zarate d/b/a Zarate)	

Construction; Alejandro Avalos Cruz; Herberto Acros Hernandez; Martin Hernandez-Aviles; Francisco Villalobos Lopez; Ambrosio Martinez-Ramirez; Ester Moran Mentado; Socorro Castiollo Montel; MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillo; Garcia Parra Insulation, Inc.; J & J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; Vincent Morales d/b/a Morales Masonry; and Miller/Player & Associates

Defendants,

NOW COME, the Plaintiffs above-named, individually, and on behalf of all others similarly situated, complaining against the above-named Defendants, as follows:

CLASS ALLEGATIONS

1. Plaintiff Stoneledge at Lake Keowee Owners' Association, Inc. ("Stoneledge HOA") is a corporation organized and existing pursuant to the laws of the State of South Carolina and conducts business in Oconee County, South Carolina. The Stoneledge HOA was created on May 24, 2005, pursuant to the South Carolina Horizontal Property Regime Act.

2. The Amended and Restated By-Laws and Declaration of Covenants, Conditions and Resolutions for Stoneledge at Keowee, dated November 1, 2005, recorded on November 30, 2005 at Book 1464, Page 33-65, and the Resolution dated March 3, 2010, recorded on November 24, 2010 at Book 1805, Page 241-243 (which are incorporated herein by reference) impose upon the Stoneledge HOA an obligation to maintain, repair, and replace components of the townhomes at Stoneledge.

3. Plaintiffs C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou K. Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White (hereinafter the "Individual Owners"), are owners of townhomes located in Phase I and/or II of the townhome community known as Stoneledge at Lake Keowee (hereinafter "the Project"), and have all suffered injury and damage, or will suffer injury or damage, as a direct and proximate result of the acts of the above-named Defendants.

4. The Project is located in Oconee County, South Carolina.

5. The Individual Owners bring this action individually and pursuant to Rule 23 of the *South Carolina Rules of Civil Procedure*, on behalf of a class of individuals and/or entities composed of each and every other owner at the Project (hereinafter the other owners at the Project sometimes shall be referred to collectively as "Class Plaintiffs"). Excluded from the Class are Defendants, members of their immediate families and their legal representatives, heirs, successors, assigns and any entity in which Defendants have or had a controlling interest. Also excluded from the Class are claims determined to belong exclusively to Stoneledge HOA.

6. For class action purposes, the Individual Owners allege that:

a. The class is sufficiently numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to the class;

c. The claims of the Individual Owners are typical of the claims of the class;

d. The Individual Owners will fairly and adequately protect the interest of the class; and

e. The amount in controversy exceeds One Hundred and No/100 Dollars ($100.00) for each member of the class.

7. Venue is proper in this Court because the principal place of business of one or more of the Defendants is in Oconee County, the property at issue is located in Oconee County, and the actions and/or inaction of the Defendants resulting in this lawsuit occurred in Oconee County.

FACTUAL ALLEGATIONS

8. The Defendant, IMK Development Co., LLC ("IMK"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. IMK developed and put certain of the Stoneledge townhomes into the stream of commerce.

9. Defendant Keowee Townhouses, LLC ("Keowee"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Keowee developed and put certain of the Stoneledge townhomes into the stream of commerce.

10. Defendant Ludwig Corporation, LLC ("Ludwig"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee

County. Ludwig developed and put certain of the Stoneledge townhomes into the stream of commerce.

11. Defendant SDI Funding, LLC ("SDI"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in business in Oconee County, South Carolina.

12. Defendant Medallion at Keowee, LLC ("Medallion"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Medallion was a developer of the Project and has or will put certain of the Stoneledge townhomes into the stream of commerce.

13. Plaintiffs are informed and believe that Medallion is the successor to SDI, Ludwig, or both of them, that it acquired the assets and liabilities of SDI, Ludwig, or both of them, through a merger, consolidation or equivalent transaction, that there exists a common identity of the officers, directors, and/or stockholders between Medallion and SDI, Ludwig, or both of them, that Medallion is a mere continuation of SDI, Ludwig, or both of them, and/or that the assets of SDI, Ludwig, or both of them, were transferred to Medallion in an effort to avoid or defeat claims of creditors or potential creditors.

14. Upon information and belief, Defendant Bradford D. Seckinger ("Seckinger") was a member, manager, owner and/or principal of Medallion, Ludwig and/or SDI at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Medallion, Ludwig and/or SDI and is personally liable for the

liabilities of Medallion, Ludwig, and/or SDI. Unless specifically stated otherwise, references to Medallion, Ludwig, SDI and/or Developers when used herein are defined to include Seckinger.

15. Upon information and belief, Defendant John Ludwig was a member, manager, owner and/or principal of Ludwig, SDI, or both of them at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Ludwig, SDI, or both of them, and is personally liable for the liabilities of same. Unless specifically stated otherwise, references to Ludwig, SDI and/or Developers when used herein are defined to include John Ludwig.

16. Defendant Integrys Keowee Development, LLC ("Integrys"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of property development in Oconee County. Integrys a developer of the Project and placed certain of the Stoneledge townhomes into the stream of commerce.

17. Upon information and belief, Defendants Larry D. Lollis ("Lollis") and William Cox ("Cox") were members, managers, owners, and/or principals of IMK, Integrys, or both of them at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of IMK, Integrys, or both of them and are personally liable for the liabilities of IMK and/or Integrys. Unless specifically stated otherwise, references to IMK, Integrys, and/or Developers when used herein are defined to include Lollis and Cox.

18. Upon information and belief, Defendant Rick Thoennes, ("Thoennes") is or was a member, manager, owner and/or principal of IMK at the time of development and construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts

of IMK and is personally liable for the liabilities of IMK. Unless specifically stated otherwise, references to IMK and/or Developers when used herein are defined to include Thoennes.

19. Defendant Marick Home Builders, LLC ("Marick"), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was licensed as a South Carolina residential builder, and was engaged in the business of residential home building in Oconee County, South Carolina. Marick acted as the general contractor for certain of the townhomes at the Project. Marick, acting in concert with IMK, placed certain of the Stoneledge townhomes into the stream of commerce.

20. Upon information and belief, M Group Construction and Development, LLC ("M Group") is a limited liability company organized and existing under the laws of the State of South Carolina that conducts business in Oconee County, South Carolina. Plaintiffs are informed and believe that M Group is the successor to Marick, that it acquired the assets and liabilities of Marick through a merger, consolidation or equivalent transaction, that there exists a common identity of the officers, directors, and/or stockholders between M Group and Marick, that M Group is a mere continuation of Marick, and/or that the assets of Marick were transferred to M Group in an effort to avoid or defeat claims of creditors or potential creditors. Unless specifically stated otherwise, references to Marick and/or Contractors herein are defined to include M Group.

21. Defendant Bostic Brothers Construction, Inc. ("Bostic"), upon information and belief, is a corporation organized and existing pursuant to the laws of a state other than South Carolina which was, at all times referred to herein, doing business in Oconee County, South Carolina as a general contractor. Bostic acted as the general contractor for certain of the townhomes at the

Project. Bostic, acting in concert with Keowee, put certain of the Stoneledge townhomes into the stream of commerce.

22. Upon information and belief, Defendant Thoennes was a license holder, member, manager, owner, and/or principal of Marick at the time of construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Marick and is personally liable for the liabilities of Marick. Unless specifically stated otherwise, references to Marick and Contractors herein are defined to include Thoennes.

23. Upon information and belief, defendant Mel Morris ("Morris") was President of Bostic at the time construction of the Project began and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Bostic. Morris is personally liable for the liabilities of Bostic. Unless specifically stated otherwise, references to Bostic and/or Contractors herein are defined to include Morris.

24. Upon information and belief, defendants Joe Bostic and Jeff Bostic were owners, officers, directors, and/or principals of Bostic at the time of construction of the Project and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Bostic and are personally liable for the liabilities of Bostic. Unless specifically stated otherwise, references to Bostic and/or Contractors herein are defined to include Joe Bostic and Jeff Bostic.

25. Upon information and belief, Defendant Clear View Construction, LLC ("Clear View") is a limited liability company organized and existing under the laws of the Sate of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Upon information and belief, Clear View provided stone work for the Project.

26. Upon information and belief, Defendant Michael W. Franz is the owner and operator of Clear View and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Clear View and is personally liable for the liabilities of Clear View.

27. Upon information and belief, Defendant MHC Contractors, LLC ("MHC Contractors") is a limited liability company organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that MHC Contractors provided work for the Project, including but not limited to stone work.

28. Upon information and belief, Defendant Miguel Porras Choncoa is the owner and operator of MHC Contractors and a resident of Greenville County, South Carolina, and authorized, participated in and/or directed the tortious or otherwise wrongful acts of MHC Contractors and is personally liable for the liabilities of MHC Contractors.

29. Upon information and belief, Defendant Builders FirstSource - Southeast Group, LLC ("Builders FirstSource") is an entity organized under the laws of a state other than South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Builders FirstSource provided materials and labor for the Project, including but not limited to, framing work.

30. Upon information and belief, Defendant Mike Green is the principal of Builders FirstSource, and authorized, participated in and/or directed the tortious or otherwise wrongful acts of Builders FirstSource and is personally liable for the liabilities of Builders FirstSource.

31. Upon information and belief, Defendant Southern Concrete Specialties, Inc. ("Southern Concrete") is a corporation organized and existing under the laws of the State of South

Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Southern Concrete provided work for the Project including but not limited to flatwork and basement work.

32. Upon information and belief, Defendant Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises ("Compton")was, at all times relevant herein, conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that Compton provided work for the Project, including but not limited to, roofing work.

33. Upon information and belief, Defendant Gunter Heating and Air ("Gunter") is a South Carolina corporation which, at all times relevant to this action, was conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that Gunter provided work for the Project, including but not limited to HVAC work.

34. Upon information and belief, All Pro Heating, A/C and Refrigeration, LLC ("All Pro") is a limited liability company organized and existing under the laws of the state of South Carolina which, at all times relevant to this action, was conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that All Pro provided work for the Project, including but not limited to, HVAC work.

35. Upon information and belief, Coleman Waterproofing was, at all times relevant herein, conducting business in Oconee County, South Carolina. Plaintiffs are informed and believe that Coleman Waterproofing provided work for the Project, including but not limited to, waterproofing work.

36. Upon information and belief, Heyward Electrical Services, Inc. ("Heyward Electrical") is a corporation organized and existing under the laws of the state of South Carolina

which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Heyward Electrical provided work for the Project, including but not limited to, electrical work.

37. Upon information and belief, Tinsley Electrical, LLC ("Tinsley") is a limited liability company organized and existing under the laws of the state of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Tinsley provided work for the Project, including but not limited to, electrical work.

38. Upon information and belief, Hutch N Son Construction, Inc. ("Hutch N Son") is a corporation organized and existing under the laws of the state of South Carolina which, at times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Hutch N Son provided work for the Project, including but not limited to, grading work.

39. Upon information and belief, Upstate Utilities, Inc. ("Upstate") is a corporation organized and existing under the laws of the state of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and belief that Upstate provided work for the Project, including but not limited to grading work, pursuant to a subcontract with Hutch N Son.

40. In its Third-Party Complaint, Marick identified Clear View, Michael W. Franz, MHC Contractors, Miguel Porras Choncoa, Builders FirstSource, Mike Green, Southern Concrete, Compton, Gunter, All Pro, Coleman Waterproofing, Heyward Electrical, Tinsley, and Hutch N Son as subcontractors or principals of same and alleged that they are among the at-fault parties by virtue of their provision of the above-described services and/or products for this Project.

41. Upon information and belief, Southern Basements, Inc. ("Southern Basements") is a corporation organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Based on discovery responses provided by Marick, Plaintiffs believe Southern Basements provided work for the Project, including but not limited to basement work.

42. Due to Marick's involvement in the construction of the Project, Plaintiffs believe that there is a reasonable basis to assert fault on Clear View, Michael W. Franz, MHC Contractors, Miguel Porras Choncoa, Builders FirstSource, Mike Green, Southern Concrete, Compton, Gunter, All Pro, Coleman Waterproofing, Heyward Electrical, Tinsley, Hutch N Son, and Southern Basements.

43. Upon information and belief, Defendant Carl Catoe Construction, Inc. ("Catoe") is a corporation organized and existing under the laws of the State of South Carolina which, at all times relevant to this action, was conducting business in Oconee County. Plaintiffs are informed and believe that Catoe provided labor and materials for framing, installation of windows, doors, siding, trim, and other work at the Project.

44. Upon information and belief, Defendants T.G. Construction, LLC, Delfino Construction, Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles, Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez, Ester Moran Mentado, and Socorro Castillo Montel are individuals or entities which, at all times relevant herein, were conducting business in Oconee County by contracting to provide services, materials, or both for the Project, pursuant to subcontracts with Catoe, including framing, installation of windows, doors, siding, trim, and other work at the Project.

45. Upon information and belief, Defendants MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillo; Garcia Parra Insulation, Inc.; J & J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; and Vincent Morales d/b/a Morales Masonry are individuals or entities which, at all times relevant to this action, conducted business in Oconee County by contracting to provide and providing materials, services, or both, for the Project.

46. In its discovery responses and through correspondence from counsel, Bostic identified MJG Construction and Homebuilders, Inc. d/b/a MJG Construction; KMAC of the Carolinas, Inc.; Eufacio Garcia; Everado Jarmamillo; Garcia Parra Insulation, Inc.; J & J Construction; Jose Nino; Jose Manuel Garcia; Eason Construction, Inc.; and Vincent Morales d/b/a Morales Masonry as subcontractors who provided services, materials or both for the Project, including but not limited to, framing, masonry, roofing, siding, insulation, concrete form work, waterproofing and patio installation.

47. The defendants identified in Paragraphs 39, 42, 43, 44, and 45 above, are hereinafter collectively referred to as "Subcontractors."

48. Defendant Miller/Player & Associates ("MPA"), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant to this action, was engaged in the business of architecture in Oconee County. MPA acted as the architect for certain of the townhomes at the Project.

49. The Plaintiffs are informed and believe that IMK was the alter ego of Defendant Marick, M Group, Integrys, Lollis, Cox, and/or Thoennes in that Marick, M Group, Integrys, Lollis, Cox, and/or Thoennes totally dominated and controlled IMK and IMK manifested no separate

interest of its own and functioned solely to achieve the goals of Marick, M Group, Integrys, the principals of same, as well as Lollis, Cox and Thoennes.

50. Because IMK was the alter ego of Marick, M Group, Integrys, Lollis, Cox, and Thoennes, to recognize the corporate distinction promotes wrong and injustice and would contravene the public policy of South Carolina.

51. Additionally or alternatively, IMK, Marick, M Group and/or Integrys are corporate relatives whose interests and activities are so amalgamated as to blur the distinction between the entities. Because of this amalgamation of interests and activities, IMK, Marick, M Group and/or Integrys should be treated as one and the same and be held jointly liable on all theories of liability asserted herein, including Breach of the Implied Warranty of Habitability, Breach of the Implied Warranty of Workmanlike Service, Negligence, and Breach of Fiduciary Duty. Unless specifically stated otherwise, references to IMK, Marick, M Group, and/or Integrys when used herein, mean each and all of those entities.

52. Additionally, because IMK and Integrys failed to observe corporate formalities and because fundamental unfairness would result if the corporate entities are recognized, Lollis, Cox and Thoennes should be held personally responsible for the liabilities of IMK, Integrys, or both.

53. The Plaintiffs are informed and believe that Marick and/or M Group was the alter ego of Thoennes in that Thoennes totally dominated and controlled Marick and/or M Group and Marick and/or M Group manifested no separate interest of its own and functioned solely to achieve the goals of Thoennes. Because Marick and/or M Group was the alter ego of Thoennes, to recognize the corporate distinction promotes wrong and injustice and would contravene the public policy of South Carolina.

54. Additionally, because Marick and/or M Group failed to observe corporate formalities and because fundamental unfairness would result if the corporate entities are recognized, Thoennes should be held personally responsible for the liabilities of Marick, M Group or both.

55. The Plaintiffs are informed and believe that Ludwig was the alter ego of Defendants SDI, John Ludwig, and/or Seckinger in that SDI, John Ludwig, and/or Seckinger totally dominated and controlled Ludwig and Ludwig manifested no separate interest of its own and functioned solely to achieve the goals of SDI, John Ludwig and Seckinger.

56. Because Ludwig was the alter ego of SDI, John Ludwig and/or Seckinger, to recognize the corporate distinction promotes wrong and injustice and would contravene the public policy of South Carolina.

57. Additionally or alternatively, SDI, Ludwig and Medallion are entities whose interests and activities are so amalgamated as to blur the distinction between the entities. Because of this amalgamation of interests and activities, SDI, Ludwig and Medallion should be treated as one and the same and be held jointly liable on all theories of liability asserted herein, including Breach of the Implied Warranty of Habitability, Breach of the Implied Warranty of Workmanlike Service, Negligence, and Breach of Fiduciary Duty. Unless specifically stated otherwise, references to SDI, Ludwig and Medallion when used herein, mean each and all of those entities.

58. Additionally, because Ludwig and/or SDI have failed to observe corporate formalities, and because fundamental unfairness would result if the corporate entities are recognized, John Ludwig and/or Seckinger should be held personally responsible for the liabilities of Ludwig and SDI.

59. Additionally, because Medallion failed to observe corporate formalities, and because fundamental unfairness would result if the corporate distinction is recognized, Seckinger should be held personally responsible for the liabilities of Medallion.

60. "Contractors," when used herein, shall refer to Marick, M Group, Thoennes, Bostic, Morris, Jeff Bostic, Joe Bostic, and IMK, both collectively and individually.

61. "Developers," when used herein, shall refer to IMK, Keowee, Ludwig, SDI, Medallion, Integrys, Marick, Bostic, Lollis, Cox, Seckinger, John Ludwig, and Thoennes, both collectively and individually.

62. The Plaintiffs have became aware of certain problems at the townhomes at the Project, including, but not limited to, water intrusion through the exterior cladding of the townhomes which has resulted in severe rot and deteriorated components of the Project.

63. Repairs and investigation to date at the Project have revealed problems within the Project as outlined and identified in the Scope of Repair by Construction Science & Engineering, dated January 24, 2011, which is incorporated herein by reference.

64. The problems at the Project, including those identified in the preceding Paragraph, and those described in the remaining paragraphs, have resulted in water intrusion and have caused physical injury to the tangible property of others. Upon information and belief, the continuous and/or repeated exposure to substantially the same general harmful conditions has resulted in rot and other physical damage to the components of the townhomes at the Project.

65. Plaintiffs reported the problems at the Project to some or all of the Defendants who have failed and/or refused to investigate the problems or to repair them.

66. Upon information and belief, there are other latent defects at the Project that have yet to be uncovered and can only be uncovered through additional investigation and testing at the Project.

67. To date, Plaintiffs have expended significant sums in attempting to repair certain townhomes, and will continue to incur costs and expenses to investigate the pervasive deficiencies and to correct them. The repair of the deficiencies will also deprive the owners of the townhomes at the Project, including the Class Plaintiffs, of the use and enjoyment of their townhomes and will also result in the diminution in value of their townhomes because of the stigma associated with the deficiencies.

68. As a result of the above-referenced problems, and those yet to be discovered, Plaintiffs have or will suffer the following damages:

a. Cost to investigate the problems at the Project, and the individual townhomes within the Project;

b. The cost to develop a comprehensive repair for the Project, including the individual townhomes at the Project;

c. The cost of accessing, repairing, and replacing all defective and/or unsuitable and damaged components at the Project and the individual townhomes within the Project;

d. The diminished market value of the townhomes at the Project;

e. Damages associated with the loss of use of the townhomes at the Project while repairs are undertaken; and

f. Such other damages as may result from the conduct of the Defendants.

69. Some or all of the damages outlined in the preceding paragraph are common to all Class Plaintiffs and, in whole or in part, the Stoneledge HOA.

FOR A FIRST CAUSE OF ACTION
(Breach of Warranty: Developers)

70. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

71. In acting as the developers of the Project and placing the individual townhomes into the stream of commerce, Developers provided an implied warranty of habitability to each owner at the Project and for the benefit of the HOA.

72. The above-referenced problems (and any subsequently-discovered problems) with the Project, and the townhomes within the Project, establish that this warranty has been breached by the Developers.

73. As a direct and proximate cause of the Developers' breach of the warranty of habitability, the Plaintiffs have been and will continue to be damaged as set forth herein.

74. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their breach of warranty of habitability in such amount as will be proven at trial.

FOR A SECOND CAUSE OF ACTION
(Negligence: Developers)

75. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

76. The Developers owed a duty to the Plaintiffs to ensure that the Project was designed and constructed using a qualified architect and builder.

77. Additionally, the Developers retained control over the Board of the Stoneledge HOA up and until September, 2008, during such time Developers had a duty to inspect, repair, and

maintain components of the Project and to access funding needs and to make provisions for adequate funding.

78. The conditions uncovered to date at the Project establish that the Developers breached their duties to the Plaintiffs in that the defective conditions were not investigated or repaired and insufficient funds existed to effect such repairs at the time control of the Stoneledge HOA was transferred to the owners.

79. As a direct and proximate cause of the Developers' negligence and gross negligence, the Plaintiffs have suffered damages and the Plaintiffs will continue to suffer additional damages.

80. Plaintiffs are entitled to a judgment against the Developers because of their negligence and gross negligence in such amount as will be proven at trial, including punitive damages.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty: Developers)

81. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

82. A special relationship exists between the Developers and the Plaintiffs based on the following:

a. The Developers developed the project;

b. The Developers funded the design and construction of the Project;

c. The Developers selected the builder and designer and others for the Project;

d. The Developers marketed and sold the units at the Project and placed them into the stream of commerce; and,

e. The Developers controlled the Stoneledge HOA until September, 2008.

83. Plaintiffs reposed special confidence in the Developers resulting in their owing to the Plaintiffs a fiduciary duty to accomplish the following non-exhaustive list of particulars:

a. To fund adequately the design, construction, and upkeep of the Project;

b. To select a qualified designer and builder for the Project;

c. To ensure that the builder and designer produced a quality product free from the types of defects that currently exist at the Project;

d. To establish sufficient capital reserves for the Association at its inception to address the maintenance and repairs at the Project;

e. To maintain and upkeep all unsold units at the Project and the common areas of the Project; and,

f. To ensure that at the time control of the Board of Directors of the Stoneledge HOA was turned over to the owners, in September 2008, that the components of the townhomes which the Stoneledge HOA is obligated to repair, maintain, and replace, were in reasonable condition, free of defects.

84. The deficiencies uncovered to date, which all existed on or before September 2008, establish that the Developers breached their fiduciary duty to the Plaintiffs.

85. As a direct and proximate cause of the Developers' breaches of fiduciary duties, the Plaintiffs have suffered damages and will continue to suffer additional damages.

86. Plaintiffs are entitled to a judgment against the Developers (including SDI) because of their breach of fiduciary duty in such amount as will be proved at trial, including punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty: Contractors and Subcontractors)

87. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

88. The Contractors and Subcontractors, by virtue of their role in the construction of the Project, extended to the Plaintiffs a warranty of workmanlike service in regard to the construction of the townhomes within the Project.

89. The above-referenced problems (and any subsequently-discovered problems) at the Project establish that this warranty has been breached by the Contractors and Subcontractors.

90. As a direct and proximate result of such breach(es) of the warranty of workmanlike service, the Plaintiffs have been and will continue to be damaged as described herein.

91. Plaintiffs are entitled to a judgment against the Contractors and Subcontractors because of their breach of warranty of workmanlike service in such amount as will be proved at trial.

FOR A FIFTH CAUSE OF ACTION
(Negligence: Contractors and Subcontractors)

92. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

93. The Contractors and Subcontractors, by virtue of their role in the construction of the Project, owed a duty to the Plaintiffs to retain, coordinate, and supervise competent subcontractors, and to accomplish such construction and/or repairs in accordance with all applicable codes, applicable industry standards, and any and all manufacturers' literature/instructions, and, when applicable, to conform such construction to whatever design documents existed at the time of constructing the Project and the townhomes within the Project.

94. The above-referenced problems (and any subsequently-discovered problems) with the Project establish that the Contractors and Subcontractors breached their duty in regard to these responsibilities which has proximately caused the deficiencies at the Project.

95. The violation of applicable building codes and the willful, reckless, and wanton failure to comply with the applicable standards establishes gross negligence on the part of the Contractors and Subcontractors.

96. As a direct and proximate result of the negligence or gross negligence of Contractors and Subcontractors, the Plaintiffs have been and will continue to be damaged as described herein.

97. Plaintiffs are entitled to a judgment against the Contractors and Subcontractors based on their negligence and gross negligence in such amount as will be proved at trial, including punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Negligence: MPA- Architect)

98. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

99. Defendant MPA was negligent, and/or grossly negligent in the design and inspection of the Project in one or more of the following particulars:

a. failure to adequately design a waterproofing system so as to prevent water infiltration into the interior portions of the building;

b. improper design of waterproofing of the exterior of the building and non-existent or improper design of flashing;

c. inadequate inspection and acceptance of defective or non-conforming construction work;

d. failure to design and insure construction in compliance with applicable building codes State and Federal laws and regulations and acceptable building practices; and,

e. failure to properly specify appropriate materials to be used in the construction of the Project.

100. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant MPA, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Express and Implied Warranty: MPA - Architects)

101. Plaintiffs reassert and reallege the allegations contained in the above Paragraphs.

102. Defendant MPA expressly and impliedly warranted that its design of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

103. Defendant MPA further expressly and impliedly warranted that the plans and specifications prepared for the Project were suitable and fit for use in constructing the Project, and that the building, when complete, would be free of design defects.

104. The plans and specifications as provided by MPA were not suitable or appropriate for their intended purpose, and as a result of MPA's breach of warranties by designing the Project

with severe structural and water intrusion problems, Plaintiffs are entitled to such actual damages as this Court may deem appropriate.

WHEREFORE, the Plaintiffs pray for a judgment against the Defendants on the above causes of action in such amounts as may be proven at trial, including consequential and punitive damages, the costs of this action, including attorney's fees, and for such other relief as the court deems just and proper.

Robert Lyles /clb

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Charleston, South Carolina
April 3, 2012

CERTIFICATE OF SERVICE

I, Ashley E. Poulnot, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, do hereby certify that I have this date, mailed via the United States Postal Service a true and correct copy of the **Plaintiffs' Third-Amended Summons and Complaint** to the following counsel of record:

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Integrys Keowee Development and IMK Development

By: Ashley Poulhot
Ashley E. Poulhot
Legal Assistant

This 3rd day of April, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	)	SUMMONS TO THIRD PARTY CLAIMS AS TO SOUTHERN STONE, INC. AND BUCK SMITH CONSTRUCTION
Plaintiffs,	)	
VS.	)	
IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, BRADFORD D. SECKINGER, JOHN LUDWIG, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, M GROUP CONSTRUCTION AND DEVELOPMENT, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JUL 3 AM 9 20

MONTEL, UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC, INC., D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY, MILLER/PLAYER & ASSOCIATES,	)
Defendants,	)
BOSTIC CONSTRUCTION, INC.,	)
Third-Party Plaintiff	)
v.	)
SOUTHERN STONE, INC., AND BUCK SMITH CONSTRUCTION,	)
Third-Party Defendants.	)

TO: THIRD PARTY DEFENDANTS SOUTHERN STONE, INC. AND BUCK SMITH CONSTRUCTION

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Claims in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the subscribers at their office, Hall, Booth, Smith & Slover, P.C., 2113 Middle Street, Suite 305, Sullivan's Island, South Carolina 29482, within thirty (30) days of the service hereof, exclusive of the day of such service; and if you fail to answer the Third-Party Claims within the aforesaid time the Cross-Claim Plaintiff, Bostic Construction, Inc., in this action will apply to the Court for the relief demanded in the Third-Party Claim, by way of judgment by default.

[SIGNATURE NEXT PAGE]

HALL, BOOTH, SMITH & SLOVER, P.C.

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ATTORNEY FOR DEFENDANT
BOSTIC CONSTRUCTION, INC

June 27th, 2012
Sullivan's Island, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
	)	
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	)	DEFENDANT BOSTIC CONSTRUCTION, INC.'S ANSWER TO THE PLAINTIFFS' THIRD AMENDED COMPLAINT AND THIRD PARTY CLAIMS AND/OR CROSS-CLAIMS AGAINST SUBCONTRACTOR CO-DEFENDANTS.
Plaintiffs,	)	
vs.	)	
IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, BRADFORD D. SECKINGER, JOHN LUDWIG, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, M GROUP CONSTRUCTION AND DEVELOPMENT, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO	)	

AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC, INC., D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY, MILLER/PLAYER & ASSOCIATES,

Defendants,

COMES NOW Bostic Construction, Inc (herein "Bostic") and in response to the Third Amended Complaint of the Plaintiffs' would allege over this honorable Court as follows:

AS A FIRST DEFENSE

1. Bostic admits the allegations contained in Paragraph 1 of the Third Amended Complaint, upon information and belief.

2. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and, therefore, denies the same.

3. Bostic admits only so much of the allegations contained in Paragraph 3 of the Third Amended Complaint as could be construed to allege that the Plaintiffs designated therein are or may be owners of townhomes located in Phase I and/or Phase II of the townhome community currently referred to Stoneledge at Lake Keowee. Any remaining allegations contained in said paragraph inconsistent with the above admissions are hereby denied.

4. Bostic admits the allegations contained in Paragraph 4.

5. The allegations contained in Paragraph 5 of the Third Amended Complaint constitute legal conclusions to which no response is required. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic for any reason whatsoever, those allegations are denied.

6. In response to the allegations contained in Paragraph 6 of the Third Amended Complaint, including all subparts therein, Bostic would show that said allegations constitute legal conclusions to which no response is required. To the extent the allegations contained there in could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied. Bostic further denies that a class action lawsuit is the appropriate format to bring the individual unit owner's action before this court.

7. Bostic would show that the allegations contained in Paragraph 7 of the Third Amended Complaint constitute legal conclusions to which no response is required. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

8. Bostic admits the allegations contained in Paragraph 8 upon information and belief.

9. Bostic admits only so much of the allegations contained in Paragraph 9 of the Third Amended Complaint as could be construed to allege that, at one time, Keowee Townhouses, LLC ("Keowee") was a limited liability company organized and existing under the laws of the State of South Carolina and placed approximately eleven of the units contained within the Townhomes at Lake Keowee project into the stream of commerce by selling them to end purchasers. Any remaining allegations contained in said paragraph, inconsistent with the above admissions, are hereby denied.

10. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Third Amended Complaint and, therefore, denies the same.

11. Bostic admits the allegations contained in Paragraph 11 of the Third Amended Complaint, upon information and belief.

12. Bostic admits the allegations contained in Paragraph 12 of the Third Amended Complaint, upon information and belief.

13. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Third Amended Complaint and, therefore, denies the same.

14. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Third Amended Complaint and, therefore, denies the same.

15. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Third Amended Complaint and, therefore, denies the same.

16. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Third Amended Complaint and, therefore, denies the same.

17. Bostic lacks knowledge and information sufficient to form a belief as to the proof of the allegations contained in Paragraph 17 of the Third Amended Complaint and, therefore, denies the same.

18. Bostic admits the allegations contained in Paragraph 18 of the Third Amended Complaint.

19. Bostic admits the allegations contained in Paragraph 19 of the Third Amended Complaint.

20. Bostic lacks knowledge and information sufficient to form a belief as to the truth of he allegations contained in Paragraph 20 of the Third Amended Complaint and, therefore, denies the same.

21. Bostic admits only so much of the allegations contained in Paragraph 21 of the Third Amended Complaint as could be construed to allege that Bostic, at one time, was a corporation organized and existing pursuant to the laws of a State other than South Carolina and performed general contracting services for the Townhomes at Lake Keowee project. However, Bostic did not complete the project. Any remaining allegations contained in said paragraph inconsistent with the above admissions, are hereby denied.

22. Bostic admits the allegations contained in Paragraph 22 of the Third Amended Complaint.

23. Bostic admits only so much of the allegations contained in Paragraph 22 of the Third Amended Complaint as could be construed to allege that at the time of construction of the Townhomes at Lake Keowee project, Defendant Mel Morris was President of Bostic Construction. Any remaining allegations contained in said paragraph are hereby denied.

24. Bostic denies the allegations contained in Paragraph 24 of the Third Amended Complaint as they pertain to Joe Bostic. In so far as the allegations contained in said paragraph pertain to Jeff Bostic, Bostic would show that, while Jeff Bostic was a purported officer, director, and/or principal of Bostic at the time of construction of the Townhomes at Lake Keowee, he is

not liable in his capacity as such. Bostic denies any remaining allegations contained in said paragraph inconsistent with the above admissions.

25. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Third Amended Complaint and, therefore, denies the same.

26. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Third Amended Complaint and, therefore, denies the same.

27. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Third Amended Complaint and, therefore, denies the same.

28. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Third Amended Complaint and, therefore, denies the same.

29. Bostic admits the allegations contained in Paragraph 29 of the Third Amended Complaint, upon information and belief.

30. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Third Amended Complaint and, therefore, denies the same.

31. Bostic admits the allegations contained in Paragraph 31 of the Third Amended Complaint, upon information and belief.

32. Bostic admits the allegations contained in Paragraph 32 of the Third Amended Complaint, upon information and belief.

33. Bostic admits the allegations contained in Paragraph 33 of the Third Amended Complaint, upon information and belief.

34. Bostic admits the allegations contained in Paragraph 34 of the Third Amended Complaint, upon information and belief.

35. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Third Amended Complaint and, therefore, denies the same.

36. Bostic admits the allegations contained in Paragraph 36 of the Third Amended Complaint, upon information and belief.

37. Bostic admits the allegations contained in Paragraph 37 of the Third Amended Complaint, upon information and belief.

38. Bostic admits the allegations contained in Paragraph 38 of the Third Amended Complaint, upon information and belief.

39. Bostic admits the allegations contained in Paragraph 39 of the Third Amended Complaint, upon information and belief.

40. To the extent the allegations contained in Paragraph 40 of the Third Amended Complaint require a response from Bostic, those allegations are admitted, upon information and belief.

41. To the extent the allegations contained in Paragraph 41 of the Third Amended Complaint require a response from Bostic, those allegations are admitted, upon information and belief.

42. To the extent the allegations contained in Paragraph 42 of the Third Amended Complaint require a response from Bostic, those allegations are admitted, upon information and belief.

43. To the extent the allegations contained in Paragraph 43 of the Third Amended Complaint require a response from Bostic, those allegations are admitted, upon information and belief.

44. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Third Amended Complaint and, therefore, denies the same.

45. Bostic admits the allegations contained in Paragraph 45 of the Third Amended Complaint, upon information and belief.

46. To the extent the allegations contained in Paragraph 46 of the Third Amended Complaint require a response from Bostic, those allegations are admitted.

47. To the extent the allegations contained in Paragraph 47 of the Third Amended Complaint require a response from Bostic, those allegations are admitted.

48. Bostic admits the allegations contained in Paragraph 48 of the Third Amended Complaint, upon information and belief.

49. Bostic would show that the allegations contained in Paragraph 49 of the Third Amended Complaint do not pertain to Bostic. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

50. Bostic would show that the allegations contained in Paragraph 50 of the Third Amended Complaint do not pertain to Bostic. To the extent the allegations contained in said

paragraph could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

51. Bostic would show that the allegations contained in Paragraph 51 of the Third Amended Complaint do not pertain to Bostic. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

52. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 52 of the Third Amended Complaint and, therefore, denies the same.

53. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Third Amended Complaint and, therefore, denies the same.

54. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 54 of the Third Amended Complaint and, therefore, denies the same.

55. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 55 of the Third Amended Complaint and, therefore, denies the same.

56. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56 of the Third Amended Complaint and, therefore, denies the same.

57. Bostic lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Third Amended Complaint and, therefore, denies the same.

58. The allegations contained in Paragraph 58 of the Third Amended Complaint constitute legal conclusions to which no response is required. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic for any reason whatsoever, those allegations are denied.

59. The allegations contained in Paragraph 59 of the Third Amended Complaint constitute legal conclusions to which no response is required. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic for any reason whatsoever, those allegations are denied.

60. To the extent the allegations contained in Paragraph 60 of the Third Amended Complaint require a response from Bostic, Bostic would show that Bostic, Mel Morris, Jeff Bostic, and Joe Bostic should not be referred to collectively and individually in any allegations contained in the Plaintiffs' Third Amended Complaint and any allegations that seek to impose liability against said individuals and/or entities are hereby denied. To the extent the allegations contained in Paragraph 60 of the Third Amended Complaint require further response from Bostic, those allegations are admitted upon information and belief.

61. To the extent the allegations contained in Paragraph 61 of the Third Amended Complaint require a response from Bostic, those allegations are denied.

62. Bostic admits only so much of the allegations contained in Paragraph 62 of the Third Amended Complaint that could be construed to allege that the Plaintiffs have observed

water intrusion in their units. Any remaining allegations contained in said paragraph are hereby denied, insofar as they pertain to Bostic.

63. Bostic admits only so much of the allegations contained in Paragraph 63 of the Third Amended Complaint that could be construed to allege that the Plaintiffs have observed water intrusion in their units. Any remaining allegations contained in said paragraph are hereby denied, insofar as they pertain to Bostic.

64. Bostic denies the allegations contained in Paragraph 64 of the Third Amended Complaint, as stated.

65. Bostic denies the allegations contained in Paragraph 65 of the Third Amended Complaint, as stated.

66. Bostic denies the allegations contained in Paragraph 66 of the Third Amended Complaint, as stated.

67. Bostic admits only so much of the allegations contained in Paragraph 67 of the Third Amended Complaint that could be construed to allege that repairs have been made to the project. Any remaining allegations contained in said paragraph inconsistent with the above admissions, insofar as they pertain to Bostic, are hereby denied.

68. Bostic denies the allegations contained in Paragraph 68 of the Third Amended Complaint, including all subparts, insofar as they pertain to Bostic.

69. The allegations contained in Paragraph 69 of the Third Amended Complaint, insofar as they pertain to Bostic, constitute legal conclusions to which no response is required. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

70. In response to the allegations contained in Paragraph 70 of the Third Amended Complaint, Bostic repeats and realleges all prior responses above as if fully set forth herein verbatim.

71. Bostic denies the allegations contained in Paragraph 71 of the Third Amended Complaint, insofar as they pertain to Bostic.

72. Bostic denies the allegations contained in Paragraph 72 of the Third Amended Complaint, insofar as they pertain to Bostic.

73. Bostic denies the allegations contained in Paragraph 73 of the Third Amended Complaint, insofar as they pertain to Bostic.

74. Bostic denies the allegations contained in Paragraph 74 of the Third Amended Complaint, insofar as they pertain to Bostic.

75. In response to the allegations contained in Paragraph 75 of the Third Amended Complaint, Bostic repeats and realleges all prior responses above as if fully set forth herein verbatim.

76. In response to the allegations contained in Paragraph 76 of the Third Amended Complaint, Bostic would show that it did not serve as a developer in this project and, therefore, no response is required from Bostic. To the extent the allegations contained in said paragraph could in any way be construed as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

77. In response to the allegations contained in Paragraph 77 of the Third Amended Complaint, Bostic would show that it did not serve as a developer in this project and, therefore, no response is required from Bostic. To the extent the allegations contained in said paragraph

could in any way be construed as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

78. In response to the allegations contained in Paragraph 78 of the Third Amended Complaint, Bostic would show that it did not serve as a developer in this project and, therefore, no response is required from Bostic. To the extent the allegations contained in said paragraph could in any way be construed as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

79. In response to the allegations contained in Paragraph 79 of the Third Amended Complaint, Bostic would show that it did not serve as a developer in this project and, therefore, no response is required from Bostic. To the extent the allegations contained in said paragraph could in any way be construed as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

80. Bostic denies the allegations contained in Paragraph 80 of the Third Amended Complaint, insofar as they pertain to Bostic.

81. In response to the allegations contained in Paragraph 81 of the Third Amended Complaint, Bostic repeats and realleges all prior responses above as if fully set forth herein verbatim.

82. In response to the allegations contained in Paragraph 82 of the Third Amended Complaint, Bostic would show that it did not serve as a developer in this project and, therefore, no response is required. To the extent the allegations contained in said paragraph, including all subparts, could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

83. In response to the allegations contained in Paragraph 83 of the Third Amended Complaint, Bostic would show that it did not serve as a developer in this project and, therefore, those allegations do not pertain to Bostic. To the extent the allegations contained in said paragraph, including all subparts, could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

84. In response to the allegations contained in Paragraph 84 of the Third Amended Complaint, Bostic denies that it served as a developer on this project and, therefore, those allegations do not pertain to Bostic. To the extent the allegations contained in said paragraph could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

85. Bostic denies the allegations contained in Paragraph 85 of the Third Amended Complaint, insofar as they pertain to Bostic.

86. Bostic denies the allegation contained in Paragraph 86 of the Third Amended Complaint, insofar as they pertain to Bostic.

87. In response to the allegations contained in Paragraph 87 of the Third Amended Complaint, Bostic repeats and realleges all prior responses above as if fully set forth herein verbatim.

88. Bostic admits the allegations contained in Paragraph 88, insofar as warranties may have been extended to certain unit owners, as a result of their transfer into the stream of commerce, while Bostic was general contractor. Bostic denies any remaining allegations contained in said paragraph, inconsistent with the above admissions.

89. Bostic denies the allegations contained in Paragraph 89 of the Third Amended Complaint, as stated.

90. Bostic denies the allegations contained in Paragraph 90 of the Third Amended Complaint, as stated.

91. Bostic denies the allegations contained in Paragraph 91 of the Third Amended Complaint, as stated.

92. In response to the allegations contained in Paragraph 92 of the Third Amended Complaint, Bostic repeats and realleges all prior responses above as if fully set forth herein verbatim.

93. Bostic denies the allegations contained in Paragraph 93 of the Third Amended Complaint, as stated, insofar as they pertain to Bostic.

94. Bostic denies the allegations contained in Paragraph 94 of the Third Amended Complaint, as stated, insofar as they pertain to Bostic.

95. Bostic denies the allegations contained in Paragraph 95 of the Third Amended Complaint, insofar as they pertain to Bostic.

96. Bostic denies the allegations contained in Paragraph 96 of the Third Amended Complaint, insofar as they pertain to Bostic.

97. Bostic denies the allegations contained in Paragraph 97 of the Third Amended Complaint, insofar as they pertain to Bostic.

98. In response to the allegations contained in Paragraph 98 of the Third Amended Complaint, Bostic repeats and realleges all prior responses above as if fully set forth herein verbatim.

99. In response to the allegations contained in Paragraphs 99 through 104, Bostic would show that the allegations are directed towards a defendant other than Bostic and, therefore, no response is required. To the extent the allegations contained in said paragraphs

could in any way be construed so as to impose liability against Bostic in this lawsuit for any reason whatsoever, those allegations are denied.

100. Bostic denies the allegations contained in the "wherefore" clause.

101. Bostic denies each and every allegation contained in the Plaintiffs' Third Amended Complaint not otherwise expressly admitted, modified, or explained herein.

AS A SECOND DEFENSE

102. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense, Bostic would show that the allegations contained in the Plaintiffs' Complaint are barred by the doctrine of flavor and/or estoppel.

AS A THIRD DEFENSE

103. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense, Bostic would show that if Bostic acted or failed to act as has been alleged in the Third Amended Complaint, which is specifically denied, there were separate and intervening acts or failures to act on the part of persons or entities other than Bostic which are the sole and proximate cause of the Plaintiffs' damages and serve as a complete bar to any recovery against Bostic.

