

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

RECEIVED

MAR 08 2019

S.C. SUPREME COURT

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MAR 08 2019

SC Court of Appeals

Ex Parte:

Nautilus Insurance Company, Appellant

In Re:

Palmetto Pointe at Peas Island Condominium
Property Owners Association, Inc., and Jack Love,
Individually, and on behalf of all others similarly situated, Plaintiffs, v. Island Pointe, LLC;
Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.;
American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.;
Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.;
Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus
Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG
Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers
and John Doe 1-60 Defendants.

Tri-County Roofing, Inc. Third Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc.
and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows,
LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson
Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo
Vasquez; and Chris a/k/a John Doe 61 Third-Party Defendants.

And

Complete Building Corporation, Inc. Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of Whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all other similarly situated, are the Respondents.

MOTION TO TRANSFER CASE TO THE SUPREME COURT

Pursuant to South Carolina Rule of Appellate Procedure 204(b), Appellant Nautilus Insurance Company ("Nautilus") moves to certify the case for immediate review by the South Carolina Supreme Court.

The appeal arises from a lawsuit styled *Palmetto Pointe at Peas Island Condominium Property Owners Association and Jack Love, Individually, and on behalf of all others similarly situated v. Island Pointe, LLC, et al.*, Civil Action No. 2015-CP-10-00955 ("Palmetto Pointe Lawsuit"). Plaintiffs Palmetto Pointe at Peas Island Condominium Property Owners Association and Jack Love (collectively "Plaintiffs") have brought suit against a number of defendants alleging defective design and construction of a condominium project known as Palmetto Pointe at Peas Island. Plaintiffs allege the buildings were improperly constructed and seek damages against the named defendants, including Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC (collectively "Miracle Siding") and Elroy [sic] Alonzo [sic] Vasquez ("Vasquez"). Plaintiffs will likely seek to satisfy any verdict in favor of Plaintiffs from the policies of commercial general liability issued by various insurers to the named defendants, including Miracle Siding and Vasquez.

Nautilus issued commercial general liability policies to Miracle Siding and the named insured Eloy Alonso. Nautilus is currently providing a defense to Miracle Siding and Eloy Alonso under a reservation of rights. Nautilus moved to intervene in the Palmetto Pointe Lawsuit for the limited purpose of requesting that the trial court submit special interrogatories and/or a special verdict form to the jury for the purpose of allocating a verdict, if any, in favor of Plaintiffs to avoid the consequences of a general verdict as demonstrated in *Auto Owners Insurance Co. v. Newman*, 385 S.C. 187, 684 S.E.2d 541, 546 (2009) and *Harleysville Group Insurance v. Heritage Communities, Inc.*, 420 S.C. 321, 332, 803 S.E.2d 288, 294 (2017). The South Carolina Supreme Court in *Newman* and *Heritage* determined that the insurers were required to pay the entire verdict/award on behalf of their insured despite the fact portions of the verdict/award included damages that were not covered by the policy.

Plaintiffs objected to Nautilus being allowed to intervene in the Palmetto Pointe Lawsuit for this limited purpose. The Circuit Court entered its Order/Statement of