AS A FOURTH DEFENSE

104. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs' claims against Bostic are barred and must be reduced because even if Bostic was negligent, grossly negligent, reckless and/or willful as alleged, which is specifically denied, any negligence, gross negligence, recklessness and willfulness by this Defendant must be measured against the negligence, gross negligence, recklessness, wantonness, willfulness of one or more of the entities other than Bostic to include the Plaintiffs,

over whom Bostic had no control, in failing or refusing to exercise reasonable care in the design, development and construction of the project.

AS A FIFTH DEFENSE

105. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs have failed to state a claim sufficient to constitute a cause of action against Bostic upon which relief can be granted and therefore, Plaintiffs' Third Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

AS A SIXTH DEFENSE

106. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs have failed to mitigate their damages as required by law.

AS A SEVENTH DEFENSE

107. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would allege that the Plaintiffs claims are barred by the applicable statutes of limitation or statute of repose.

AS AN EIGHTH DEFENSE

108. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs claims are barred in whole or in part by the doctrine of unclean hands.

AS A NINTH DEFENSE

109. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would allege that any injury and damage sustained by the Plaintiffs was due to and

caused by the sole and negligent acts or omissions of some person or persons other than Bostic over whom Bostic exercised no authority or control and for that reason, Bostic is not liable to the Plaintiffs in any sum whatsoever.

AS A TENTH DEFENSE

110. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs and/or their agents inspected, approved and ratified all work performed by Bostic. Furthermore, Plaintiffs knew or should have known if any of Bostic's work was not in accordance with the plans and specifications and in a workmanlike manner. Accordingly, Bostic pleads the applicable statute of limitations or statute of repose as a complete bar to all of the Plaintiffs' claims.

AS AN ELEVENTH DEFENSE

111. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that any express warranty allegedly provided by Bostic has expired.

AS A TWELFTH DEFENSE

112. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the materials and workmanship of Bostic at all times and in all manner met applicable plans, specifications, building code requirements, and industry standards and that Bostic is, therefore, not liable to the Plaintiffs in any sum whatsoever.

AS A THIRTEENTH DEFENSE

113. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with Bostic and not

under Bostic's domain or control.

AS A FOURTEENTH DEFENSE

114. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs may have failed to joint a necessary party to this litigation as required by Rule 19, SCRP, and Plaintiffs' Third Amended Complaint should be dismissed pursuant to Rule 12(b)(7), SCRP.

AS A FIFTEENTH DEFENSE

115. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs' claims are barred to the extent that the Plaintiffs and/or their members and agents discovered, or should have discovered, or were aware of any defects and nevertheless unreasonably proceeded to pay for Bostic's services.

AS A SIXTEENTH DEFENSE

116. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that any damages suffered by the Plaintiffs are the direct and proximate result of the Plaintiffs comparative and/or contributory negligence and Plaintiffs' recovery should be barred or, alternatively proportionately to Plaintiffs' comparative negligence or others unrelated and not under the control of Bostic.

AS A SEVENTEENTH DEFENSE

117. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that even if the Plaintiffs were damaged, as has been alleged, which is denied, the claims are barred pursuant to the doctrine of spoliation.

AS A EIGHTEENTH DEFENSE

118. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative

defense thereto, Bostic would show that the Plaintiffs have failed and refused to comply with the contractual conditions precedent to this action, including but not limited to, timely written notice and detailed statements in the amounts claimed, thereby extinguishing the right to maintain the action herein.

AS A NINETEENTH DEFENSE

119. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs' claims are barred to the extent that the Plaintiffs discovered, should have discovered, or were aware of any defects and failed to allow Bostic an opportunity to investigate and cure any alleged defects.

AS A TWENTIETH DEFENSE

120. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the claim of the Plaintiffs for punitive damages against this Defendant cannot be sustained, because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principals of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of viciously discriminatory characteristics, including the resident, wealth, corporate status of Bostic, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrating and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate Bostic's due process and equal protection rights guaranteed by the

Fourteenth Amendment to the United States Constitution and by the South Carolina Constitutional provisions providing for due process and equal protection, and would be improper under the common law and public policies of the State of South Carolina.

AS A TWENTY-FIRST DEFENSE

121. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs' claim for punitive damages is inappropriate in this case since Bostic did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages could be based.

AS A TWENTY-SECOND DEFENSE

122. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs' claims against this Defendant are barred to the extent they seek to recover in tort for purely economic loss.

AS A TWENTY-THIRD DEFENSE

123. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that the Plaintiffs cannot recover under a theory of implied warranty because all prior warranties have been explicitly disclaimed by Bostic.

AS A TWENTY-FOURTH DEFENSE

124. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that if this Court finds that an express warranty was given by Bostic, which it denies, Plaintiffs' remedy must be limited to the remedies available under the warranty as its sole and exclusive remedy.

AS A TWENTY-FIFTH DEFENSE

125. Further responding to the Plaintiffs' Third Amended Complaint and as an

affirmative defense thereto, Bostic would show that it has substantially performed all of the requirements, contractual or otherwise, in a reasonable manner.

AS A TWENTY-SIXTH DEFENSE

126. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that any injuries and damages sustained by the Plaintiffs have been the result of the misuse and/or abuse of the product or products in question. Additionally, the Plaintiffs and/or other parties may have failed to use the product properly and may have abused the product and subjected it to abnormal use at the time or times and places alleged in the Plaintiffs' Third Amended Complaint. Further, the product and/or products may have been used and handled contrary to the normal method abusing the same, which was well known or ought to have been well known by the Plaintiffs and/or other parties.

AS A TWENTY-SEVENTH DEFENSE

127. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show on information and belief that any and all alleged warranties were effectively excluded, modified and/or disclaimed.

AS A TWENTY-EIGHTH DEFENSE

128. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would allege and show that it made no warranties of any kind, express or implied, or any representation of any nature to the Plaintiffs, and such constitutes a complete defense to the Plaintiffs' Third Amended Complaint.

AS A TWENTY-NINTH DEFENSE

129. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that any claims for breach of warranty made by the Plaintiffs are barred

because the Plaintiffs did not rely upon any warranties from Bostic.

AS A THIRTIETH DEFENSE

130. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic pleads the state-of-the-art doctrine is a complete defense to the Plaintiffs' Third Amended Complaint.

AS A THIRTY-FIRST DEFENSE

131. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic would show that it is entitled to a set-off for damages collected by the Plaintiffs from joint tortfeasors.

AS A THIRTY-SECOND DEFENSE

132. Further responding to the Plaintiffs' Third Amended Complaint and as an affirmative defense thereto, Bostic hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its answer to assert any such defenses.

THIRD PARTY CLAIMS AND/OR CROSS-CLAIMS AGAINST SUBCONTRACTOR CO-DEFENDANTS

COMES NOW Bostic Construction Corporation ("Bostic") subject to its Answer to the Plaintiffs' Third Amended Complaint, in the alternative, and by way of cross claims against Defendants MJG Construction and Homebuilders, Inc., d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarnamillo, Garcia-Parr Insulation, Inc., J&J Construction, Jose Nino, Jose Manual Garcia, Eason Construction, Inc. and Vincent Morales d/b/a Morales Masonry, Southern Stone, Inc., and Buck Smith Construction ("Subcontractor Co-Defendants") would allege unto the Honorable Court as follows:

1. Bostic served as general contractor on a portion" of Phase I of the townhomes at

Lake Keowee project n/k/a Stoneledge at Lake Keowee ("Project").

2. Upon information and belief, at all times relevant hereto, the Subcontractor Co-Defendants were conducting business in Oconee County, South Carolina and were hired as subcontractors at the Project by Bostic to perform labor and services with regard to the Project.

3. Upon information and belief, Buck Smith Construction performed framing labor.

4. Upon information and belief, Southern Stone, Inc. provided various services and materials related to the installation of synthetic stone on the Project.

5. This Court has jurisdiction over all matters contained herein pursuant to S.C. Code Ann. § 15-7-30, Oconee County, South Carolina is the proper venue for this action.

6. The Plaintiffs have alleged numerous causes of action against Bostic including but not limited to, negligence, breach of warranties, breach of contract and various other causes of action. As set forth in its answer to the Plaintiffs' Third Amended Complaint, Bostic denies that it is liable to the Plaintiffs for the alleged damages and commences these cross claims IN THE ALTERNATIVE.

FOR A FIRST CAUSE OF ACTION AS TO SUBCONTRACTOR CO-DEFENDANTS
(contractual/equitable indemnity and contribution).

7. Bostic denies that it breached any duty to the Plaintiffs whatsoever and further denies any liability for the Plaintiffs' alleged damages.

8. If Bostic is compelled to pay damages for any reason in this matter, it would allege that any liability for said damages would be an imputation of negligence upon Bostic as the result of a wrongful act or omission committed by the Subcontractor Co-Defendants.

9. Bostic is entitled to full indemnification and/or contribution from the Subcontractor Co-Defendants for any liability Bostic is found to have to the Plaintiffs in this action, and Bostic would be entitled to damages for the Subcontractor Co-Defendants' negligence as therein

described, and for their breach of their implied and expressed warranties, entitling Bostic to recover from the Subcontractor Co-Defendants in the amount of any monies it is adjudged to owe Plaintiffs, or which it may pay Plaintiffs in settlement of Plaintiffs' claims, plus the costs of investigating and defending this claim, including the reasonable attorneys fees.

FOR A THIRD CAUSE OF ACTION AS TO SUBCONTRACTOR CO-DEFENDANTS
(negligence)

10. Bostic repeats and realleges all prior responses above as if set forth herein verbatim.

11. The Subcontractor Co-Defendants were negligent, careless and reckless in the design, supervision, construction, inspection, and/or supplying the work and materials outlined above and incorporated into the project.

12. As a direct and proximate result of such negligence, carelessness, and recklessness,

Bostic has been damaged in the amount of any monies that it is adjudged to owe Plaintiffs or which it may pay Plaintiffs in settlement of their claims, plus the cost of investigating and defending this claim, including reasonable attorneys fees.

13. Upon information and belief, Bostic is entitled to judgment of actual damages, collectively or individually against the Subcontractor Co-Defendants in the amount of any monies that it is adjudged to owe Plaintiffs or which it may pay Plaintiffs in settlement of Plaintiffs' claims, as well as fees and costs incurred in the investigation, defense and settlement of this claim.

FOR A THIRD CAUSE OF ACTION AS TO SUBCONTRACTOR CO-DEFENDANTS
(breach of warranty)

14. Bostic repeats and realleges its prior responses above as if set forth herein

verbatim.

15. The Subcontractor Co-Defendants expressly or impliedly warranted to Bostic that all work performed by Subcontractor Co-Defendants would be performed in a careful, diligent, or workmanlike manner and that any materials and/or services designed, supplied or sold by subcontractor cross claim defendants for use on the project would be merchantable and fit for their intended and specific purpose. Subcontractor Co-Defendants breached their implied and/or expressed warranties and merchantability and workmanlike service and/or fitness for a particular purpose in the construction of the project.

16. As a result of these breaches of warranty, Bostic has incurred damages in the amount of monies it is adjudged to owe Plaintiffs or which it may pay Plaintiffs for the settlement of Plaintiffs' claims, plus the cost of investigating and defending this claim.

17. Upon information and belief, Bostic is entitled to judgment against Subcontractor Co-Defendants in the amount of any monies that it is adjusted to owe Plaintiffs or which it may pay Plaintiffs for settlement of Plaintiffs' claims as well as the cost and fees incurred in the investigation, defense or settlement of this claim.

FOR A FOURTH CAUSE OF ACTION AS TO SUBCONTRACTOR CO-DEFENDANTS
(breach of contract)

18. Bostic repeats and realleges all prior responses above as if set forth herein verbatim.

19. Bostic entered into a contract with the Subcontractor Co-Defendants to provide work and/or materials on the Project. The terms of the contracts required Subcontractor Co-Defendants to provide construction, goods, and/or services for the Project that, among other things, would produce a quality Project free from defects and otherwise in conformance with building codes and industry standards.

20. Subcontractor Co-Defendants breached their contracts by failing to provide appropriate

construction, goods, and/or services at the Project, by failing to perform their work in a careful, diligent, and workmanlike manner, and by failing to provide goods and services that resulted in a quality residence free from defects and otherwise in conformance with all appropriate building codes and industry standards.

21. As a result of these breaches of contract, Bostic has incurred damages in the amount of any monies that it is adjudged to owe the Plaintiffs or which it may pay the Plaintiffs in settlement of the Plaintiffs' claims, plus the cost of investigating and defending these claims, including any and all reasonable attorneys fees.

22. Upon information and belief, Bostic is entitled to judgment against Subcontractor Co-Defendants in the amount of any monies it is adjudged to owe the Plaintiffs, or which it may pay the Plaintiffs in settlement of the Plaintiffs' claims, as well as costs and fees incurred in the investigation, defense and settlement of this claim.

WHEREFORE, having fully answered the Plaintiffs' Third Amended Complaint, Bostic prays that the Third Amended Complaint against it be dismissed for the costs of defending this action, for the relief sought in all cross claims and for such other relief as this Court and jury may deem just and proper.

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ATTORNEY FOR DEFENDANT BOSTIC CONSTRUCTION, INC

June 20th, 2012
Sullivan's Island, SC

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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DEC 04 2015

SC Court of Appeals

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

The Honorable Alexander S. Macaulay, Circuit Court Judge

Lower Court Case No. 2009-CP-37-00652

Court of Appeals Case No. 2015-000417

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated, Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers

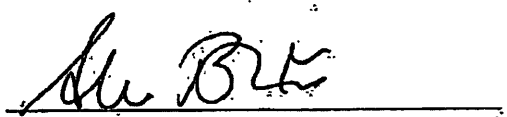
Construction, Inc., Miller/Player & Associates; Bradford D. Seckinger; John Ludwig, William C. Cox, Larry D. Lollis, Rick Thoennes, M. Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Upstate Utilities, Inc., Southern Basements, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles; Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez; Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry,

Appellants.

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SC Court of Appeals

(Of Whom Bostic Brothers Construction, Inc., is the Appellant)

INITIAL BRIEF OF APPELLANT



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STATEMENT OF ISSUES ON APPEAL

I THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTIONS FOR DIRECTED VERDICT AND JUDGMENT NOTWITHSTANDING THE VERDICT AS TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS.

II. THE TRIAL COURT ERRED IN APPLYING THE SETOFF TO THE ENTIRE $5 MILLION VERDICT.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S POST-TRIAL MOTIONS FOR A NEW TRIAL ABSOLUTE AND NEW TRIAL NISI.

STATEMENT OF THE CASE

This action was originally brought by Stoneledge at Lake Keowee Owners' Association, Inc. (hereinafter "HOA") and various individual homeowners on May 29, 2009. Plaintiffs filed this construction defect suit against Appellant on February 9, 2010. (Pls.' First Am. Compl.) In Plaintiffs' Third Amended Complaint, Plaintiffs asserted the following causes of action: (1) Breach of Warranty of Developers[1]; (2) Negligence of Developers; (3) Breach of Fiduciary Duty of Developers; (4) Breach of Warranty of Contractors and Subcontractors[2]; (5) Negligence of Contractors and Subcontractors; (6) Negligence of Miller/Player and Associates (hereinafter "MPA")[3]; and (7) Breach of Express and Implied Warranty of MPA. (Pls.' Third Am. Compl. ¶¶ 70-104.)

This matter went to a jury trial on October 28, 2013. At trial, Plaintiffs sought damages totaling $6.5 Million for construction defects against Defendants. During the trial, Defendants Marick and IMK were deemed an amalgamated entity, and treated

[1] "Developers" identified in Plaintiffs' Third Amended Complaint included IMK, Keowee, Ludwig, SDI, Medallion, Integrys, Marick, Appellant, Larry Lollis, William Cox, Bradford Seckinger, John Ludwig, and Rick Thoennes, collectively and individually. (Pls.' Third Am. Compl. ¶ 61.)

[2] "Contractors" identified in Plaintiffs' Third Amended Complaint included Marick, M Group, Thoennes, Appellant, Mel Morris, Jeff Bostic, Joe Bostic, and IMK, both collectively and individually. (Pls.' Third Am. Compl. ¶ 60.)

[3] MPA was the architect for various townhomes at the Project. (Pls.' Third Am. Compl. ¶ 48.)

jointly for purposes of trial (hereinafter "Marick/IMK"). At the close of Plaintiffs' case, Appellant moved for a directed verdict as to the issue of the expiration of the statute of limitations, which was denied. (See Trial Tr. 1234:7–1255:10, Nov. 5, 2013; 1302:4–1303:5, Nov. 6, 2013.) Appellant renewed its motion for directed verdict at the close of Defendants' case, which was also denied. (See Trial Tr. 1556:4–8, Nov. 7, 2013.) On November 7, 2013, the jury returned a verdict as follows:

(a) $3 Million for negligence against Marick/IMK and Appellant;

(b) $1 Million for breach of implied warranties against Marick and Appellant; and

(c) $1 Million for breach of fiduciary duty against Defendants IMK, Integrys, Rick Thoennes, Larry D. Lollis, and William C. Cox, individually.

(Verdict Form pp. 1–3.) The jury allocated 60% of the negligence award to Appellant and 40% to Marick. The jury allocated 30% of the breach of implied warranties to Appellant and 70% to Marick. (Apportionment Form p. 1.) The trial court ostensibly applied a setoff of $2,855,911.77[4] to the entire $5 Million verdict, entering judgment for $2,144,088.23, and in the instances of breach of implied warranties and negligence, the trial court then reduced the $2,144,088.23 by the percentage of apportionment. (See Tr. of J. pp. 1–2, Ex. A (determining the trial court's applied set-off by subtraction).) The trial court entered the entire amount of the judgment as to Appellant, presumably under a joint and several liability theory based on Appellant's negligence.

[4] This figure was calculated by subtracting the judgment amount of $2,114,088.23 from the $5 Million verdict. At the time Appellant submitted its Post-Trial Motions, it was under the belief that settlement funds totaled $2.908 Million. Plaintiffs submitted to the trial court in their Motion to Alter or Amend Judgment dated November 18, 2013 that their settlements with other parties prior to trial totaled $2,800,000, which is likely a rounded number. (Order Granting [sic] Pl.'s Mot. to Alter or Amend J. p. 9, Nov. 18, 2013). Due to this discrepancy, Appellant relies on the trial court's Transcript of Judgment demonstrating a setoff of $2,114,088.23 for this Initial Brief.

The undersigned counsel timely filed four Post-Trial Motions on November 18, 2013.[5] Appellant filed a Motion for Judgment Notwithstanding the Verdict, pursuant to Rule 50, SCRCP, arguing that the Court erred in failing to grant Appellant's Motion for Directed Verdict based upon the applicable statute of limitations. Appellant also filed a Motion requesting an Order granting a setoff of all funds recovered pre-trial by Plaintiffs. Appellant's third Motion requested a new trial absolute, pursuant to Rule 59, SCRCP. Appellant's fourth Motion requested a new trial nisi remittitur, also pursuant to Rule 59, SCRCP.

The trial court entered an Order Denying Defendants' Post-Trial Motions on January 22, 2015, noting the court was "unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered." (Order Den. Defs.' Post-Trial Mot. p. 2, Jan. 22, 2015.) The undersigned counsel did not receive written notice of the Entry of Judgment until February 4, 2015.

Curiously, the trial court's Order only addressed motions submitted by Defendants Marick, Theonnes, IMK, Integrys, Cox, and Lollis, but omitted reference to Appellant's motions. Out of an abundance of caution regarding the court's omission of any ruling on the motions, on February 19, 2015 the undersigned filed a "Motion to Alter or Amend Judgment Entered on January 30, 2015 Pursuant to Rule 59(e), SCRCP." (Bostic Brothers Construction, Inc.'s Notice of Mot. and Mot. to Alter or Am.) Appellant received an Order from the trial court filed March 13, 2015, denying its motion. (Order Denying Bostic Brothers Construction Inc.'s Rule 59 Motion to Reconsider, March 13, 2015.)

[5] November 17, 2013 was a Sunday, allowing Appellant to timely file its Post-Trial Motions on Monday, November 18, 2013.

On February 26, 2015 and March 20, 2015, Appellant timely filed its Notice of Appeal and Second Amended Notice of Appeal, respectively, in regards to the following Orders of the trial court:

(1) Order denying Appellant's Motion for Directed Verdict at the close of Plaintiffs' case during trial;

(2) Order denying Appellant's Motion for Directed Verdict at the close of Defendants' case during trial;

(3) Final Judgment, Apportionment Form, and Jury Verdict Form filed November 8, 2013;

(4) Form 4 and accompanying Order Denying Defendants' Post-Trial Motions filed on January 22, 2015, ostensibly denying Appellant's Post-Trial Motions previously identified;

(5) Form 4 Judgment filed January 30, 2015, amending prior Form 4 Judgment filed November 8, 2013; and

(6) Order Denying Bostic Brothers Construction Inc.'s Rule 59 Motion to Reconsider filed March 13, 2015.

(Notice of Appeal; Second Am. Notice of Appeal.)

The undersigned counsel received the complete trial transcript on September 3, 2015, and subsequently submitted a Motion for Extension of Time to File Appellant's Initial Brief and Designation of Matter on September 8, 2015, requesting a 30-day extension. Appellant was granted an extension to submit its Initial Brief and Designation of Matter until November 4, 2015. Appellant requested, and received, a second 30-day

extension to file its Initial Brief and Designation of Matter no later than December 4, 2015 by Order dated October 29, 2015.

FACTS

This construction defect action stems from a multi-family townhome project located on Lake Keowee in Oconee County, South Carolina, with multiple phases of development at Stoneledge of Lake Keowee (hereinafter "the Project"). Bostic Brothers Construction, Inc. (hereinafter "Appellant") served as the initial general contractor of record and obtained building permits to construct the initial 37 units as part of Phase I of the Project in August 2002. (See Trial Tr. 1175:5, Nov. 5, 2013; Pls.' Ex. P-10.) Appellant's principals, Jeff and Joe Bostic, had an ownership interest in Defendant Keowee Townhouses, LLC, which operated as the developer of the Project. (Trial Tr. 634:15–22, Oct. 31, 2013.) After commencement of the Project as general contractor, Appellant ultimately entered into bankruptcy proceedings. (Trial Tr. 416:1–9, Oct. 30, 2013.) At the time Appellant entered into bankruptcy proceedings, it had completed construction of approximately twelve homes.

On the brink of foreclosure, Defendant Keowee Townhouses, LLC sold the remaining, partially-completed 25 units in Phase I of the Project in lieu of foreclosure. These partially-completed units were sold to Defendant IMK Development Co., LLC (hereinafter "IMK"), a development company comprised of Defendants Marick Home Builders, LLC (hereinafter "Marick") and Integrys Holdings, LLC (hereinafter "Integrys"). At a considerable discount, the sale was completed on March 30, 2005. At the time IMK purchased the units, Rick Thoennes was the license holder and managing member for Marick. (Trial Tr. 1139:23–25, Nov. 5, 2013.) Shortly thereafter, Marick

assumed the role of general contractor, obtained new building permits on the 25 partially-completed units, and began work on the Project in 2005. (See Trial Tr. 1146:3–8, Nov. 5, 2013.) At that time, Rick Thoennes assigned Nathan Hornaday as the superintendent for the Project. (Trial Tr. 464:7–14, Oct. 30, 2013.)

After assuming control of the Project in mid-2005, Marick/IMK created an HOA, established bylaws, and elected HOA board members including Rick Thoennes, William Cox, and Tim Roberson. (Trial Tr. 216:23–217:8, Oct. 29, 2013.) Marick/IMK remained in control of the HOA until September 2008. (Trial Tr. 312:9–21, Oct. 29, 2013.) In September 2008, Marick/IMK transferred control of the HOA to the individual homeowners. (Trial Tr. 312:9–14, Oct. 29, 2013.) It is important to note that neither Appellant nor Defendant Keowee Townhouses, LLC had any active involvement in the HOA.

APPELLANT'S ARGUMENTS

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT AS TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS.

OPERATIVE FACTS

At trial, Plaintiffs called numerous homeowners to testify as to their observations of the defects in various homes of Stoneledge as early as 2003. Steven Taylor moved into a home in Stoneledge in 2003, when Appellant was still working on the Project, and testified that he noticed water intrusion in the lower level of his home from the time he moved in, more than six years prior to Appellant being named as a Defendant. (Trial Tr. 293:19–20; 295:16–21, Oct. 29, 2013; 305:19–22, Oct. 29, 2013.) Mr. Taylor further testified that he observed water intrusion in various parts of the home, including the

outside porch and crawlspace, both before and after Marick/IMK assumed control of the Project and created the HOA. (Trial Tr. 305:15–25, Oct. 29, 2013.) From 2003 through 2005, Mr. Taylor made several requests to HOA Board members to remedy the defective areas of the home. (Trial Tr. 306:3–7, Oct. 29, 2013.) In fact, the HOA, through its Marick Board members, made repairs to nearly all of the homes' porches/decks in 2005 to correct cracks that leaked water to the lower levels. (Trial Tr. 308:1–14; 309:17–20, Oct. 29, 2013.) Moreover, Mr. Taylor stated that he notified Marick/IMK, and specifically Rick Thoennes, a member of the HOA in 2005, of the alleged defects, and that upon notice of the alleged defects, Marick, at the instruction of HOA members, attempted several times to fix the issues. (Trial Tr. 328:21–24; 351:9–16, Oct. 29, 2013.) There is no evidence in the record that Appellant received notice of any defects causing damage during this time or at any time prior to being served with the lawsuit against it in February 2010.

Another homeowner, Robert White, moved into Stoneledge in June of 2006, 3.8 years before he sued Appellant, and noticed water intrusion in his crawlspace "since day one." (Trial Tr. 1044:17–18; 1049:2–5, Nov. 4, 2013; see also Trial Tr. 1075:15–22, Nov. 4, 2013 (testifying that he was aware of window leaks in the months following his purchase).) Upon taking control of the property, Mr. White identified a "hefty list" of punch items, and "continued to deal with the I.M.K. folks for those." (Trial Tr. 1046:12–18, Nov. 4, 2013.) Pursuant to documents executed prior to closing, Mr. White was aware that the HOA, controlled by Marick/IMK, was responsible for maintaining the exterior of the building. (Trial Tr. 1063:1–5, Nov. 4, 2013.) Mr. White testified that the "I.M.K. folks" he regularly dealt with in regards to the alleged defects were Rick

Thoennes and Tim Roberson, both members of the HOA in 2006. (Trial Tr. 1046:1–6, Nov. 4, 2013.) Mr. White testified that he notified HOA members and Nathan Hornaday, the project superintendent hired by Mr. Thoennes, of the roof leaks, numerous window leaks, crawlspace leaks, and a door leak. (Trial Tr. 1048:11–16; 1075:19–24, Nov. 4, 2013.) Like Mr. Taylor, Mr. White testified that upon notice to the HOA, the HOA assigned Nathan Hornaday to assist in repairing the various defects. (Trial Tr. 1047:9–21; 1075:23–24, Nov. 4, 2013.)

Additionally, Plaintiff called several representatives of Marick/IMK, as well as Nathan Hornaday, to testify about the defects that they observed in 2005. Mr. Thoennes confirmed Mr. White's testimony that the HOA was responsible for the exterior maintenance of the homes. (Trial Tr. 1167:11–15, Nov. 5, 2013.) Although Mr. Thoennes did not specifically recall when he learned of various defects, he acknowledged that Mr. Hornaday or a homeowner likely informed him of the problems. (Trial Tr. 1150:16–25, Nov. 5, 2013.) In fact, Mr. Thoennes specifically testified that Mr. Taylor informed him "early on" about various leaks in Mr. Taylor's home. (Trial Tr. 1168:8–12, Nov. 5, 2013.) By all accounts, the defects complained of by various homeowners were conveyed to the HOA members. (Trial Tr. 1171:5–8, Nov. 5, 2013.)

In 2005, five years before Appellant was named as a Defendant, Mr. Thoennes was fully aware that several decks had cracks in the concrete. (Trial Tr. 1175:16–25, Nov. 5, 2013.) In response to the homeowners' complaints, Mr. Thoennes, as managing member of Marick and HOA member, undertook to correct those defects without notifying Appellant of the defects any time prior to Plaintiffs naming Appellant as a Defendant in February 2010. (Trial Tr. 1172:1–6, Nov. 5, 2013.)

Nathan Hornaday testified that, upon his arrival at Stoneledge as superintendent in 2005, the majority of the units were completed except for three or four. (Trial Tr. 467:12–23, Oct. 30, 2013.) Mr. Hornaday was instructed to walk through all of the 25 partially-completed, unsold units to identify any potential problems or defects, and testified that he and Rick Thoennes walked through several of the units together. (Trial Tr. 468:16–21; 469:5–10, Oct. 30, 2013.)

Upon arrival to the site, Mr. Hornaday observed that the porches and decks were leaking, creating water stains on the rock and ceilings. (Trial Tr. 478:21–24; 479:2–6, Oct. 30, 2013.) Mr. Hornaday also observed water intrusion inside the homes, independent of the leaking porches and decks, leading to water stains around the corners of windows and on the floors. (Trial Tr. 480:6–11; 489:13–25, Oct. 30, 2013.) Furthermore, Mr. Hornaday testified that these issues were not present in only one unit, but rather several separate units. (See Trial Tr. 488:3–11, Oct. 30, 2013 (testifying of various window leaks among five or six units).) Mr. Hornaday further testified that Rick Thoennes was aware of the leaking decks and porches, and that he conducted walkthroughs with Rick Thoennes to show him the various defects. (See Trial Tr. 481:8–13; 489:13–25 Oct. 30, 2013 (testifying that Rick Thoennes personally observed the water stains on windows and floors).) Mr. Hornaday specifically recalled reporting all of his observations in the Phase I units to Mr. Thoennes. (Trial Tr. 469:5–10, Oct. 30, 2013.) Most telling, Mr. Hornaday responded affirmatively when asked whether he believed that Mr. Thoennes was aware of all of the conditions about which Mr. Hornaday testified. (Trial Tr. 495:11–14, Oct. 30, 2013.)

Plaintiffs also called an engineering expert, Derek Hodgin, who testified that any reasonably prudent general contractor who saw the conditions in Unit 33 when Marick re-permitted the Project in 2005—water intrusion around the windows and doors, inadequate flashing, and other defects—would be on notice of several construction defects and impose upon it an obligation to conduct further investigation and make repairs. (Trial Tr. 750:5–752:24; 754:5–757:3, Oct. 31, 2013.) Notably, Mr. Hodgin's testimony was not refuted by any other experts. Despite the obvious defects, at no time thereafter did the HOA notify Appellant of any defects or potential claim.

A. Appellant's Motion for Directed Verdict as to the issue of expiration of the statute of limitations should have been granted by the trial court because Plaintiffs failed to assert a claim against Appellant within the three-year statute of limitations.[6]

The applicable statute of limitations for causes of action sounding in negligence and breach of implied warranties after 1988 is three years. S.C. Code Ann. § 15-3-530 (Supp. 1997). "A cause of action accrues under South Carolina law the moment the defendant breaches a duty owed to the plaintiff." Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159–160 (Ct. App. 1998) (quoting Grooms v. Med. Soc'y of S.C., 298 S.C. 399, 402, 380 S.E.2d 855, 857 (Ct. App. 1989)). S.C. Code Ann. § 15-3-530 provides a "discovery" rule exception to the general three-year statute of limitations, effectively tolling the statute of limitations until a person "knows or by the exercise of reasonable diligence should . . . know[] that he has a cause of action." Barr, 330 S.C. at 644, 500 S.E.2d at 159–160 (citing S.C. Code Ann. § 15-3-530). "The statute starts to

[6] Appellant, in its Post-Trial Motion for a New Trial Absolute, moved for a new trial on the grounds that the verdict was against the greater weight of the evidence, and that the verdict was against applicable law. (Def. Bostic Brothers Construction, Inc.'s Post-Trial Mot. for a New Trial Absolute, Nov. 21, 2013). As this Motion relied upon the same facts and arguments contained in Section IA of this Brief, Appellant hereby preserves its Post-Trial Motion by reference, and incorporates the same herein.

run upon discovery of such facts, as would have led to the knowledge thereof, if pursued with reasonable diligence." Barr, 330 S.C. at 644–65, 500 S.E.2d at 160 (quoting Grayson v. Fid. Life Ins. Co. of Philadelphia, 114 S.C. 130, 135, 103 S.E. 477, 478 (1920)). The statute of limitations, therefore, begins to run at the time a person has actual or constructive notice "that some claim against another party might exist." Barr, 330 S.C. at 645, 500 S.E.2d at 160 (Ct. App. 1998) (quoting Graniteville Co. v. IH Servs., Inc., 316 S.C. 146, 148, 447 S.E.2d 226, 228 (Ct. App. 1994)) (emphasis added).

In Barr, the plaintiffs purchased a home from the defendant in February 1985. In May 1987, and for three years thereafter, annual termite inspections revealed excessive moisture under the plaintiffs' home. Barr, 330 S.C. at 642–43, 500 S.E.2d at 158. Despite the inspector's recommendation to address the excessive moisture, the plaintiffs did not report the issues to defendant or hire an engineer to inspect the home until March 1992. Id. at 642–43, 500 S.E.2d at 159. Plaintiffs filed suit against defendants in 1994, nearly nine years after purchasing the home. Id. at 643, 500 S.E.2d at 159. At trial, plaintiffs admitted that they were aware of the problems but characterized them as "nothing of great concern." Id. at 645, 500 S.E.2d at 160.

This Honorable Court held that "[a] party has constructive notice if the party knows of 'facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right . . . has been invaded or that some claim against another party might exist.'" Id. (quoting Graniteville, 316 S.C. at 148, 447 S.E.2d at 228). This Honorable Court further held that the "[f]ailure of the injured party to comprehend the full extent of damages . . . is immaterial." Barr, 330 S.C. at 645, 500 S.E.2d at 160 (citations omitted).

At the time numerous defects were originally discovered in 2005, the HOA owed various duties to the homeowners established through the covenants and bylaws. The covenants and bylaws empowered the HOA to "employ attorneys . . . to advise, serve and represent the Association when deemed necessary []" and to "do anything necessary or desirable . . . which the Association deems necessary to carry out the purposes of the Association . . . ." (Am. and Restated Bylaws of Stoneledge at Lake Keowee Owners' Association, Inc. §6.1, ¶¶ (e), (h), Nov. 1, 2005; Pls.' Ex. P-3.) Additionally, the covenants and bylaws bound the HOA to manage and maintain the Common Area and the Service Facilities. These areas included all real property and buildings, including the building envelopes. (Trial Tr. 222:4-22, Oct. 29, 2013; Bylaws §1.4; Am. and Restated Decl. of Covenants, Conditions, and Restrictions for Stoneledge at Lake Keowee, Article VII, Nov. 30, 2005.) These covenants and bylaws make abundantly clear that responsibility to maintain, repair, and seek relief, if necessary, rested solely on the HOA in 2005. (See generally Pls.' Ex. P-3, P-4, P-5 (HOA governing documents identified or admitted into evidence at Trial Tr. 220:21-222:24, Oct. 29, 2013).) In 2005, the HOA had both the power and obligation to assert a claim against Appellant. Nothing precluded the HOA from notifying Appellant of a potential claim, or from filing suit against Appellant. To the contrary, the HOA, from 2005 through the time of trial, had every ability, and was charged with, asserting a claim against Appellant, but chose not to do so until 2010.

During the trial in the case at bar, many of Plaintiffs' own witnesses testified that the HOA received actual notice of various construction defects as early as 2005, approximately five years before naming Appellant as a Defendant. Both Mr. Taylor and

Mr. White made abundantly clear that, between 2003 and 2006, they notified employees and representatives of Marick/IMK—and specifically members of the HOA—that their respective homes were suffering from numerous defects leading to water intrusion and damage. During that time, and in response to the homeowners' complaints, the HOA undertook to repair various homes, including waterproofing all but one of the homes' porches. These repairs were done at the express instruction of HOA members Rick Thoennes and Tim Roberson. Moreover, the HOA undertook these repairs of the defects without notifying Appellant at any time prior to February 2010. Despite considerable testimony to the contrary, Plaintiffs now submit to this Honorable Court the untenable position that the HOA had no knowledge, actual or constructive, of any possible defects until 2008, when the HOA was turned over to the homeowners.

Additionally, the testimony of Rick Thoennes and Nathan Hornaday unequivocally demonstrates actual knowledge by the HOA of numerous defects as early as 2005. The two inspected many of the units upon arrival to the Project in 2005, and both personally observed several areas of concern, both inside and outside the units. Although Mr. Thoennes testified that he could not recall when he received notice of the defects, Mr. Hornaday's testimony makes clear that Mr. Thoennes—an HOA Board member—was fully aware of leaking porches, decks, and windows causing visible damage in 2005. Moreover, Mr. Hornaday testified that he engaged subcontractors, at the direction of Mr. Thoennes, to make repairs to various units, while never once notifying Appellant of the defects. Most telling, Plaintiffs' own expert testified that a reasonably prudent contractor would have been on notice of the defects due to the extensive water intrusion in several of the homes.

While many of Plaintiffs' witnesses, including Rick Thoennes and Robert White, testified that they were unaware of the pervasiveness of the defects until sometime in 2008 when the homeowners assumed control of the HOA, such unawareness is irrelevant as to the expiration of the statute of limitations. As this Honorable Court made clear in Barr, "[f]ailure of the injured party to comprehend the full extent of damages . . . is immaterial." Barr v. City of Rock Hill, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (Ct. App. 1998) (citations omitted). The evidence presented at the trial in this case is nearly identical to that presented in Barr, namely, that the Plaintiffs realized there were issues with the homes, but that they viewed those issues as "nothing of great concern." Id. The plaintiffs in Barr were found to have knowledge of defects, and found to have failed to institute an action within the statute of limitations despite being unaware of the extent of their damages. Here, the HOA had actual knowledge of the defects, yet failed to file its claims against Appellant within the three-year statute of limitations. As such, the trial court should followed the holding in Barr and granted Appellant's motion for directed verdict on this issue.

B. The holdings in Magnolia North and Graniteville do not operate to toll the applicable statute of limitations in this action because Appellant never controlled the HOA at Stoneledge, nor was an expert required to establish Plaintiffs' claim.

In response to Appellant's Motion for Directed Verdict, Plaintiffs argued that the three-year statute of limitations should be equitably tolled under Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012). Specifically, Plaintiffs contend that Magnolia North stands for the proposition that the statute of limitations is tolled during the time a developer controls the HOA where the HOA has an actionable claim. (Trial Tr. 1240:4–19, Nov. 5, 2013.) Plaintiffs also

contend, if only by reference, that the statute of limitations should be tolled because some of the defects were not observable until an expert investigation in 2010 by Derek Hodgin. (Trial Tr. 1245:20–1246:6, Nov. 5, 2013.)

Magnolia North was a construction defect case where the developer, Heritage Communities, Inc. (HCI), began work on a condominium complex in 1998. Magnolia North, 397 S.C. at 356, 725 S.E.2d at 116. Four years later in 2002, HCI turned over control of the property owners' association (POA) to the homeowners. Id. at 356, 725 S.E.2d at 117. A second developer completed the construction of the units, and the POA completed construction of the roads and pools. Id. In May 2003, the POA filed suit against HCI, among others, alleging construction defects of the Magnolia North project. Id. at 357, 725 S.E.2d at 117. HCI moved for a directed verdict and JNOV as to all of the POA's causes of actions based on the expiration of the three-year statute of limitations. Id. at 357–58, 725 at 117. HCI appealed a denial of both motions. Id.

On appeal, this Honorable Court held that the statute of limitations was equitably tolled, and upheld the trial court's denial of HCI's motion for directed verdict and JNOV. In so holding, this Honorable Court stated that equitable tolling is intended to effectuate fairness and is "adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Id. at 371, 725 S.E.2d at 125 (citing Hooper v. Ebenezer Senior Servs. and Rehab. Ctr., 386 S.C. 108, 115–17, 687 S.E.2d 29, 32–33 (2009)). Notably, this Honorable Court stated, "We find unpersuasive Appellants' claim that an organization they controlled would have initiated an action against itself during [the period it controlled the POA.]" Magnolia North, 397 S.C. at 371, 725 S.E.2d at 125

(emphasis added). This Honorable Court continued, "after the property owners gained control over the POA, they exercised due diligence by filing this action on May 28, 2003, approximately eight months after assuming control." Id.

The facts in Magnolia North are readily distinguishable from those in the present action. Appellant was never in control of the HOA at Stoneledge, nor was it ever actively involved in the HOA; it was merely the initial general contractor and developer for the Project. Upon assuming the Project, Marick/IMK created and controlled the HOA from 2005 to 2008, at which time it turned over control to the homeowners. The HOA, during the aforementioned period, had both opportunity and incentive to pursue claims against Appellant for the construction defects, but chose not to. In fact, they had an obligation to do so under its own bylaws. Moreover, the HOA Board members had notice of these defects almost immediately upon Marick assuming control of the Project, but actively undertook remedial action without once notifying Appellant of any potential claims. The rationale underlying the decision in Magnolia North—that the developer, while in control of the POA, could not have been expected to initiate an action against itself during its time of control—does not apply here because Marick/IMK, not Appellant, controlled the HOA and had ample incentive to pursue claims against Appellant within three years after notice of the defects. Instead, the HOA attempted repairs on their own initiative through 2008 while refusing to notify Appellant in any manner of the defects. Appellant received notice of these claims in February 2010, over five years after the HOA received notice of the defects, and nearly two years after the statute of limitations had expired.

During oral arguments regarding Appellant's Motion for Directed Verdict, Plaintiffs also urged the court to equitably toll the statute of limitations based on

Graniteville Co., Inc. v. IH Servs., Inc., 316 S.C. 146, 447 S.E.2d 226 (Ct. App. 1994). In Graniteville, the plaintiff's textile mill was destroyed by a fire on July 5, 1989. Id. at 147, 447 S.E.2d at 227. On July 13, 1989, the plaintiff retained a fire investigator to determine the cause of the fire. Id. The plaintiff filed its Complaint on July 13, 1992, three years and eight days after the fire. Id. This Honorable Court concluded that the plaintiff filed its Complaint within the applicable statute of limitations, reasoning that the plaintiff required expert investigation to determine the cause of the fire, particularly since there was no reason to suspect negligence on the part of the defendant. Id. at 148, 447 S.E.2d at 228. This Honorable Court stated, "When the injury requires an expert to make a determination of the cause of the injury and an expert is retained, this, in and of itself, is evidence of reasonable diligence in determining whether or not the injury is attributable to a wrong inflicted by someone else." Id. In so holding, this Honorable Court found that the plaintiff could not know the cause of the fire, and therefore could not identify a defendant, without an expert investigation. Id.

In the present case, Plaintiffs readily admitted that the defects leading to water intrusion "can certainly be things that a normal, average, everyday person would understand could give rise to a claim or water infiltration problems . . . ." (Trial Tr. 1246:1–4, Nov. 5, 2013.) Plaintiffs contend that several defects, such as improperly constructed firewalls, were not readily observable without expert investigation, which was conducted by Mr. Hodgin in 2010, and maintains the untenable position that because at least one defect was not readily observable, equitable tolling should be applied to all of Plaintiffs' claims. The present action is immediately distinguishable from Graniteville in that the HOA Board members personally observed, and were notified by numerous

homeowners of, numerous defects, including window, door, porch, deck, and patio leaks in 2005. By Plaintiffs' own admission, these defects do not require expert investigation. Moreover, this is not the situation presented in Graniteville where the plaintiff needed an expert to determine who or what caused the damage. To the contrary, the HOA (through Mr. Thoennes's and Marick/IMK's involvement) knew upon assumption of the Project that Appellant was the only prior general contractor of the Project, and could have named Appellant as a Defendant anytime through late 2008, well within the statute of limitations.

Moreover, our courts have limited the application of equitable tolling, and have refused to apply equitable tolling in situations where the plaintiff has not alleged any misconduct by a defendant (here, Appellant) in actively misleading the claimant. See State v. Miller, 404 S.C. 29, 744 S.E.2d 532 (2013); Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009); Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (2009); Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989); Kimmer v. Wright, 396 S.C. 53, 719 S.E.2d 265 (Ct. App. 2011); Ross v. Ross, 394 S.C. 261, 715 S.E.2d 359 (Ct. App. 2011); Am. Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (Ct. App. 2009); and Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008) ("Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations.").

In Pelzer, the court outlined the circumstances that give rise to equitable tolling relief:

> Equitable tolling has been deemed available where—
>
> — extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.

> — the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.
>
> — the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.
>
> It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights. However, it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation.

Pelzer, 378 S.C. at 521, 662 S.E.2d at 620–21 (emphasis added).

Pelzer makes clear that equitable tolling should be applied only where a defendant has actively misled a plaintiff about a cause of action, or the plaintiff is somehow prevented from asserting his or her rights. Id. No party has alleged misconduct on behalf of Appellant that would give rise to tolling the statute. Moreover, nothing prevented the HOA on behalf of the homeowners, from asserting its rights (clearly delineated in its own bylaws) against Appellant from 2005 through early 2007.

In sum, Plaintiffs argue that, under Magnolia North, the statute of limitations should be tolled from 2005 to 2008, when control of the HOA was turned over to the homeowners. Alternatively, Plaintiffs contend that the court should apply equitable tolling under Graniteville and Pelzer to allow Plaintiffs a means to recover for the negligence of a third party. Plaintiffs fail to acknowledge that they had recourse, and actually recovered from several third parties. Plaintiffs asserted a breach of fiduciary duty action against three members from the Marick/IMK HOA—Larry Lollis, William

Cox, and Rick Thoennes. In asserting these causes of action, Plaintiffs implicitly recognize that the Marick/IMK HOA did not act timely to assert a claim against Appellant, and that such delay resulted in substantial property damage. However, Plaintiffs attempt to then argue that the HOA had no ability to pursue a claim on behalf of the homeowners against Appellant because the homeowners did not control the HOA. This is not a situation where the Plaintiffs will be left without a means of recovery if they are unable to recover from Appellant. To the contrary, Plaintiffs obtained a significant judgment under their breach of fiduciary duty claims. Not a single factor espoused in Pelzer is applicable in the case at bar, particularly where Plaintiffs were successful on a cause of action that alleged failure of HOA Board members to perform their duties.

Plaintiffs' reliance on Magnolia North and Graniteville to support the application of equitable tolling is misplaced in the present matter. The evidence at trial readily demonstrates that the HOA had ample opportunity and incentive to assert a claim against Appellant any time between 2005, when they learned of the defects, and late 2008, when the three-year statute of limitations expired. This factual scenario is vastly different from Magnolia North, where the developer/POA would have had to assert a claim against itself to preserve its rights. Moreover, by Plaintiffs' own admission, the various defects resulting in water intrusion were readily observable without the need of expert inspection, in stark contrast to the facts presented in Graniteville. Finally, South Carolina law demands a limited application of equitable tolling, and suggests applicability only where a defendant's misconduct has led to the expiration of the statute of limitations, which has never been alleged in this case.

As such, the trial court erred in denying Appellant's Motions for Directed Verdict and JNOV, and Appellant respectfully requests this Honorable Court to remand this matter to the lower court with instructions to vacate the judgment against Appellant, and to dismiss Appellant from the action with prejudice based upon the expiration of the statute of limitations.

II. THE TRIAL COURT ERRED IN APPLYING THE SETOFF TO THE ENTIRE $5 MILLION VERDICT.

The jury in this matter returned a verdict as follows: (1) $3 Million for Negligence as to Appellant and Marick/IMK; (2) $1 Million for Breach of Implied Warranty as to Appellant and Marick; and (3) $1 Million for Breach of Fiduciary Duty as to Defendants IMK, Integrys, Rick Theonnes, Larry D. Lollis, and William C. Cox, individually. Appellant submits to this Honorable Court that only the negligence award of $3 Million is subject to a setoff of $2,855,911.77, representing the amount of recovery by Plaintiffs received from various settling tortfeasor-Defendants prior to entry of judgment. (See supra note 4 and accompanying text.) Appellant additionally contends that the aforementioned setoff should not have been applied to reduce Plaintiffs' awards for breach of implied warranty and breach of fiduciary duty.

If a plaintiff has received, or is to receive, payment from another tortfeasor-defendant, a motion should be made to provide the other tortfeasor-defendants a setoff of any amounts paid by the other tortfeasor-defendants toward any judgment entered. See, e.g., Powers v. Temple, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967). This setoff shall be kept from jury consideration and applied by the court. Id. The underlying rationale for such setoff is avoiding a plaintiff's double recovery from multiple tortfeasor-defendants. See, e.g., Smith v. Widener, 397 S.C. 468, 471–72, 724 S.E.2d 188, 190 (Ct. App. 2012).

> [T]here can be only one satisfaction for an injury or wrong. A settlement by a joint tortfeasor reduces the claim against the others to the extent of any amount stipulated by the release or covenant. Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury. When the settlement is for the same injury, the nonsettling defendant's rights to a setoff arises by operation of law.

Id. (emphasis added) (internal citations and quotations omitted). This Honorable Court elaborated, "[S]ection 15-38-50 grants the court no discretion . . . in applying a set-off." Id. (quoting Ellis v. Oliver, 335 S.C. 106, 112, 515 S.E.2d 268, 271–72 (Ct. App. 1999)).

South Carolina Code § 15-38-50 provides:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
>
> (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

S.C. Code Ann. § 15-38-50 (emphasis added).

A. The settled tortfeasors' aggregate settlement in the amount of $2,855,911.77 should apply to offset only the $3 Million verdict for negligence against Appellant and Marick.

Plaintiffs, in their Complaint, allege that they have suffered and will continue to suffer damages as a result of the various Defendants' alleged negligence. (See generally

Pls.' First Am. Compl.). Prior to the entry of judgment, Plaintiffs received $2,855,911.77 from settling tortfeasor-Defendants. (See supra note 4 and accompanying text.)

South Carolina's Contribution Among Tortfeasors Act (hereinafter "SCCATA"), codified in South Carolina Code § 15-38-10 *et seq.*, requires the trial court to apply a setoff of any amounts paid by joint tortfeasors to plaintiffs in exchange for a Release. S.C. Code Ann. § 15-38-50. "[T]he court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." Smith v. Widener, 397 S.C. 468, 471–72, 724 S.E.2d 188, 190 (Ct. App. 2012). Although the jury awarded a different measure of damages among two causes of action, only one "injury" was sustained by Plaintiffs. See Ellis v. Oliver, 335 S.C. 106, 112–113, 515 S.E.2d 268, 272 (Ct. App. 1999) (concluding the use of "injury" under S.C. Code § 15-38-50 was broad enough to include all damages, including those attributable to multiple causes of action "[arising] out of the same factual scenario," resulting from the joint negligence of various parties). On its face, Plaintiffs' Complaint does not distinguish between the damages in relation to any particular cause of action, making clear that the funds paid by settling Defendants were paid to compensate Plaintiffs for the same injury.

Appellant timely filed a Post-Trial Motion requesting the Court to offset the $2,855,911.77 previously received by Plaintiffs against the jury verdict.[7] The trial court subsequently denied all Defendants' Post-Trial Motions, which ostensibly denied Appellant's Motions, even though not specifically identified in the Order. (Order Den. Def.'s Post-Trial Mot. p. 2, Jan. 22, 2015.) Appellant then timely filed a Motion to Alter

[7] At the time of submitting its Post-Trial Motion, Appellant was under the belief that settlement funds totaled $2.908 Million, but subsequently recognized the correct setoff amount reflected in the Transcript of Judgment.

or Amend the Judgment out of an abundance of caution, requesting the trial court to specifically rule on each of Appellant's Post-Trial Motions, which was denied by the trial court.

The Transcript of Judgment was filed January 30, 2015, entering judgment against Appellant in the amount of $2,144,088.23 in regards to the negligence claim, and $643,226.47 in regards to the breach of warranty claim. The full judgment amount was also entered against Defendants IMK, Integrys, Thoennes, Cox, and Lollis for breach of fiduciary duties.

B. The trial court erred in applying the settled tortfeasor-defendants' aggregate settlement to offset the $1 Million verdict for breach of fiduciary duties.

The trial court applied the setoff to the entire $5 Million judgment, which included a $1 Million award for breach of fiduciary duties against Defendants IMK, Integrys, Rick Thoennes, William C. Cox, and Larry D. Lollis. This allocation stands in stark contrast to South Carolina law and would unquestionably lead to an inequitable result not contemplated by the legislature.

S.C. Code § 15-38-20(G) states: "This chapter does not apply to breaches of trust or of other fiduciary obligation." S.C. Code Ann. § 15-38-20(G) (emphasis added). By its clear and unambiguous language, SCCATA prohibits its application to breach of fiduciary duties. Plaintiff may attempt to argue that the language of S.C. Code § 15-38-20(G) is limited to the section of which it is a subpart, titled "Right of Contribution." However, this argument has no merit, as the Code clearly states "chapter" and not "section."

Plaintiff may also argue that the aforementioned setoff applies to all breaches of fiduciary duties in the present action by relying on Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 662. S.E.2d 444 (Ct. App. 2008). In Vortex Sports, the plaintiff filed suit against CSMG and Ware, among others, asserting causes of action of aiding and abetting breach of fiduciary duty and tortious interference with a contract against CSMG, and asserting breach of fiduciary duty against Ware. Id. at 201, 662 S.E.2d at 447. Ware settled prior to trial, and a jury awarded damages against CSMG for both causes of action. Id. at 203, 662 S.E.2d at 447–48. There, the trial court reduced Vortex's award by the settlement received from the other defendants, including Ware. Id. at 203, 662 S.E.2d at 448. Vortex appealed, arguing that the settlement with Ware was based on different causes of action than those asserted against CSMG, and thus the injury caused by CSMG was different than the injury caused by Vortex. Id. at 209, 662 S.E.2d at 451.

This Honorable Court found no trial court error in applying Ware's pretrial settlement to offset the final award. Id. at 209–10, 662 S.E.2d at 451. This Honorable Court concluded that, because the claims against CSMG and Ware arose out of the same factual scenario, "Section 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." Id. at 210, 662 S.E.2d at 451 (quoting Ellis v. Oliver, 335 S.C. 106, 113, 515 S.E.2d 268, 272 (Ct. App. 1999)). This Honorable Court did not address the issue of whether any portion of the pretrial settlement operated as an offset to damages awarded for the aiding and abetting breach of fiduciary duty asserted against CSMG.

S.C. Code § 15-38-20(G) is unambiguously clear in prohibiting SCCATA's application to breaches of fiduciary duties. Vortex does nothing to abrogate or otherwise modify SCCATA—it merely confirms that a defendant is entitled to an offset of funds previously paid to a plaintiff for the same injury, regardless of what cause of action the prior settlement funds were paid to compensate. It does not stand for the proposition that a tortfeasor found liable for a breach of fiduciary duty is entitled to an offset of prior settlement funds.

C. The trial court erred in applying the settled tortfeasor-defendants' aggregate settlement to offset the $1 Million verdict for breach of implied warranties.

The trial court applied the setoff to the entire $5 Million judgment, which also included a $1 Million award for breach of implied warranties against Appellant and Defendant Marick. Because a cause of action for breach of implied warranties is an action in contract—and not in tort—no portion of the setoff can be applied to the breach of implied warranty award.

In regards to setoffs, S.C. Code § 15-38-50 provides:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
>
> (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

S.C. Code Ann. § 15-38-50 (emphasis added). This section expressly provides for setoffs only to (1) tortfeasors who are (2) liable in tort.

Negligence is a cause of action in tort, and SCCATA permits setoffs in such causes of action. Breach of express or implied warranties, on the other hand, are causes of action in contract. See Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 320 S.C. 49, 54, 463 S.E.2d 85, 88 (1995) ("A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie."). In fact, Plaintiffs conceded during trial that our Supreme Court has established that breach of implied warranty claims are not tort claims. (Trial Tr. 1277:24–1278:1–8, Nov. 5, 2013). In the present case, the settling tortfeasors' total contribution totals $2,855,911.77. The jury awarded $1 Million against Appellant (30%) and Defendant Marick/IMK (70%) for breach of implied warranty. As this cause of action is an action in contract, no setoff should be applied to the damages awarded for breach of implied warranty.

In conclusion, the trial court erred in applying the setoff of $2,855,911.77 to the entire $5 Million judgment, and Appellant respectfully requests this Honorable Court to remand this matter to the trial court with instructions to apply the setoff as follows: setoff of $2,855,911.77 to the judgment of $3 Million entered as to the negligence claims against Appellant and Marick, reducing the total judgment as to the negligence claims to $144,088.23. Appellant further respectfully requests this Honorable Court to remand with instructions prohibiting application by the trial court of the setoff to any awards or judgments as to the breach of implied warranty and breach of fiduciary duty claims. Appellant further respectfully requests this Honorable Court to remand with instructions

to enter judgment in accordance with Form 4 Jury Verdict Form—60% apportioned to Appellant in the amount of $86,452.94, and 40% apportioned to Defendant Marick in the amount of $57,635.29.

In the event this Honorable Court concludes that the setoff applies to both the breach of warranty and negligence claims, the setoff should apply only to those awards, totaling $4 Million. In this scenario, Appellant would respectfully request this Honorable Court to remand this matter to the trial court with instructions to apply the setoff as follows: setoff of $2,855,911.77 to the judgment of $4 Million entered as to the negligence and breach of warranty claims against Appellant and Marick, reducing the total judgment to $1,144,088.23. Appellant would further request this Honorable Court to Honorable Court to remand with instructions to enter judgment in accordance with Form 4 Jury Verdict Form—60% apportioned to Appellant in the amount of $686,452.94, and 40% apportioned to Defendant Marick in the amount of $457,635.29 as to the negligence claims. As for the breach of warranty claims, 30% would be apportioned to Appellant, totaling $300,000.00, while 70% would be apportioned to Marick, totaling $700,000.00.

III. THE TRIAL COURT ERRED IN DENYING APPELLANT'S POST-TRIAL MOTIONS FOR A NEW TRIAL ABSOLUTE AND NEW TRIAL NISI.

A. The trial court erred in admitting into evidence Plaintiff's exhibit of an Excel spreadsheet purporting to show emergency repair expenses.

During the trial of this matter, Plaintiffs admitted evidence, over the objection of Appellant, of payments by the HOA for emergency repairs at Stoneledge in the form of an Excel Spreadsheet, which was introduced into evidence during the testimony of Michael Furnari, a homeowner at Stoneledge. (Trial Tr. 1220:14–1221:15, Nov. 5, 2013.)

Appellant objected on the grounds that the spreadsheet constituted inadmissible hearsay. (Trial Tr. 1205:6–17, Nov. 5, 2013; Pls.' Ex. 42.) In overruling Appellant's objection, the trial court referenced Rule 1806 (presumably intended to be Rule 1006, SCRE) relating to summaries and Rule 803(6) relating to hearsay exceptions. (Trial Tr. 1220:19–25, Nov. 5, 2013.) Specifically, the trial court opined that Mr. Furnari was the custodian of the document, and that he, along with his wife, prepared the document. (Trial Tr. 1220:19–25, Nov. 5, 2013.)

Rule 803(6) states:

> A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Rule 803(6), SCRE. Mr. Furnari was asked to identify the spreadsheet showing the cost of emergency repairs incurred by the HOA, and further testified that he and his wife, Donna Furnari, prepared the document on behalf of the HOA. (Trial Tr. 1204:1–1205:9, Nov. 5, 2013.)

However, the spreadsheet itself, as well as the foundation laid for its improper admission, are flawed for several reasons. The spreadsheet introduced into evidence only identifies monetary amounts, and fails to identify specific emergency repairs, making this

document unreliable. Moreover, Mr. Furnari did not profer testimony or other evidence indicating that the spreadsheet was kept in the course of a regularly conducted business activity, nor did he offer testimony that it was the regular practice of the HOA to make the spreadsheet. (See Trial Tr. 1204:1–1205:9, Nov. 5, 2013.) Finally, it was Donna Furnari, and not Michael Furnari, who testified about the emergency repairs, and therefore Mr. Furnari's testimony did not lay a proper foundation for admitting the evidence, nor was he the appropriate witness to admit the evidence, as he did not testify to its truthfulness and accuracy. (See Trial Tr. 234:5–13; 266:20–267:6, Oct 29, 2013.)

B. The trial court erred in failing to submit a comparative negligence charge to the jury.[8]

Near the close of trial, the trial court was presented with a verdict form that, in form and substance, proposed a comparative negligence apportionment between the Plaintiff HOA and Defendants. (See Trial Tr. 1518:12–24, Nov. 6, 2013.) Appellant argued in favor of this verdict form, and for a comparative negligence charge, arguing that the HOA did nothing to notify Appellant or otherwise seek a remedy until 2010. (Trial Tr. 1519:2–8, Nov. 6, 2013.) The trial court rejected the verdict form purporting to apportion fault to the HOA and ruled there was "no evidence of negligence on behalf of the homeowners association, the plaintiffs in this case." (Trial Tr. 1522:9–19, Nov. 6, 2013.) Based on this ruling, the trial court declined to charge the jury with a comparative negligence charge. (Trial Tr. 1572:6–10, Nov. 7, 2013.)

[8] Appellant, in its Post-Trial Motion for a New Trial Absolute, moved for a new trial on the grounds that the verdict established that the jury failed to properly consider the evidence and applicable law on mitigation of damages. (Def. Bostic Brothers Construction, Inc.'s Post-Trial Mot. for a New Trial Absolute, Nov. 21, 2013). As this Motion relied upon the same facts and arguments contained in Section III(B) of this Brief, Appellant hereby preserves its Post-Trial Motion by reference, and incorporates the same herein.

It is well-settled law that the negligence of a party is a question of fact for the jury. See, e.g., Thompson v. Michael, 315 S.C. 268, 433 S.E.2d 853 (1993); Felder v. K–Mart Corp., 297 S.C. 446, 377 S.E.2d 332 (1989); and Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984). "[A]pportionment of negligence, which determines both whether a plaintiff is barred from recovery or can recover some of his damages and the proportion of damages to which he is entitled, is usually a function of the jury." Brown v. Smalls, 325 S.C. 547, 559, 481 S.E.2d 444, 451 (Ct. App. 1997). "Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." Ross v. Paddy, 340 S.C. 428, 437, 532 S.E.2d 612, 617 (Ct. App. 2000) (citing Brown, 325 S.C. 547, 481 S.E.2d 444). "Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error." Id. "Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error." Id.

In ruling no comparative negligence existed in the case at bar, the trial court appeared to have adopted the rationale espoused in Magnolia North, concluding that the Marick/IMK-controlled HOA could not have sued itself. (See Trial Tr. 1519:20–23, Nov. 6, 2013.) The trial court further refused to "attribute anything to the homeowners association until they got control, which would be 2008." (Trial Tr. 1520:11–13, Nov. 6, 2013.) The trial court concluded that Mr. Cox, Mr. Roberson, and Mr. Thoennes were "principles of I.M.K" and not members of the HOA, but only members of the board of directors of the HOA. (Trial Tr. 1521:22–1522:2, Nov. 6, 2013.)

The HOA Board Members and IMK funded repair efforts of the HOA because the HOA, at that time, had minimal funds. (Trial Tr. 1184:10–17, Nov. 5, 2013.) Plaintiffs' own witness, Robert White, admitted that Mr. Thoennes and Mr. Cox were board members of the HOA. (Trial Tr. 158:1–2, Oct. 29, 2013; 1051:1–13, Nov. 4, 2013) ("[Marick/IMK] controlled the Stoneledge H.O.A. from the period of 2005 to 2008. That is, they sat on the board. They made decisions for the H.O.A."); (testimony indicating that Rick Thoennes, Tim Roberson, and Bill Cox were HOA Board members). Subsequent board members Donna Furnari, Steve Taylor, and Robert White all testified that they, as board members, acted on behalf of the HOA to fund repairs. (See, e.g., Trial Tr. 224:1–23; 336:8–13, 355:21–22, Oct. 29, 2013.) In fact, the only change in the HOA was its members, not the entity itself. (Trial Tr. 1050:8–18, Nov. 4, 2013.) The rights and responsibilities of the HOA were, in form and substance, the same in 2008 as they were when Marick/IMK controlled the HOA in 2005.

The trial court misguidedly attempted to distinguish between the Board of Directors of the HOA and the HOA as an entity. This distinction is wholly irrelevant to the issues of comparative negligence. The HOA, whether it was controlled by Marick/IMK or by the individual homeowners, had duties to repair the defects that were observed as early as 2005. The HOA failed to make any significant repairs, and failed to pursue a legal remedy against any contractor or builder until 2009, only asserting a claim against Appellant in February 2010. This inaction constitutes a failure to mitigate its damages, and the delay unquestionably resulted in additional damage, which was due to the omissions of the HOA, regardless of who was in control.

Based on the foregoing, Appellant respectfully requests this Honorable Court to remand this case to the trial court for a new trial.

CONCLUSION

The evidence at trial unquestionably demonstrates that the HOA, and its Board members Rick Thoennes and Tim Roberson, had actual and constructive knowledge of numerous defects in several of the homes in Stoneledge as early as 2005, when Marick assumed control of the project. Upon notice of these defects and damage, the HOA voluntarily undertook the responsibility of making repairs to various units without once notifying Appellant of any potential defects. Marick/IMK then turned control of the HOA over to the homeowners in 2008. Two years later, and five years after discovery of the defects and property damage, the HOA brought suit against Appellant. Based on the testimony of several homeowners, Marick/IMK HOA members, and Marick employees, the trial court incorrectly denied Appellant's Motions for Directed Verdict and Motion for Judgment Notwithstanding the Verdict as to the expiration of the statute of limitations. Based on this error, Appellant respectfully requests that this matter be remanded with instructions to dismiss Appellant with prejudice and to vacate the judgment entered against Appellant for both the negligence and breach of warranty claims.

Even if this Honorable Court is not persuaded that the statute of limitations had expired, Defendants are statutorily entitled to an offset of all funds paid to Plaintiffs by all settling tortfeasor-Defendants, totaling $2,855,911.77, as to the negligence claims only. This figure should be applied to offset only the $3 million negligence award against Marick/IMK and Appellant, as the setoff does not apply to claims of breach of fiduciary duty and breach of express or implied warranty. As a result, Appellant

respectfully requests that this matter be remanded with instructions that the $3 million judgment against Marick/IMK and Appellant be reduced to $144,088.23, to be apportioned according to the jury verdict form.

In the alternative, Appellants respectfully request this Honorable Court to remand with instructions for a new trial based on several, independent grounds. First, the trial court erred in allowing Plaintiffs to admit an Excel spreadsheet purporting to show emergency repairs. This spreadsheet was admitted in error because it was unreliable due to the absence of any description of repairs; no proper foundation was laid for its admission; there was no testimony that such document was kept in the regular course of business; and because Mr. Furnari did not testify as to the documents truthfulness and accuracy, all resulting in the document constituting inadmissible hearsay. Additionally, the trial court erred in failing to charge the jury as to comparative negligence of the Plaintiff HOA. Extensive testimony by many of Plaintiffs' own witnesses demonstrated that the HOA had the ability and obligation to pursue a claim against Appellant, yet took no action to notify Appellant of any defect or potential claim until 2010, five years. The evidence unquestionably demonstrates that the HOA failed to mitigate its damages by conducting inadequate repairs rather than pursuing a claim against Appellant within the three-year statute of limitations. The trial court erred in applying the rationale espoused in Magnolia North, and Appellant respectfully requests this Honorable Court to remand to the trial court with instructions for a new trial.

Respectfully submitted,



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December 3, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable Alexander S. Macaulay, Circuit Court Judge

Lower Court Case No. 2009-CP-37-00652
Court of Appeals Case No. 2015-000417

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated, Respondents,

v.

IMK Development Co., LLC, Keowee Townhouses, LLC, Ludwig Corporation, LLC, SDI Funding, LLC, Medallion at Keowee, LLC, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Miller/Player & Associates; Bradford D. Seckinger; John Ludwig, William C. Cox, Larry D. Lollis, Rick Thoennes, M. Group Construction and Development, LLC, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction, LLC; Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders FirstSource Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprise d/b/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration, LLC, Coleman Waterproofing, Heyward Electrical Services, Inc., Tinsley Electrical, LLC, Hutch N Son Construction, Inc., Upstate Utilities, Inc., Southern Basements, Inc., Carl Catoe Construction, Inc., T.G. Construction, LLC, Delfino Construction; Francisco Javier Zarate d/b/a Zarate Construction, Alejandro Avalos Cruz, Herberto Acros Hernandez, Martin Hernandez-Aviles; Francisco Villalobos Lopez, Ambrosio Martinez-Ramirez;

Ester Moran Mentado, Socorro Castillo Montel, Upstate Utilities, Inc., MJG Construction and Homebuilders, Inc. d/b/a MJG Construction, KMAC of the Carolinas, Inc., Eufacio Garcia, Everado Jarmamillo, Garcia Parra Insulation, Inc., J&J Construction, Jose Nino, Jose Manuel Garcia, Eason Construction, Inc., and Vincent Morales d/b/a Morales Masonry,
Appellants.

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SC Court of Appeals

(Of Whom Bostic Brothers Construction, Inc., is the Appellant)

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant to be Included in the Record on Appeal upon the Respondents by depositing a copy of same in the United States Mail, First Class postage prepaid, on December 3rd 2015, addressed to Respondents' attorneys of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, PO Box 773, Charleston, SC 29402.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE OCONEE COUNTY
Court of Common Pleas

The Honorable Alexander S. Macaulay

Appellate Case No. 2015-000417

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

OF WHOM STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION IS THE .....RESPONDENT

V.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOMES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, BRADFORD D. SECKINGER, JOHN LUDWIG, WILLIAM C. COX, LARRY D. LOLLIS, RICK THOENNES, M. GROUP CONSTRUCTION AND DEVELOPMENT, LLC, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTIONLLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRSSOURCE SOUTHEAST GROUP, MIKE GREEN, SOTHERN CONCRETE SPECIALITIES, CARL COMPTON D/B/A COMPTON ENTERPRISE D/B/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., CARL CATOE CONSTRUCTION, INC.; T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCITON, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEX, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC OF THE CAROLINAS, INC., EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC. AND VINCENT MORALES D/B/A MORALES MASONRY, DEFENDANTS,

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STATEMENT OF THE ISSUES

1. Was the trial court's denial of Bostic's directed verdict motion and JNOV proper, when conflicting evidence existed as to whether the owner controlled HOA knew or should have known it had a cause of action against Bostic, and when under any circumstances equity supported tolling the statute until the owners gained control of the HOA?
2. Set off
3. Did the trial court properly deny Bostic's motion for a new trial based on the admission of a spreadsheet summary of emergency damages, when Bostic did not dispute the damages?
4. Did the trial properly deny Bostic's motion for a new trial on the grounds that the court did not charge comparative negligence, when evidence of Plaintiff's negligence was admitted?

STATEMENT OF THE CASE

This construction defect case arises from pervasive defects and resulting damage at an 80-unit townhome project on Lake Keowee in Oconee County (the "Project" or "Stoneledge"). Plaintiff and Respondent Stoneledge at Lake Keowee Owners' Association, Inc. ("the HOA") instituted this lawsuit on May 29, 2009, and subsequently amended the complaint to add Appellant Bostic Brothers Construction, Inc. ("Bostic"), alleging negligence and breach of warranty causes of action. Bostic was served on March 29, 2010. Bostic and the other defendants were the developers, contractors, and subcontractors responsible for the development, construction and sale of Stoneledge units and also the management of the HOA Board of Directors until September 2008, when control was turned over to the homeowners.

On August 28, 2013, Judge Macaulay, upon the motion of certain subcontractor defendants, issued an Order for Separate Trials and Scheduling Order, which contemplated separate trials for Phase I and Phase II of the Project. Bifurcation Order datedAugust 28, 2013.The basis of that order was that the phases were developed by different developers (Bostic was not involved in Phase II), that different codes and even different law applied to the two phases, and that separate trials would prevent undue prejudice to certain subcontractors who performed work solely on one phase or the other. The Bifurcation Order set a Phase I trial to begin on October 28, 2013, and scheduled a Phase II trial to begin within a few months.

The trial relating to the HOA's claims for Phase I began on October 28, 2013, and resulted in a jury verdict against Bostic in the amount of $5,000,000. The trial judge determined the verdict was cumulative, and the jury was dismissed without objection. On November 8, 2013, the Court entered a Form 4 order of judgment. Verdict Form, November 8, 2013. Bostic filed post-trial motions including a Motion for Judgment Notwithstanding the Verdict, a Motion requesting an Order granting a set-off, a Motion for a New Trial Absolute, pursuant to Rule 59, *SCRCP*, and a Motion for a New Trial Nisi Remittitur, also pursuant to Rule 59.

Plaintiff filed a Motion to Alter or Amend Judgment seeking to have the full amount of the cumulative judgment award, $5,000,000, assigned to each of the causes of action. Motion to Alter or Amend, Letter dated November 25, 2013. By letter dated November 25, 2013, Plaintiff clarified the prior settlement amounts $2,855,911.77 received from defendants for Phase I and asked that the full set-off be applied to each cause of action, reducing the amount awarded for each cause of action to $2,144,088.23. Letter of Lyles dated November 25, 2013. No defendants objected to the amount of prior Phase I settlements as set forth in the letter.

Judge Macaulay presided over a hearing on all post-trial motions on April 10, 2014. Transcript of Record, April 10, 2014. Defendants' motions were not ruled on until January 22, 2015, at which point they were denied. Form 4 Order Denying Defendants' Post-Trial Motions dated January 22, 2015.

As requested in Plaintiff's Motion to Alter or Amend and letter dated November 25, 2013, the trial court entered a Form 4 Judgment filed January 30, 2015, amending its prior Form 4 Judgment filed November 8, 2013, and applying a set-off for the amounts recovered by the Plaintiff from the settling defendants. Form 4 Judgment, January 30, 2015.

STATEMENT OF FACTS

The HOA is responsible for maintenance, repair, and replacement of the building envelopes, roofs, porches, and decks of all Stoneledge units. Trial Tr. 219:6-11. The Project was developed in two phases. Phase I consists of eight (8) buildings representing thirty-seven (37) individual units. Bostic served as the original general contractor, and was also an owner of the initial development company, Keowee Townhomes, LLC. Trial Tr. 634:15-22. Bostic constructed and sold numerous units, and several units were in various stages of completion when Bostic ceased construction and ultimately entered into bankruptcy. Trial Tr. 416:1-9; 323:5-10; 467:12-468:11.

On or about March 30, 2005, Keowee Townhomes, LLC sold the Project, including 25 unfinished units in Phase 1, to Defendant IMK Development, Co., LLC ("IMK"), a development company comprised of Defendants Marick Home Builders, LLC ("Marick") and Integrys Keowee Development, LLC ("IK"). Trial Tr. 1146: 3-8. IK is comprised of William Cox, Tim Roberson and Larry Lollis. At that point, Marick assumed the role of general contractor for the

completion of Phase I and the entire development of Phase II. Trial Tr. 342:25-343:2. Rick Thoennes was the managing member for Marick. Trial Tr. 1139:23-25.

IMK created a homeowner's association and filed a Declaration of Covenants and bylaws in November 2005, and named Rick Thoennes, William Cox, Tim Roberson as board members. Trial Tr. 216:23-222:1, 303:1-305:1, 1110:2-10; Trial Ex. P-2, P-3, P-4, P-7. IMK remained in control of the board of the homeowner's association until September 26, 2008. *See* Trial Ex. P-2.

On October 28, 2013, a jury trial commenced on the Phase I claims only. The HOA offered only one damages figure, which was comprised of the costs the HOA incurred to temporarily make repairs and the estimated future cost to repair. The HOA claimed damages totaling $6,309,197.00. In response, Bostic offered evidence of a scope of repair developed by its expert, Rick Moore, and a price to implement that scope totaling $2,200,130.93.

At trial, the Plaintiff's witnesses included homeowners Robert White, Steve Taylor, Donna Furnari, and Michael Furnari. Each testified about their knowledge of the problems at Stoneledge. Steve Taylor testified that when Bostic left the project, he did not know anything about the quality of construction in the unfinished units. Trial Tr. 298:5-14. Mr. Taylor also testified that he had various problems in his unit. Marick repaired, or attempted to repair these problems. Trial Tr. 305:15-308:20.

Mr. Taylor became president of the HOA board when it was first turned over to the homeowners in 2008. According to his testimony, in late 2008, heavy rains followed a long drought, and multiple Phase I units began showing significant water infiltration problems. Trial Tr. 312:9-314:3, 328:21-329:12. Steve Taylor and Robert White, another homeowner, both

testified certain latent deficiencies were not discovered until 2009, when a report of a handrail problem in the unit of owner Jim Logan revealed severe rot and deterioration behind the stone facade. Trial Tr. 314:14-315:19, 332:10-333:12.

Mr. Thoennes, a licensed general contractor and managing member of Marick, which was also a member of IMK, sat on the board of the association until September of 2008, and made a number of repairs in response to owner complaints. Trial Tr. 1168:25-1170:17. Mr. Thoennes specifically testified that during the operative time, he was wearing a number of hats, including contractor, head of the sales department for IMK, and, to some degree, a member of the board. Trial Tr. 1169:21-1170:17. Mr. Thoennes refused to admit that he communicated information regarding the repairs requested of him while wearing his "contractor hat" to the homeowners' association board. Trial Tr. 1165:23–1166:22, 1167:20-1168:7.

Plaintiff's expert Derek Hodgin provided expert testimony about the various construction defects at the Project. Trial Tr. Page 528-627 Trial Ex. 27-28. Plaintiff presented evidence of repair damages totaling $6,309,197.

Bostic's own expert Rick Moore admitted that the Project had pervasive water infiltration, rot, and deterioration resulting from the contractor's failure to properly construct the Project. Trial Tr. 1387:15-1388:13; 1389:3-7; 1443:18-22; 1460:23-1462:24. Bostic's expert Steve Watkins estimated a cost of $3,995,106.34 to implement Hodgin's scope of work (not including the cost of contract administration services, which Watkins were necessary) and $2,200,130.93 to implement the defendant's reduced scope of work (which was increased at trial to $2,470,000). Trial Tr. 1020:20-1026:7; Trial Exhibit P-30; Trial Tr. 1487:13-1490:6, 1500:5, 1512-1513. Trial Exhibit DB-4. Further, Bostic's principals, Joe and Jeff Bostic and Mel Morris

acknowledged defects at the Property and testified that the owners were entitled to a proper and full repair. Trial Tr. 634:23-635:16, Trial Tr. 632:4-5, Trial Tr. 633:1-10. 640:11-24, Trial Tr. 641:12-20; 391:21-392:1.

When the Phase I verdict was rendered, the only remaining Defendants were the contractors for Phase I (Bostic and Marick) and the developers of Phase I (IMK, IK, Cox, Lollis and Thoennes). On November 8, 2013, the jury returned a verdict in favor of the Plaintiff in the amount of $5,000,000 on three causes of action: negligence ($3,000,000.00), breach of warranty of service ($1,000,000.00), and breach of fiduciary duty ($1,000,000.00). Verdict Form, November 8, 2013. At the request of Defendants, the Court allowed apportionment of the awards under the negligence and breach of warranty causes of action. After deliberating, the jury allocated sixty percent (60%) of the negligence award to Bostic and forty percent (40%) to Marick and allocated seventy percent (70%) of the breach of warranty award to Marick and thirty percent (30%) to Bostic. Apportionment Form. No allocation of any kind was requested with respect to the breach of fiduciary duty award, nor would that have been appropriate.

After the jury rendered its verdict, but before allocation and while the jury was still empanelled, counsel for the HOA asked the Court if the award was cumulative. In response, with no objection or inquiry from counsel for any defendant, the Court ruled as follows:

> Well, the way the Defendants have been treating it, yes, it is cumulative because they've been treating them all as separate little things that they want – what is it ? – apportionment on this one and apportionment on that one.

Trial Tr. 1763:8-1764:18; Post Trial Motions Tr. 15:5-18:8. Again, no Defendant objected to that ruling or requested that an inquiry be made of the jury on that issue while the jury was empanelled. Instead, the defendants merely argued their positions with respect to apportionment.

The jury was released after deciding the apportionment issue was decided without anything further being requested by any defendant.

On November 8, 2013, the Court entered a Form 4 order of judgment. Verdict Form, November 8, 2013. Plaintiff filed a Motion to Alter or Amend Judgment seeking to have the full amount of the cumulative judgment award, $5,000,000, assigned to each of the causes of action. Motion to Alter or Amend, Letter dated November 25, 2013. By letter dated November 25, 2013, Plaintiff clarified the prior settlement amounts $2,855,911.77 received from defendants for Phase I damages and asked that the full set-off be applied to each cause of action, reducing the amount awarded for each cause of action to $2,144,088.23. Letter of Lyles dated November 25, 2013. None of the Defendants objected to the amount of prior Phase I settlements as set forth in the letter.

As requested in Plaintiff's Motion to Alter or Amend and letter dated November 25, 2013, the trial court entered a Form 4 Judgment filed January 30, 2015, amending its prior Form 4 Judgment filed November 8, 2013, and applying a set-off for the amounts recovered by the Plaintiff from the settling defendants. Form 4 Judgment, January 30, 2015.

STANDARD OF REVIEW

JNOV

"A motion for a judgment notwithstanding the verdict (JNOV) is merely a renewal of the directed verdict motion." *Jamison v. Hilton*, 413 S.C. 133, 139, 775 S.E.2d 58, 61 (Ct. App. 2015). The trial court must deny a motion for a directed verdict or JNOV if there is conflicting evidence, or the evidence yields more than one reasonable inference, or its inference is in doubt.*Id.* Neither the trial court nor the appellate court has the authority to weigh or resolve

conflicts in the evidence. *Id.* This Court will reverse the trial court's ruling on a JNOV motion only "when there is no evidence to support the ruling or where the ruling is controlled by an error of law." *Law v. S. Carolina Dep't of Corr.*, 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006).

MOTION FOR NEW TRIAL

Since the trial court has sound discretion in deciding whether to admit or exclude evidence, the trial judge's decision will not be reversed on appeal unless it appears he clearly abused his discretion and the objecting party was prejudiced by the decision. *Sullivan v. Davis*, 317 S.C. 462, 465, 454 S.E.2d 907, 909 (Ct. App. 1995); *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 242, 616 S.E.2d 431, 435 (Ct. App. 2005).

To establish that the judge's refusal to give the requested charge deprived one of a fair trial, the refusal must have been both erroneous and prejudicial. *Miller v. City of W. Columbia*, 322 S.C. 224, 230, 471 S.E.2d 683, 686 (1996). When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues. *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). The trial court is not required to instruct the jury on a principle of law that is irrelevant to the case as proved. *Id.* Moreover, even if the trial court erred in failing to give a requested instruction, the requesting party also must show that the error was prejudicial to warrant reversal on appeal. *Id.*

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED BOSTIC'S MOTION FOR DIRECTED VERDICT AS TO STATUTE OF LIMITATIONS BECAUSE A QUESTION OF FACT EXISTS AND THE STATUTE WAS PROPERLY TOLLED UNTIL THE OWNERS CONTACTED THE HOA.

In substance, Bostic's Motion for JNOV, pursuant to Rule 50, is based upon its contention that the Plaintiff's claims are barred by the statute of limitations. Bostic's argument fails for two reasons. First, the evidence at trial was conflicting as to when the HOA, or the individual owners, knew or should have known that any one or more causes of action against Bostic existed for the host of defects and different resulting damages that all parties agreed existed at Stoneledge. The evidence created a question of fact, and was not subject to a ruling as a matter of law.

Second, Bostic's arguments relative to the statute of limitations rest upon two false premises that both are unsupported by law and contrary to established principles of fairness and equity protecting homeowners. Bostic's first false premise is that when control of the HOA is turned over from a developer to the owners, the HOA comes burdened with the developer's knowledge of potential defect claims. Bostic's second false premise is that equitable tolling of the statute only applies in certain limited circumstances not present here.

For the reasons discussed below, Bostic's appeal based upon the trial court's proper denial of its motion for JNOV should be denied.

A. Conflicting evidence as to whether the HOA or homeowners had sufficient knowledge of problematic conditions precluded the trial court from finding that the statute of limitations had run as a matter of law.

Section 15–3–535 of the South Carolina Code provides that, "Except as to [medical malpractice actions], all actions initiated under Section 15–3–530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." SC Code Ann. § 5-3-535 (1976). When the evidence is conflicting or is capable of more than one reasonable inference, whether the plaintiff knew or should have known that it had a cause of action is a jury question. *See McAlhany v. Carter*, 415

S.C. 54, 66-67, 781 S.E.2d 105, 112 (Ct. App. 2015), reh'g denied (Jan. 28, 2016). Moreover, a jury must also resolve factual issues when there is a dispute as to whether an owner may have known about certain defects and damages and not others. *Id.*; *see also Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 185, 708 S.E.2d 787, 794 (Ct. App. 2011).

In arguing that the HOA's claims are time-barred as a matter of law, Bostic relies upon testimony at trial that after Bostic abandoned the project, in 2004, and during the period when the second developer, IMK, controlled the homeowners' association, two Phase I owners, Steve Taylor and Bob White, reported certain problems with their units to Rick Thoennes (principal of Marick and also IMK). Bostic asserts that the HOA was then charged with Thoennes's knowledge of defects, and such knowledge was sufficient to commence the running of the three-year statute of limitations as a matter of law.

To the contrary, Mr. Thoennes specifically testified that during the operative time, he wore number of hats, including contractor, head of the sales department for IMK, and, to some degree, a member of the board. Despite a vigorous cross-examination by Bostic's counsel, Mr. Thoennes refused to admit that he communicated information regarding the repairs requested of him to the homeowners' association board while wearing his "contractor's hat." Trial Tr. 1165:23–1166:22, 1167:20-1172:8. Marick and Mr. Thoennes made repairs as requested and did not report these conditions or requests to the board. *Id.* (The sum spent by Marick to effect those repairs is not part of the claim of the HOA.)

Regarding the knowledge of the owners requesting those repairs, in addition to the facts set forth above, Mr. White and Mr. Taylor consistently testified that neither of them believed, until 2009, that any of the conditions reported to Mr. Thoennes gave rise to the pursuit of a legal

claim. Trial Tr. 1075:25-1076:13. Mr. White and Mr. Taylor also both testified that certain latent deficiencies were not discovered until 2009, when a report of a handrail failure in the unit of owner Jim Logan, revealed severe rot and deterioration behind the stone facade. Trial Tr. 314:14-315:19. It was at that point, for the first time, that anyone from the homeowners' association testified that they were aware of the extent of the deficiencies. Trial Tr. 314:14-315:19. In support of the contention that the owners first learned of the severity of latent deficiencies after discovery of the problem at Logan's unit, at that time the HOA, controlled by the owners for a mere six or seven months, retained the services of an engineering firm, the Warren Group, to investigate what they believed at that point to be a structural problem at Phase I. Trial This action was commenced on May 29, 2009, just six months after control of the HOA was turned over to the owners.

Further, while there were reports of problems from the early owners of Phase I units before 2009, those problems were addressed by Marick, to the apparent satisfaction of the owners, based upon what they knew at the time. Mr. Taylor testified that while Marick was onsite from 2005 to 2008, he was not aware of defects to deck columns; roofing defects; foundation leaks; problems with the stonework; or problems with the windows. Trial Tr. Page 332-333.

He also testified that Marick was responsive to his requests for repairs:

Q: Did Marick have someone that would respond to repair requests?
A: Yeah. There was a gentleman by the name of Nathan who was on site.
Q: And they also had an email address and phone numbers, didn't they?
A: Yeah
Q: Okay. So if you're a homeowner between 2005 and 2008 at Stoneledge, you could call or you could email or you could grab Nathan, you could grab Rick?
A: Yeah.

Trial Tr. Page 333 Ln. 15-25.

Mr. Taylor went on to say that he never reported problems to the HOA while it was controlled by IMK. Trial Tr. Page 334 Ln. 17-25.

Marick's willingness to address repair requests to the satisfaction of the owners was confirmed by Hornaday, Marick's Superintendant:

> Q: And when the homeowners, Mr. Taylor and everybody else, would come to you, did you repair their units or instead of making repair to their units, hire someone to repair their units?
>
> A: Yes. I can only think of a rare instance where we didn't, and that would have been some kind of cosmetic thing inside the unit that we probably would not have tackled. But even inside, we did warranty work. We fixed doors and sump pumps and those kinds of things. It was more the cosmetic stuff that we didn't feel like we should fix.
>
> Trial Tr. Page 1174 Ln. 3-13

Finally, Mr. Cox, also on the HOA board but not a contractor, testified that he was unaware of any construction defects when property was sold. (Trial Transcript P. 1132-1133).

All of this testimony, taken in the light most favorable to Plaintiffs, clearly suggests that neither the HOA or the individual owners were aware of systemic and pervasive construction defects, or the severe damages located behind the stone and wood siding in Phase I, or the need to bring suit against Bostic for those problems until the reality of the situation became clear to them in 2009, after turnover of control of the HOA.

In *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989), the Supreme Court ruled on the statute of limitations in a case involving latent defects. In *Santee*, the plaintiff had a cement storage complex installed in 1965 that included twelve concrete silos and three bins. *Id.* at 693. In 1969, a small crack was discovered in one of the bins, which was repaired. *Id.* In 1975, another crack appeared in the same bin. *Id.* at 694. The

complex was inspected at this point, and the bin was again repaired at a relatively small cost. *Id.* In 1980, two individuals were killed when a second storage bin collapsed. *Id.* A subsequent investigation revealed that the bin, as well as the twelve silos, were structurally unsound because steel reinforcement rods had been improperly spaced and tied together. *Id.*

The plaintiff brought suit against the general contractor responsible for the construction of the cement plant. The trial court concluded that the plaintiff knew or should have known that it had a cause of action against the contractor when the first crack appeared in 1969, or at least when the second crack appeared in 1975. *Id.* at 695. The South Carolina Supreme Court rejected this conclusion, noting that the plaintiff had introduced expert testimony as to the latency of defects in the silos, noting that the rods were inside concrete walls, and hence undiscoverable. *Id.* at 696. Moreover, there was evidence that repairs were performed. *Id.* The South Carolina Supreme Court concluded that the evidence introduced "went to the reasonableness of [the plaintiff's] actions, which was an issue to be decided by the jury." *Id.* (*citing Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962)).

More recently, the *Santee* case is cited in support of *Centex Homes v. S. Carolina State Plastering*, LLC, No. 4:08-CV-2495-TLW, 2010 WL 2998519 (D.S.C. July 28, 2010). In *Centex Homes*, Judge Wooten held that although the question was close, the record contained questions of material fact regarding when Centex should have known, through the exercise of reasonable diligence that a cause of action existed against several of its subcontractors for alleged construction defects associated with a condominium complex. *Id.* On June 20, 2001, Building 3 was the first building to be completed at the condominium complex, and Building 1 was completed on April 29, 2002. In 2002, Centex discovered water damage to Building 3,

which was thought to have been caused by water intrusion at the intersection of the deck and outside walls. Two subcontractors participated in repairs performed in 2002 to address the damage, which included the installation of kickout flashing at the intersections. Centex did not add the kickout flashing to Building 1, which was a similar building. In 2006 Centex discovered water damage in Building 3 and in Building 1. Again it was thought to be caused, at least in part, by water intrusion at the decks. Between 2006 and 2007 Centex made repairs and filed suit against several subcontractors. The subcontractors moved for summary judgment on the statute of limitations.

Centex argued the water damage to Building 1 could not be attributed in total to the lack of kickout flashing, and that damage to Building 3 continued despite the addition of kickout flashing. Thus, Centex argued there were multiple factual issues: the causes of the damage; the existence of latent defects prevented discovery; and evidence that investigation required certain reassemble steps. The Court held that a conclusion that Centex was barred from bringing an action to recover for water intrusion damage that was discovered in 2006 because it did not take steps to insure the kickout flashing was properly installed in 2002 would require the court to infer that the damage could have been prevented if the flashing had been properly installed, which it found was a jury question. *Id.* at *7. The Court found that the determination of whether Centex, through the exercise of reasonable diligence, should have discovered these alleged deficiencies prior to 2006 was an issue properly resolved by the finder-of-fact. *Id.* at *8.

In this case, at most, a question of fact existed as to when the HOA, through Thoennes or the individual owners, was on notice of defects sufficient to commence the statute of limitations. Another question of fact existed as to which, if any, of the defects and damages for which the

HOA asserted claims may have been known or could have been known to the HOA more than three years prior to the filing of the lawsuit. Because of the questions of fact, the trial court properly denied Bostic's motion since it could not rule, as a matter of law, that the statute of limitations had expired more than three years before the claim was filed. *See, Law*, 368 S.C. at 434–35, 629 S.E.2d at 645 (stating this court will reverse the circuit court's ruling on a directed verdict or JNOV motion only "when there is no evidence to support the ruling or where the ruling is controlled by an error of law"). Further, Bostic failed to submit the question of when the HOA knew or should have known of a claim to the jury and has thereby waived any right to have the issue determined by the trier of fact. The questions of fact clearly preclude a finding on that issue as a matter of law.

B. Regardless of the level of notice, the limitations period should be equitably tolled since these owners were not in control of the association until September of 2008.

In addition, regardless of the level of notice, the limitations period should be equitably tolled since these owners were not in control of the association until September, 2008. Bostic argues that equitable tolling only applies in a situation where a defendant has directly done something to give rise to the tolling. Since there is no evidence that Bostic controlled the HOA board during the operative timeframe (indeed the HOA did not exist until well after Bostic left the site), Bostic argues that equitable tolling does not apply to the statute of limitations relating to the HOA's claims against it. That, however, is a misreading of equitable tolling. The fact that the owners had no right to control the affairs of the HOA, or file suit on its behalf, until at least September 2008, is sufficient reason to support the trial judge's finding that the statute was tolled until developers transferred control to the homeowners. The evidence from trial indicates clearly

that the owners, once in control, acted with dispatch and comported with any applicable standard of due diligence.

Bostic essentially argues that the statute of limitations began to run as to the HOA upon its creation in November 2005. At that time, Bostic argues, any defect known by the developers was chargeable to the HOA for purposes of the statute of limitations, meaning that the second developer, IMK, let the statute of limitations all but expire, thus precluding the claims of the owners who now control the HOA. This is so, Bostic argues, notwithstanding the fact that the owners who now control the HOA had no ability to assert those claims until September of 2008, and acted with clear dispatch and due diligence upon assuming control of the HOA at that time.

The result urged by Bostic is anathema to the public policy of South Carolina, as established through its construction defect law, which clearly seeks to protect owners of residential units from defective construction and shady developers and contractors, and ensures that they are armed them with the rights necessary to protect themselves.

Unlike typical corporations, homeowners associations are unique and are treated as unique by the courts. Prior to the turnover of control, the homeowners of a condominium or townhome development are without the right or ability to control the affairs of the HOA, and do not have the ability to bring suit on its behalf. Thus, the homeowners in a precarious position where in they have financial responsibility for the obligations of the HOA, but no way to protect themselves in relation to the operation of the HOA. For that reason, the courts of South Carolina have protected homeowners from harmful conduct and conditions that result when a developer fails to properly manage the affairs of the HOA by imposing upon developers fiduciary obligations, including requirements that common areas be in good condition at the time of

turnover. The same concerns have also given rise to the elimination of privity as a defense, as well as the development of warranties implied in law for the sale of residential units and for the quality of construction. (See, *Kennedy v Columbia*, 299 S.C. 335, 384 S.E.2d 730 (SC 1989), for a thorough discussion of the history of South Carolina's considerable judicial efforts to "expand our rules to provide the innocent buyer with protection." Id at 736.)

There is no authority supporting Bostic's position that the law of South Carolina imposes on owners of residential units, who are responsible for the funding and operation of a homeowners association, constructive knowledge of defects that may have been acquired by an adversarial developerover a period of years prior to turnover of control. As noted, such a concept is repugnant to South Carolina's policy to provide protection of innocent buyers.

There is authority, however, which provides that the court has the equitable power to toll the statute to prevent a gross injustice like the one Bostic seeks. As noted by the Court of Appeals in *Magnolia North v Heritage Communities*, 397 S.C. 348, 725 S.E. 2d 112 (Ct. App 2012), "The equitable power of the court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies." *Id* at 125.

It would be manifestly unfair to rule that the statute of limitations began to run years before the owners assumed control of the association; during which time the board was controlled by IMK, whose interests were actually adverse to the owners who comprise the current board. The trial court, applying the equitable power it possessed, correctly held that the statute of limitations did not begin to run before these owners were given control of the HOA.

This suit was filed less than a year after turnover and is not time-barred.

II. THE TRIAL JUDGE PROPERLY APPLIED THE SET OFF IN THE FORM 4 JUDGMENT DATED JANUARY 30, 2015.

Bostic argues that the trial court erred in applying a setoff for the amounts the Plaintiff recovered from settling defendants prior to trial. In the January 30, 2015 Judgment, the Court in fact did apply a set off of all funds the Plaintiff recovered; giving Bostic, and every other defendant, the full value of the set-off.

A. Bostic received the full benefit of a set off of all amounts the Plaintiff recovered from the settling defendants.

In Plaintiff's post-trial motion to alter or amend, Plaintiff asked the trial court to apply the full amount of the cumulative jury award, $5,000,000, to each of the three causes of action, and the trial court did apply the full amount of the cumulative jury award, $5,000,000, to each cause of action in its January 30, 2015 Form 4 Judgment.[1] See Form 4 Judgment dated January 30, 2015. The January 30, 2015 Judgment amended the prior Form 4 Judgment dated November 8, 2013 and dated back to the November 8, 2013 Judgment. *Id.*

After assigning the full amount of the cumulative verdict, $5,000,000, to each cause of action, the court reduced the verdict as to each cause of action by the amount of the entire set off ($2,855,911.77) and then applied the Apportionment Act, as reflected in the Apportionment Form signed by the jury. See Apportionment Form dated November 7, 2013.

[1]While the jury was still empaneled, counsel for Plaintiff specifically asked if the judgment was cumulative and the Court ruled that the verdict was cumulative and $5,000,000.00. Bostic took no exception to this and did not request that the jury be asked about its intent with respect to the judgment. Thus Bostic has waived its right to argue the verdict is not cumulative. Bostic simply missed its opportunity to do this and the Court's prior ruling, to which no exception was made, must stand. *See Vigilant Ins. Co. of New York v. McKenney's Inc.*, 524 F. App'x 909, 914 (4th Cir. 2013)(Denying Vigilant's motion for new trial due to waiver of its right to request a new trial because counsel did not bring the asserted inconsistency to the district court's attention before the jury was excused).

In making its argument, Bostic seems to ignore the trial court's January 30, 2015 order. Once that Order is considered, Bostic's arguments are irrelevant and nonsensical. There is no scenario under which Bostic could receive more than 100% of the set-off, which is what it got in the trial court's January 30, 2015 Order.

B. A set off is equitable in nature and properly determined by the trial court.

Further, Bostic's motion for set-off erroneously seeks to have the set-off applied only to the negligence cause of action apparently based upon Bostic's belief that the South Carolina Contribution Among Joint Tortfeasors Act (SCCAJA) provides the only basis for application of set-off. However, although the SCCAJA provides for reduction of the verdict to account for amounts paid by settling tortfeasors, a set off can also apply to other causes of action. *Smalls v. S.C. Dep't of Educ.*, 339 S.C. 208, 219, 528 S.E.2d 682, 688 (Ct.App.2000) ("A set-off is not necessarily founded upon 'any statute or fixed rule of court, but grows out of the inherent equitable jurisdiction' of the court; therefore, such motions are 'addressed to the discretion of the court ....' " (quoting *Rookard v. Atlanta & Charlotte Air Line Ry.*, 89 S.C. 371, 376, 71 S.E. 992, 995 (1911)). Here, the trial court applied the full amount of the set-off to all of the causes of action so that each defendant enjoyed in full the right to the reduction in the amount of the verdict to ensure that the HOA did not recover twice.

III. EVIDENCE SUPPORTS THE TRIAL COURT'S DENIAL OF A NEW TRIAL.

A. Admission of a summary of emergency repair costs, if error, was not prejudicial.

Bostic moves for a new trial on the basis that the Plaintiffs were allowed to admit a summary of emergency repairs. Since the trial court has sound discretion in deciding whether to admit or exclude evidence, the trial judge's decision will not be reversed on appeal unless it

appears he clearly abused his discretion and the objecting party was prejudiced by the decision. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 242, 616 S.E.2d 431, 435 (Ct. App. 2005).The repair summary established that the association paid $139,800.00 for emergency repairs to Phase I. Bostic does not dispute that the cost of emergency repairs are recoverable. Rather, Bostic disputes the document, which it says was inadmissible as hearsay.

Not only does Bostic fail to dispute the damages, counsel for Bostic told the jury in his closing arguments that the emergency repair damages should be included, thereby making the admission of the document harmless error, if was error at all. *See* Trial Tr. 1694:3-19.

> ...there's one other number, I think, that they need to take care of. And that's the emergency repairs, which are a hundred thirty-nine eight hundred eighty-one. We owe them that. I don't know – well, you know, that's up to you. You don't have to award those. I don't know what they're for. It's just a spreadsheet. It could be fixing windows with balls knocked through them. I don't know. But they put them on the list. We don't know what they are, duty they've been submitted as evidence. We'll take their word for it...

In addition, admission of the emergency repair summary if error was harmless for another reason. Plaintiff total damages at trial were $6,309,197.00, which included the emergency repair number and the future cost to repair. The jury awarded the sum of $5,000,000, well below what Plaintiff requested. Any mistake in inclusion of emergency repairs does not detract from the strength of other evidence of damages. Even if the court improperly submitted the summary, there was sufficient evidence of other damages to support the award. *See Magnolia North v Heritage Communities, Supra* (inclusion of mistaken maintenance records was deemed harmless error since the jury did not award Plaintiffs full damages).

Bostic was also given every opportunity to fully cross-examine Mr. Furnari, who submitted the summary. Bostic also had the right to recall Donna Furnari as a witness if Bostic

believed that the summary was somehow inaccurate or unsubstantiated by the evidence. Indeed, Bostic never made that argument at trial nor did Bostic ask either Mr. Furnari or Ms. Furnari for or about the documents which served as the basis of the summary. Trial Tr. 1207:20–1209:24. Finally, contrary to Bostic's contention, Mr. Furnari testified at length that it was he, not Ms. Furnari, who was directly involved in accessing the appropriateness of the emergency repairs, developing the scope of those repairs, hiring the contractors to effect those repairs, and actually being on site while those repairs were being made. Trial Tr. Page 207-293. Thus, the admission affords no basis for reversal. *See Allegro, Inc. v. Scully*, 409 S.C. 392, 411,762 S.E.2d 54, 64 (Ct. App. 2014), reh'g denied (Aug. 26, 2014), cert. granted (Apr. 22, 2015) (admission of inadmissible hearsay affords no basis for reversal where the out-of-court declarant testifies at trial and is available for cross-examination).

B. It was proper not to charge compared to fault of the HOA since Bostic offered no proof of HOA Negligence and failed to preserve the issue for appeal.

Finally, Bostic moves for a new trial on the grounds that the Court failed to charge the jury on comparative negligence. To warrant reversal, the party seeking the requested jury charge must demonstrate error and prejudice. *Fairchild v. S. Carolina Dep't of Transp.*, 385 S.C. 344, 351, 683 S.E.2d 818, 822 (Ct. App. 2009), aff'd, 398 S.C. 90, 727 S.E.2d 407 (2012). Jury instruction should be confined to the issues supported by the evidence. *Id.*

First, Bostic has not preserved that issue for appeal because it failed to proffer the charge or make it a part of the trial record. (An alleged erroneous exclusion of evidence is not a basis for establishing prejudice on appeal in absence of an adequate proffer of evidence in the court below. *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 244, 391 S.E.2d 546, 547 (1990))

Further, while Bostic now asserts that the HOA was negligent, Bostic failed to submit any testimony or evidence establishing the standard of care for the owner controlled HOA or the developer controlled HOA. Correspondingly Bostic did not offer any evidence that that standard of care had been breached or was the proximate cause of any of the damages claimed by Plaintiff. Trial Tr. 1521: 1522:2. Counsel for Bostic never argued to the jury that the owners or the Plaintiff HOA did anything wrong or that they caused the harm for which they sought relief. Trial Tr. Page 1679-1710. In fact, counsel for Bostic argued just the opposite in his closing:

> Nobody wants to keep these people at risk for these buildings any longer than they already have been. Rick Moore, licensed, credible, an engineer, knows how to fix buildings is going to bear the risk with his scope...He will contract with these people. He will make sure that their buildings are fixed.

Trial Tr. 1684.

Because Bostic failed to prove duty, breach or proximate cause relating to claimed negligence of the HOA, submission of that issue to the jury would have been wholly improper.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court affirm the jury verdict and the orders on appeal.

Respectfully submitted,

LYLES & LYLES, LLC

By: _____

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COUNSEL FOR RESPONDENTS

May 13, 2016
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE OCONEE COUNTY
Court of Common Pleas

The Honorable Alexander S. Macaulay

Appellate Case No. 2015-000417

RECEIVED
MAY 16 2016
SC Court of Appeals

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS,

OF WHOM STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION IS THE .....RESPONDENT

V.

IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOMES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., MILLER/PLAYER & ASSOCIATES, BRADFORD D. SECKINGER, JOHN LUDWIG, WILLIAM C. COX, LARRY D. LOLLIS, RICK THOENNES, M. GROUP CONSTRUCTION AND DEVELOPMENT, LLC, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTIONLLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRSSOURCE SOUTHEAST GROUP, MIKE GREEN, SOTHERN CONCRETE SPECIALITIES, CARL COMPTON D/B/A COMPTON ENTERPRISE D/B/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING,. HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCITON, ALEJANDRO AVALOS CRUZ, HERBERTO ACROS HERNANDEX, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, UPSTATE UTILITIES, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC OF THE CAROLINAS, INC., EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J

CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC. AND VINCENT MORALES D/B/A MORALES MASONRY, DEFENDANTS,

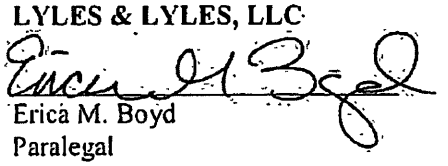
OF WHOM BOSTIC BROTHERS CONSTRUCTION, INC. IS THE .....APPELLANT

PROOF OF SERVICE

I certify that I have served Initial Brief of Respondents Stoneledge at Lake Keowee Owners' Association, Inc. on all counsel of record by delivering same electronically, via email, or in the alternative by depositing a copy of it in the United States Mail, First Class postage prepaid, this 13th day of May, 2016, addressed to the following:

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Elizabeth Wieters, Esquire
Paul B. Trainor, Esquire
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Attorneys for Bostic Brothers Construction, Inc.

LYLES & LYLES, LLC

By: 
Erica M. Boyd
Paralegal

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NUMBER: 2009-CP-37-0652
STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, INC., C. DAN CARSON, JEFFREY J. DAULER, JOAN W. DAVENPORT, MICHAEL FURNARI, DONNA FURNARI, JESSY B. GRASSO, NANCY E. GRASSO, ROBERT P. HAYES, LUCY H. HAYES, TY HIX, JENNIFER D. HIX, PAUL W. HUND, III, RUTH E. ISAAC, MICHAEL D. PLOURDE, MARY LOU PLOURDE, CAROL C. POPE, STEVEN B. TAYLOR, BETTE J. TAYLOR, AND ROBERT WHITE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED	)	**TRANSCRIPT OF JUDGMENT**
Plaintiffs,	)	
VS.	)	
IMK DEVELOPMENT CO., LLC, KEOWEE TOWNHOUSES, LLC, LUDWIG CORPORATION, LLC, SDI FUNDING, LLC, MEDALLION AT KEOWEE, LLC, BRADFORD D. SECKINGER, JOHN LUDWIG, LARRY D. LOLLIS, WILLIAM C. COX, INTEGRYS KEOWEE DEVELOPMENT, LLC, MARICK HOME BUILDERS, LLC, M GROUP CONSTRUCTION AND DEVELOPMENT, LLC, BOSTIC BROTHERS CONSTRUCTION, INC., RICK THOENNES, MEL MORRIS, JOE BOSTIC, JEFF BOSTIC, CLEAR VIEW CONSTRUCTION, LLC, MICHAEL FRANZ, MHC CONTRACTORS, MIGUEL PORRAS CHONCOAS, BUILDERS FIRST SOURCE SOUTHEAST GROUP, MIKE GREEN, SOUTHERN CONCRETE SPECIALTIES, CARL COMPTON D/B/A COMPTON ENTERPRIZE A/K/A COMPTON ENTERPRISES, GUNTER HEATING & AIR, ALL PRO HEATING, A/C & REFRIGERATION, LLC, COLEMAN WATERPROOFING, HEYWARD ELECTRICAL SERVICES, INC., TINSLEY ELECTRICAL, LLC, HUTCH N SON CONSTRUCTION, INC., CARL CATOE CONSTRUCTION, INC., T.G. CONSTRUCTION, LLC, DELFINO CONSTRUCTION, FRANCISCO JAVIER ZARATE D/B/A ZARATE CONSTRUCTION, ALEJANDRO	)	

AVALOS CRUZ, HERBERTO ACROS HERNANDEZ, MARTIN HERNANDEZ-AVILES, FRANCISCO VILLALOBOS LOPEZ, AMBROSIO MARTINEZ-RAMIREZ, ESTER MORAN MENTADO, SOCORRO CASTILLO MONTEL, UPSTATE UTILITIES, INC., SOUTHERN BASEMENTS, INC., MJG CONSTRUCTION AND HOMEBUILDERS, INC. D/B/A MJG CONSTRUCTION, KMAC, INC., D/B/A KMAC NORTH CAROLINA, EUFACIO GARCIA, EVERADO JARMAMILLO, GARCIA PARRA INSULATION, INC., J&J CONSTRUCTION, JOSE NINO, JOSE MANUEL GARCIA, EASON CONSTRUCTION, INC., AND VINCENT MORALES D/B/A MORALES MASONRY, MILLER/PLAYER & ASSOCIATES,	)
Defendants,	)
BOSTIC CONSTRUCTION, INC.	)
Third-Party Plaintiffs,	)
vs.	)
SOUTHERN STONE, INC. AND BUCK SMITH CONSTRUCTION,	)
Third-Party Defendants.	)

TO THE CLERK OF COURT FOR OCONEE COUNTY:

The issues in this action were tried in the Circuit Court before Judge Alexander S. Macaulay in a jury proceeding on November 8, 2013. On January 21, 2015, an amended Form 4 Order was signed by Judge Macaulay (attached hereto as Exhibit A). The verdict and relief are stated below:

1. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Bostic Brothers Construction, Inc. in regards to negligence in the amount of $2,144,088.23;

2. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Marick Home Builders, LLC and IMK Development, Co. in regards to negligence in the amount of $857,635.29;

3. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Bostic Brothers Construction, Inc. in regards to breach of warranty in the amount of $643,226.47;

4. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Marick Homebuilders, LLC in regards to breach of warranty in the amount of $2,144,088.23;

5. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against IMK Development, Co. in regards to breach of fiduciary duty in the amount of $2,144,088.23;

6. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Integrys Keowee Development, LLC in regards to breach of fiduciary duty in the amount of $2,144,088.23;

7. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Rick Thoennes in regards to breach of fiduciary duty in the amount of $2,144,08.23;

8. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against William C. Cox in regards to breach of fiduciary duty in the amount of $2,144,08.23; and

9. Judgment in favor of Stoneledge at Lake Keowee Owners' Association, Inc. against Larry D. Lollis in regards to breach of fiduciary duty in the amount of $2,144,08.23.

Clerk of Court of Oconee County

Dated: March ____, 2015
Oconee, South Carolina

Attorneys of record:

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Cynthia Brown, Esquire
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Greenville, SC 29601
Attorneys for IMK Development Co., LLC, Integrys Keowee, LLC, William C. Cox, Larry Lollis

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-37-0652

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

Stoneledge at Lake Keowee Owners' Association, Inc., et al.
PLAINTIFF(S)

IMK Development Co., LLC et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

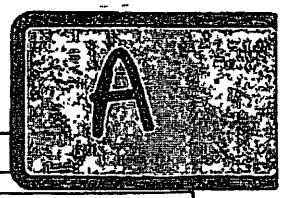
☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Jury found for the Plaintiffs on the cause of action for negligence as to Defendants Bostic Brothers Construction, Inc., IMK Development Co., LLC, and Marick Home Builders, LLC in the amount of $3,000,000.00; Jury found for the Plaintiff on the cause of action for breach of warranty of workmanlike service as to Defendants Bostic Brothers Construction, Inc. and Marick Home Builders, LLC in the amount of $1,000,000.00. Jury found for the Plaintiff on the cause of action for breach of fiduciary duty as to Defendants IMK Development Co., LLC, Integrys Keowee Development, LLC, Rick Thoennes, William C. Cox and Larry D. Lollis in the amount of $1,000,000.00. At trial these verdicts were ruled to be cumulative and are reflected as such herein (See Attached Verdit Form and Apportionment Form for more specific details). Plaintiff Stoneledge at Lake Keowee Owners' Association is responsible for disbursements of monies collected to its respective owners on a pro rata basis. This order hereby amends the prior Form 4C order filed on November 8, 2013. Additionally, this judgment shall be backdated to the filing date of the original Form 4C order, November 8, 2013.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :



INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Negligence: Bostic Brothers Construction, Inc.	$2,144,088 23

Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Home Builders, LLC and IMK Development Co.	$857, 635.29
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Warranty: Bostic Brothers Construction, Inc.	$643,226.47
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Marick Homebuilders, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Breach of Fiduciary Duty: IMK Development Co.	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Integrys Keowee Development, LLC	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Rick Thoennes	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	William C. Cox	$2,144,088.23
Stoneledge at Lake Keowee Owners' Assoc., Inc.	Larry D. Lollis	$2,144,088.23

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 JAN 30 PM 3 29

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

Circuit Court Judge

2063
Judge Code

1/21/15
Date

A TRUE COPY
JAN 30 2015
CLERK OF COURT - OCONEE COUNTY

SCRCP Form 4C (03/2013)

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of Jan, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 30th day of Jan, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Robert T. Lyles

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jason Imhoff, Alan Belcher
Cynthia Buck Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly W. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, ET AL. V. IMK DEVELOPMENT, ET AL.
CASE NO.: 2009-CP-37-0652

CERTIFICATE OF SERVICE

This is to hereby certify that on this 6 day of March, 2015, pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, that I have this date, mailed a true and correct copy of the **Transcript of Judgment** to the following counsel of record:

Jason M. Imhoff, Esquire
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Spartanburg, S.C. 29304
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Alan Belcher, Esq.
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Attorney for Bostic Brothers Construction, Inc.

Cynthia Buck Brown, Esquire
Harper Lambert & Brown, PA
Post Office Box 908
Greenville, SC 29602
Attorneys for IMK Dev., Integrys Keowee Dev., William Cox, & Larry Lollis

Brooke Trevino

STONELEDGE AT LAKE KEOWEE OWNERS' ASSOCIATION, ET AL. V. IMK DEVELOPMENT, ET AL.
CASE NO.: 2009-CP-37-0652

CERTIFICATE OF SERVICE

This is to hereby certify that on this 20 day of March, 2015, pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, that I have this date, mailed a true and correct copy of the **Transcript of Judgment** to the following counsel of record:

Jason M. Imhoff, Esquire
The Ward Law Firm, P.A.
Post Office Box 5663
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Alan Belcher, Esq.
Hall, Booth, Smith, PC
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Attorney for Bostic Brothers Construction, Inc.

Cynthia Buck Brown, Esquire
Harper Lambert & Brown, PA
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Greenville, SC 29602
Attorneys for IMK Dev., Integrys Keowee Dev., William Cox, & Larry Lollis

Brooke Trevino
Brooke Trevino

State of South Carolina

County of Oconee

In the Court of Common Pleas

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund III, Ruth e. Isaac, Michael D. Plourde, Mary Lou K. Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, Robert White, individually and on behalf of all others similarly situated,	2009-CP-37-652
Plaintiffs,	October 28 - 31, 2013 AND November 4 - 7, 2013
-vs-	Transcript of Record
IMK Development Company LLC, Keowee Townhouses LLC, Ludwig Corporation LLC, SDI Funding LLC, Medallion at Keowee LLC, Bradford D. Seckinger, John Ludwig, Larry D. Lollis, William C. Cox, Integrys Keowee Development LLC, Marick Home Builders LLC, M Group Construction and Development LLC, Bostic Brothers Construction Inc., Rick Thoennes, Mel Morris, Joe Bostic, Jeff Bostic, Clear View Construction LLC, Michael Franz, MHC Contractors, Miguel Porras Choncoas, Builders First Source Southeast Group, Mike Green, Southern Concrete Specialties, Carl Compton d/b/a Compton Enterprize a/k/a Compton Enterprises, Gunter Heating & Air, All Pro Heating, A/C & Refrigeration LLC, Coleman Waterproofing, Heyward	

Electrical Services Inc., Tinsley)
Electrical LLC, Hutch N Son)
Construction Inc., T.G.)
Construction LLC, Delfino)
Construction, Francisco Javier)
Zarate D/B/A, Zarate Construction,)
Alejandro Avolos Cruz, Herberto)
Acros Hernandez, Martin)
Hernandez-Aviles, Francisco)
Villalobos Lopez, Ambrosio)
Martinez-Ramirez, Ester Moran)
Mentado, Socorro Castillo Montel,)
Upstate Utilities Inc, Southern)
Basements Inc, M.J. Goodwin)
Construction and Homebuilders Inc)
D/B/A M.J. Goodwin Construction,)
KMAC Inc. D/B/A KMAC North)
Carolina, Eufacio Garcia, Everado)
Jarmamillo, Garcia Parra Insulation)
Inc., J&J Construction, Jose Nino,)
Jose Manuel Garcia, Eason)
Construction Inc., Vincent Morales)
D/B/A Morales Masonry and)
Miller/Player & Associates,)
)
Defendants.)

BEFORE:

The Honorable Alexander Macaulay, Judge

APPEARANCES:

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Robert T. Lyles, Jr., Esquire

Attorneys for the Plaintiffs

APPEARANCES:

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Bill Woods, Esquire
Attorney for Defendant Jose Nivo

Mike Wilkes, Esquire
Attorney for Defendant Clearview Construction LLC & Michael Franz

Cynthia Brown, Esquire
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Attorney for Defendant Everardo Jamimillio

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J. Wiley McKeown, Esquire
Attorney for Defendant Brad Seckinger

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Shawn T. Pinkston, Esquire
Attorney for Defendant Heyward Electrical Service

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Attorney for Defendant Clearview Construction LLC & Michael Franz

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Attorney for Defendant Miller/Player & Associates

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Attorney for Defendant Carl Catoe Construction Co.

Taylor Anderson, Esquire
Attorney for Defendant Builders FirstSource Southeast Group, Mike Green

Robert Megane, Esquire
Attorney for Defendant Southern Concrete & Southern Basements

Lawrence B. Orr, Esquire
Attorney for Defendant Miller/Player & Associates

Lindsay Builder, Esquire
Attorney for Defendant Clearview Construction LLC & Michael Franz

John Harjehausen, Esquire
Attorney for Defendant Heyward Electrical Service

Shawn T. Pinkston, Esquire
Attorney for Defendant Heyward Electrical Service

Attorney for Defendants

Renee Tollison
Circuit Court Reporter

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October 28, 2013

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at approximately 11:00 a.m.)

THE COURT: All right. We are here on the matter of Stoneledge at Lake Keowee Owners Association, Inc., et al, verus I.M.K. Development Company, L.L.C., et al, 2009-CP-37-652. I understand this is a motion hearing for a trial to begin at two o'clock this afternoon. Is that correct, Mr. Lyles?

MR. LYLES: Yes, sir.

THE COURT: And Mr. Belcher?

MR. BELCHER: Yes, Your Honor.

THE COURT: All right. Let's see. I need to be -- who are the others? Well, of course, I know Mr. Imhoff. But who's ---

MR. GRESH: Your Honor, I'm Jack Gresh here with Alan Belcher.

THE COURT: Okay. Very good. Now, would somebody like to tell me where we are other than Oconee County? In other words, have there been any developments since we last met?

MR. LYLES: I have a couple of additional settlements, Your Honor, that we would like to get on the record at some point in time.

THE COURT: We'll do those. Well, let me have the names, if you could.

MR. LYLES: Yes, sir.

THE COURT: Because our court reporter has been trying to put together, you might call it a test.

MR. LYLES: And Madam Court Reporter, I have reached settlements with the Defendants John Logan personally, Ludwig Corporation, and S.D.I. Funding. And I have also reached a settlement agreement with the Defendant Eason Construction. So those will not be participating.

THE COURT: There's a gentleman in the back there, Mr. Lyles.

MR. SMITH: And Haywood Electrical as well.

MR. LYLES: Yeah. I thought you were already on there, but maybe not.

Haywood Electrical too. He's here. We made that settlement so long ago, I thought that everybody was aware of that.

THE COURT: I see that you have someone with you at your table, Mr. Lyles, I don't remember you introducing.

MR. LYLES: This is Kelly West. Kelly is a lawyer who works with us. He's agreed to come ---

THE COURT: Okay. Thank you. Glad to have you

with us.

All right. Your name, please, sir, for ---

MR. SMITH: Chris Smith on behalf of Haywood Electrical.

THE COURT: All right. And I understand, your cases or matter has been settled as well?

MR. SMITH: That's correct, Your Honor.

THE COURT: Very good. Thank you.

Has that been done on the record or by agreement?

MR. LYLES: I think we've actually got a settlement agreement with Haywood Electrical, and the money has been paid there.

THE COURT: All right. Fine. I just want to be sure that all the requirements of the settlement are in order.

MR. LYLES: Whenever you're ready, I've got -- Chad Poteat is here for Eason Construction. And Chad and I have a written letter between us, but Chad wanted to put our terms on the record.

THE COURT: Okay.

MR. LYLES: And then I have got a signed letter with the lawyers for Ludwig and S.D.I. Because Frank Smith was out of town over the weekend, I just got his letter today. So I can put that on the record this afternoon or in the morning.

THE COURT: Well, let's do that. And, of course, then if we do have any attorneys here that would like to be done earlier, we'll do it when we take a break.

MR. LYLES: Okay.

THE COURT: All right. Very good.

Mr. Belcher, anything from your parties?

MR. BELCHER: No new developments, Your Honor.

THE COURT: All right.

Mr. Imhoff?

MR. IMHOFF: Nothing new, Your Honor.

THE COURT: All right. Now, I understand there have been some motions or something filed recently?

MR. LYLES: We filed some, I think, fairly standard motions in limine going to the conduct of the trial. I think a number of parties might have filed motions in limine. I don't know what the status of all of those motions is. The other two motions that I think are pending before you relate to the habitability arguments that Marick made about a month ago. And I don't think that there's a signed order on that. I know we both supplemented the materials on that since you ruled from the bench. And then the other thing is Mr. Imhoff and Marick filed a motion on Friday addressing the issue of the assignments for non-named plaintiffs --

excuse me -- non-plaintiff owners in phase one to the association, which we also briefed after our last get-together. And I think Jason filed that motion out of an abundance of caution just to make sure there was a motion on the record, and we responded to that over the weekend.

THE COURT: All right.

Mr. Imhoff?

MR. IMHOFF: Your Honor, I think that's right. I mean, I don't have -- what order you want to do it in, but the settlements, the motion in limine. I have a motion, as you know ---

THE COURT: Well, what I'd like to do this morning is to get all of the trial matters out of the way. And then I'll take up others. And, of course, the reason I'm looking at the plaintiffs' motion to add assignment plaintiffs or new plaintiffs. I understand what his position is, and I've gotten your motion. But I'm curious if you'd like to -- he wants to do it.

MR. IMHOFF: Oh, yes, Your Honor. I happy to argue it. I'm ready to argue it. I'm good to argue it now.

THE COURT: All right. That's what I'm trying to get to, is just if we could have some sort of resolution to that matter because otherwise we'd have to -- what is it? -- amend the pleadings and everything

else.

MR. IMHOFF: Well, that's right, Your Honor. I think, as I look around the room here, I think that Defense is unanimous in opposition to the addition. And anybody can stand up and tell me they're not in opposition. But the addition of these twenty-six new plaintiffs. And I know that Mr. Lyles doesn't want me to call them plaintiffs, but they certainly are, Your Honor.

THE COURT: In the order of things, they certainly are not defendants.

MR. IMHOFF: That's right. You denied -- Your Honor, they have not been on the pleadings since they were filed in 2009 or any of the amendments. You denied class certification, so there is not a class representative that can speak for them. So if the statute is not tolled ---

THE COURT: By the way, I just signed a short order on denial of the class certification. I thought it had been done on the record.

MR. GRESH: Thank you, Your Honor.

MR. IMHOFF: So if they -- if the class has not been certified, as you say, and they are not on the pleadings, and so they are now assigned. I mean, they've never been on the pleadings. They've never been identified individually, then they are absolutely new

plaintiffs. If they are not barred by the statute of limitations -- what Mr. Lyles keeps arguing is that the statute of limitations does not apply to them. And I don't think there's any question that they knew in 2009 that they had claims when this lawsuit was filed. Mr. Lyles will argue to you that the statute of limitations shouldn't apply to them. The statute of limitations should be equitably tolled. I don't agree with that. But the bigger point to all of us is that these are twenty-six brand new folks. And this Court has decided that all of the homeowners have different and varying claims. They have different damages inside their unit. They have different loss of use. They bought their units from different people. Different people built their units. And so if by this procedural last-minute maneuver, these twenty-six folks are able to join this case and the H.O.A. or representative of the owners is going to sit on the stand and testify about all twenty-six of these other people, they just did an end runaround your denial of class certification because they've never had to answer discovery specific to them. They won't be cross-examined specific to what their damages are or who they believe caused their damages, who sold the units to them.

This Court does have discretion, based on what I

have read, in whether or not to join parties at the last moment. And I think that the standard is prejudice. And this is absolutely prejudicial because twenty-six homeowners out there will get to joint the litigation without going through the litigation process. And I think that's the objection.

And, again, I invite anybody to stand up. But I think that's unanimous with all of the defendants, understanding that we could have taken every owners' deposition out there. At the time, it was a class certification motion. So we took every owner whose name was on the pleadings. And I think we took over a hundred depositions in this case.

So, Your Honor, I think the statute has run. These twenty-six folks could have joined the lawsuit at any time in the last four years or frankly any time in the last nine years. Most of them in phase one knew about the deck issues and the other issues. If the statute does not apply, it is equitably tolled, then this Court has the discretion to refuse to allow the joinder of those twenty-six people through the use of these assignments. And we would ask that you use your discretion and refuse to either allow them to join the lawsuit or -- procedurally, I'm not sure what is correct here -- or grant summary judgment as to those twenty-six

people and refuse to join them.

THE COURT: All right. Mr. Belcher? And I'm looking at you because you have the place of honor at the Defense table. Do you have anything to add in opposition to ...

The reason I'm skipping over you is I want to hear what's in opposition before I hear you because I think I know what you're going to say.

MR. BELCHER: Well, Your Honor, it creates -- it creates a difficult situation for us as defendants and as plaintiffs in this case because whatever your ruling is is going to impact whether or not we try this case more than once. We have one trial date which we've had now for several months. We want to try the case. The Bostic Construction people want to try this case. They want to have their day in court, their opportunity to have resolution to this case and to get these plaintiffs taken care of in however way this jury's going to take care of the H.O.A. That's the big claim that we're dealing with here is the H.O.A. claims. All these individual unit owners' claims, their claims are for purported loss of use damage and some damage to the interior of their units during repairs, which is probably going to be taken care of anyway. So what my concern is, is that we're going to find ourselves in a situation

where a jury renders a verdict here in a few days. And that verdict may very well be that they don't agree that these plaintiffs that are named plaintiffs in this lawsuit are entitled to loss of use damages, which is well and good. But now we may be faced with a situation where we have to go litigate the issue of loss of use damages with additional people that we didn't contemplate having to deal with. So that's my only concern here is that we subject ourselves to inconsistent findings of fact and remedies for these plaintiffs. And they may find themselves in a situation where some of the unit owners are entitled to these loss of use damages and some of them aren't just because we've had two different evidentiary proceedings and two different verdicts by a jury. So that's something else that I think the Court needs to consider as it determines what it's going to do with these latecomers to the game.

THE COURT: Are you're saying they're latecomers? You mean their cause of action just arose recently?

MR. BELCHER: No.

THE COURT: Well, I'm just curious in what regard you meant they were latecomers.

MR. BELCHER: Well, the fact of the matter is is that this case is so complex that we did not take the

time, with all the other depositions ---

THE COURT: I understand. I was being somewhat facetious because as I understand it, they were there in the beginning and knew what was happening. And obviously somebody might have talked to them or they could have discovered they had some defect or some complaint to be made. So that's not a latecomer.

MR. BELCHER: No. I mean to the table for today.

THE COURT: All right. Very good.

All right. Now, Mr. Lyles?

MR. LYLES: Yes, sir. And I appreciate Your Honor only ---

THE COURT: Let me ask you about this assignment.

MR. LYLES: Yes, sir.

THE COURT: That's sort of an interesting -- I'm not familiar with assignment of something. I'm familiar with subrogations.

MR. LYLES: Yes, sir.

THE COURT: In a subrogation, of course -- what is it? -- some consideration is an exchange for the ability to stand in the shoes of someone else.

MR. LYLES: Yes, sir.

THE COURT: Now, does an assignment have some

significance outside of the statute of limitations?

MR. LYLES: Well, significance in terms of a bargain for exchange. The assignments themselves, if I am correct, reference the consideration for the assignment being the efforts of the H.O.A., paying the experts, and so on and so forth.

THE COURT: Well, now, of course, it says that now they've got twenty-six other people to -- what is it? -- incur an expert and depositions for. I mean, they're entitled. How else would you determine what the claim was?

MR. LYLES: Well, I think that ---

THE COURT: That was assigned?

MR. LYLES: Yes, sir. The claim that has been assigned has been a part of this lawsuit since it was first filed.

THE COURT: Then why didn't they file? If it was a part of it, why didn't they file?

MR. LYLES: They did. Your Honor, they were all members of a punitive class. And under Rule 23; that was how they participated in this litigation. And the ---

THE COURT: When was the class -- what is it? -- declared or decided?

MR. LYLES: The class allegations were in the

initial filing.

THE COURT: But they were never -- it was never determined that it was a class action until it was heard?

MR. LYLES: It was not. It was alleged that it was a class action. None of the defendants moved to dismiss the class action allegations. The class action was pending in conformance with the rules and all of the orders of the Court until it was determined by the Court that the class would not be certified. And I think importantly under Rule 23 ---

THE COURT: Well, wasn't it your allegation that it be certified as a class action?

MR. LYLES: Well, we ---

THE COURT: Why didn't you go ahead and do that so they would know that they were going to have to face an additional twenty-six claims?

MR. LYLES: Well, they were aware of the class allegations with the filing of the original lawsuit. They were aware of the names of the owners, and they were aware of the damages that were being claimed by the class members.

THE COURT: But you didn't have grounds for summary judgment?

MR. LYLES: I'm not sure -- summary judgment on what issue?

THE COURT: Class action, that it was a class action.

MR. LYLES: We didn't file a motion for summary judgement on class action.

THE COURT: Because that would be -- it was a matter of law that you're entitled to, not a matter of fact.

MR. LYLES: Well, if you -- the question to me was when did they get notice that they were going to have to defend these claims. And the answer to that is, I think, May the 24th of 2009. The way we responded to our interrogatories ---

THE COURT: Well, have you got those twenty-six names on your interrogatories?

MR. LYLES: Yes, sir. Yes, sir, we do.

THE COURT: And are they as members of the homeowners association or individually?

MR. LYLES: They are listed. A question was asked in two ---

THE COURT: Well, I'm just curious. I mean, you never once listed the twenty-six individuals that you now wish to be included in the -- as plaintiffs?

MR. LYLES: We did list them, yes, sir.

THE COURT: As plaintiffs?

MR. LYLES: Well, the pleadings themselves

establish that the owners in phase one and phase two were class members.

THE COURT: Well, that was an allegation.

MR. LYLES: An allegation.

THE COURT: Yeah. An allegation until the Court ruled on whether or not they ---

MR. LYLES: Correct.

THE COURT: --- satisfied the class action requirement under law, not facts. The facts were undisputed, so no controversy as for the jury to find.

MR. LYLES: I understood your question to be, when did they get -- when were ---

THE COURT: No. I'm asking when you. And that's my problem. In other words, it does seem to be a little bit late. And you do not have any sort of -- the homeowners association hasn't made any sort of direct payment or anything like that. What these twenty-six will be getting would be the benefit that the others who have been contributing.

MR. LYLES: Well, no. They've all been contributing.

THE COURT: Well, they haven't been deposed. And that's something of a contribution, just -- what is it? -- haven't contributes time and inconvenience.

MR. LYLES: Well, they were certainly

identified. Everybody has known who they are. We answered our discovery based on -- and if you remember that what we did is we framed the damages for the class members very specifically and uniformly throughout, which is loss of use, which is a number we identified two years ago that applied to every single class member. It was included in our damages summary and all of our interrogatory responses. And we also assigned to the individual class members an allocation for the repair costs of eighty-five hundred dollars, which was disclosed two years ago, and multiplied by a total of eighty for all of the class members. And the names of all the class members being the owners of Stoneledge units who were identified in discovery as soon as they were requested in September of 2012 and again in December of 2012. And of course, they obviously also are part of the public record. The only thing that we did not do is move for class certification. And the reason we didn't move for class certification -- I think this was stated previously on the record -- is because oftentimes, rather than have a fight over class certification, it is in the best interest of the defendants -- and Mr. Belcher referenced this this morning already -- to have a class certified for ease of settlement.

THE COURT: Then why didn't he do that?

MR. LYLES: Why didn't he do what?

THE COURT: Move for the certification?

MR. LYLES: Well, he would have moved ---

THE COURT: If it's in his best interest. Now he's saying it's prejudicial.

MR. LYLES: Well, what he's saying ---

THE COURT: I mean, is it one foot or the other foot?

MR. LYLES: I don't think that he's saying that -- my point, Your Honor, the reason for the delay is we tried to get this case settled. It is easier to settle a construction defect case if the parties agree to a settlement and then they agree on class certification.

THE COURT: Well, then why didn't you go ahead and move for the certification early so that you could have that convenience? Why did you wait until the last -- late until the -- after the statute of limitations run to do it?

MR. LYLES: Because I was -- parties that would oppose class certification under normal circumstances ---

THE COURT: So there was a reason that you couldn't do it before that?

MR. LYLES: It's not couldn't. It's a decision I made.

THE COURT: All right.

MR. LYLES: And I think we put it on the record, the parties that would oppose class certification -- for example, even Marick today. If Marick were to settle this case today, Marick would obviously want class certification because they would like to make sure that they get a resolution of all claims.

THE COURT: Well, that's why we have statute of limitations.

MR. LYLES: Well, the statute of limitations is a ---

THE COURT: Well, it's kind of like hoisting yourself on your own batard (phonic). Either the twenty-six you're saying now should have been included in the class because they knew what their loss was, or they did not know what their loss was and they had to wait till the last minute to be included in the class -- or to be done individually. And either way, though, it seems that the time has passed for them to be either included as part of the class or individually.

MR. LYLES: Your Honor, they were a member of a punitive class up until you denied class certification.

THE COURT: Until a court ordered it, it was punitive.

MR. LYLES: Correct. And during the period of time that they were a member of the punitive class, the

statute of limitations is tolled. They participated in this litigation as they're allowed to participate in this litigation under Rule 23. And I think that the law is clear about that. Whether the Court wants to allow us through the H.O.A. to prosecute the claims via assignment is a separate issue. But these owners participated in this litigation because they're allowed to participate in litigation under the rules.

THE COURT: Well, let me ask you.

MR. LYLES: Yes, sir.

THE COURT: And this is a very simple question. If the class certification was not granted ---

MR. LYLES: Yes, sir.

THE COURT: --- and they weren't participating as a member of the class, would they be entitled to a judgment?

MR. LYLES: If they were not a member of the class and it was -- no, sir, they wouldn't.

THE COURT: Okay.

MR. LYLES: They've got the right now. I think in light of the Court's ruling, they simply have the right to go out and file their own claim.

THE COURT: If the statute of limitations says that they're within that protection, then, of course, they'd be entitled to do it.

MR. LYLES: Yes, exactly. And so that is the alternative they've got. And what they have sought to do was to try to avoid that effort and expense and take advantage of this through the assignments.

THE COURT: Very good. All right. Anything else from the defendants or any of the defendants that still have an interest in whether or not the complaint be amended?

Yes, sir. Your name, please?

MR. BUCKLEY: Your Honor, Ed Buckley. I'm here for Everado Jaramillo, J-A-R-A-M-I-L-L-O. The only thing I would add -- and I understand it's been briefed by some of the parties who have actually briefed this issue. But Rule 23(d)(1), the rule itself, actually says that as soon as practicable after the commencement of the action brought as a class action, the court shall determine by order whether it is to be so maintained. So the court recognizes that this issue can be avoided because class certification should be brought to the court as soon as practicable after the commencement of the action so that we avoid exactly what we're doing here today.

THE COURT: Very well. Anything else?

All right. As I say, the class certification, when it was brought to the Court's attention, was denied either on the record, and now a form order in writing has

been made. I do find that the addition that has been mentioned today is that by reason of the delay in bringing the action or moving for certification, that it would be prejudicial to the parties who had been involved in the litigation up until now, to include others who have settled. Apparently, they would -- I'm not sure where they would be in the matter, depending on what the agreements were as far as hold harmless or something like that. I don't know. In other words, it just opens the door to further activity to the Court. And I can assure you the Court has had enough activity for quite a period of time.

All right. Anything else? All right. So the motion to amend to add the twenty-six is denied.

Yes, sir?

MR. IMHOFF: The motion, I guess -- well, I'm not sure what procedurally it is. The motion to strike the twenty-six or motion for summary judgment on the twenty-six?

THE COURT: Well, they don't have -- isn't the caption still what the caption was?

MR. IMHOFF: Yes, Your Honor.

THE COURT: It doesn't have the twenty-six names. That's what they wanted to do was to include the twenty-six -- what is it? -- was it not?

MR. IMHOFF: Yes. And I'm just not sure if -- it was my motion to exclude them. So I guess -- because I don't think -- the plaintiffs didn't make a motion to bring them in.

THE COURT: I'm reading your motion. Motion to dismiss or alternatively motion for summary judgment, compel or to strike plaintiffs' addition by assignment of twenty-six new plaintiffs. And that's what I've granted.

MR. IMHOFF: Great. Okay. Your Honor, the grounds that you said was discretion and prejudice ---

THE COURT: Well, not only discretion, but also I feel that the rule itself requires that it be brought in a reasonable time.

MR. IMHOFF: Are you finding that they're barred by the statute of limitations, Your Honor?

THE COURT: Well, I think that that's something that will have to be determined if they should bring an action. What we are saying is they are individuals. And each individual has to be determined whether or not they had cause to realize that they had a claim.

MR. IMHOFF: Thank you, Your Honor.

THE COURT: It might be that -- what is it? -- it was an inference. And heaven help anybody in Oconee being incarcerated. So it might have been a rule for -- what is it? -- tolling the statute. Those would have to

be decided on individual cases.

All right. Anything else? I mean, as far as housekeeping in bringing an action and how it will be tried this week, hopefully.

MR. LYLES: The other issue that I know we're waiting on is a ruling from the Court on the motion that Marick made to dismiss the habitability claim. And Marick made that motion on behalf of itself and I.M.K. And we had briefed that issue too after that argument about a month ago. As I understood the proposed order that Marick submitted, the basis of the order granting dismissal of the habitability claim was a lack of privity of contract. And I ---

THE COURT: And you brought two cited authority. I think Mungo and -- was it Columbia Lumber?

MR. LYLES: Yes, sir, it's goes back to ---

THE COURT: And both of those were vendors; right?

MR. LYLES: Well, Kennedy was not -- Kennedy versus Columbia Lumber was a general discussion of this law.

THE COURT: Which they didn't accept.

MR. LYLES: Well, in Kennedy, that was actually started off, I think, as a lender case. But what they did in that case is they held, among other things, that

an implied warranty of service attaches to the builder's work which does not require privity of contract to assert. But in the same discussion, the court in Kennedy reviewed the history of the implied warranty law and I thought made it very clear that in South Carolina there is no privity of contract requirement to assert an implied warranty claim, whether it's habitability or the implied warranty of service. And I ---

THE COURT: I thought they did and they just said that that's the -- what is accepted in some jurisdictions and by some writers.

MR. LYLES: I think Judge Toal said that the Court in South Carolina had been steadfast in holding that privity of contract is not a requirement for implied warranty claim. And they cited the J.K.T. Hardwick case in which the court said, "We seek to still all whispers of a requirement of privity of contract to assert an implied warrant of habitability ..." Excuse me. "... an implied warranty claim," generally speaking. And so that's the basis of my request that you not sign that order.

THE COURT: Mr. Imhoff?

MR. IMHOFF: Your Honor, interestingly, I don't disagree with Mr. Lyles. We're just talking past each other. What he's talking about, Your Honor, is whether a

subsequent purchaser could sue the seller.

THE COURT: Oh, gracious. By the way, I'm not so quick in memory. In fact, I can't even remember where my car's parked. But I knew that certain cases came to mind when you mentioned the motion. The reason for that is apparently I granted an order, an order granting partial summary judgment, by I.M.K. Development Company and Marick Home Builders, L.L.C., and Rick Thoennes ...

MR. IMHOFF: Yes, Your Honor.

THE COURT: ... against the plaintiff on October the 16th. And apparently, it just has not been filed as yet.

MR. IMHOFF: Yes, Your Honor.

THE COURT: I apologize.

MR. IMHOFF: You're hearing plaintiffs' motion to reconsider your decision.

THE COURT: Oh.

MR. IMHOFF: That's what Mr. Lyles is ---

THE COURT: Well, that's easy enough.

MR. LYLES: Well, I had no idea the order had been signed. So what I had done is asked you not to sign it. But apparently that didn't ---

THE COURT: Well, apparently it came after it was signed. I'm not sure why I would have signed it if there was some -- what is it? -- reason not to. But

apparently the reason that you proposed was not enough to get me to go back and unsign it.

MR. LYLES: Okay.

THE COURT: So, again, I will hear this as a 59 motion, and I think it's -- I'll grant that it's timely filed. But I'd also find that I'm satisfied that there's no error of law or fact and that all matters have been considered after due and complete consideration. And I thank you, sir. But the thing is your Rule 59 will also be denied.

MR. LYLES: Yes, sir. Thank you.

THE COURT: Okay. All right. Anything else? By the way, thank you for helping me.

The last, what was it -- within the last month I've been in trial almost every week. So I hope you will forgive me and grant me a little patience or whatever as not being up-to-date on everything.

All right. Anything else? Any other outstanding or pending motions?

Yes, ma'am?

MS. BROWN: Your Honor, Cynthia Brown for I.M.K., I.M.K., Cox and Lollis. And I have a pending order -- a motion to reconsider your order that was filed with regards to Marick's order granting summary judgment on the cross-claims by my clients. And I submitted the

motion to reconsider. It mostly is for clarification of the order because of some of those statements that were made in the order were inaccurate. I'm not sure if Mr. Imhoff has an objection to my motion.

MR. IMHOFF: I don't, Your Honor. We just need to rewrite the order.

THE COURT: That'll be fine, yeah.

MS. BROWN: Okay. Would you like me to submit a proposed order?

THE COURT: Well, let me suggest that the one who wants the order done does the order.

MS. BROWN: Okay. All right.

THE COURT: And if he agrees, that's fine. All he'll do -- what is it? -- is just show the Court that he consents.

MS. BROWN: Okay. I'll take care of it.

THE COURT: Yes, ma'am. Thank you.

MS. BROWN: And the only other one -- concern that I have is related to bankruptcy filing with Mr. Seckinger.

THE COURT: Now, that's the gorilla that's in the room.

MS. BROWN: Yes, Your Honor.

THE COURT: Has anybody addressed the gorilla? Now, I'm not talking on a personal basis, but -- what is

it? -- just the question.

MS. BROWN: I appear to be a sacrificial lamb. Your Honor, I did a little bit of research over the weekend. I do not believe that it stays the entire case.

THE COURT: Well, first of all -- now, again, you know, obviously bankruptcy is not something that our state courts are involved in. I think the Constitution takes care of that. But I do, of course -- what is it? -- have parties who are involved in bankruptcy. And the only thing the Court has gotten on this bankruptcy is a fax or email about somebody having allegedly filed a bankruptcy proceeding. But I have no statement there is a pending -- which is the usual course. Am I wrong? I mean, y'all are all out there, and y'all are real lawyers. So I mean, y'all probably could practice in federal court as well as state, but I can only do my part in the state court. Don't you usually have to have some sort of statement from the Court that there is a bankruptcy proceeding pending or a matter?

MS. BROWN: Your Honor, Ed Buckley for Jose Jaramillo. I don't think that's true. I think the bankruptcy filing automatically acts ---

THE COURT: Well, how do we know it's a filing?

MR. BUCKLEY: --- whether this Court has notice or not. But I agree with Ms. Brown that the only matters

that are stayed are the claims against the person who filed bankruptcy. All other matters can go forward.

MS. BROWN: Well, and Mr. Buckley, my knowledge of bankruptcy is probably the most limited in this room. However, I do know from reading the 362 stay, upon filing of the bankruptcy, the way the statute reads in plain meaning it says, the commencement -- okay. I'm sorry. § 11 USC 362(a) creates a stay of, number one, "the commencement or continuation, including the issuance or employment of process of a judicial, administrative or other actionable proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that are both before the commencement of the case under this title." The way that I read that statute, it is an automatic stay. And by saying that, it means that it makes us seek relief from the stay to continue.

THE COURT: But my point is that I'm here in South Carolina in a state court. And I've got an action that involves -- what is it? -- multiple parties. It was then -- and I think I was the idiot that -- what is it? -- determined it was complex so I'd have to take it and keep it. I can't, you know, slough it off to somebody else. But the fact is I have nothing. I'm not -- I

could walk in the federal courthouse and say, you know, I'm a circuit judge in South Carolina. And let me file something as a circuit judge in South Carolina. They'd probably, what standing do you have? What standing do I have to stop everything in South Carolina Circuit Courts or trial courts because somebody sends an email that says that? Somehow I think our system does require notice of some sort. I mean, we can't commence an action without service -- I mean, filing and service. We can stop an action by a mere -- and, again, I understood from his email that he had an attorney, a bankruptcy attorney. And you're tell me bankruptcy attorneys don't -- what is it? -- send notices to litigants in pending matters that that action will be stayed against their attorney -- I mean, against their client?

MS. BROWN: Your Honor, I ---

THE COURT: Mr. Buckley, I'd like to hear from you.

MR. BUCKLEY: It's actually a crime for Mr. Lyles to try to proceed against that bankruptcy debtor whether he knows about the bankruptcy or not. Once he's been notified that there is a pending bankruptcy ---

THE COURT: Well, I'm not -- again, Mr. Buckley, my concern is we lost a war trying to decide who was in charge of litigation and bankruptcy, for example.

And I don't want to fight the civil war over again. When somebody tells me the federal has authority and has jurisdiction and all of that, all I ask is they tell me that. Otherwise, I'm putting you all out in jeopardy or whatever if Mr. Lyles doesn't, you know, respond and it turns out the fellow was not -- what is it? -- in bankruptcy.

MR. BUCKLEY: I just want you to understand from Jose Jaramillo's perspective, nothing is stayed except the claims against the bankrupt debtor.

MR. LYLES: And, Your Honor ---

THE COURT: All right. So it's my understanding y'all are all going to defend me when -- what is it? -- Judge Cain pulls me into federal court. Well, I guess it wouldn't be Judge Cain. It would be -- what is it? -- one of the bankruptcy judges -- for ignoring an email. You're all going to say, well, we were there that day when he put his whole -- what is it -- judicial life on the line and said that he's going to let this matter go forward even though he had an email.

MR. LYLES: Your Honor, just to show that I've got your back.

THE COURT: Oh, right.

MR. LYLES: On Friday ---

THE COURT: After all I've done you for?

MR. LYLES: On Friday upon hearing this, I told the Court we will not proceed in our claims against Mr. Seckinger. So the claims -- as far as I'm concerned, the stay is in effect as it relates to our claims against him, and we're not proceeding with that.

THE COURT: Well, I understand there are some cross-claims and things of that nature, or are they?

MR. BELCHER: Here's my concern with that, Your Honor.

THE COURT: Yes, sir.

MR. BELCHER: Alan Belcher for Bostic. That you had dismissed all of those claims for failure to prosecute or for otherwise failure to appear at the last hearing. That was my recollection. Which you did that from the bench. But I think there's some issue with the timing of the entry of your order in the court's record that this bankruptcy filing may have been made in the interim. I just want to make sure that your order from the bench is good so that we don't -- so that they don't come back -- the Trustee in bankruptcy doesn't come back and sue Bostic on these cross-claims.

THE COURT: Well, forgive me. Again, that's exactly what I wanted too. But I'm told now I don't need to do it. And that's why -- what is it? -- I have just -- what is it? -- sworn you all in as -- what is it? --

witnesses that it's not. Now, what -- that what has been done until now does not affect the proceedings here. I can't give you that assurance. I'm not a federal judge. I'm not a bankruptcy judge.

MR. IMHOFF: Your Honor, if I may, as to Marick? I think there are only, if they exist at all, equitable indemnity claims from Seckinger versus my client. If I have any claims against Seckinger, Marick has any claims against Seckinger, we dismissed them.

THE COURT: All right.

MR. IMHOFF: We're not bringing them.

THE COURT: Well, just forgive me. And maybe I'm making too much of it because why should I worry about what happens. It's all -- y'all are all ready to go, so I'm more than ready to get rid of it. The idea, though, is that it is unusual that I am not going to -- perhaps this case, because I've got so many good lawyers that are going to defend me on it, I'll let it go. But I hope that the bankruptcy bar and those litigants who find themselves in bankruptcy don't think that they can send emails to judges in the state courts -- I don't know. I guess, magistrate might be governed by an email -- and that would stay whole proceedings. And obviously, that was his intent. Because otherwise if he -- he sent it to me. I guess he copied all of y'all. I don't know. Did

everybody get a copy of the email?

MR. LYLES: We got it from the clerk. He didn't send it to any of us.

THE COURT: Oh, that's right. I forgot. He didn't even consider any of you.

MR. LYLES: I did talk to him this weekend, and I know he has no intention of being here.

THE COURT: Well, he didn't have any intention of being here before, and that's why his actions were dismissed.

MR. IMHOFF: Right.

MS. BROWN: Judge Macaulay, let me throw out one thing. I understand that Mr. Lyles has said that he won't pursue those claims. My sole concern with regards to my clients is that if it comes out of bankruptcy and we haven't done this the right way, they're going to be exposed again to another situation. But I think that could be solved by Mr. Lyles taking a 40(j) on the record.

THE COURT: He can't take a 40(j) without the other party's consent.

MR. LYLES: 40(j) as to what?

MS. BROWN: Seckinger's claims.

THE COURT: All right. So you have stated pretty much what the Court's concern is. It's not so

much my -- what is it? -- feelings that -- what is it? -- I'm inferior to an email from a bankruptcy client. Not even an attorney. But the fact is I'm put in jeopardy if there are any irregularities in the bankruptcy filing because at least the rule, as you read or advised me -- what is it? -- does require a filing. Not just a I'm going to or -- what is it? -- I did. But an actual something that has a stamp on it that says this has been done. So if y'all are ready to proceed, I am. But you do so at your own peril.

Mr. Buckley, you seem to be ---

MR. BUCKLEY: We can handle it.

THE COURT: All right. Very good. All right. Either speak now or forever because this matter is going forward because it's been pending long enough. I think if we can't resolve it that the parties remain unresolved.

MS. BROWN: Thank you, Your Honor.

THE COURT: Thank you, ma'am.

All right. Anything else?

MR. IMHOFF: I'm still thinking about whether I'm protected or not, Your Honor. But, yeah, we do have motions in limine if ---

THE COURT: Oh, yeah. I'm going to take those up. Those are trial matters.

MR. IMHOFF: Okay.

THE COURT: I'm going to take a break, and then I'm going to take up that. But I wanted to get all of these other things because obviously there's a lot of things out there. And I do apologize and beg your indulgence because I have been somewhat otherwise involved. That's why I didn't sign orders and didn't file orders I had signed.

MR. IMHOFF: I don't want to reopen this ---

THE COURT: All right.

MR. IMHOFF: --- but may I just say for the record with the bankruptcy thing that I think Marick and my clients are protected because Mr. Lyles has dismissed his claims against Seckinger. And Seckinger's claims against my client, I believe, are on the equitable indemnity. And so he can't recover against me. I don't have any claims against him. I mean, isn't that how everybody else looks at that?

MR. LYLES: Not Cynthia.

THE COURT: Yeah, that's the first time I ever heard -- what is it? -- an attorney ask another attorney or attorneys for an advisory opinion. There's a reason judges don't do it because you don't know where that dog's going to come from the next time. All right.

All right. Is there anything else though on these

motions that have been outstanding?

(No response)

THE COURT: All right. So we are ready to go through the pretrial questions about voir dire and motions in limine.

Okay. Well, let's take a short break, and then we'll come back and do that. Now, I understand the jury in this case is coming in at two.

Is that right, Madam Clerk?

THE CLERK: That is correct, yes, sir.

THE COURT: Very good. Thank you. All right. Let's stand at ease.

Oh, by the way, also, the exhibits. Now, if you have -- I notice I've been furnished with schedules of exhibits. But be sure that the clerk has those and she's either marked them or whatever, you know, that she needs before we begin. Do you understand? In other words, if you've got exhibits that you can, the parties can agree on as far as authenticity and things of that nature, go ahead and have them marked for identification, either plaintiffs or defendant or whatever, as the court reporter would suggest. And then, of course, if you can agree on them, in other words no further proof needs to be -- or proffer needs to be made, then let's go ahead and agree on them. Then you can use them in your opening

statements or everybody can use the same exhibits. All right. Any questions? Very good.

We'll stand at ease. Let's say about -- at least fifteen minutes and we'll be back at twelve.

(WHEREUPON, court stood at recess for a short break.)

THE COURT: Looking at one of the first motions in limine as to the Defendant Ludwick, as I understand it, that matter has been resolved?

MR. LYLES: Yes, sir.

THE COURT: Mr. Mack?

MR. WOODS: Your Honor, Mr. Mack's not here. I'm in his firm. And he's told me that that ---

THE COURT: All right. So that's no longer necessary?

MR. WOODS: No longer necessary.

THE COURT: All right. Very good. Give the court reporter your name.

MR. WOODS: Bill Woods.

THE COURT: Thank you, sir. All right.

All right. Another one is as to Jose Nino. All right. As I understand it, there are three areas of interest that the defendant Jose Nino seeks to have limited settlement or negotiations, other residences or projects in which Mr. Nino has performed work and

insurance. All right. Mr. ---

MR. MARTIN: Curtis Martin for Jose Nino, Judge. As you said, they're very straightforward. Settlement discussions, investigation of other residences by Mr. Nino and any discussions regarding insurance coverage.

THE COURT: All right. Mr. Lyles?

MR. LYLES: I don't have any opposition to that, Your Honor.

THE COURT: All right. So in other words -- and one thing I did notice -- and I appreciate you doing that, Mr. Martin -- is that in the event that you even see -- or anybody who is participating in the trial of the case sees a reason or maybe a call to go into any of those matters with Mr. Nino -- about Mr. Nino's situation, that you should bring it to the Court's attention, let the Court address it prior to it being published or taken up before the jury. Any question about that, Mr. Lyles?

MR. LYLES: No, sir.

THE COURT: Anyone else? All right. So your motion in limine is granted. Now, I might note that, of course, a motion in limine has to be renewed at the time of trial. So in other words, it's also up to you to anticipate if you think something's going to violate the

Court's preliminary ruling on the testimony.

MR. MARTIN: Understood. Thank you.

THE COURT: Very good. Thank you.

All right. The next one is Mr. Imhoff's. Again, as to settlements and negotiations, matters affecting phase two, reference to insurance and Trehel estimates or Able estimates or John Folk estimates.

All right. Mr. Imhoff?

MR. IMHOFF: Yes, Your Honor. I believe that the reference to insurance settlement negotiations, I think those are both agreed to by plaintiff, Your Honor.

THE COURT: All right. Any objection to that?

MR. LYLES: The settlement, are you talking about phase two? Did you just mention phase two?

MR. IMHOFF: I'm talking all settlement agreements.

MR. LYLES: Yeah, settlement agreements, Your Honor.

THE COURT: All right. Settlement agreements and insurance. That's one and three on his motion.

MR. LYLES: Yes, sir.

THE COURT: All right. And how about construction of phase two?

MR. IMHOFF: Your Honor, we just had a discussion about that. I think we have mostly an

agreement on that. My motion is to keep any discussion of phase two out of the trial of this case as it would paint Marick or be used to paint Marick as incompetent or deficient or defective in phase one. In other words, if we're going to be bifurcating the trial, I see them as two completely different trials. Obviously, we're going to have to discuss at some point some phase two in some capacity. The jury's just going to ---

THE COURT: Oh, I understand.

MR. IMHOFF: But I don't want Mr. Hodgin on the stand saying, well, it's so bad in phase two that I can assume that it's that bad in phase one. And I don't know that the plaintiff intends to do that. He's told me he doesn't. But I would like that motion.

THE COURT: All right. How about the Trehel and Able and John Folk estimates?

MR. IMHOFF: Your Honor, the Trehel estimate is Plaintiffs' -- I think it's somewhere around a six million dollar estimate to repair this. And Bob White, who is the H.O.A. representative, a 30(b)(6) deponent, has testified that they don't intend to use Trehel to do the work out there. That John Folk, himself, I believe has testified that he doesn't think he's going to get the job. And then we know that our expert, who's giving a different price, is actually out on site doing the repair

work, Your Honor. So we believe it's a misrepresentation to the ---

THE COURT: How about Able?

MR. IMHOFF: I'm sorry?

THE COURT: How about Able?

MR. IMHOFF: I think Able Constructors then became Trehel or John Folk left Able Constructors and went to Trehel, but it's all the same estimate, I believe.

THE COURT: Is that correct, Mr. Lyles?

MR. LYLES: Yeah, John Folk was with Able when he did the first estimate. Now he is with Trehel.

THE COURT: With Trehel. Okay. So in other words, we're talking about the same testimony?

MR. LYLES: Yes, sir.

THE COURT: The same estimate. All right.

MR. IMHOFF: All right. So basically the motion is that it would be a misrepresentation to tell the jury that they're going to use an estimate and numbers that they're clearly not going to use by admission, by testimony, and by the fact that they've hired our expert to go out there and actually start repairing the units. And his number, our expert, has a very different number, as you can imagine, from the Trehel estimate. So there isn't any basis to ---

THE COURT: Well, what I was going to say, though, I think that the estimates would have to be proffered before the amounts or anything would come in. In other words, let's just do this. Do you have other testimony as far as the estimates as to repair or restore?

MR. LYLES: Well, a couple of things. First of all, I don't think that there is any requirement in offering an estimate that the owners represent that they have agreed to contract with that estimator. These people have expert opinions coming in from people my folks have no intention of contracting with. An estimate's an estimate. That would go to the weight of the estimate and so on and so forth.

And number two, we have now made ---

THE COURT: Well, don't you think -- I mean, you just wouldn't take somebody off the street. Wouldn't you have to have somebody that has, you know, some proffer ---

MR. LYLES: Yes.

THE COURT: --- you'd say that -- what is it ---

MR. LYLES: Well, Trehel is definitely capable and competent. And I think what Mr. White testified to is -- and this is not Mr. White's obligation. This is

going to be a board decision that's going to be made about the repair contractor. And I think that Mr. Furnari will testify that this association fully intends to give Trehel the opportunity to do this work when this case is over. And they have given Trehel the opportunity to go out and do repair work, which they've paid Trehel to do. They've asked Trehel to do emergency repair work.

THE COURT: Well, I will treat it the same as I would all motions in limine. As far as the estimates, before any testimony comes in, you might want to proffer it outside the jury's hearing. In other words, just tell me you have a matter to take up with the Court.

MR. LYLES: Yes, sir.

THE COURT: And then I'll -- what is it? -- let them take a break and I'll hear you. And we'll find out if there is any -- it does kind of concern me that -- and then, of course, I know Trehel very well. But -- what is it? -- it somewhat opens the door to opinion testimony coming in based on lack of validation or whatever. Validation, I say, which means that we limit particular opinion testimony as to damages and values, even though I don't agree with it, to Judge Ness' rule about only landowners can testify to the value and damages to their property without any sort of basis. And first you have to lay -- before you hear the fee, you have to lay the

foundation. And that's what I would suggest in this case, that if you're going to use a witness from Trehel or I guess -- and all three of them are now connected -- then -- what is it? -- let's proffer it before the Court. Because otherwise you might have somebody coming in and testifying to a windshield appraisal. And that wouldn't be very good.

MR. LYLES: Well, I think we'll develop plenty of foundation about the scope of repair that's necessary.

THE COURT: Well, there we go. That's what you want to do. And the familiarity and -- what is it? -- anything else that might go to the credibility.

MR. LYLES: Yes, sir.

THE COURT: In other words, you don't just -- what is it? -- give somebody the opportunity to come in and tell me what they think. That's politics. That's not justice.

MR. LYLES: That was never our intention. And we fully intend to call the defense pricing expert, even though he hasn't given an updated or a complete estimate.

THE COURT: Well, then you can ask him why. That would be a good idea.

MR. LYLES: And there's not actually a wide disparity between his estimate and the Trehel estimate.

THE COURT: That sounds so compelling we might

as well just go home right now.

MR. LYLES: Well, it would suit me.

THE COURT: All right. Okay. Is there anything else in your -- let's see. We took care of the insurance and negotiations or offers for settlement. Phase two, now, that's a delicate matter because obviously anybody -- once the case is developed, it's going to be clear that it only applies to a portion of the development. And you're not proposing that they -- what is it? -- put up a curtain between the two phases? In other words, I'm being facetious again.

By the way, my law clerk's given me a tee shirt that says the sarcasm is free. So don't be offended. It happens to all of you. All right.

MR. IMHOFF: No curtain, Your Honor. Just how it's used or how it's discussed. We don't want it to color the jury's opinion ---

THE COURT: Well, you know, that's a two-edged sword. In other words, it's the type of thing I would perhaps want to avoid regardless of which side you're on. The plaintiff to suggest -- what is it? -- you know, phase two, you know, is also there. But we're going to have to deal with that later, which suggests that, of course, that your client -- I mean, whoever the other side is on phase two has some liability. But, however,

if you bring it up, it sort of admits that there is a problem. I would somehow suggest that -- in fact, I would even be prepared to instruct the jury not to consider anything other than what's at issue here. I mean, it's a -- again, you have to forgive my limited experience, but I've done a little condemnation work. And we had -- what is it? -- a whole series of parcels on a project. And we were able to avoid talking about one parcel in connection with another parcel because it was -- even though it was the same project and everything else and the jury knew that -- but without going into it.

MR. LYLES: One thought I had in discussing it with these guys before we started this phase of the proceedings was if phase two is out there, it's a pending action. It's never been our intention to try to establish liability for phase one because of defects in phase two. So I don't think that's an issue.

THE COURT: Because you have different contractors and everything else.

MR. LYLES: Yes, sir.

THE COURT: That's why I bifurcated it.

MR. LESTER: Yes, sir. Which leaves me ---

THE COURT: So, I mean, somehow I think you don't need to mention it. And I usually don't permit jurors to ask questions. And if they do have a question,

I usually ask them to submit it and then let the Court instruct it.

MR. LYLES: But there are some documents that don't relate to defects, establishing the defects, though, that I want to use that to refer to phase two. So what I had suggested to these lawyers is that perhaps you could tell the jury that this is a trial of phase one. This is not a trial of the phase two aspect of the case, that that is still pending.

THE COURT: Well, if it comes up, that's exactly what I'll do, but I would try to avoid it as much as possible, you know.

MR. LYLES: Yes, sir.

THE COURT: And it depends on how it comes up as to how my instructions will be to disregard. But my instructions will be to disregard.

MR. LYLES: Yes, sir.

THE COURT: I mean, in other words, if -- well, let's leave it at that. I will have to respond, but I do not think that it is relevant to phase one. I've already ruled that. So I want to be consistent with my prior ruling.

MR. LYLES: Yes, sir.

THE COURT: All right. So let me see. That takes -- well, all of them, as I say, will depend on

being -- if you're going to anticipate any of the matters that you object to being addressed, either from the plaintiffs or the defendants, that you give the Court a heads-up. So, I mean, don't you blurt it out and don't you -- what is it? -- invite it.

MR. IMHOFF: I understand, Your Honor. And that goes for the witnesses and experts also, Your Honor?

THE COURT: Pardon?

MR. IMHOFF: That would go for witnesses and experts?

THE COURT: Well, I would think that -- what is it? -- you do not call a witness that you do not have some -- what is it? -- influence with. And one of those influences is you don't prejudice my case by saying something you're not supposed to. Which was -- mistrials are a lot easier to get around than -- what is it? -- having to sit through two weeks of a lengthy trial.

By the way, as I told you earlier, I'm going to be out of here in a year, so I might be able to dodge you for twelve months.

All right. Let's see. We've got one more, I think. Now, this is -- no. This is -- let's see. I think that was the one I just did. All right. Now, this is plaintiffs' motion in limine, settlements and negotiations. Apparently, y'all are in agreement on

that.

American civil justice system or lawsuits in general. Now, I thought the Court was supposed to talk about the justice systems and lawsuits. I didn't know that we were going to -- you were going to have an expert here to tell us what to do.

MR. LYLES: No, sir, I don't. What I am trying to avoid is editorializing from anybody about the inadequacies of the system or the unfairness of the system or the opportunistic nature of the system or otherwise being critical of the American justice system.

THE COURT: Mr. Imhoff or other defendants? Does anybody want to go into the fact that -- what is it? -- our system of justice is not perfect? I mean, I might even take that as a personal affront.

MR. BUCKLEY: I'm not going to mention anything about Mr. Lyles' brief, Your Honor.

THE COURT: All right. That's not a proper topic, I think -- what is it. I'll say this -- what is it? -- I used to be an attorney for a hospital. And my worst problems with the hospital was that the doctors would like to talk about each other. And the problem with that was that whoever they talked about, whoever they were talking to, the public, in other words, didn't know which doctor it was. They just went over there.

The doctor would say the other doctor was not a good doctor. And so it reflects on everybody. So when we start undermining the confidence of the public in our system of justice, then we all suffer the consequences. And I would suggest we don't need to do that.

All right. Failure to call available witnesses. Now, that depends.

MR. LYLES: Simply avoiding any insinuation that our failure to call a witness that another party could also have called ---

THE COURT: Well, I think the rule is fairly clear, isn't it, that you have to have control over the ---

MR. LYLES: Yes, sir.

THE COURT: I mean, I don't think you can say the failure to call the President of the United States as a witness or the former Secretary of State.

MR. LYLES: I agree.

THE COURT: All right. Any question about that? I mean, anybody have a question that if you want to have a charge on failure to call -- and that's where it would come. It would come in in the instruction of the law phase, not -- what is it? -- in argument unless you get an instruction on the law. Then it would be applicable. But I -- because otherwise, if the Court

hasn't ruled that such a comment would be appropriate, meaning relevant and material, then -- what is it? -- it wouldn't be supported by the evidence or the law. So let's don't -- what is it? -- do anything to damage the law or the evidence.

Testimony unavailable. Well, now, I don't exactly know -- how would you get in testimony of a witness merely because he's unavailable, unless it's an exception to the hearsay rule?

MR. LYLES: I think, Your Honor, that I don't anticipate that being a problem. I just don't want there to be any insinuation in counsels' argument about what a witness who did not testify might have said.

THE COURT: Y'all are so entertaining. There is a Sherlock Holmes mystery about the dog that didn't bark. And that was the element that solved the mystery. So I think that sometimes you can talk about what is not done, but it would only have to be in the area of a Sherlock Holmes mystery. All right. I don't know. Was it -- with the dog, it would have to be -- what is it? -- The Hound of Baskervilles or something. I know the fellow was hiding out there, and the dog didn't bark because he knew who the fellow was. But anyway, I can't remember.

MR. LYLES: Your Honor, we'll be happy to

withdraw the last three.

THE COURT: Please do. Or otherwise you'll have to listen to me, wouldn't you?

All right. Personal belief of a counsel, hostile witness. All right. Now, hostile, that's governed by the rule. It's not only hostile, but it's adverse. In other words, if a witness obviously is identified with another side, even though not a party, of course, that would be the type of thing that has to be taken up prior to cross-examining your own witness. Isn't that the only area it comes up is with cross-examination?

MR. LYLES: Yes, sir.

THE COURT: And you say five, six, and seven are withdrawn?

MR. LYLES: Yes, sir, we withdraw those.

THE COURT: All right. Now, have y'all looked at each other's requests for voir dire?

MR. LYLES: Yes.

THE COURT: I mean, the thing is, I want to -- I'd like to have some guidance if you -- and I need witness lists too. Have we got those? Now, everybody has submitted a witness list that they want the jury inquired about?

MR. LYLES: I think ...

Bo, didn't we submit a master witness list that

included ---

THE COURT: Perfect. That's exactly what I was looking for.

MR. GRESH: Yes, sir.

MR. LYLES: I don't know if it includes, Alan, your late witness, your Oconee County guy.

MR. BELCHER: I think we included that on our supplemental.

MR. LYLES: I just don't know if it's on my master list.

MR. BELCHER: It may not be on the master from Bostic -- Alan Belcher for Bostic Construction. We did submit a witness list that had two representatives from the Oconee County building authority that may not be on Mr. Lyles'.

MR. LYLES: Who are they so we can check?

MR. BELCHER: I can't recall their names.

THE COURT: Well, let's do find the names. I mean, we've got some time before we -- the jury's not going to be in until two.

MR. BELCHER: Yes, sir.

THE COURT: Well, let me ask you, we should have -- we should be able -- well, they've already been qualified generally, so this will be a case specific qualification, is it not, Mr. Lyles?

MR. LYLES: The fellow downstairs told me that our jury was coming in at two, but this jury ---

THE COURT: Oh, wait a minute. All right. So it's a different jury. Is that right, Madam Clerk?

THE CLERK: That is correct.

THE COURT: All right. So we've got to generally qualify them as well as case specific? All right. So that -- and so we do have some time. But between now and the time we get to the case specific, do look over your jury lists and get the names. All right. And let's ...

MR. LYLES: Bo, we can go over that during the break before the jury gets here, go over that master list. And I'm assuming that we can take out people on that list that nobody's going to call. Because I think what Holly did was just put down a list of everybody's.

THE COURT: Well, do that if you would, please.

MR. LYLES: Yes, sir.

THE COURT: Is there any problem with that? I mean, I don't want to interfere with your lunch, but -- what it is -- no use asking people about people that are not -- and let's also face the fact this is a small county. And you're going to -- what is it? -- the more names you have down there, the more people that are going to be familiar. So, I mean, that can take forever. I

mean, there's a reason for that. All right.

All right. I'm starting with the plaintiffs' request for voir dire. All right. One -- and this is the way I usually do for those of you who have not been with me before. One and two, I usually -- gosh, I don't know how we're going to do this with as many plaintiffs as we have. Except I can do it -- since we don't have the twenty-six individuals now in addition, I think I can just ask, Mr. Lyles, when I call for the plaintiff that you will, if any of your plaintiffs are in the courtroom or representatives of the plaintiffs like the homeowners association, that they stand and look upon the jury. And, of course, you introduce yourself and your law firm or your practice.

MR. LYLES: Yes, sir.

THE COURT: In the same way, now, I need probably -- and I do need someone to go through the defendants to find out which ones are still involved. And I'll do the same thing. I'll call the names of the defendants that are still involved and ask the attorneys to stand. And if they have a representative in the courtroom, to ask them to stand. In other words, the attorneys introduce their clients and themselves. In other words, their law practices. And that's how I take care of the -- do you know any of the lawyers

participating in this action? Actually, my question is, "Has any of the lawyers or attorneys or their law practices ever employed or represented them, any members of the jury panel or their immediate family?" And then the same thing. "Any members of your immediate family know of any parties participating in this action?" So that's how the introduction will work. And then the same thing with the witness list. Is there witnesses -- when the names are called if they're in the courtroom, if they'd stand.

All right. I'm looking again at the plaintiffs' four. "Are you familiar with the residence complex known as Stoneledge at Lake Keowee?" How about this? "If so, in what way?" Because there might be somebody lives there or -- what is it? -- they're a member of the family that sold a property or something like that. Then, of course, the other question is going to be, "Can you be fair and impartial?"

All right. Number five, any objection? It's about lawsuits.

(No response)

THE COURT: All right. How about number six? That's the one about complaint against bad experience with a contractor or builder? Anybody? Number six?

(No response)

THE COURT: All right. Hearing none, I'll ask it. All right. Number seven, if you'll forgive me, I would put it more in a sort of a general way. "Have you or a member of your family ever been involved in the construction industry or business?"

MR. LYLES: Okay.

THE COURT: All right. Eight, again, I would at the end of the question, "Have you or a member of your family ever lived in or owned a condominium or townhouse?" And if they answer yes, then I'd ask you, "Would that interfere with your ability to give both the plaintiff and defendant a fair and impartial trial?" Any objection?

(No response)

THE COURT: All right. That's what I'll do.

All right. "Have you or a family member ever made a claim for property damage?"

MR. LYLES: Judge, I'd suggest that we limit that to a building or structure.

THE COURT: Well, that's what I was thinking. Like I told you, I've had some experience with condemnations and -- what is it? -- automobile accidents and things like that, so ---

MR. LYLES: Building or structure.

MR. BELCHER: Your Honor, that gets a little

close to insurance in my estimation.

THE COURT: Good point.

MR. BELCHER: I don't want somebody to sit back there and go into a diatribe about how much they hate their insurance companies in front of the venire and possibly ---

THE COURT: You don't think somebody would say, "Well, they were on my side," or "I'm in good hands"?

MR. BELCHER: I doubt it.

THE COURT: All right.

MR. BELCHER: In Cincinnati.

THE COURT: Let's see. I think we have -- what is it? -- don't we have one here about a lawsuit?

MR. LYLES: Yes, sir, we do.

THE COURT: Let's do that. I mean, otherwise it could be so broad it could be anything. I've had a laundry -- what is it? -- beat up on my buttons and all that. All right. We'll not do that one.

Nine, all right, about punitive damages. First of all, I think the final clause is perhaps inappropriate for voir dire even. If warranted by the facts of this case, I think that's something that has to be determined by the facts of the case if the punitive damages are charged. Just, "Is there anyone on the jury panel opposed to awarding of punitive damages?"

All right, Mr. Imhoff?

MR. IMHOFF: I'll object to that, Your Honor. I don't think it should be in there at all. Are we going to explain what punitive damages are to the jury?

THE COURT: Yeah, eventually.

MR. IMHOFF: I mean -- I'm sorry. To the jury pool.

THE COURT: What?

MR. IMHOFF: To the jury pool?

THE COURT: Well, that's just it. It's -- I don't know. That's why I'm asking you.

MR. IMHOFF: I think that would be necessary for that question to be asked. Otherwise, I don't think it should be asked. It also implies that this is a punitive damages case.

THE COURT: I think that's -- oh, now we hear from you. All right. All right. Follow that racket. You got on your feet in a hurry.

MR. GRESH: Yes, sir. John Gresh on behalf of Bostic. I believe it somehow asks the panel to prejudge the issue. I'd say applicability.

THE COURT: All right. I think you're right on that. Now, just remember, the voir dire doesn't want to exclude anyone, but it certainly -- what is it? -- doesn't want -- I think we have a term when I try capital

cases of staking out witnesses, that we get their views on something and -- what is it? -- if they either hear it or don't hear it, then -- what is it? -- that affects their ultimate judgments. So we just don't stake them out as to a particular issue that might be involved in a case.

Now, anything else? Are those the only ones? No. Here we go.

All right. Number one -- now, are these the lawyers who are going to be involved: Robert T. Lyles, Lawrence B. Orr, Francis M. Mack, Franklin J. Smith? Now, of course, when I recognize you, that you will introduce anybody else that might be assisting you in the trial of the case so we'll have them all.

MR. LYLES: That sounds like a dated list.

THE COURT: It's updated or dated?

MR. LYLES: That's an old list.

THE COURT: All right. Well, now, tell me who will be involved.

MR. BELCHER: Which document are you reading from, Your Honor?

THE COURT: I'm sorry. Defendant S.D.I. Funding's requests.

MR. BELCHER: They're no longer a party, so we don't need that.

THE COURT: Bless your heart. All right. Jose Nino, is he out? All right. That's -- I don't know who it is. All right.

Yes, sir?

MR. ANDERSON: Good morning, Your Honor. John Anderson for Jose Nino. Did you have a question on our ---

THE COURT: Yeah. I just wanted to be sure you were still involved.

MR. ANDERSON: Yes, sir.

THE COURT: I mean, in other words, the one I just went through obviously was not. And I didn't need to go through his.

MR. ANDERSON: Yes, sir.

THE COURT: All right.

MR. ANDERSON: Thank you.

THE COURT: Well, your number one I'm going to cover. All right. I have Robert Lyles, Jonathan J. Anderson, William B. Woods, Alan R. Belcher, Lawrence B. Orr, Chad E. Poteat, Edward Buckley, David Yokel. Is Mr. Yokel here?

MR. LYLES: No, sir.

THE COURT: Is he still in the case?

MR. LYLES: No, sir.

THE COURT: Who is that?

MR. BUCKLEY: Lawrence Orr and Chad Poteat ...

THE COURT: Yes, sir.

MR. BUCKLEY: ... are out.

THE COURT: But they're here.

MR. BUCKLEY: They're here.

THE COURT: And they're going to participate?

MR. BUCKLEY: No, sir.

MR. POTEAT: No, Your Honor. We're one of the ones -- Chad Poteat on behalf of Eason Construction. We're one of the ones that you're going to approve a settlement on.

THE COURT: All right. So I need to put y'all on the record on your settlement?

MR. POTEAT: Yes, sir.

THE COURT: What about Roy R. Hemphill?

MR. HEMPHILL: Yes, Your Honor.

THE COURT: Okay. There you are. All right. "Are you or any member of your family or friends related by blood or marriage?" All right. What do you say about number two? "Are you or any member of your family had any contact, social or business, with homeowners of Stoneledge?" All right.

MR. LYLES: That's the similar to the question that I had asked. I don't know if you want to ask it again. But you had, I think, limited to -- in my voir

dire, I asked if anybody was familiar with Stoneledge. And you said, "And if so, how?"

THE COURT: Okay.

MR. LYLES: So I didn't know.

THE COURT: All right. That's exactly why I go over these things with you. You've got better memories than I do.

MR. LYLES: Do you need more?

MR. ANDERSON: No.

Your Honor, we're happy as long as we can identify the people on the jury who might be living there now.

THE COURT: Right.

Three apparently has to do with potential witnesses?

MR. ANDERSON: That is correct, Your Honor.

THE COURT: All right. So they would be covered in the master list that I have and that you will go over during lunch?

MR. ANDERSON: That is correct, Your Honor.

THE COURT: Okay. So I don't need to do any of those.

And number four is covered. Number five, I think is covered by four. I'm not going to ask them what type of cases they have.

Now, what is the Department of Labor, Licensing and Regulation? What does that have to do with this?

MR. ANDERSON: Your Honor, there's a procedure that they could file complaints against contractors without actually bringing any type of insurance claim or a lawsuit. And if they have done that, we would like to know that.

THE COURT: Well, isn't it covered by the other one that I was going to ask that's not limited to L.L.R.?

MR. ANDERSON: Your Honor, our concern is, is that it's a different type of complaint and they may not include it within the manner in which you were asking the other one.

THE COURT: Well, I was going to ask, "Have you made a complaint against or had a bad experience with a contractor or builder relating to repair or construction of a structure?" And that's who you'd make that complaint to. So I'm going to let that stand.

MR. ANDERSON: Thank you, Your Honor.

THE COURT: Now, remember any exceptions you want to make to my rulings to protect the record, please do so.

All right. The identification of Jose Nino is going to be done, you know, as with the other parties.

MR. ANDERSON: Yes, sir.

THE COURT: And the same thing with eight. I think it's covered.

MR. ANDERSON: I think nine probably falls in that same category.

THE COURT: Okay. And I think ---

MR. ANDERSON: As does ten.

THE COURT: And ten because that's definitely under L.L.R.

Let's see. Don't I have one in there about townhouses?

MR. LYLES: Yes, sir, you do.

THE COURT: All right. So it's covered.

MR. LYLES: In mine.

THE COURT: How about twelve? All right. What about homeowners association, property owners, number twelve? Isn't S.D.I. out?

LAW CLERK: That was on S.D.I.'s voir dire. But they're out, so they're not using that anymore. So just disregard that notation.

THE COURT: Oh, okay. All right. So they're out, but this is on Jose?

MR. ANDERSON: Right.

THE COURT: Do we have any counterclaims against the homeowners?

MR. BELCHER: No.

MR. ANDERSON: Your Honor, the purpose of that voir dire question is to identify people who may belong

to a housing -- or H.O.A.s or P.O.A.s and have been involved either on boards or brought claims, not specifically related to the H.O.A. or P.O.A. in this case.

THE COURT: Well, you say involved in any claims made by a homeowners association.

MR. ANDERSON: That would not be specific to. That's any H.O.A. or any P.O.A.

THE COURT: All right. Any objection?

MR. LYLES: No, sir.

THE COURT: Hearing none.

All right. "Is there any member of the jury pool who currently worked or has worked for a building department?". I think that's appropriate.

And the property damage, I think I've already struck.

MR. LYLES: Yes, sir.

MR. ANDERSON: Yes, sir.

THE COURT: And the same thing with the -- I think I've not struck it, but I think it's already covered on anybody living there.

All right. Where are we?

Now, on number one, this is I.M.K. Are those individuals that are going to be witnesses or anything? It looks like some of them were they named the

plaintiffs. Is that correct?

MS. BROWN: Yes, Your Honor. The names of the witnesses. That's probably covered on one of the earlier ones.

THE COURT: All right. So you're covered. Look at them and be sure, you know, on that master list. The same way with two is going to be covered. Now, these are the Defendants, so that'll be covered. That'll be covered when you go through your witness list.

MR. LYLES: And, again, many of the ones that are listed here are people who have settled or ---

THE COURT: Well, that's what I'm saying. You'll take them off of your master witness list ...

MR. LYLES: Okay.

THE COURT: ... rather than have me go through each one, please.

The same way with number four, number five. Number six, I'll ask. Number seven -- actually, number six, seven, and eight are covered by my own charges or my own voir dire. Number nine is interesting. Oh, wait a minute. "Discuss with you." I'm going to ask that one because I'm always interested in somebody having contact with others.

Mr. Woods, you're from Lexington, aren't you?

MR. WOODS: Well, Your Honor, my office was in

Lexington for a lot of years.

THE COURT: Well, the only reason I ask you that, you're familiar with the Gonzales murder case or the Tillman murder case. Gonzales was killed by Tillman. That's where the people went out and talked to all the jurors and found out which side they were on before they drew the jury. A very efficient method.

MR. WOODS: Yes. That was -- they used to do that in Lexington County rather frequently.

THE COURT: All right.

MS. BROWN: Your Honor, if you recall, our senior partner, Mr. Donald Harper, was a U.S. attorney, and that's one he taught me to put in voir dire.

THE COURT: Oh, it's a good one. It's a good one. Sorry I haven't seen it before or not as much. I usually -- what is it? -- instruct the jury, of course, that -- what is it? -- if anybody should discuss it or try to discuss it.

All right. "Does any juror own any interest in a limited liability corporation?" Any objection to that?

MR. LYLES: Not from me, Judge.

THE COURT: I think the general question that I approved will cover number eleven. That's a little specific. And number twelve the same way. I've covered it or will cover it. Number thirteen, this is a small

county and, "Have you served on more than -- juries?" I see people -- in the twenty years, I've seen some of the same people. In fact, I've seen some of their grandchildren. But anyway. All right. Any objection?

(No response)

THE COURT: Now, I'll have to think about that one. By the way, if I don't charge something that I say I am going to charge, you can also except to that too.

Now, that's something I usually, obviously reserve for my jury charge. I might be interested in finding out. Any objection to number fourteen?

(No response)

THE COURT: All right. Bostic Brothers. Number one is covered. Number two is covered. Number three is covered. Number four will be covered. I've already got the, "Have you ever served on a jury before?" since I said wouldn't charge that last one. Didn't the last one say the same thing pretty much?

MR. BELCHER: It did, Your Honor. That's correct. I.M.K. thirteen.

THE COURT: Yeah, thirteen. That will be covered then. Number six will be covered. And number seven is going -- that's what I was going to ask anyway, but not all those specifics. What I usually ask, "Would that affect your ability to give both the plaintiffs and

defendant ..." And that's the same way with eight. All right. There's that "Will they follow ..." It'll be covered from the other one. Oh, what have I said about lawsuits involving construction-related matters? Haven't we got that down somewhere?

LAW CLERK: I believe so.

THE COURT: I think I've -- I will cover ten. Number eleven, I think if I ask if anybody knows anyone or have a reason to know about Stoneledge at Lake Keowee that that will be covered. "Has anyone on the jury ever overseen or been involved in the remodeling or construction of their own home?" The problem with that is, it depends on who you ask, the husband or the wife. The husband says, "Go ahead and do whatever you want to." The wife says, "Whoa. Let's change this to that." That's a sexist comment, I know. But -- what is it? -- what do y'all say about that? Is that ...

(No response)

THE COURT: All right. I'll ask it. I'd just as soon find out. Now, thirteen is an important question. I definitely will ask it. Number fourteen is covered. How about fifteen? I'll ask it. I guess seventeen would have to be asked too. Well, sixteen and seventeen. Now we get into -- well, how about eighteen? How is that applicable? "Have you or any member of your

family owned a small business?" Anybody that manages a household owns a small business. You know, we don't want to, one, exhaust the jury or the judge. I tell you what. Unless I have someone insisting on it, I'm not going to charge it. Haven't I covered the condominium or apartment complex?

MR. LYLES: Yes, sir.

MR. BELCHER: Yes, Your Honor.

THE COURT: I think so. Y'all help me on this because ---

MR. BELCHER: Yeah, I think twenty-one and twenty-two are withdrawn too because you've already dealt with those.

THE COURT: Right. I will ask twenty, though, because we had the homeowners thing and I said not. But I would ask if they've ever been a member.

MR. BELCHER: Twenty-one should be withdrawn.

THE COURT: Huh?

MR. BELCHER: Twenty-one should be withdrawn.

THE COURT: Twenty-one? Twenty-two?

MR. BELCHER: No. Twenty-two should be in.

THE COURT: Twenty-three is one of those charges on the facts. I will not charge twenty-three. Twenty-four would be covered.

How many saw "A Time to Kill" or read the book? Do

you remember what the jury did on the last day? You know they voted the night before for conviction. And then after the jury argument of the -- what is it? -- learned counsel, they reversed it that soon. Something that they probably should charge, but I'm not going to question them about that because that's bad habits.

And number twenty-five, again, I'll charge that. That goes without -- I don't think it's a type you qualify a jury with.

I'm going to -- my general charge somewhat covers that. In other words, if there's any reason you cannot be -- what is it? -- fair. Oh, gracious. I tell you what. I'll charge on twenty-seven, the second sentence. "Do any of you have any religious or philosophical or other reasons that would prevent you from acting as a fair and impartial juror?"

All right. Next? Now, didn't KMAC settle?

MR. LYLES: Yes, sir.

THE COURT: All right. I had no requests for charges on that.

All right. Everado Jaramillo. Is that you, Mr. Buckley?

MR. BUCKLEY: That's me, Your Honor.

THE COURT: All right. I'll cover number one, two, three. Those are all witnesses; is that not

correct?

MR. BUCKLEY: That's right, Your Honor.

THE COURT: All right. "Has anyone on the jury ever employed by or performed any work for any of the following?" Now ...

MR. BUCKLEY: Those are named plaintiffs.

THE COURT: All right. They will be covered then. Five, that's going to be covered, I think. Oh, I know it is.

MR. BUCKLEY: Six, I don't really care about, Judge.

THE COURT: All right. I think I might have it in another one, though, but I'll strike it here. What do y'all say about seven and eight? And nine? I tell you what. Nine pretty much covers seven and eight because otherwise, as I say, I think you're probably staking them out as to listing a particular item. So I'm going to charge nine but not seven or eight, which is the same thing as ten. I'll charge it. I think number eleven is covered. Oh, gracious. Don't tell me you want me to ask twelve ---

MR. BUCKLEY: That's all right.

THE COURT: --- in Oconee County.

MR. BUCKLEY: That's all right.

THE COURT: By the way, Oconee County is like a

big family. We don't always get along, so it doesn't matter if we know each other or not.

MR. BUCKLEY: Yeah. I had a lawyer one time tell me, "That's my law partner." I said, "Well, I might want him on there."

THE COURT: Well, you know who I -- when I was with the Attorney General's Office in Columbia trying cases in Anderson and they had a lawyer named Ross Anderson at that time. And of course, I was off. And he -- we empaneled the jury. And as the juror was going past the desk to get in the box or whatever, Ross looked over at me. "That's my cousin." I said, "I'm glad I've got somebody on there that knows about you." Of course, he's a great American now being a district judge.

All right. Where are we? Number thirteen, same thing. That'll be covered. I don't know if I've said I'd cover fourteen or not, but I'll go ahead and ask it.

MR. BUCKLEY: I think a variation on fourteen, Your Honor, is something that I meant to include but didn't. But essentially, "Does any member of the jury panel have any strong religious or personal belief ---"

THE COURT: I'm going to ask that.

MR. BUCKLEY: "--- which would prevent them from following the law as you instruct them."

THE COURT: I've got that. I said I would

charge the bit about, you know, number 27 on -- I guess that's Bostic -- on Bostic Brothers; right? All right. I'll look at it. In other words, I don't want to get them into the question of liability and damages or things of that nature. But to ask that whether or not they would be able to listen to the evidence and render a fair and impartial. But I will ask, of course, if there's any -- I'll work that one out.

Let me see here. All right. That's all of the voir dire.

It's a quarter after. And I do want y'all to go through the jury list -- I mean, not jury list, the witness list -- and give me a clean -- not a clean, but one that eliminates some of those who are not going to be witnesses.

I know the jury is coming in at two. Madam Clerk, how long will -- are they actually reporting at two?

THE CLERK: Yes.

THE COURT: So that means that you have to clear them and all of that?

THE CLERK: That's correct.

THE COURT: So why don't you try to be back at two fifteen, but two thirty will probably be when we -- so that gives you an hour and fifteen minutes.

All right. Anything else before we recede for

lunch?

Yes, sir?

MR. SMITH: Your Honor, would you still want to put our ---

THE COURT: Yeah, I want to put your -- please do. All right. So it'll be y'all and Mr. Lyles, I think, is the only ones unless the others want to hear what the settlement was.

All right. Those who want to leave, leave. Or do you want to hear what the settlement was?

MR. SMITH: Your Honor ---

THE COURT: Just one second. Let's see. Those who want to leave, go ahead and leave now so I can -- now, if you stay, you have to stay.

(Off record discussions)

THE COURT: All right. Is that everybody that's going to remain?

MR. BUCKLEY: We're going to leave, Your Honor.

THE COURT: Very good.

MR. BUCKLEY: Thank you.

THE COURT: Thank you.

Mr. Belcher, are you leaving?

MR. BELCHER: No. I'll be right back, Your Honor. I don't think I need to be here.

THE COURT: That's what I'm asking because I'd

like to go ahead and put these matters on the record.

MR. BELCHER: I'll wait.

THE COURT: All right. We are now here on some matters in this action that have been resolved, as I understand it, Mr. Lyles?

MR. LYLES: Yes, sir.

THE COURT: All right. And who's the first?

MR. SMITH: Chris Smith here on behalf of Haywood Electrical.

THE COURT: Yes, sir.

MR. SMITH: Your Honor, it's my understanding that the final paperwork has not been signed though; is that right?

MR. LYLES: That's right.

THE COURT: Well, if you put the terms of the settlement on the record, please?

MR. LYLES: Haywood Electric has agreed to pay fifteen thousand in settlement.

MR. SMITH: That's correct. Fifteen thousand. Two carriers will be splitting that.

MR. LYLES: In full settlement of the plaintiffs' claims against Haywood Electrical.

THE COURT: All right. Is there any more to it?

MR. SMITH: Not from us, Your Honor.

THE COURT: All right. Very good. And ---

MR. POTEAT: Yes, Your Honor. Chad Poteat ...

THE COURT: Yes, sir?

MR. POTEAT: ... on behalf of Eason Construction, Inc.

MR. LYLES: And the plaintiffs have agreed to settle all claims pending against Eason Construction for the sum of one million dollars.

THE COURT: All right.

MR. POTEAT: That's correct, Your Honor. And there are no claims pending against the principle of Eason. But obviously this will be a full release of all claims that we have agreed upon.

THE COURT: All right. Now, let me ask you on these two claims. Mr. Smith, is there any time limit? Because sometimes there's a question about if they're timely as far as satisfaction.

MR. LYLES: No, sir. I don't think I included the time limit on yours. I assume ---

MR. SMITH: You asked for a month, but I don't know. It wasn't -- our offer and acceptance of the offer was not conditioned upon the time limit. But we're doing everything ---

THE COURT: Well, time is not of the essence then. Is that what you're saying?

MR. SMITH: It's not a part of our settlement, but it is.

THE COURT: Well, what's the term, as I understand, means as far as a consequence of a contract or agreement. If time is not the essence, then it has to be reasonable.

MR. SMITH: Thank you, Your Honor. I think that's the case.

THE COURT: And is -- is that what you're saying, Mr. Lyles?

MR. LYLES: Yes, sir.

THE COURT: All right. Any question about that?

MR. LYLES: No, sir.

THE COURT: All right. And how about yours? I've forgotten your ---

MR. SMITH: Chris Smith for Haywood Electrical. The same.

MR. POTEAT: And time is not of the essence in our agreement either.

THE COURT: All right. Very good. Thank you very much.

MR. LYLES: Thank you, Your Honor.

THE COURT: Thank you.

All right. Anything else, ladies and -- or lady and

gentlemen?

(No response)

THE COURT: All right. I'll see you about two fifteen or two thirty.

MR. LYLES: Yes, Your Honor.

(WHEREUPON, court stood at recess for a lunch break.)

THE COURT: All right. Are the plaintiffs ready?

MR. LYLES: Yes, sir, Your Honor.

THE COURT: The defense ready, Mr. Belcher?

MR. BELCHER: Yes, Your Honor, we're ready.

THE COURT: Ladies and gentlemen, this is a term of common pleas court, sometimes called a civil court. A lawsuit is a civilized method of determining disputes between citizens. The purpose here is to resolve in an orderly manner disputes between citizens who have cases in this court in a fashion which will ensure that justice under the law is accomplished between the parties to the lawsuit.

The trial of a case begins with the selection of a jury. Because all parties to a lawsuit are entitled to jurors who approach the case with an open mind, I will be asking certain questions of the entire jury panel. The trial jury must be as free as humanly possible from any

bias, prejudice or sympathy for either side or any party and free from any preconceived ideas on the facts of the case or the law of the case. The questions that will be asked are designed to ensure that each side does have a fair and impartial jury.

Now, I might instruct you and impress upon you that if any person should talk with you or attempt to talk with you about any case scheduled for this term of court, it would be your solemn duty to immediately report that matter to the Court's attention. The reason for that is you have been sworn as jurors of the Court of Common Pleas for the Tenth Judicial Circuit, and no one is to interfere with your duty as such. As I say, if anybody either speaks with you or attempts to speak with you, report them immediately and I'll take the appropriate action.

Now, we are about to begin the trial of the case of Stoneledge at Lake Keowee Owners' Association, Inc., versus Bostic Brothers Construction, Inc., and I.M.K. Development Company, L.L.C., Integrys Keowee Development, L.L.C., Larry D. Lollis, William C. Cox, and Rick Thoennes and Marick Home Builders, L.L.C., and Everado Jaramillo and Jose Nino.

Now, the plaintiffs are represented by -- which is 2009-CP-37-652. The plaintiffs are represented by Mr.

Lyles.

Mr. Lyles, if you'd please stand and introduce yourself, your law firm and anybody that will be assisting you in the trial of this case and well as anyone representing your corporate defendants.

MR. LYLES: Yes, sir.

THE COURT: Plaintiff. Excuse me.

MR. LYLES: My name is Robert Lyles. I'm a lawyer from Charleston. I practice law in Charleston with my first cousin whose name is Bill Lyles. And we have a small firm down there, and we do a lot of construction litigation. With me from my office is Kelly West. She's an attorney who practices with me. Also with me is Donna Furnari. Donna is a named plaintiff in this case. I represent Donna as well as the Stoneledge at Keowee Homeowners Association, L.L.C. -- or Inc. actually.

I also represent a number of individual plaintiffs in addition to Donna.

THE COURT: Let me -- Mr. Lyles, if you would, ask your client to stand and to look upon the jury, please.

MR. LYLES: Donna Furnari.

THE COURT: All right. And if any of your other clients are in the room or are represented in the

room, ask them to stand as well.

MR. LYLES: Yes, sir.

(WHEREUPON, Ms. Furnari stood.)

THE COURT: Thank you, ma'am. You may be seated.

MS. FURNARI: Thank you.

MR. LYLES: In the back, Donna's husband Mike Furnari. Next to Mike is Steve Taylor. Next to Steve is his wife Betty. And we have John and Cathy Wilson who are also owners and residents at Stoneledge.

THE COURT: All right. The reason I do that, of course, in these days and times we might not know someone by their names, but we would recognize them. And that's why I ask any of you who are being introduced to the jury panel, that you look upon the jury panel so they might see anyone they recognize.

All right. Go ahead.

MR. LYLES: I have just a couple of more people that I represent personally who are not or were unable to be here to day. And that's Jessie and Nancy Grasso, Carol Pope and Bob White. Thank you.

THE COURT: Thank you very much.

Now, the defendants Bostic Brothers Construction, Inc., are represented by Mr. Belcher. Mr. Belcher, if you would, please, stand and introduce yourself and

anyone who will be assisting you as well as any of your clients who might be present.

MR. BELCHER: Thank you, Your Honor.

Good afternoon, ladies and gentlemen. My name is Alan Belcher. I practice with the law firm of Hall Booth Smith. I lead the firm's South Carolina construction practice group. With me today and over the next several days assisting me is Jack Gresh, my law partner in the firm. Also present are people that I have been asked to represent here today: Jeff Bostic, Joe Bostic and Mr. Mel Morris.

THE COURT: And I do think you have the client, Mr. Cox?

MR. BELCHER: No, Your Honor. These are the only people that I represent.

THE COURT: Oh, I see. I apologize. Thank you, sir.

All right. I.M.K. Development, L.L.C., is represented by Ms. Brown.

Ms. Brown, if you would, please stand and introduce your law firm and anyone who'll be assisting in your case and anybody that might be representing your clients or are present.

MS. BROWN: Thank you, Your Honor.

My name is Cynthia Brown. I work with Harper,

Lambert & Brown. Our firm focuses on construction litigation. Not with me here today is Ted Vick, also an attorney with our firm, who may be assisting in this case. I do represent I.M.K. Development, L.L.C., I.M.K., L.L.C., Mr. Lollis. He is also not here today because he's had a death in the family. Will not be here tomorrow, but will be present for the rest of the time. And Mr. Cox who is sitting in the back of the room, I represent him personally as well.

THE COURT: Very Good. And that's Mr. Larry D. Lollis and Mr. William C. Cox?

MS. BROWN: Yes, Your Honor.

THE COURT: Very good. Thank you, ma'am.

Also as defendants is Marick Home Builders, L.L.C., represented by Mr. Imhoff.

Mr. Imhoff, if you would stand and introduce yourself and your clients.

MR. IMHOFF: Yes, Your Honor. Thank you.

My name is Jason Imhoff. I work in the Ward Law Firm over in Spartanburg, South Carolina. I do construction litigation in the Upstate of South Carolina. With me and assisting me is Jack Graham, who is also from the Ward Law Firm. And we represent the Marick Home Builders, L.L.C., and this gentleman Rick Hoffman.

THE COURT: Very good. Thank you, sir.

Now, the defendant, Rick Thoennes, is represented by Mr. Hemphill.

Mr. Hemphill, if you'd please stand, introduce yourself and anyone that would be assisting you and your client.

MR. HEMPHILL: May it please the Court, Your Honor.

Ladies and gentlemen, my name is Roy Hemphill, and I practice law in Greenwood and generally in the Upstate. I represent M. Group Construction and Development, a construction company. And Mr. Thoennes, who you just met, was the owner of that company and an engineer in that company. Also, I anticipate that Mark Hutcherson will also be here tomorrow. He also is with that company.

THE COURT: Thank you, sir.

Also, we have Mr. Everado Jaramillo. You'll have to forgive me. I'm not very good with names. Everado Jaramillo. How about that? And represented by Mr. Buckley.

MR. BUCKLEY: My name is Ed Buckley, and I represent Everado Jaramillo. With me here is Nick Rivera from my office. I'm from Charleston, South Carolina, as well. And we'll be representing Mr. Jaramillo in this case. Thank you.

THE COURT: Very good. Thank you, sir.

And Jose Nino, another defendant, is represented by Mr. Anderson.

MR. ANDERSON: Thank you, Your Honor.

THE COURT: If you would, please.

MR. ANDERSON: Good afternoon. My name is J.J. Anderson. I'm from Charleston. I practice with Anderson, Reynolds and Stephens. Curt Martin with our firm is going to be assisting me this week. We also are assisted by Bill Woods, and I will let Mr. Woods introduce himself.

MR. WOODS: My name is Bill Woods. I practice law in Columbia with the firm of Richardson Plowden. I primarily have my practice in the area of construction defect cases statewide. Thank you.

THE COURT: All right. Before we select a jury, I need to ask you some questions.

Is there any member of the jury panel related by blood or marriage, now or formerly, or a close personal friend or business associate of any of the parties to this action? And that would include Stoneledge at Lake Keowee Owners Association, Inc., Bostic Brothers Construction, Inc., Mel Morris, Joe Bostic, Jeff Bostic, I.M.K. Development Company, L.L.C., Integrys Keowee Development, L.L.C., Larry D. Lollis or William C. Cox,

Rick Thoennes or M Group Construction and Development, Marick Home Builders, L.L.C., Everado Jaramillo, or Jose Nino. Any member of the jury panel related by blood or marriage, close personal friend or business associate of any of the parties of this action, if you'd please stand at this time.

(No response)

THE COURT: Is any member or has any member of the jury panel or members of their immediate family ever been represented by or employees of any of the attorneys involved in this case or their law firms? If so, please stand.

(No response)

THE COURT: Now, I'm going to be calling out a list of possible witnesses in this case. When I say possible witnesses, these are witnesses who may be called in the case but do not necessarily have to be called. Derek A. Hodgin -- and if they're in the courtroom at the time, if they'd please stand. Derek A. Hodgin, Richard J. Rogers, John Folk and other representatives of the Trehel Corporation, Grasso, Jessie and Nancy.

Is that Jessie and Nancy Grasso?

MR. LYLES: Yes, sir.

THE COURT: Carol Pope, Furnari -- or Michael and Donna Furnari. Thank you, ma'am. Steven and Betty

Taylor, Robert and Judy White, Bradford D. Seckinger, Rick Thoennes III and Rick Thoennes, Joe Bostic, Jeff Bostic, Mel Morris, Trina Wilkerson, Harold and Teri Graham, John and Nancy Wilson, Steven Gosk, Paul and Margaret Daniels, Dee Dyenson, Cheree Moody, Jerry Lrasen, Everado Jaramillo, Jose Nino, Larry D. Lollis, Tim Roberson, William "Bill" Cox, Robert "Chip" Albert, Phillip and Debbie Alphin, Tristar Holdings, L.L.C., Emmanuel Joseph, John and Maralan Littlefield, Phillip and Suzanne DiPietro, Sula Sizemore, Phil Schmmel and Julia Eakes, Nathan Hornaday, F. Cannon Chambers, Mike Smith and Linda Smith, Edward and Jackie Cocciadiferro, James Log, Paul and Mary DuQue, Charles Gainey and Jeff Rybak, Rad William and Anne Page, Gary and Pat Selvaggio, Adam Beadles, Adam and Adrienne Bruckman, William Kerr and Jennifer Murphy, Rodney Ownbey and Shannon Ownbey, Walter and Dolly Schember, Richard and Catherine Welchel.

Anyone related by blood or marriage, close business associate of any -- oh, excuse me. I have some other names here of possible or potential witnesses.

J. David Horne, Professional Engineer, Marshall F. Clark of M.C.A. Architecture, Richard A. Moore, Physical Engineer -- or Professional Engineer -- excuse me. Steve J.L. Watkins of Watkins Services.

Now, is any member of the jury panel related by

blood or marriage, close personal friend or business associates of any of the potential witnesses in this case? If so, please stand at this time.

Yes, sir, your name, please?

THE JUROR: Steven Lusk.

THE COURT: Yes, sir.

THE JUROR: I'm employed by Trehel Corporation.

THE COURT: All right. I'm going to excuse you on the trial of this case. So you will be excused. In fact, I think that will complete your service for this week as well.

THE JUROR: Thank you.

THE COURT: All right. Thank you very much.

Anyone else? I guess I should ...

Yes, ma'am, let's start up ---

THE JUROR: I am not a close friend, but I do know Trina Wilkerson.

THE COURT: All right. And your name, please, ma'am?

THE JUROR: Judy Ledford.

THE COURT: Now, would that in any way interfere with your ability to give both the plaintiff and defendants a fair and impartial trial if she should be a witness?

THE JUROR: No.

THE COURT: Very good. Thank you, ma'am.

Yes, sir?

THE JUROR: I'm a member of the Board of Zoning Appeals in Oconee County. And I don't know if that would interfere or not, but I ---

THE COURT: You're a member of the Board of Appeals here in Oconee?

THE JUROR: Yes, sir.

THE COURT: Well, that would excuse you because that is a commission here in Oconee County. And your name, please, sir?

THE JUROR: Berry Nichols.

THE COURT: Mr. Nichols, you'll be excused, but thank you for being here.

Also, I should ask you is any member of the jury panel or their immediate family an officer, stockholder, member or employee of any of the corporate or L.L.C.s who are defendants in this matter or parties to the matter to include the plaintiff homeowners association.

Any member of the jury panel or their immediate family an officer, stockholder or member or employee of the corporations in this action? That includes the plaintiff as well as the defendant corporate parties. If so, please stand.

(No response)

THE COURT: Is there any member of the jury panel familiar with the residences or complex known as Stoneledge at Keowee in West Union, South Carolina? Any member of the jury panel who is familiar with the residences or complex known as Stoneledge at Lake Keowee in West Union, South Carolina, if you'd please stand at this time.

(No response)

THE COURT: Has any member of the jury panel or members of their immediate family ever been involved in a lawsuit? If so, please stand. Any member of the jury panel or members of their immediate family ever been involved in a lawsuit, either plaintiff or defendant, if you'd please stand at this time.

All right. Yes, ma'am. We'll start on that side. Your name, please?

THE JUROR: My name is Pam Dame.

THE COURT: Yes, ma'am.

THE JUROR: My husband got hurt on the job and hurt his back.

THE COURT: Has the matter been resolved?

THE JUROR: It has.

THE COURT: Very good. Thank you very much. Now, would that in any way interfere with your ability to give both the plaintiff and the defendants a fair and

impartial trial?

THE JUROR: No, sir.

THE COURT: All right. Thank you, ma'am.

Yes, ma'am, your name, please?

THE JUROR: April McGuffin.

THE COURT: Yes, ma'am.

THE JUROR: We were in a car accident, and there was a lawsuit brought between us and ---

THE COURT: All right. Were you plaintiff or defendant?

THE JUROR: Plaintiff.

THE COURT: All right. Has that matter been resolved?

THE JUROR: Yes.

THE COURT: And would that in any way interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: No.

THE COURT: Thank you, ma'am.

Yes, sir?

THE JUROR: James Bryson. My wife's involved in a civil lawsuit at this time.

THE COURT: It's still pending?

THE JUROR: Yes, it is.

THE COURT: All right. As a plaintiff or

defendant?

THE JUROR: Defendant.

THE COURT: All right. You're not represented by any of the parties to this action or any of the attorneys?

THE JUROR: No.

THE COURT: All right. Would that interfere with your ability to give both the plaintiff and the defendant a fair and impartial trial?

THE JUROR: Probably not.

THE COURT: No. I need to know either if it -- let me explain that to you. I should have done this earlier. There are two reasons that I ask the questions about the fair and impartial -- ability to be fair and impartial. Of course, the first is that the parties to the action, all of the plaintiffs and all the defendants, are entitled to a fair and impartial jury. Now, however, you as jurors didn't ask to be here today. You were drawn. You were summoned to come here today. And I do not wish to interfere with your conscience or anything, any sort of reservation you might have if you had to make a decision.

So, therefore, I ask could you be fair and impartial or would -- and somehow you feel it might compromise some principle or something of that nature. So, therefore,

it's two sides. One for the parties but also for the comfort, if you would, of the jurors. So would that in any way interfere with your ability to give both the parties, the plaintiffs and the defendants, a fair and impartial trial?

THE JUROR: I would think not, but ---

THE COURT: Well, that's a very honest answer. And that's the reason. But you do understand I'll need to excuse you because I do have to have somebody that has no reservation about doing what, you know, the law and the evidence would provide. You understand?

THE JUROR: Yes, sir.

THE COURT: All right. I am going to excuse you though. But I want to thank you for being here.

THE JUROR: Thank you.

THE COURT: Thank you, sir.

By the way, I might also note, since I'm trying to catch up with myself, if you do respond to more than one question, each time you respond, you need to stand and give me your name. The reason for that is the court reporter here is recording everything that is said and done in the courtroom. So, therefore, the only way the record would reflect who is speaking is if we identify ourselves. So even though you answer more than one question or you stand more than one time, each time you

do respond to a question, if you would, identify yourselves by your names.

All right. Anyone else?

(No response)

THE COURT: Has any member of the jury panel or any member of their immediate families ever been involved in the construction business or industry? If so, please stand. Any member of the jury panel or members of immediate family ever been involved in the construction business or industry, if you'd please stand.

All right. Here we go.

Your name, please, sir?

THE JUROR: Morris Cobb. I was with Duke Power Construction for twenty years.

THE COURT: All right. Would that in any way interfere with your ability to ---

THE JUROR: No, sir.

THE COURT: --- give both the plaintiff and the defendant a fair and impartial trial?

THE JUROR: No problem.

THE COURT: Very good. Thank you, sir.

Yes, sir, on the end?

THE JUROR: Timothy Todd. I've been in masonry construction for thirty years.

THE COURT: All right. Would that in any way

interfere with your ability to give both the plaintiff and the defendant a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Thank you, sir.

Yes, sir?

THE JUROR: Ricky Rhodes. I worked construction in Tennessee for fifteen years.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: No.

THE COURT: Very good.

Yes, ma'am?

THE JUROR: Samantha Hoffman. My uncle is -- lays tile.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiff and the defendant a -- plaintiffs and the defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Thank you, ma'am.

Yes, sir?

THE JUROR: Buffalo Rock, Buffalo Rock, Inc. Construction. No, it would not. Joel Allen.

THE COURT: All right. Mr. Allen, it would not

interfere with your ability to give both plaintiff and defendant ---

THE JUROR: No, it would not.

THE COURT: Thank you, sir.

Yes, ma'am?

THE JUROR: My make is Karen Shiverdecker. My husband works as a heating and air technician.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, ma'am.

Yes, ma'am?

THE JUROR: Yes. My husband worked for Spectrum Interiors for about sixteen years doing construction. My name is Jennifer Guffie.

THE COURT: All right. Ms. Guffie, would that in any way interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, ma'am.

Yes, sir?

THE JUROR: Michael Krout. I did construction work for twenty years.

THE COURT: All right. Would that in any way

interfere with your ability to give both the plaintiff and defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, sir.

Yes, sir?

THE JUROR: Brad Holder, Eldeko Electrical and Keowee Stone.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: I don't believe so, but I don't know all the particulars, so ...

THE COURT: No. That's what I said earlier, that your decision could be made on the law and the evidence. If you could be fair and impartial after hearing all the law and the evidence applied to the case?

THE JUROR: Yes, sir.

THE COURT: Would your experience -- by being in the construction industry, would that in any way interfere with that ability?

THE JUROR: No.

THE COURT: Very good. Thank you, sir.

Yes, ma'am. And, again, we have to have your name.

THE JUROR: I'm sorry. Pam Dame.

THE COURT: Yes, ma'am?

THE JUROR: And my husband worked in construction before he became disabled.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Thank you.

Yes, sir?

THE JUROR: Thomas L. Bramlett.

THE COURT: Yes, sir.

THE JUROR: I worked with Trehel when I got out of a high school a long time ago.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, sir.

Yes, ma'am?

THE JUROR: Gale Metzel.

THE COURT: Yes, ma'am?

THE JUROR: Gale Metzel. My husband has his own business as a builder.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: To be honest with you, I'd be partial to the builder.

THE COURT: All right. Well, that's what I asked. So, again, you will be excused. I thank you very much, though, for being here.

THE JUROR: Thank you.

THE COURT: Yes, sir?

THE JUROR: Richard Miller. My dad worked for Davis McAllen.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, sir.

Yes, sir?

THE JUROR: Richard Coward. I have twenty-eight years of masonry contracting.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: No.

THE COURT: Very good. Thank you, sir.

Anyone else?

(No response)

THE COURT: Have you -- excuse me. Has any

member of the jury panel or a member of their immediate families ever lived in or owned a condominium or townhouse? Is there any member of the jury panel or members of their immediate families ever lived in or owned a condominium or townhouse? If so, please stand.

THE JUROR: Margaret Turissi-Toupet.

THE COURT: Yes, ma'am?

THE JUROR: I currently live in a townhome now.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: I'm really not sure.

THE COURT: I'm going to excuse you, but I thank you for being here.

THE JUROR: Sorry.

THE COURT: Not at all. You did exactly right. Thank you, ma'am. You may be excused.

THE JUROR: Thank you.

THE COURT: Yes, sir?

THE JUROR: Brad Holder. I lived in condominium while I was employed.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiff and the defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, sir.

Yes, ma'am?

THE JUROR: My name is Mary Suski, and we own a condo, and we live in our own home. We also own a condo.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, ma'am.

Yes, sir?

THE JUROR: Jonathan Moss. Me and my wife went in with her parents and purchased a condo.

THE COURT: Would that in any way interfere with your ability to give both the plaintiffs and defendants a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, sir.

Yes, ma'am?

THE JUROR: My name is Jenny Eicher. My parents own a condo, and it would not affect my decision at all.

THE COURT: Very good. Do I understand that it does not interfere with your ability to give both the plaintiffs and defendant?

THE JUROR: It does not.

THE COURT: Very good. Thank you, ma'am.

All right. Is there any member of the jury panel or members of their immediate family ever worked for or do currently work for a building department or government business license office? If so, please stand.

(No response)

THE COURT: Very good. Thank you.

All right. I instructed you not to discuss any fact about this case with anyone or permit them to discuss it with you. But has anyone discussed with you any fact that may be involved in this matter or in the trial of this case? If so, please stand. Any member of the jury panel who has been approached or has discussed or had people seek to discuss with you any fact that might be involved in the trial of this case. If so, please stand.

Yes, sir, your name, please?

THE JUROR: Steve Loftis.

THE COURT: Yes, sir.

THE JUROR: I've been approached by some of the property owners in the past about the possibility of getting natural gas made available at Stoneledge.

THE COURT: Okay. Getting what?

THE JUROR: Natural gas being available.

THE COURT: Oh, I understand. All right. But not anything about this particular case?

THE JUROR: No, sir.

THE COURT: All right. But that certainly -- or would that interfere with your ability to give both the plaintiffs and the defendants a fair and impartial trial?

THE JUROR: (Shook head side to side in the negative). It would not interfere, no.

THE COURT: Very good. Thank you, sir.

All right. Has any member of the jury panel ever previously served on a jury in a civil case? If so, please stand.

Yes, ma'am. Your name, please?

THE JUROR: Karen Shiverdecker.

THE COURT: Yes, ma'am.

THE JUROR: I don't remember when. I think it was in 1995 that I served.

THE COURT: All right. Was it a -- it was civil case?

THE JUROR: (Nodded head up and down in the affirmative)

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendant in this case a fair and impartial trial?

THE JUROR: No.

THE COURT: Very good. Thank you, ma'am.
Anyone else?
THE JUROR: You said it was just in Oconee County, or does it matter?
THE COURT: No, ma'am. Anywhere.
THE JUROR: Probably in the early '80s I served on a car accident case.
THE COURT: All right. And would that ---
THE JUROR: But I was not part of the deliberation. I was an alternate. But it won't, you know, influence me for this.
THE COURT: Well, let me ask you, would that experience in any way interfere with your ability to give both the plaintiffs and the defendant a fair and impartial trial in this case?
THE JUROR: No, sir.
THE COURT: Very good. Thank you, ma'am.
MADAM COURT REPORTER: Her name, please.
THE COURT: Oh, I'm sorry. I missed your name.
THE JUROR: Mary Suski.
THE COURT: Thank you, Ms. Suski.
Yes, sir?
THE JUROR: Thomas L. Bramlett. A few years ago. It was a car accident.
THE COURT: All right. Would that experience

in any way interfere with your ability to give both the plaintiffs and defendant a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Okay. Thank you.

MADAM COURT REPORTER: I missed his name.

THE COURT: I'm sorry, sir. Y'all have to forgive me. My mind kind of rambles. Your name, please?

THE JUROR: Thomas L. Bramlett.

THE CLERK: He's number 20.

THE COURT: All right. Thank you very much, sir.

All right. Has any member of the jury panel or members of their immediate family ever been employed or involved in the real estate or real estate developing business? If so, please stand.

All right. Yes, sir, Mr. Lollis?

THE JUROR: My wife is a real estate broker with her own office in the past.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendant a fair and impartial trial in this case?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, sir.

Yes, sir.

THE JUROR: Joel Allan. We started a

subdivision in West Union, and ---

THE COURT: All right. Would that experience in any way interfere with your ability to give both the plaintiffs and defendant a fair and impartial trial?

THE JUROR: No, it will not.

THE COURT: Very good. Thank you, Mr. Allen. Yes, ma'am?

THE JUROR: Veronica McClain. I work for Bell's Property Management.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendant a fair and impartial trial in this case?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, ma'am. Has any member of the jury panel or members of their immediate family ever been a member of any homeowners association? If so, please stand.

All right. Yes, ma'am, your name, please?

THE JUROR: Susan McCalister. I'm a member of the property owners association out at Lake Greenwood.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendant a fair and impartial trial in this case?

THE JUROR: No, sir.

THE COURT: Very good. Thank you, ma'am.

Yes, sir?

THE JUROR: I'm Scott Rogers, and I'm a property owner and part of the association at Fiddler's Cove.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and defendant a fair and impartial trial?

THE JUROR: It would not.

THE COURT: Very good. Thank you.

Yes, ma'am?

THE JUROR: I'm a member of the property owners, homeowners for Still Water in Seneca and also for the condos at the Woodlands in Central.

THE COURT: All right. And your name, please, for the record?

THE JUROR: Mary Suski. I'm sorry.

THE COURT: Yes, ma'am. Thank you again.

Yes, sir?

THE JUROR: Steve Loftis. I'm a member of the association at Still Water and Keowee II.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendant a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Ms. Suski, did I ask you would that interfere with your ability to give both the plaintiffs and defendant a fair and impartial trial?

THE JUROR: You asked me. And it won't.

THE COURT: Very good. Thank you. You see how this is going.

Yes, sir?

THE JUROR: My name is Robert Leitner. I'm a member of Cross Creek Plantation and Four Points North Property Owners Association.

THE COURT: All right. Would that in any way interfere with your ability to give both the plaintiffs and the defendant a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: All right. Yes, ma'am?

THE JUROR: Christine Lewis. I'm a member of the P.O.A. for Procipus (phonic).

THE COURT: Very good. Would that in any way interfere with your ability to give both the plaintiffs and the defendant a fair and impartial trial?

THE JUROR: No, sir.

THE COURT: Very good.

All right. Does any member of the jury panel have any religious, philosophical or other beliefs that

prevent you from acting as an impartial juror in this case? Any member of the jury panel who has a religious, philosophical or other belief that would prevent that person from acting as a fair and impartial juror in this case? If so, please stand.

(No response)

THE COURT: Has any member of the jury panel or members -- excuse me. Any member of the jury panel formed or expressed an opinion about any issue or matter that might be involved in this case? If so, please stand.

(No response)

THE COURT: Is any member of the jury panel aware of any bias or prejudice towards either the plaintiffs or the defendants or any of them in this case? If so, please stand.

(No response)

THE COURT: Lastly, does any member of the jury panel know of any reason whatever why she or he should not serve as a juror in this case? If so, please stand.

(No response)

THE COURT: Any further questions from any of the plaintiffs?

MR. LYLES: No, sir.

THE COURT: Any further questions from any of

the Defendants?

MR. BELCHER: None from Bostic, Your Honor.

THE COURT: Are there any other defendants who have any additional questions?

(No response)

THE COURT: Very well.

Now, Madam Clerk, if you would, please, give us a jury.

The way a jury is selected in the Court of Common Pleas and civil court is different from that in General Sessions Court, which is criminal court. In civil court the clerk prepares a list. It's called a strike list. And from that list, each side will strike four jurors. It's a list of twenty names.

THE CLERK: Alternates?

THE COURT: Four.

THE CLERK: Four?

THE COURT: And actually, we'll have four -- we'll have eight. Is that right? Pardon me. Excuse me.

Mr. Imhoff?

MR. IMHOFF: Your Honor, may I approach?

THE COURT: Certainly.

(WHEREUPON, a bench conference was held off the record.)

THE COURT: All right. As I was saying, ladies

and gentlemen, the way that you draw a jury in the Court of Common Pleas is that the Clerk of Court is preparing what we call a strike sheet. There will be a list of twenty names from which each side will strike four. In other words, the plaintiffs will strike four, and the defendants will strike four. They do this alternately. But the idea is that that will leave the twelve from the twenty that will constitute the jury. Also, we're going to have two alternates. So you'll have six additional names on the list. And each side will each strike one of the first three and then the second three. So that will leave two alternates. Now, of course -- what is it? -- the first twenty of the names are for the jury, and the second three names will be -- twenty-one through twenty-three, will be the first alternate. And then, of course, the second alternate will be twenty-four through twenty-six. Or -- well, no. That'll be right. Or until -- if they don't use all the three strikes in the first alternate, then you'll go to the next three strikes and you get the next three names.

All right. With that, that does take some time. Let's see. I'm going to suggest the defendants use the grand jury room to go over the jury list and the plaintiffs use the petit jury room to go over their list.

Now, they'll go over this list and then come back

and do the strike at that time.

How much time do you think you might need, Mr. Lyles?

MR. LYLES: Ten minutes, fifteen minutes.

THE COURT: Well, all right. Let's say fifteen minutes after five.

How about, Mr. Belcher, is that enough, you think, for the defendants?

MR. BELCHER: Yes, Your Honor.

THE COURT: All right. Let's do that. So as soon as you get the strike sheet, then retire to the jury room for your groups.

All right. If you would, take the plaintiffs out this door to the petit jury room. And then, of course, the defendants can go out the back door to the grand jury room.

All right. Now, let's be sure I've got this right. The first twenty names, that's what you're going to strike the jury?

THE CLERK: Yes, sir.

THE COURT: As far as the next alternates, do the first -- each one gets a strike. Each side gets a strike. So if we agree on the first one, then you'll go to the next name. And then it'll be three names again, rather than going three to twenty-six.

THE CLERK: Okay.

THE COURT: Okay. All right. Any question about it, Mr. Lyles?

MR. LYLES: I think I got it.

THE COURT: All right.

MR. LYLES: I think I got it.

THE COURT: Mr. Belcher?

MR. BELCHER: I understand, Your Honor.

THE COURT: Thank you. All right. If we have any questions, let's get it resolved.

MR. BELCHER: We understand, Your Honor.

THE COURT: The reason I say that is there's a little confusion occasionally because when you draw an alternate now, you have to go with the first alternate to the second alternate. And you let the alternates -- what is it? -- select which one. No, it is not. The first alternate is the first one to fill in.

All right. We'll stand at ease until a quarter after. So if you need to stretch your legs or anything, go ahead and do that now. But do be back in the courtroom before quarter after five.

(WHEREUPON, court stood at recess for a short break.)

THE COURT: All right. Is it Mr. Telley? I understand you mentioned something to the Clerk of Court

about ---

THE JUROR: Knowing the Bostics.

THE COURT: Yeah.

THE JUROR: I've been a Clemson fan. I would be biased.

THE COURT: You would be biased?

THE JUROR: (Nodded head up and down in the affirmative)

THE COURT: Then I'm going to excuse you. Okay? Thank you for bringing that to our attention. Thank you.

All right. Are we ready to proceed?

MR. LYLES: The plaintiff is, Your Honor.

MR. BELCHER: The defense is ready, Your Honor.

THE COURT: The defense ready?

MR. BELCHER: Yes, Your Honor.

THE COURT: Plaintiff ready?

MR. LYLES: Yes, sir.

THE COURT: All right.

Madam Clerk, if you would, give us a jury.

THE CLERK: Plaintiff strikes first the numbers on the left.

MR. LYLES: Plaintiff strikes number 12.

THE CLERK: Plaintiff strikes number 12.

MR. BELCHER: Defense strikes number 6.

THE CLERK: Defendant strikes number 6.

MR. LYLES: Plaintiff strikes number 2.

THE CLERK: Plaintiff strikes number 2.

MR. BELCHER: Defendant strikes number 7.

THE CLERK: Defendant strikes number 7.

MR. LYLES: Plaintiff strikes number 15.

THE CLERK: Plaintiff strikes number 15.

MR. BELCHER: Defense strikes number 3.

THE CLERK: Defense strikes number 3.

MR. BELCHER: I'm sorry. I'm sorry. Number 10.

THE CLERK: Number 10, okay. Defense strikes number 10.

MR. LYLES: Plaintiff strikes 17.

THE CLERK: Plaintiff strikes number 17.

MR. BELCHER: Defense strikes number 13.

THE CLERK: Defense strikes number 13.

For alternate number one?

MR. LYLES: Plaintiff strikes 22.

THE CLERK: Plaintiff strikes number 22.

MR. BELCHER: Defendant strikes 23.

THE CLERK: Defense strikes number 23.

And for alternate number two?

MR. LYLES: Plaintiff strikes number 26.

THE CLERK: Plaintiff strikes number 26.

MR. BELCHER: Defendant strikes number 24.

THE CLERK: Defendant strikes number 24.

Now we'll go over the strikes. Plaintiff strikes number 2, number 12, number 15, number 17, alternate number one number 22, and alternate number two number 26.

MR. LYLES: Yes, ma'am.

THE CLERK: Defendant strikes number 6, number 7, number 10, number 13, number 23 of alternate number one, and number 24 of alternate number two.

MR. BELCHER: That's correct, ma'am.

THE CLERK: Ladies and gentlemen, as I call your name, if you would, please come forward, bringing your personal belongings and taking a seat in the jury box.

Number 64, Jennifer Duncan.

Number 244, Johnny Wilbanks.

Number 208, Scott Simmons.

Number 121, Catherine Keahon.

Number 158, Marisol Moranchel.

Number 206, Karen Shiverdecker.

Number 63, Barry Duncan.

Number 106, Jarrod Holbrooks.

Number 84, Tony Freeman.

Number 42, Morris Cobb.

Number 234, Vanessa Tuck.

Number 1, Micah Adams.

For alternate number one, number 72, Margaret Farmer.

And alternate number two, number 216, Peggy Smith.

THE COURT: All right. Is there any reason this jury cannot be sworn for the trial of this case, from the plaintiffs?

MR. LYLES: None from the plaintiff, Judge.

THE COURT: From the defendants?

MR. BELCHER: No, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, I'm going to excuse you for the balance of the day. In fact, the day is over now because normally -- I might as well tell you, my policy is that we usually try to quit before five o'clock each day. So that means -- because it's been my experience that we all have two days. One begins early in the morning; one goes to about -- that goes to about five o'clock. And then we have one that begins at five where we have to do other things that goes on forever. So, therefore, I usually try to be sure that jurors are out by five or soon thereafter, which means that, of course, I don't start a witness close to five o'clock that might carry us further. However, if we're trying to finish up a witness -- in other words, with examination, rather than split the testimony, I go

ahead and go a little bit beyond five. But this is a good bit beyond five. So with that, I'm going to just excuse you. I'm going to ask you to go back to the jury room with the bailiff. And I'm going to ask you, out of the first twelve of the jurors, if you would select a foreperson for the jury. And then once you do that, come back and I'll excuse you for the day. During that time while you're selecting a foreperson, that's the twelve that will be sitting.

Let's see, you're the two alternates, so everybody in the first six seats on the front row and the first six seats on the back row, if you would, please. And it can be by secret ballot or however way you want it. But just, if you would, select a foreperson for this jury.

All right. With that -- in fact, and I'll suggest that -- well, no, we're not going to do it. We're going to put everybody back in the jury room. But as soon as you do have a foreperson for the jury, if you would knock on the door and come back and we'll receive that. And then we'll excuse you for the balance of the day.

All right. Everyone else remain seated while the jury retires from the courtroom.

(WHEREUPON, the jury exited the open court at approximately 5:57 p.m.)

THE COURT: All right. Ladies of gentlemen of

the jury panel who were not selected on the trial of this case, as I told the entire panel earlier, this case is going to probably last several days if not -- we've set aside, in fact, two weeks for it. It probably will not go that long. But the fact is, this will be the only case we try at this term of court. So with that, I'm going to excuse you. This will conclude your service as jurors here in circuit court. And about the only thing I -- I appreciate your patience with the Court today and I thank you for your service. I hope it has not been without some benefit to you. But the only thing I can do for you, if you'll remember when I qualified the entire panel this morning, I asked how many had served on a jury the last three years. At least you won't have to be summoned for another three years. So that will be some benefit to you.

But I do thank you. And in all seriousness, our system of justice would not function if we did not have citizen participation. And I thank you for taking the time and making the arrangements in order to be here today for the selection of the jury. And I do want to thank you on behalf of the County of Oconee as well as our system of justice for your participation.

With that, I will excuse you. And y'all have a wonderful week now without any further interference.

(WHEREUPON, the jury panel exited the open court at approximately 5:57 p.m.)

THE COURT: I do understand that we do have a foreperson. All right. I understand they have selected a foreperson for the jury.

Anything from the plaintiffs before we bring the jury back?

MR. LYLES: No, sir, Judge.

THE COURT: From the Defense?

MR. BELCHER: No, Your Honor.

THE COURT: All right. Very good. Ask the jury to join us.

(WHEREUPON, the jury entered the open court at approximately 6:01 a.m.)

THE COURT: Now, who was selected as the foreperson?

THE JUROR: (Raised hand)

THE COURT: All right. Ms. Moranchel, you take this first seat on the front row there. And we're not going to swear you until tomorrow, but you'll be the foreperson or foreman of the jury. You'll always sit in that seat. The two alternates will always sit in the two seats on the end of the back row. But all the other seats are not in any way reserved, so you can sit wherever you like.

Now, I'm going to excuse you today until ten o'clock in the morning because we'll have some things we need to do before the trial begins. But at that time, we will begin the trial.

I tell the jurors in cases that this is the most difficult part of the trial of the case for you because you're going home, and somebody's going to ask "Well, what are you doing?" And you're going to say, "Well, I've been drawn on a trial." And they'll say, "Well, what's the case about?" You're going to say, "Well, I can't talk to you about it." And they'll say. "Well, why not?" And you'll say, "Because the Judge said so." And they'll probably say something to the effect, "Well, that's ridiculous." Well, the fact is, I think you understand, this is an important case to everybody involved, and it needs to be resolved in a proper fashion. And that means that no one who is not sitting where you are now or in that jury room when you deliberate for a verdict in this case can help you. In other words, they haven't heard the first bit of testimony or seen the first bit of evidence, nor will they see the first bit of testimony or hear the first bit of evidence. So they can only interfere with the proper resolution of the matter.

So with that, I am going to instruct you that if

somebody should attempt to discuss it with you, I'll be here about eight thirty in the morning, and I'll be glad to explain it to them. But I think you understand this is an important case that needs to be resolved in a proper fashion.

With that, I'm going to excuse you until ten o'clock in the morning. Just come back to the jury room. The bailiff will show you how to get back to the jury room that you'll be using. Well, let's see.

Yeah, we're going to be up here. So this jury room will be the one we'll be using. With that, I wish you a very -- well, first of all, I want to thank you for your patience today. I wish you a very good evening, and I'll see you in the morning.

Everyone else remain seated while the jury retires from the courtroom.

(WHEREUPON, the jury exited the open court at approximate 6:04 p.m.)

THE COURT: All right. Anything from the plaintiffs before we take our evening recess?

MR. LYLES: No, sir.

THE COURT: Anything from the Defendants?

MR. BELCHER: No, Your Honor. Thank you.

THE COURT: All right.

Madam Clerk, if they do need to do something in the

courtroom, will the courthouse be open at 8:30 or so?

THE CLERK: 8:30.

THE COURT: All right. Very good. So do make those arrangements.

And Madam Court Reporter, we'll start the trial at ten.

All right. Very good. I'll see you in the morning.

MR. LYLES: Thank you, Judge.

THE COURT: Yes, sir.

(WHEREUPON, court stood at recess for the day at approximately 6:04 p.m.)

October 29, 2013

(WHEREUPON, court convened with all parties present and the following proceedings were had commencing at 10:23 a.m.)

THE COURT: All right. We're back on the case of Stoneledge at Lake Keowee Homeowners Association, Inc., et al, versus I.M.K. Development Company, L.L.C., et al, 2009-CP-37-652.

All right. Are the plaintiffs ready to proceed?

MR. LYLES: Yes, sir, Your Honor.

THE COURT: Are the defendants ready to proceed? I'm going to sort of appoint Mr. Belcher as the spokesman. And if anybody has any exceptions -- what is it? -- if they would communicate that.

MR. BELCHER: The peanut gallery seems to suggest we're ready to proceed, Your Honor.

THE COURT: All right. I'm trying not to be Howdy Doody. But anyway ...

Gentlemen, ladies, apparently my questions yesterday were not as forceful and intelligent as I had wanted them. I have received a note from one of the jurors.

> Yesterday my husband and I took a day off and went to tend to my son. We really don't have a baby sitter, and my parents work twelve-hour shifts. And my husband's mother works second shift and picks her children up before going to work. And the time frame is iffy on who's taking care of the children. If I stay, my husband will have to ask for another day off. It is his last one. And we have only one car, and I would much rather him go to work because we depend on his paychecks because I am a stay-at-home mom only. I'd rather him keep his job than lose it. I would be more than happy to serve another time. Near a holiday would be great.

As we've discussed before with other jurors, my concern is not only that the parties have a fair and impartial jury, but also the jurors are comfortable in

doing what they have to do, which is obviously pay attention to what is happening in the courtroom during the trial of the case. If there's anything that's going to interfere with that, I feel that it would be better to excuse her. I wish they had told me. I asked the question particularly of any children, custody of children whom care needs to be provided for or if they couldn't provide care for while they served. And if not -- what is it? -- they would be excused. Unfortunately, as I say, maybe I was not as clear about it as I should have been. Unless I have an objection, I'm going to excuse the juror.

Now, that brings us down to two alternates. And I forgot to look it up. But -- what is it? -- as I understand, the way we do is the Clerk puts the two alternates names in the -- I guess we'll have to use some sort of container -- and draw the names out. In other words, the rule now is that you do it the same way you do original jurors. You do it at random. In other words, the old days were good because you just moved the one up.

But so, Madam Clerk, if you would, please put the two names of the alternates and fashion it and select one.

THE CLERK: Okay.

THE COURT: Now, perhaps I should also remind

us that's going to bring us down, as I say, to twelve jurors and one alternate. As I understood yesterday when we drew the jury that there was an agreement to go to eleven if we had to, of course, but no further. Now, is that the same understanding you have today, Mr. Lyles?

MR. LYLES: Yes, sir.

THE COURT: Is that the same? Check with your group. In other words, if we have two other problems ---

MR. BELCHER: I'm fine with proceeding with eleven. I guess if anybody else has an objection to it, they just need to speak up.

THE COURT: Very good. Thank you. So we will. That's the process we'll follow.

All right. Would you ask Ms. Moranchel to join us, please? I think -- if Buck's back there, he knows which one it is, I believe.

THE BAILIFF: Yes, sir.

MS. BROWN: Your Honor?

THE COURT: Yes, ma'am.

MS. BROWN: This doesn't need to be on the record.

(Off record discussion)

(WHEREUPON, the juror entered the courtroom.)

THE COURT: All right. I understand you have a problem with providing for your children?

THE JUROR: Yes.

THE COURT: All right. So I'm going to excuse you. All right?

THE JUROR: Thank you.

THE COURT: I want to thank you for serving.

THE JUROR: Thank you.

THE COURT: Thank you.

(WHEREUPON, Court's Exhibit Number 1 was marked for identification only.)

THE COURT: Can you hear me now?

MS. BROWN: Yes, sir.

THE COURT: By the way, if anyone can't, if you would, please, just raise your hand. I'll try to speak up and speak more precisely or clearly or cogently. I'm not sure I can do that. But anyway, I'll try.

All right. If there's nothing else, let's bring our ...

Is there anything from the plaintiff?

MR. LYLES: The only thing I had, Judge ---

THE COURT: Yes, sir.

MR. LYLES: --- is I've talked to Lisa this morning. I've got a few things that I want to put on an easel this morning in my opening. And we've been trying to figure out the best place to put the easel so that defense counsel, the jury and you can see it.

THE COURT: How large is the ---

MR. LYLES: Just some posterboard.

THE COURT: I mean, really how far back can the jury see it?

MR. LYLES: I think that that's too far. And so I'm even happy to hold it and show it to defense counsel and show it to you. I just don't want to put anybody to the back of it. And as Lisa ---

THE COURT: Well, where are you planning to put the easel?

MR. LYLES: Well, we moved it over here. I originally had it over here this morning thinking that that might be good.

THE COURT: Well, let me -- the thing is, that's not bad because we don't use those two seats at the end.

MR. LYLES: Okay.

THE COURT: And so that'll be -- can the defense see it? You might have to move some of your things there so they can -- no. That's going to be to the back of the defense.

MR. LYLES: Yes, sir.

MR. BELCHER: If you'll just show it to me before you put it up so I know what it is.

MR. LYLES: Is that okay?

THE COURT: Check with the other attorneys. How many of these do you have?

MR. LYLES: There are about six or eight. Some of them are just charts showing the parties.

THE COURT: All right. Well, let me ask you this. Now, these are for demonstrative purposes; they're not exhibits?

MR. LYLES: They're not exhibits. They will be.

THE COURT: All right. Have they been marked?

MR. LYLES: No, sir.

THE COURT: Okay. All right.

MR. BELCHER: We had planned to put ours just about right here so that anybody who wants to scoot over and see it from this side of the courtroom can do that.

THE COURT: What do you think about that?

MR. LYLES: I'm happy to do that if that ---

THE COURT: That might be better really. And ...

MR. LYLES: Yeah, I'm happy. I just want ---

THE COURT: Yeah. I think that would be better. That also -- I do think that you should, when you're presenting it, do show it to the defense first.

MR. LYLES: Okay. Yes, sir.

THE COURT: All right. We do need to draw that

name. Let's let Mr. Bowman use -- those wwho remember how we used to do juries. You'll probably remember ...

Yes, sir?

MR. BELCHER: I apologize for interrupting, Your Honor. My concern is, is that if the twelve, or thirteen jurors back there see how easy it is to get off the jury now because somebody's left, that we're going to lose a couple more. Can we bring them out here and make sure that we're not going to have any more people ---

THE COURT: Certainly. That'll be ---

MR. BELCHER: Because if we need to empanel some more people, if we need to call some people back who have been excused ---

THE COURT: That's a good point because we haven't sworn the jury yet.

MR. BELCHER: Yeah.

THE COURT: Okay. Let's do that. But right now we're going to draw an alternate.

THE CLERK: Mr. Bowman has drawn.

THE COURT: All right. Juror number 107 then will be moved to the jury.

(Off record discussion)

MR. LYLES: There's not a he as an alternate. There are two women alternates.

THE CLERK: You're right. You're right.

MR. LYLES: Okay.

THE CLERK: That's my fault. I'm sorry. I'll do it again. I'm so sorry.

THE COURT: All right. Number 72 will be the alternate now, Margaret M. Farmer. No. She'll be a member of the jury panel, and the only alternate we'll have then will be Peggy Smith.

All right. Anything from the plaintiff before we bring the jury back?

MR. LYLES: No, sir.

THE COURT: From Defense?

MR. BELCHER: Nothing, Your Honor.

THE COURT: All right. Thank you.

Ask the jury to join us, please.

(WHEREUPON, the jury entered the open court at approximately 10:36 a.m.)

THE COURT: All right. Let the record reflect the jury, minus one plus the two alternates, are in the jury box. And inasmuch as I had to excuse a juror, I'm going to ask Ms. Farmer, if you would, move down to the seat next to the foreman.

(WHEREUPON, the witness complied.)

THE COURT: Ms. Smith, you are now the only alternate we have, so you can sit in either of those two chairs. Thank you.

Mr. Foreman, ladies and gentlemen of the jury, we've had to excuse two jurors after the panel was qualified. Actually, no. I think there are two others and now one of the alternates. This case requires a jury of twelve. And as I mentioned, it's going to last -- it could last as long as two weeks. We hope that -- what is it? -- it'll be completed before then, of course. But I need to know if there is anything that you're aware of now that might interfere with your sitting on this jury, because otherwise, before we start the case, we would have to draw a new jury. Now, rather than get your answer here, I'm going to let you go back to the jury room. And if any of you have any sort of concerns, I'm going to ask you to bring it to the Court's attention.

Now, that goes for all twelve of you as well as you, Ms. Smith. So, therefore, I'm going to ask you to retire from the courtroom. If you need to discuss it, fine, but I need to know that we can go forward because, as you realize, this is an important case to everybody that's involved and it needs to be resolved in the proper fashion which requires twelve jurors.

So with that, I'm going to excuse you and ask you to go back and see if there's anybody that has any further problems. I mean, of course, if there's some emergency or something like that, of course, we'd take care of

that. But I mean right now if you anticipate any problems. And once you're ready to come back, Mr. Foreman, if you'll knock on the door. Thank you.

(WHEREUPON, the jury exited the open court at approximately 10:39 a.m.)

THE COURT: All right. Anything further from the plaintiff?

MR. LYLES: No, sir, Judge.

THE COURT: From the Defense?

MR. BELCHER: No.

THE COURT: All right. Now, let's -- just for the record, is there anything that we need to do before we do -- if we swear the jury and go to the jury with opening statements, is there anything we need to be prepared for?

MR. LYLES: (Shook head side to side in the negative)

THE COURT: Okay. If there is, let me know or particularly let each other know so that we can get it resolved before we try to get this underway again.

All right. We'll stand at ease.

(WHEREUPON, Court stood at ease after which the jury entered the open court at approximately 10:45 a.m.)

THE COURT: All right. Mr. Foreman, have you been able to discuss among the jury as to whether or not

there'll be any other problems that we know about or reasonably anticipate?

MR. FOREMAN: Yes, sir, we did. And there is no problem foreseen.

THE COURT: All right. Any objection from the plaintiff to swear the jury?

MR. LYLES: None. None, from the plaintiff, Judge.

THE COURT: From the defendants?

MR. BELCHER: No, Your Honor.

THE COURT: Very good.

Madam Clerk, if you would, please swear the jury.

(WHEREUPON, the jury was duly sworn.)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, before the case begins, I'd like to tell you a little bit about how we will proceed. The status of foreman is the same as any other juror. The foreman does act as a spokesperson for the trial jury. It is the responsibility of the foreman to preside over the trial deliberations and when you retire to reach a decision on the issues of the case. As the jury deliberates its verdict, the foreman has a duty to see that each juror has a full and fair opportunity to express his or her opinions and views on all aspects of the case.

Now, from time to time, it will be necessary to send

you out to take care of certain legal matters. When you return to the courtroom, Mr. Foreman, please make sure that all members of the jury are ready to come back at the same time. The reason for that, of course, is from this point on you must make your decision in this case based solely on the testimony from this witness stand and the evidence introduced in this courtroom. So it's absolutely essential that every member of the jury has the same opportunity to see and hear the same testimony and evidence. So, therefore, if somebody's not quite ready to come back, just wait and put everybody together. And then when you are ready to return to the courtroom, all come back together.

Now, as far as the trial is concerned, the first thing that will happen is that the attorney for the plaintiff -- the plaintiffs being the individuals who have brought or the entities that have brought this action or lawsuit. The plaintiffs' attorneys will make an opening statement which will be followed by a similar statement by the defendants' attorneys.

Now, these opening statements are not arguments. The arguments will come at the conclusion of the case. The purpose of these opening statements is for each party to state the facts they intend to prove and the theory of their case.

Now, following the opening statements, each side will present its evidence with the plaintiff once again going first. Now, evidence may take many forms. It may be testimony, stipulations, documents, models, photographs or the like. You should pay close attention to all the evidence which is presented by each party because, as I've said, you, the jury, are the sole and only finders of the facts in this case. No one else will be permitted to weigh the evidence and render a verdict based upon it except you.

Now, after all the evidence has been presented, the attorneys will make their closing arguments. Unlike the opening statements, these final remarks will be true arguments. That is each side will emphasize certain portions of the evidence and try to persuade you to agree with their versions of the facts.

After the arguments are finished, I will explain to you the law which applies to this case. You will then retire to the jury room and consider the facts and law. And once you have done so, you'll return a verdict in favor of one side or the other.

In this case, we have many parties, so there'll be separate verdicts in each matter. And there are certain additional comments I need to make before the case begins. First, as I mentioned earlier, although I am the

only person who can tell you what the law is, you are the only ones who can determine the facts. I do not have the right to indicate how I may feel about the evidence presented. And throughout this trial, my intention will be to act impartially towards each party.

Second, from time to time, an attorney may object to some bit of testimony or evidence which the other side is seeking to present. As in sports, business or any other structured activity, there are certain rules that both sides must obey in presenting the evidence. These rules have a definite purpose. They ensure that the information you receive is the most trustworthy and reliable evidence available.

An objection is the procedure we will use for an attorney to call a possible violation of the rules to the Court's attention. And for this reason, you should not hold an objection against a plaintiff's client -- I mean, a party's client, nor should you conclude from my ruling on the objection that I favor one side or the other.

Finally, I would ask that you pay the closest attention possible to the evidence presented to you. I will ask that you do not take notes. For if the note taker makes an error, those notes can be more detrimental than helpful during the deliberations. The time-tested system is for each of you to listen carefully, and I'm

confident that you will.

Now, the reason I suggest that jurors do not take notes, it's been my experience if we take notes we have a tendency to concentrate on the note that we are taking. In other words, we're concentrating to be sure that we write down what we think we hear. That in itself is a problem because we might miss a word. In other words -- or even hear a word that wasn't spoken. And I use the word "not." In other words in you write down the word "not" in a note, it changes the meaning of the note altogether if that was not actually said. And, also, when we're concentrating on the note, you miss what is happening on the witness stand and in the courtroom with the evidence being presented. It's more important that you keep your eyes on the courtroom and the witness testifying at all times so that you'll be able to evaluate the testimony and evidence because you, and you alone, are the only ones who can determine the facts in the case. And if you have a question in your own mind as to what their testimony was, in your joint deliberations you would -- same as you when you're going to reach a verdict which must be unanimous, you depend on what the others recall. And we have a tendency, also, if somebody has it written down and says, "Well, I've got it written down here," well, it's only good as what it reflects as

actually being said at the time. And sometimes we don't hear everything or we miss some essential part, which is, as I say, one might miss a word.

Now, having said all of that, I do take notes. And that's not one of these things, do as I say not as I do. Please understand you have entirely different purposes, or we have entirely different purposes in this courtroom. As I said, you are the only ones that can determine the facts, to weigh the evidence, evaluate the evidence, to determine the credibility of witnesses. I am not concerned about the weight of the evidence or even the evidence itself. The only thing I'm concerned about is according to our procedures that certain things are done as they are required to do. So what I'm doing is jotting down what happens, not the significance of it. That is for you.

So with that, I'll recognize Mr. Lyles for his opening statement.

MR. LYLES: May it please the Court. Thank you, Your Honor.

OPENING STATEMENT

BY MR. LYLES:

Good morning. I was introduced to you yesterday. My name is Robert Lyles. It's a pleasure to appear before you guys today. This is the first case I've ever

tried in Oconee County. I've been working on this case for four years, and so it's been a pleasure to be up here and be in this courthouse and be in your town and driving through your county.

I told you I'm from Charleston. I have a law firm down there. And I've been practicing law -- it's hard for me to believe. But I've been practicing twenty-six years which, as I said, is a little tough to imagine. I was actually born in Clemson. And I'm from a family of architects. And my father and mother were in school when I was born. I was born over in Anderson. Clemson was my first home.

We've added somebody to our table today. You might have noticed. And that's Burgess Metcalf. Burgess is also an architect. And Burgess works with a company called Construction Science and Engineering. And you'll hear a lot about this company. C.S.E. is what we call it. It turns out Burgess is from a suburb of Fair Play, and -- or he tells me. And he's a local Oconee County boy himself.

In any event, I appreciate your service and your attention. And I think I speak for all of the lawyers, my colleagues and friends on the defense side too. Y'all were here yesterday afternoon for what was, I'm sure, a long afternoon for y'all. And you see how the process

works. And I can tell you that as you're sitting here this morning that we, meaning me and my clients and the defense lawyer and their clients, selected you to be here. And we all appreciate the sacrifice that's involved in jury service. And we appreciate it. And I personally look forward to trying this case in front of you this week.

As I mentioned, the case is four years old. So I don't want you to believe that this is something that got started a week ago or a month ago or even a year ago. Four long years I've been working on this case. My clients have been living with this case. The defendants, most of them, have been involved in this case for four long years too. So as I stand before you today, this is something that I have been looking forward to doing for four years. A little more than four actually. And it's been a hard long process.

And I will tell you again on behalf of my colleagues, as well as me, the trial that you see is the result of thousands of hours of work and effort and I think close to a hundred depositions that have been taken in this case. Everybody's worked real hard. And me no more than the defendants. Everybody's worked hard to bring this case to you.

I will say that there is a little bit of a

distinction, though, between my clients and the defendants. And nobody wants to be on the defendant's side of a lawsuit, and I admit that. But the reason we're here today is because my clients have a problem. They have a big problem. And they are here today at what I view as the beginning of the end of this process to ask you to help them fix the problem that they have. And that's the purpose of this proceeding.

Now, when I was in law school twenty-six years ago, they told us in our trial advocacy class that an opening statement is an opportunity for the lawyers to sort of give the jurors a roadmap of the case. A little advanced view of what the case is about and the type of evidence that the jury is going to hear over the next week or two weeks. To give you an opportunity to maybe understand a little bit of context when you start hearing the evidence that's coming from the witness stand in the form of witnesses, the documents that you read, and the photographs that you read and the other types of evidence you may see. So I'm here to try to give you my roadmap of this case so you understand how I see this case and how I think this case will unfold over the course of the next two weeks.

Let me begin that by reintroducing the parties to you because we have a lot of parties. And it's going to

get confusing. By the end of this two weeks, you guys are going to absolutely know who's who. But right now you've probably got some questions about that.

So what I did -- excuse me -- I did some charts. And the courtroom is tight because we've got so many people in here. So we're all a little crunched up for space. I've got a board here, and it just tells you who my clients are. As Judge Macaulay said earlier, I represent the plaintiffs. That is the people who are bringing this claim. My client is The Stoneledge at Lake Keowee Owners Association. We refer to that as the H.O.A. or the association. You'll hear that a lot. It's actually an incorporated entity in South Carolina. And over the course of the next couple of weeks you'll hear a lot about an H.O.A., and you'll hear what an H.O.A. does and who are the members of an H.O.A. and what the responsibilities are of an H.O.A. And you'll hear about how an H.O.A. gets money to fund its operation and to fund its obligations. So you'll hear lots about the H.O.A.

I also represent a bunch or a few individual owners of units in phase one at Stoneledge. The Furnaris, the Taylors, Bob White, the Grassos and Carol Pope. And many of my clients are out here today and other owners of Stoneledge. Those are my clients.

As you know, my clients have brought these claims against a number of defendants because they have this problem. And so I want to show you the defendants again in this format so that you are able to see a little more clearly who the defendants are. And I'm sorry we're so far away. I'm trying to make sure that the Judge and the defense lawyers have an opportunity to see this too. And I'll talk to you just very briefly about them.

The first listed up there is Bostic Brothers Construction. This case is about Stoneledge, which is a townhome community on Lake Keowee, and it's about phase one of Stoneledge. We'll call it phase one. There's another phase, but it's not at issue in this case. Bostic Brothers Construction was the general contractor for phase one of Stoneledge. They started construction in, I believe, 2002. And you'll hear that Bostic left the site in 2004 partially completed.

Also, we have Jeff Bostic, Joe Bostic and Mel Morris, three individually named defendants, who are seated over here. They were the members of Bostic Brothers Construction. We also have in this courtroom some Bostic subcontractors. That is, contractors who Bostic hired to build certain components of phase one. We have Jose Nino who was a framing subcontractor. We have in the courtroom a subcontractor by the name of

Everado Jaramillo, who was also a Bostic framing subcontractor. And you'll hear testimony about what those subcontractors did and what their responsibilities were in connection with this project.

The next line of defendants is a company called I.M.K. It's I.M.K. Development Company, L.L.C., I believe. I.M.K. was the company -- if you remember, a moment ago, I told you that Bostic left the project not completed. You'll hear that in 2005 I.M.K. came in and took over the project, what remained to be done in phase one. And they sold nineteen of the units in phase one as a developer.

Now, I.M.K. is an L.L.C.. It's not a person. And you'll hear that I.M.K. is made up of two other L.L.C.s. Made up of Marick Home Builders, who has a successor corporation called the M Group. And both of them are here. They were a member of I.M.K. and contractor for phase one. They completed the work that Bostic didn't complete. And you'll hear that they made some repairs to problems in the Bostic units after they took over.

We also have here in the courtroom a member of Marick and M Group. His name is Rick Thoennes, Jr. Mr. Thoennes, he's here. There he is, Mr. Thoennes. Mr. Thoennes was the license holder of that general contracting firm. He held the license. And importantly,

Mr. Thoennes was also a board member of the Stoneledge H.O.A., my client.

The next defendant we have down here is Integrys Keowee. Integrys was also a member of I.M.K. I.M.K. is an acronym for Integrys, Marick, Keowee. Integrys Keowee was comprised of three members, two of which are here, Mr. Cox, Bill Cox, and Larry Lollis, both members of I.M.K. And Mr. Cox also served on the board of the Stoneledge H.O.A.

So that's a reintroduction to the parties. Pretty dry, boring stuff. But it's important for you to understand who's here and why they're here.

Now, let me tell you next a little bit about the case because I've tried and tried to think about the best way to portray this case as simply as I can in opening statements. And the case, as you will hear as the evidence unfolds, is about three things. The case is about the failure of the contractors to do their jobs and do their work in a manner that they should have done. The case is about the contractors doing a bad job which has caused the problem that my clients have.

The second thing this case is about -- the case is about the developers' decision to not deal with those contractor problems and defects, but rather to make those problems the problems of my client which is why we're

here today.

And the third thing this case is about, it's about my clients getting their homes repaired and the defects and the problems that the contractors and developers created corrected. That's what this case is about, and that's why you're here.

Some evidence that you will hear -- and I will try to be as brief as I can about that over the next couple of weeks. The evidence that you will hear will be essentially this. As I mentioned earlier, the developer controlled the Stoneledge H.O.A. from the period of 2005 to 2008. That is, they sat on the board. They made decisions for the H.O.A. They decided what got repaired and what didn't from 2005 to 2008.

In September of 2008 the developer, Mr. Cox and Mr. Thoennes among others, turned over the H.O.A. to my clients. Imagine, if you will, handing the keys to the car to somebody else. And in September of 2008 they said to my clients who are the owners, who are the people that had bought these units, "This H.O.A. is yours to take care of and to control from here on out." That's significant. My clients got the keys in September of 2008 and were told to manage the H.O.A.

What you'll hear is that in the early part of 2009, my clients began to realize that the problem existed.

You'll hear that my clients began to understand that units at Stoneledge in phase one leaked, that the units in Stoneledge in phase one weren't performing as intended. You will hear that by May of 2009, an owner at Stoneledge had hired me to file this lawsuit just eight months after the developers turned over the H.O.A. to my clients. You'll hear that the association, who's my client now -- wasn't my client then. You'll hear that they worked through the summer of 2009 to try to remedy these problems in a different way. You'll hear that by late summer 2009, the association, not through me, had hired another engineering firm, Grant Engineering Firm, to come in and investigate problems that they had seen in phase one. And that by the late summer of 2009, these owners, now in control of the H.O.A., had actually had to go out and structurally support porches and decks on the lake side of their homes with six-by-six treated lumber timbers because those decks and porches were already a life safety issue less than a year after control of the H.O.A. had been given to them by the developers.

You'll hear that ultimately the association decided that they couldn't get satisfaction. And so they ultimately joined the lawsuit that I had filed in May. And their claim was brought in October of 2009.

At that time, the association retained C.S.E., the

engineering firm I told you you're going to hear a lot about. And the principle of C.S.E., who will testify probably Wednesday, maybe Thursday, is someone by the name of Derek Hodgin. I don't think any of you know him, but Derek is local. He lives in Clemson. He's the former mayor of Westminster. Derek's got an engineering firm up here. He's somebody that I and other lawyers in this case have known for many years. The association hired Derek to come out and do a thorough top-of-the-roof, bottom-of-the-foundation inspection and investigation of their project to tell them what all is wrong with their homes. And Mr. Hodgin did that. And Mr. Hodgin is going to get on the witness stand, and he's going to tell you what he found. And he's going to show you what he found in phase one at Stoneledge.

And I want to show you just a few photographs of conditions that you'll see in Mr. Hodgin's presentation. Mr. Hodgin will describe all the photographs to you. And he'll tell you what you're looking at, so I won't do that. But I want you to see what he found.

These are some of the thousands of photographs that have been taken of phase one at Stoneledge. These photographs will be put up on the screen, so I won't be jostling them around. I don't have that technological capability myself. Exterior wall beneath a bedroom

window, I think. And the last photograph is the framing beneath a porch where people go sit and have cocktail parties and read.

After Mr. Hodgin did his investigation and he reported his findings to my client, they then asked Mr. Hodges [sic] to please tell them what they needed to do to fix their house to solve the problem that we're all here about today. And you'll hear from Mr. Hodges. And he did a very thorough repair document because my clients didn't want something fly-by-night or just general instructions. You'll hear that they wanted a licensed engineer in South Carolina, which Mr. Hodges is, to describe for them and provide for them a specific scope of repair that was sufficient to tell a general contractor what he needed to do to fix it and provided specifications and code provisions and manufacturers' instructions, so that when the problem is fixed, it's fixed correctly. Mr. Hodgin will testify about that.

And then importantly, after they got Mr. Hodgin to do the scope of repair, my clients hired an estimator, a contractor, to tell them how much it would cost to do the repair that Mr. Hodgin says has to be done. His name is John Folk. You'll hear from Mr. Folk. He's now with Trehel Construction. Mr. Folk looked at Mr. Hodgin's estimate, used his years of experience estimating and

constructing jobs, and Mr. Folk estimated the price to do what Mr. Hodgin said needed to be done at four point five million dollars.

Now, as I'm giving you the roadmap, another estimator was also hired, a company called Watkins Services. And you'll hear from them. You'll hear from them in my case. Watkins Services is a company I'm familiar with for twenty years. And they were hired by the defendants in this case. You'll hear that Watkins Services was also asked to give a price to do what Mr. Hodgin said needed to be done. Watkins Services came back and said it's going to cost at least three point eight million dollars to do what needs to be done.

It's fascinating as I'm standing before you, before this trial even begins, you have an estimate from the plaintiff at four point five, an estimate from the defense at three eight plus. And that's seven hundred thousand dollars, which is a lot of money, except it's less than twenty percent of the estimate totals. We're not that far off.

Finally, you'll hear that Mr. Hodgin has also said that the foundation walls in phase one also need to be repaired because they just simply leak like a sieve. And he's estimated -- or excuse me. He's done a scope of repair for the foundation walls. Mr. Folk is the only

person who's done an estimate for that. And he says that's going to cost also about a million dollars.

There's some other miscellaneous damages. And I don't use the term miscellaneous to imply that they're small. They're just generalized damages that you'll also hear about, including the cost for an architect or an engineer during the reconstruction to fix the problem.

And then finally, you'll hear a fair amount of testimony over the next two weeks about what my clients have been doing for the last four years as they have been waiting on you because they've had to go out there and they've had to do what we call emergency repairs to try to prevent peoples' ceilings from falling in and things like that. And so you'll see that number too.

And that's the roadmap of the case from our perspective. And I hope and I'm confident that by the time I get to get back up in front of you and speak to you again in the closing part of this case we have convinced you what it's going to cost to fix the problem that my clients have.

Again, I appreciate your time and your thoughtfulness. I look forward to trying this case with you.

THE COURT: Mr. Belcher?

MR. BELCHER: Thank you, Your Honor. May it

please the Court.

OPENING STATEMENT

BY MR. BELCHER:

Good morning, ladies and gentlemen. I introduced myself to you yesterday. My name is Alan Belcher. I'm an attorney here in South Carolina. I practice predominately down at the coast or up and down the coast, but also over here as much as I can. I have family here in the Greenville area. I really have enjoyed being up here.

I do construction law too just like all of the attorneys who introduced themselves to you. I didn't grow up in a family of architects, but I grew up in the dirt. So I figured when I got out of law school that was what I knew how to do, so that's what I kept on doing. I was probably, you know, four or five years old carrying buckets of water up and down the hill for concrete for my dad and my uncle. So I know a little bit about construction, and I know what's wrong here.

We're here today about the Stoneledge project. And I don't know how many of you all have been to Stoneledge or how many of y'all know where it is. It's a townhome development out on Lake Keowee. And if I can get it up on the screen here, maybe I ...

Do you have a screen?

THE CLERK: Yes, sir.

MR. BELCHER: It's a development around Lake Keowee in West Union off of Ebenezer Road. It's about eighty townhomes. It's a very nice place, plenty of boat docks. A nice place for people to have their second homes.

As Mr. Lyles said, I.M.K. and Marick were the general contractors who finished this project up for these homeowners. They built an entire second phase in the development. They built the pool. They built the tennis courts. They built all of the amenities. I think they added some boat docks. They took this project over from Bostic Construction at some time. And I'm going to talk to you about that a little bit.

But what we're here today to do is we're going to have a trial in the case. And the trial is a result of a lot of work. It's a lot of work from everyone at this side of the table. It's a lot of work from Joe Bostic and Jeff Bostic and Mr. Morris who have taken time out of their schedules to be here.

Mind you, this project is about ten years old. That's when Bostic left this project because the developer said, "It's time to stop building. We're not selling." Ten years ago, the Bostic Brothers left this project. Now, I'm going to tell you here in a few

minutes that Joe wasn't even involved in the company anymore, and that's an issue that we probably need to address in this trial. Joe had already left Bostic Brothers Construction before this project started to get out of the ground. But they're here ten years later not because -- just because they got sued; they're here ten years later because they are upset about this. They are not here to fuss about whether or not these buildings need to be fixed. They want to make sure that the right thing gets done here. They want to make sure that these buildings get fixed. Because even though they didn't complete this project, this is a Bostic project from its beginning. And they want to make sure that it gets fixed. So I want you to understand that from the very outset, nobody is going to tell you that these buildings don't need to be fixed. And nobody is going to tell you that those pictures that you saw from Mr. Lyles are okay. That's not what we're here about, and that's not the fight.

Now, some of y'all, I don't know if any of y'all have had the privilege or pain of serving on a jury before, but you're probably all asking yourself, you know, why are we here? What are we going to do? Well, as you get comfortable in there in your seats and y'all are sitting there thinking about it, what are we going to

do, we're asking you to do exactly what the Judge told you yesterday to do. And what he told us yesterday, I think makes a lot of sense. His quote was, "We have to be fair." And the purpose of you all being here today is to resolve the dispute in a fair and orderly manner. All right? That's what we're asking you to do. We're asking you to be fair to both sides. That's very important.

You have to weigh evidence in this case. We're going to hear lot throughout this trial about scales of justice and what is more likely than not and who's going to be responsible for the damages that are out there. The damage to the decks. The damages to the porch.

But what are you supposed to do? Well, the thing you're supposed to do is just use your common sense. God gave y'all common sense, gave us common sense. We're going to hear a lot of testimony from the stand. Y'all are going to learn a two or thing [sic] maybe. Maybe some of y'all are already pretty well aware of what goes in building a house. But you're going to learn stuff about flashing at heads of windows and where a piece of metal goes and where some caulk goes and how you put the windows in and how do you put a porch together and how you're going to integrate stone. So it's going to be a learning experience for all of you probably to some degree. But we're asking you to just weigh all that

evidence and render a fair, just and reasonable award at the end of this, one that is fair to both sides for all the people in the courtroom.

Now, I want to talk a little bit more about the history of this project, who built it and why. This is not some project that Joe and Jeff Bostic and Mel Morris were looking at as get it done, get it sold and get out of there. This is a project that is very close to their hearts. It's a project that when they were approached originally, they immediately jumped at the opportunity to do it.

You'll hear probably some testimony that the original architect for this development had shopped this whole concept around to several contractors, many of whom had just passed on it. Joe and Jeff Bostic found this through the architect and a couple of equity investors that found what was called Cobb's Cove, which is now Stoneledge, and said, yes, we want to do that. We don't want to build just an apartment building. We want to build nice, well-appointed, custom-looking townhomes for people to enjoy as second homes, for the Clemson Alumni, for Joe and Jeff themselves who had it worked out and if they were able to complete the job, probably would have purchased one themselves for them and their kids to get together on holidays and on football game weekends.

Now, Jeff Bostic in this company never swung a hammer. When Jeff's first career was over, he went into business with Joe. Joe finished his career, his first career, earlier, went into the construction business building some nice apartments in Greensboro. Jeff joined Joe after Jeff retired. And they got together. They started building apartments, student housing and some condos and townhomes.

This one was a different job. This was not an apartment complex with one thousand square foot apartments like we've all probably lived in at some point in our lives. This was supposed to be a high-end construction, custom-looking construction, around the lake.

Now, Jeff never swung a hammer. He didn't. That wasn't his job. His job was to serve as an equity investor. He was an equity recruiter. He knew people throughout the country that had money and were willing to invest in projects like this. He knew people who would be the developers for these projects, that would hire the expertise of the construction company to come in and build the units after they were funded or at least partially funded with cash equity. That's what he did.

He's not a general contractor. He's never had a license to be a general contractor. That was not his job

in the business. Not his job. He's still a defendant in this lawsuit. He's a defendant in this lawsuit under Bostic Construction. I don't know why. I don't know why. That's something that you all are going to have to determine, if that makes any sense to sue Mr. Bostic as -- not in his corporation, but as an individual for what he did to help develop the money necessary to start building this. That's something you all are going to have to decide, whether that makes any sense at all.

Next is Joe Bostic. Now, Joe is a licensed contractor. He started out on a very small scale in Greensboro building duplexes and multi-family. By the time -- and that would been in the '90s. I think the early to mid '90s is when he started doing that. By the time 2002 rolls around, 2002 and 2003 rolls around, Joe Bostic has nothing to do with the day-to-day of the construction. He's busy managing the business that had grown rather large at the time.

Again, he wasn't out there swinging hammers, didn't build anything at Stoneledge, didn't do anything right or wrong at Stoneledge to cause the pictures that you're seeing there. Yet, just like his brother Jeff, he's been sued. Not as Bostic Construction; he's been sued as an individual in this case. And he's had to come here and defend his reputation and defend his family's name for

the next week in a lawsuit where he didn't swing a hammer and he didn't do anything wrong. You, again, are going to have to decide if that makes any sense whatsoever in this lawsuit, for him to be an individual defendant that these people are seeking recovery from.

Now, the other gentleman who is here with us is Mel Morris. Mel Morris was -- at the time of construction of Lake Keowee, he had assumed the president's role in Bostic Construction. He had an expertise in construction and did materials procurement. And he was the one who knew how to organize the labor, get the people on the site, get the site built and build an efficient, cost-effective unit that cost -- which would be passed on to the seller.

You're going to hear that under the Bostic model, we weren't doing anything on the cheap, but we were using the resources that Bostic had to deliver these units to people at a price point that was almost affordable. Now, affordable to the people who can afford a second home at Stoneledge is different to a lot of us, but a price that made it possible to have a second home. That price went up after the Bostics left.

Now, they built Cobbs Cove. It was Cobbs Cove. That was the original concept. They changed it to the Townhomes on Keowee. So now it's Stoneledge as it is

today. What they had called it was the Townhomes on Keowee. And they did it because of their allegiance to Clemson, their ability to have a place this close to Clemson so that they could go watch games on Saturdays and only be thirty minutes away, to have a place for their children to go and live when their children went to Clemson. That's why they did this. So, again, they're not building this with an eye towards maximizing profits and getting rich off of a single job. They're building this because they're going to live in this community. And people who live in this community alongside of them, they want them to be satisfied purchasers with these units. They're not a fly-by-night operation, as you may hear suggested. They built these with an eye to live in them.

This is the original plat. Now, they began construction around 2002 and 2003. That's what the permits say. The permits -- we start pulling them in 2002, and we do the site work and the excavation. We get the building pads down.

Before a single building is built, Joe has already decided to retire from construction. So Joe is out as of January 1st, 2003. He sells the company. He sells his interest. I think Mr. Morris probably takes on a bigger role in the company.

But this is something that Joe has even talked to me about this morning. He's perplexed that he's still here. He's willing to be here to defend his name, to do what he needs to do and even defend his old company. But he is still perplexed why he's here as an individual defendant when he was long-gone from the company when these people started to have problems with these buildings. And, again, that's something you all are going to have to decide.

Now, Bostic sold -- Bostic completed and obtained what's called a certificate of occupancy from the building department in the 2003 time frame. I've got a -- behind here. But I've got something that may help you back here. This is the -- you'll see a lot of this one. This is the plat. I don't know if y'all can see that from here, but this is the plat for phase one. And we're going to be talking a lot about this.

When Bostic started, this is what it planned to do. It was going to build these thirty-seven units and then pause, determine interest and build a second phase of about forty-three units. The second phase -- and you'll see some pictures of it just because that's where all the amenity centers and things are. You'll see pictures of some of those units in the second phase. It goes out this road, wraps around the lake.

So Bostic started. They got everything to a place where it was at least, as you see here today, under roof. And that's just a term that we use in construction meaning the shingles are on the roof, most of the windows are in. I think the siding is on. From the outside, these units probably look like they are complete. Now, there are very many of these. And I think that that holds true for about thirty-three out of the thirty seven. There were a couple that required a lot more construction than that.

Of the number that were, quote, unquote, under roof, some of them were sold by that developer, for that first developer. From what we gather, there were eleven sold. There remained twenty-seven. And you've already seen the numbers of how many Marick sold and then how many the next company in line sold. But we only obtained certificates of occupancy on the ones that we sold.

Sometime in around October of 2004, the units weren't selling because Bostic had built them at a price point to try to sell them at what would be a low price for a property like this in comparison to other lake properties. But they couldn't sell it for that because they had put all the money -- they had put more money into it than they were able to sell them for.

So when that all happened, the developer shut down

the project. Bostic didn't complete the other twenty-six or twenty-seven units in the phase. Some of those units needed cabinetry, so it was almost complete. Some of those units needed walls. Some of those units needed plumbing and air. It just varied how complete they were. So we don't have a great historical note of which was what. We only go by the permits that were later pulled by Marick to complete the job.

Now, when Marick comes in, they acquire all of these unsold units, the twenty-six or twenty-seven unsold units in phase one, that are least under roof and some of them further along. They issue new permits on those about a year after Bostic has left. Many of these buildings were left sitting partially complete for a year just because the developer told Bostic to stop. Bostic was having financial issues as a result of this and other projects. So the units sat, sat empty, partially complete.

The next time that you see permits being pulled and certificates of occupancy being issued under Marick -- they did pull new permits, they had to pull new permits because the buildings had sat unfinished -- is about a year later. And then Marick goes on and sells out almost all of phase one at a much higher cost, considerably higher. I think that there were people who paid upwards of twice what Bostic may have sold its first units for

down here and throughout the complex. So that's something that you need to understand as well.

Now, that all being said, Bostic is sitting here today. And the Bostic Brothers, Joe and Jeff, can sit here today, and they can make every argument in the world that they're not responsible to all of these homeowners. And, frankly, the law would probably support that. And they could sit here and say that there's nothing wrong with these buildings. And they could sit here and tell you, "We don't think these people are entitled to any thing." But that's not what they're doing.

You've seen all those pictures of everything that's so bad, and I want to show you some other pictures. This is what Joe and Jeff's idea ultimately turned into. This is the front sign of Stoneledge. This is the front gate and the guard shack and I think the mailboxes. This is the entrance down to where all the homes are. This is a typical unit that's out there. Okay? This is what Bostic set out to build. It's fancy-looking lakefront townhomes. This is what they set out to build as well.

Now, you're going to hear later -- you see these pictures. And I'm going to show you some other pictures here in just a minute. But these pictures, especially where you have this porch issue -- and I'll tell you this is a bad looking picture. That's probably right about

this area. Okay? That's where we see this issue right around these columns right there on these porches. And they have had to put -- or they have put -- don't know if it's necessary or not. They put some big piers underneath the big wood poles to support because there's a fear that those porches in those areas are unstable. There's some rotten wood at some of those locations. Some of those locations do look like that. But that's what it looks like on the outside. And that's what Joe and Jeff set out to build. This is a look at more of the units to show how they sort of stack with one another and have lake views.

Now, what are the issues? One of the things that I want you all to be very clear about as we move into this is that there's going to be maybe a rush to judgment or a rush to an understanding that these buildings are terrible, that these buildings are falling off the hill, sinking into the lake, and they just need to be torn down and thrown away. Okay? There are issues. There are issues that we have identified. There are issues that they have identified. There are issues with the roof to some extent and the way the roof intersects with certain walls and materials that you're supposed to put in between a roof and a wall. It can be technical what goes there. And there's some places where that needs to be

corrected.

There are problems with the decks. That's a problem. That needs to be corrected. There's some problems with a couple of leaking windows. That needs to be corrected. If windows leak, they need to be corrected. There's some problems that they have pointed to with framing. Somewhere all over this project there are places where maybe the wood is this much too short or the wood is this much too long. And that has to be addressed. Well, if the code says address it, it needs to be addressed.

Then there's some grading issues which ultimately create one of the -- probably the biggest part of the interior issues that you're seeing in the basements is that the grading needs to be reworked, and there probably needs to be a little bit of work done there.

Now, you're going to hear from C.S.E. and Derek Hodgin that because of what the general contractors did -- and think that they failed -- I think he told you that there are three issues, one of which is that there was a failure by the contractors to build these buildings right.

You're going to hear from Mr. Hodgin and Construction Science and Engineering that as a result of these failures, every single stone on these houses needs

to come off. Every single piece of siding needs to come off. Every single shingle needs to come off. These buildings need to be stripped back to their skin and reconstructed. And in the meantime, we're going to take every porch off and put it back on too. And that's the only way that Mr. Hodgin is going to be satisfied that these buildings are okay. Oh, and we're going to take every single window out, regardless of whether it leaks or not, and we're going to put it in a different way.

Now, you're going to see pictures like this. We don't hide from pictures like this. We know this is out there. Just like they did, we hired an expert to go out there. With the benefit of what Mr. Hodgin had already done, we hired a gentleman by the name of Richard Moore who's a very well-respected gentleman who works for people who own homes, who works for people who build homes. And he is a forensic engineer. He takes the time to review the report of Mr. Hodgin of Construction Science and Engineering, and then he goes out and he does his own destructive test cuts. He pulls out wood. He pulls off stone. He developed a protocol of what he wanted to do to find out not just that something's wrong -- we know something's wrong -- but to find out the extent of it, to find out if it's really fair to pull off every stone, to find out if it's really fair to pull off

every piece of siding and every shingle and everything else because ultimately what's fair is what they're going to have to pay.

So let's look at what Mr. Moore found. And here are just a couple of samples. Okay? Because I don't want you to think that this situation is everywhere. I think that's a disingenuous conclusion for anyone to make. Here's a test cut of the same location where that was found in at least one unit. Here's a picture of the exact same thing. The cavity in-between the top of the porch and the ceiling of the lower basement porch. The exact same place, different unit. It's there. Here's another place. Look through there. You don't see any of these conditions. You don't see any of this mess. You don't see any of that. Look there. You don't see any of it. So I want you to understand as you go into this, that, yes, there are pictures like that. There are conditions like that. But there are conditions like what I've just showed you too which means we are going to offer you and you're going to have at your disposal an alternative that's fair and reasonable. An alternative to tearing these buildings down. An alternative to ripping these buildings -- all the skin off of them and putting it back on. An alternative to pulling out every window whether it needs it or not. That's what we're

here to do. We're not here to fight about this or to justify what we did or what our construction company did or what the construction company did after Mr. Bostic was no longer a part of it. We're here to show you how we're going to fix it.

Now, Mr. Moore performed an investigation. He did, I think, eighteen different test cuts all over phase one. He developed a scope of repair. The scope of repair is different than Mr. Hodgin's. The scope of repair is what we call in this business a surgical repair, a repair that does not require tearing off things that are not broken. He does not suggest that just because they're missing some vapor barrier here or you're missing some flashing here that it all has to come off. Okay? He has a scope of repair that he is going to testify about and stand behind as being sufficient, more than sufficient, to bring these buildings into a shape better than they've ever been. All right? You're going to have that at your disposal.

Now, a price of repair. You've heard about Mr. Watkins, Watkins Services. The old Mr. Watkins, Steve Watkins, did the original work on this for me. I hired him to go out there and tell us how much is it going to cost to fix these. Because at the time -- and what you'll see on the board from the plaintiffs, their repair

estimate is essentially more than it costs the Bostics to build these things from the ground up. So I hired Mr. Watkins to go out there. I've worked with him before. Mr. Lyles has worked with him before. There's not a person in this courtroom that hasn't worked with him before because this is his business to go in and do remedial work. We hired him to come out there. He gave us an estimate of -- well, here's some things -- here's what some things are going to cost, but I need to have some more information. I need to know quantities. Here's what it would cost on a unit cost. And that estimate was really low. We said, well, that's not a good enough estimate. We know it's going to take more than that. What ultimately happened, Mr. Watkins passed away last year. But his son took over the company. So you're going to hear testimony not from Steve Watkins but from J.R. Watkins, who is Steve, Jr. He took over the company. He is the guy who, when his dad was in charge, he was the guy out in the field. He was the guy who knew how to do what needed to be done to fix buildings. Well, now he's in charge. And he does -- you're going to hear about what he's going to do, and you're going to hear what his final estimate is.

Now, you've heard that Watkins has an estimate that's only seven hundred thousand dollars off from the

plaintiffs' estimate or whatever that number was. Well, you're also going to hear that that is Watkins pricing the same scope that they're suggesting needs to be done. We're going to give you the benefit of a number that these people are entitled to, what they've revised with a surgical repair, a written scope of repair of what needs to be done to fix these buildings and how much does that cost. And you're going to hear that number. And that's the number that we're going to suggest these people are entitled to to fix the buildings.

Again, we're not running away and hiding on this. We want these buildings fixed. We want people who live in that community to say the Bostic Brothers did a great job. They made it right. They made those issues right. That's all we're asking for.

So just like Mr. Lyles' third issue in this case, the third issue that he wants you to consider, fix the buildings, that's what we want to do. That's what we want to do. We're not here to make H.O.A.s rich. We're not here to pay them for more than what they're entitled to. But we're here asking you to return a verdict at the end of evidence that will fix these buildings and make it right.

With all that said, ladies and gentlemen, just remember that the charges that you're going to hear from

the Judge and some of the initial charges you've heard are that you're here to do something fair, just and reasonable. You're here to return a fair, just and reasonable award. If you just keep those three words in the front of your head with everything you do, with all the testimony you hear, with all the documents you see, just keep an open mind and be fair, just and reasonable. Thank you very much.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, I am going to ask you if you'd take a very short break before we continue with the opening statements because we have several to be made. But I'm thinking maybe not more than ten minutes, and them come back, and we'll try to get as much out of the way before lunch.

So, again, now, my instruction throughout the trial of this case, Mr. Foreman, ladies and gentleman, is that you are not to discuss this case among yourselves or permit anyone to discuss it with you, even when you're back in the jury room. Obviously, you can see that this is a case that involves a lot of information. And until you hear it all, then you shouldn't make a judgment before you've heard everything including the law that's applicable.

But with that, I'll excuse you and ask you to --

don't even talk about personality. Let's just stick with something else. All right. Very good. Thank you very much.

(WHEREUPON, the jury exited the open court at approximately 11:48 a.m.)

THE COURT: Ladies and gentlemen, before we take a break, there's something I just need to be sure that is acceptable. Obviously, we've already started with the order of the course of the trial with Mr. Lyles going first in the plaintiffs' case, Mr. Belcher for Bostic Brothers. Mr. Imhoff will be next with Marick Builders.

MR. IMHOFF: Your Honor, may I?

THE COURT: Certainly.

MR. IMHOFF: The defense has actually agreed, so that the jury can understand it a little bit, to go chronologically. In other words, the Bostics and their subs would go first because that's the construction. And then M Group, I.M.K. Marick would go later because they came later.

THE COURT: Well, then how about giving me an order because this is the order I have. Mr. Belcher for Bostic, Mr. Imhoff for Marick, Ms. Brown for I.M.K., Mr. Hemphill for M Group, Mr. Buckley for Jaramillo and Mr. Anderson for Nino.

MR. IMHOFF: May I tell you the order that we'd prefer, Judge?

THE COURT: Well, that's what I'm asking for. Yes, sir.

MR. IMHOFF: Obviously, Mr. Belcher would go first for Bostic.

THE COURT: Right.

MR. IMHOFF: Mr. Anderson would go next for Nino.

THE COURT: That will be for Mr. Nino?

MR. IMHOFF: Yes, Your Honor.

THE COURT: Okay. Wait a minute. Mr. Buckley's got his hand up.

MR. IMHOFF: Mr. Buckley would go third for Everado Jaramillo. I'm not sure how you say that.

THE COURT: Jaramillo.

MR. IMHOFF: I would go fourth, Your Honor, for Marick.

THE COURT: Okay.

MR. IMHOFF: Ms. Brown would go fifth for I.M.K., and then Mr. Hemphill would -- I think is the last person.

THE COURT: Is that right, Mr. Hemphill, M Group last?

MR. HEMPHILL: Yes, Your Honor.

THE COURT: All right. Very good. That's what I needed to know. That's why we're taking a break to make something of it. All right. Very good. Let's do be back before twelve.

(WHEREUPON, court stood at recess for a short break.)

THE COURT: All right. I understand the jury's ready to come back.

(WHEREUPON, the jury entered the open court at approximately 12:08 p.m.)

THE COURT: All right. Let the record reflect the jury and alternate are in the jury box. We will now proceed with Mr. Anderson.

MR. ANDERSON: Yes, Your Honor. Thank you.

OPENING STATEMENT

BY MR. ANDERSON:

Good morning. Or I guess it is officially this afternoon, so ...

It's an honor for me to appear here in front of you on behalf of Jose Nino. Jose Nino was the framer on the job. And for those of you who don't know what a framer does, the framer builds the skeleton of the building and erects it. He hammered pieces of wood together. He was given the material that he was to use by Bostic and was told how and where to put it up. That's what he did on

this job.

You're going to see pictures, and have seen some of them, of rot and damaged framing. The reason that that occurs to the framing is because it was not properly protected by the trades that came behind Mr. Nino. When Mr. Nino left his work, you would just be able to see lumber and sheetrock or O.S.B. on the walls. That's all he does. Then he moves on to the next building or the next job.

And you're going to hear terms like building wrap, flashing, and waterproofing. Those terms all relate to what is done to protect the framing,to keep it from turning black or rotting or deteriorating. Now, Mr. Nino did not do any of that work.

And the Judge is going to instruct you at the end of this case that there are three things that Mr. Lyles needs to prove to you. Number one is, is that there was an obligation for one of the contractors to do something, and they either didn't do it or they did it improperly. That's the first step. And there has to be -- that has to be the responsibility of that subcontractor.

The second thing is they have to show that there was damage resulting to the building. And then the third is, is that whatever the contractor failed to do or did wrong actually caused that damage. And it's that cause

connection that we ask you to focus on when considering Mr. Nino because nothing he did on the job would have caused the water to come in and damage his own work. The people that come behind him in the job in sequence are required to protect the framing. That was not done in some instances. And so we would like you to keep that in mind.

Please listen carefully to the evidence, as I know that you will. And one thing to listen to also is what did each subcontractor contract to do. What did he sign on -- what was his job? And what's important about that is, is that there were a lot of people working out there. A lot of different subcontractors. And one's responsibility will stop short, and another is responsible for completing that portion of the building. And you need to know where those stops and starts are so you can assign responsibility so that as Mr. Lyles is going down the road on his roadmap, he doesn't run over the wrong person. We would like to have the responsibility placed where it belongs and ask you to do that. Thank you.

THE COURT: Mr. Buckley?

MR. BUCKLEY: Thank you, Your Honor.

OPENINGS STATEMENT

BY MR. BUCKLEY:

Good afternoon. I'm Ed Buckley. We met yesterday. I represent Everado Jaramillo or Jaramillo. And one thing that I want you to understand perfectly when we start this trial and to keep in mind throughout this trial is that my client is being sued as a defendant. My client has not a single burden in this case. Keep that in mind. The plaintiff has the burden to prove what my client did, that my client did it wrong, and that it caused damage. And you are not to assume anything about what my client did. You are not to assume anything about what my client might have done. You are not to assume anything about what my client might have caused to go wrong at this project.

And what you're not going to hear in this trial is any testimony from the people at Bostic who employed my client, who worked with my client on that project. There were three job superintendents who were present on the entire project during the Bostic time frame. You're not going to hear one bit of testimony from those people. You're also not going to see a single invoice from my client where he installed a window. But he's being blamed for installing windows improperly.

The other thing you're not going to see is you're not going to see my client present through his invoices for a critical eight-month period. What you're also

going to see is that my client was working on a number of projects for Bostic. You're going to hear from one of the defendants over here, Mel Morris, that at the time this project was underway, they had twenty projects underway. Twenty that Bostic was working on. They were as far away as Western Illinois University. They were in Charleston and Greensboro, North Carolina. They were in Savannah. They were up here. And my client was going around to various projects, and there's an eight-month gap where he isn't even here. And we're going to show you what happened during that eight-month gap.

The other thing that's kind of interesting in this case, I've known Robert Lyles for all of his twenty-six years because I've been practicing thirty years. We grew up practicing law together in Charleston. And Robert and I try cases or litigate cases against each other. In fact, it's kind of ironic. I've got a plaintiff's case in Charleston that Robert's defending right now. And we go head-to-head a lot.

But one of the things that has surprised me to learn in this case is you heard the name Watkins. Watkins has provided a defense expert -- I mean a defense estimate for repairing Stoneledge problems. Well, guess who's been doing repairs out there? Watkins. These folks have hired Watkins because they have confidence in him. And

he's been out there doing foundation repairs. I just think that's interesting.

Pay attention. Don't assume anything, and don't rely on a witness whose only evidence is an assumption. Thank you very much.

THE COURT: Mr. Imhoff?

MR. IMHOFF: Thank you, Your Honor.

OPENING STATEMENT

BY MR. IMHOFF:

Ladies and gentlemen of the jury, my name is Jason Imhoff. I introduced myself to you yesterday. I practice in Spartanburg County.

I was very, very pleased to see that the Judge gave y'all a break. If you're ever been in the courthouse in Spartanburg County, there are marks behind every one of the jurors head on the wall from where I take it that they sleep. So I appreciate it that he gave you a break.

This is a construction case. It's not C.S.I. or those more interesting shows or whatever. It's a construction case. We all know it. We live day out and day in. Our wives and kids and everyone else probably things we're boring. We'll probably bore you throughout a lot of this case. We don't intend to. It's important to our clients.

My client -- and I'm happy to represent him -- is

Rick Thoennes and his company, Marick Home Builders. The case against Rick and his company is very, very, very different from the rest of what you've heard this morning. And the reason it's different is because Rick and his company didn't build anything you've heard about this morning. None of it. The allegation against Rick and his company is that they didn't find it. All of these pictures, if you look underneath the stone, the shingles, the siding, the dirt, that's where you find that damage. And all of those things, stone, shingles, windows, siding, dirt, were put on these buildings by someone else. So the allegation against him is he didn't find it. They paid a lot of money, a lot of experts -- you'll hear it -- to go take all of that off and find all of that.

The difference with Mr. Thoennes and his company and his partners is they came to this project later. You've already heard this morning that the project was built, all of the exteriors were on, roof, windows, siding, stone, dirt. The units were up. They were built. They were built by Bostic Brothers who are good builders, who are reputable builders. They were inspected by the Oconee County building inspector, who I think you'll hear from.

So Mr. Thoennes and his company came to the project.

And when they came to the project, I think you will hear they were deemed as saviors. Eleven units had been sold, and then the project went into bankruptcy. These folks were in trouble. There were shells of buildings out there. There was no pool. You don't want to have a lake house without a pool; right? No tennis courts, no meeting room, clubhouse. None of that was there. They were in trouble. They were having problems with their units. All of their money and their investment was in trouble, and nothing was being done and nothing was being built. And for Mr. Thoennes and his partners, they were saviors.

When they get out there, they start constructing the interiors of the units. And as you've heard, they're in varying degrees. Some of them were complete and unsold, and some of them didn't even have drywall up.

Mr. Thoennes and his company pulled permits for them. You will see what the permits are for. You will hear what they paid to be done out there. Floors, walls, appliances, plumbing and electrical in some units. So they were saviors. They started building out there.

You heard from the Bostics. You've seen the pictures. This is a beautiful development. When Rick and his partners went out there, they bought four of them. They bought four of those units, and they were

neighbors with these homeowners, these plaintiffs. Not only were they neighbors, but they helped these plaintiffs. They helped their neighbors. They brought their family, their friends out there. They were on tubes and boats together out there, all together for years 2005 until 2008.

While Rick was out there, we think -- it's hard to go back and look. But about seventeen units were sold. Four of those, I think, were sold to these folks, Rick and his partners. But the evidence will come out. It's a little bit cloudy. But they were sold while they were out there.

2008, right? What happens in 2008? Builders go out of business. It happened to Rick, unfortunately. Went out of business. They had to leave the project. The remaining units, nine or something like that, were transferred to yet another developer, another builder. And those are a whole 'nother issue.

Here's probably the most important part and what you'll hear a lot about from my client and the case against my client. Rick and his helper, Nathan, and the people that they hired fixed everything that was reported to them between 2005 and 2008. If you lived there and your window leaks, call Rick or Nathan. If your door sticks, call Rick or Nathan. If you have water, call

Rick or Nathan. Roofing, call Rick or Nathan. The testimony will be they fixed everything for these folks. Everything. And the people that lived out there knew it.

Then came the decks. This is going to be the issue in the case. These big beautiful decks on these things. I don't have it. Mr. Belcher had it. If you saw them, they're beautiful. They're two-story, stone clad decks. You've got a bottom with a cement pad. You've got a second story with a cement pad. Half of it's covered. They have a screened-in half of a porch. They're beautiful.

They leaked. They leaked right through that stone into the ceiling below them. There's no question. Nobody's going to deny that. It was a problem. It was a problem for these folks, Rick and his partners. It was a problem for these folks who owned out there.

What do you do? There's a problem. They together decided to hire a waterproofing company. You'll hear that they hired someone called Coleman Waterproofing that specialized in the waterproofing of those decks. And they agreed, and you will hear I believe today, that the homeowners that lived out there agreed and accepted that repair and understood what it was and what it wasn't. And they put that on the decks, and it's supposed to waterproof the decks. And it worked. Don't know that it

worked completely, but it worked. And Rick paid for it for everyone. Even the folks that he didn't sell to, didn't build for, he paid for all of that.

So that's where we are. That's the case against my client Rick Thoennes. He was the savior. They were thankful. They were neighbors. He's being sued. He takes the allegations very seriously. He lived next to them for three years or at least on the weekends when these folks went out to their vacation homes. He did what he could for them and sometimes more than he was required to do for them. And he was neighborly. And now he's a defendant in this lawsuit. And he's here and he's going to defend himself vigorously.

And we will ask you at the end of this to be fair, to judge him fairly and judge his partners fairly. And we appreciate you not making any marks on the back of the walls here while we do that over the next two weeks because we will bore you for a little while at times. But we'll also take some breaks. Thank you very much.

THE COURT: Ms. Brown?

MS. BROWN: Thank you, Your Honor.

OPENING STATEMENT

BY MS. BROWN:

I am Cynthia Brown. I introduced myself yesterday. I represent I.M.K., Integrys Keowee, Bill Cox and Larry

Lollis. Mr. Cox is here. As I mentioned yesterday, Mr. Lollis has had a death in his family. He will be here tomorrow and other times but has not been able to make it yesterday or today.

We do thank you for your service. This is your most important civil duty outside of serving in the military for our country. We have the greatest justice system in the world, and we appreciate your participation in what we know will be a tedious case. Some of the evidence will be quite tedious. Some of the witness, bless their hearts, have to give a lot of tedious testimony. And we just ask that you, you know, let the Judge know and the bailiff know if you're nodding off and need to walk around for a few minutes. Just stay with us, and we will get through it as quickly as we can.

You know, this is a serious case, and I don't want to minimize it or anything. But I thought, just give a minute of levity for a second. I was talking to -- about my husband wanted to know where I was going, what was going on. I said, "Well, I've got a case in Oconee." And I said, "You know, it's lake property in Oconee." And he said, "Huh. Nods to George Strait, huh? Not oceanfront property in Arizona; you've got lakefront property in Oconee." So that's what we call the case at my house now is lakefront property in Oconee.

My client, I.M.K., is a partnership or an L.L.C. actually between -- Integrys Keowee is fifty percent, and Marick Home Builders is fifty percent. And the way this partnership worked was that Marick Construction was building the facilities, the houses, without profit. That was their contribution, the fifty percent contribution to the L.L.C. Integrys Keowee's fifty percent contribution was to provide funding, investment monies. Also to provide certain management responsibilities, accounting functions, I.T. functions.

The construction costs, not profit or fee, were paid by Integrys Keowee. That was their fifty percent contribution. So when Mr. -- well, when Marick Builders was building something, would send in the bill, the cost would be paid. That's what Integrys Keowee did.

And Integrys Keowee, that is where Mr. Cox and Mr. Lollis come in. They were members of Integrys Keowee. There's also another member named Tim Roberson who is not a party. So there are three members of Integrys Keowee involved solely on that basis.

It's unusual for me in a construction -- since I've been doing construction litigation for almost twenty years now, I don't represent construction clients. My clients are investors and businessmen. Mr. Cox is in financial, accounting, I.T. sort of software arena. And

Mr. Lollis is in medical supplies. That's why when it comes to this case, when you hear about the construction part of it, that really wasn't Integrys Keowee or Mr. Cox or Mr. Lollis. You know, like some of the other clients, other defendants had said they were confused as to why they're named in this lawsuit.

Now, I.M.K. was the developer. Half of it was Marick, and we do understand that being part. But as far as Integrys Keowee goes and Mr. Cox and Mr. Lollis, we'd ask that you pay close attention to see if you hear anything that would show actionable -- what we call actionable conduct by Mr. Cox or Mr. Lollis individually or Integrys Keowee. And at the end of the case, I'm convinced that you won't have heard any evidence that will implicate them in anything that's been done.

Now, as far as what you've also heard from other attorneys, we agree that it needs to be fixed. Point number three from Mr. Lyles. I.M.K. also agrees with Mr. Belcher when he says, "That is what Bostic wants to do." I.M.K. wants Bostic to do that too. We want them to fix the property. Nobody's denying that there are some construction issues on this property. They need to be fixed. The people who are responsible should fix the property. That is not going to be Integrys Keowee, Mr. Cox or Mr. Lollis.

I do think that it's important when you're hearing a case like this to try and keep the parties straight. And we'll do our best to help you with that. But it's very important when you're looking at this to place the responsibility where it belongs. And that's what we're asking you to do is to listen carefully and see who is responsible for the problems that these homeowners have on their property. Thank you for your time.

THE COURT: Mr. Hemphill?

MR. HEMPHILL: May it please the Court, Your Honor.

OPENING STATEMENT

BY MR. HEMPHILL:

Mr. Foreman, ladies and gentlemen of the jury, I was introduced yesterday. Again, my name is Roy Hemphill. And my office is located in Greenwood, but I have the good pleasure of practicing in a number of counties here in the Upstate. It's always good to come to the Golden Corner. I represent a company known as M Group Construction and Development. That company did not come into being until five years after the construction was over, the construction that's at issue in phase one. M Group Construction and Development is made up of Mr. Thoennes, who's seated over here, Rick Thoennes.

Rick Thoennes has two sons, Rick III and Mark. When

he formed this company in March of 2009, he had gone through, like a number of builders throughout the United States, the great recession. He had to change what he had been doing. He had to change his business model. Instead of doing townhomes; because nobody was buying townhomes or high-end sorts of homes like that, he decided to create a company in 2009 to build houses over in the Simpsonville area of Greenville County. And those houses were in the one to two hundred thousand dollar range. He did not ditch Marick Home Builders. It's still a company. What he did instead was he created a new company, M Group Construction and Development.

Now, M comes from because he had two other people join his outfit. And those two folks were his son Mark and Mark Hutcherson, right over here, who is seated with me on the second pew back there. They formed this company and they started building those homes.

I will be the briefest. In fact, I'm almost through talking because I think what's going to happen now is -- I don't know the Judge's exact schedule, but I think he's probably going to let you go for lunch. And I know that rule number one of public speaking is getting out of the way of folks you're talking to if lunch is about to be served.

So let me just say this. Nobody with an M Group hat

-- nobody rode up with an M Group -- in an M Group truck back in the 2002 to 2004 time frame and swung the first hammer or turned the first screw.

What's being asked of you throughout the trial or certainly at the end of the trial, is to find that certain outfits or certain companies are liable to these owners for these repairs. But I would suggest to you, is it fair that a company that did not come into being for four or five years after the construction that's at issue today should be held liable? Thank you.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, I think the attorneys are correct that this would be a good time to take a break because now we're going to start the actual trial of the case with the testimony and evidence of the parties. I'm going to -- well, let me just ask you. You check with your jury, Mr. Foreman, if you would, as to how much time you would probably need. I would suggest anywhere from an hour, an hour and fifteen minutes to an hour and a half. You know what's available and how long it takes you to get there. But just check with your jury.

Now, this does not have to be unanimous. It's a consensus of the jury. How long? An hour, which would be one thirty, one forty-five or two o'clock?

MR. FOREMAN: Well, before we had discussed

previously about that you'd probably dismiss around one to two thirty. I believe it was an hour and half. That'd be sufficient, I believe, for everyone.

THE COURT: So one thirty?

MR. FOREMAN: I'm saying an hour and a half.

THE COURT: All right. Well, the thing is -- that's a good -- I'm glad you did that and I appreciate you doing it. I think that's an excellent thought. All right. So we'll come back at one thirty or as close as you can. Isn't that right? One thirty or as close as you can. And if you're a little bit late, that's all right because obviously we can't start without you. All right. Very good.

All right. You have not heard the whole case at all, just the opening statements. Again, as I've said from the very first, please do not discuss the case among yourselves or permit anybody to discuss it with you.

With that, I will see you back at one thirty or thereabouts. All right.

All right. Everyone else remain seated while the jury retires from the courtroom.

(WHEREUPON, the jury exited the courtroom at approximately 12:26 p.m.)

THE COURT: All right. Mr. Imhoff?

MR. IMHOFF: No, Your Honor. I think you were

just talking about -- I think it was actually less than fifty-five minutes that you gave. And I don't want you to yell at the jurors if they come back at ---

THE COURT: I don't yell at jurors.

MS. BROWN: Just the lawyers?

THE COURT: I will bark at a lawyer. No. I hope I did give them enough flexibility. An hour to an hour and a half. In other words, they don't have to be back at the exact moment because we can't start without them.

All right. With that, anything from the plaintiff before we take a break?

MR. LYLES: No, sir.

THE COURT: Anything from the defendants?

MR. BELCHER: None from us, sir.

THE COURT: Very good. All right. We'll see you at -- y'all can take an hour and ten minutes.

(WHEREUPON, court stood at recess for a lunch break.)

THE COURT: All right. Is there anything from the plaintiff before we bring the jury back?

MR. LYLES: No, sir.

THE COURT: From the Defendants?

MR. BELCHER: No, Your Honor.

THE COURT: Very good. Ask the jury to join

us, please.

(WHEREUPON, the jury entered the open court at approximately 1:52 p.m.)

THE COURT: All right. Let the record reflect the jury and alternate are in the jury box.

All right. Mr. Foreman, ladies and gentlemen of the jury, we'll now begin with the plaintiffs' case.

Mr. Lyles?

MR. LYLES: The plaintiff would call Ms. Donna Furnari as our first witness.

(WHEREUPON, the witness was duly sworn.)

THE COURT: If you would, please, ma'am, would you give us your full name, spelling your last name for the record.

THE WITNESS: Yes. It's Donna Marie Furnari, F- as in Frank, U-R-N-A-R-I.

THE COURT: Very good. Thank you, ma'am.

Mr. Lyles?

DONNA FURNARI,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. LYLES:

Q. Donna, I'm going to stand back here.

MR. LYLES: Can I -- I want to move this microphone. Is it okay if I slide this over?

MADAM COURT REPORTER: (Nodded head up and down in the affirmative)

MR. LYLES: Thank you.

Q. I'm going to try to stand back here. So I want you to speak loudly when you speak to me and you speak to the jury when you're answering questions; okay?

A. Yes, sir.

Q. I'm not trying to get away.

A. Okay.

Q. I'm not trying to crowd them.

Where you from?

A. I'm from a suburb of Cleveland, Ohio.

Q. Is that where you grew up?

A. That's where I grew up. Lived there all my life.

Q. Are you married?

A. I am.

Q. And who are you married to?

A. Michael Furnari.

Q. He's in the courtroom with us?

A. He is.

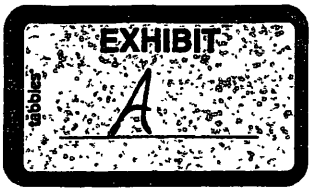
Q. Do you have any children?

A. Yes.

Q. Other family?

A. Yes.

Q. Tell me about your family.



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
AUG 02 2016
SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable Alexander S. Macaulay, Circuit Court Judge

Lower Court Case No. 2009-CP-37-00652
Court of Appeals Case No. 2015-000417

Stoneledge at Lake Keowee Owners' Association, Inc., C. Dan Carson, Jeffrey J. Dauler, Joan W. Davenport, Michael Furnari, Donna Furnari, Jessy B. Grasso, Nancy E. Grasso, Robert P. Hayes, Lucy H. Hayes, Ty Hix, Jennifer D. Hix, Paul W. Hund, III, Ruth E. Isaac, Michael D. Plourde, Mary Lou Plourde, Carol C. Pope, Steven B. Taylor, Bette J. Taylor, and Robert White, Individually, and on Behalf of All others similarly situated,

Respondents,

v.

IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Theonnes,

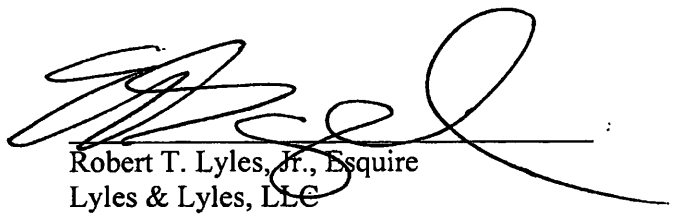
Defendants.

(Of Whom Bostic Brothers Construction, Inc., is the Appellant)

ACCEPTANCE OF SERVICE

The undersigned hereby certifies that on this 2nd day of August, 2016, a true copy of the Record on Appeal was served upon counsel of record via hand delivery at the office of Respondents' attorneys of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, 342 E Bay St, Charleston, SC 29401.

[SIGNATURE TO FOLLOW]



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Defendants.

(Of Whom Bostic Brothers Construction, Inc., is the Appellant)

PROOF OF SERVICE

I certify that I have served the Appellant's Record on Appeal upon the Respondents via hand delivery, August 2nd, 2016, at the office of Respondents' attorneys of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, PO Box 773, Charleston, SC 29402.

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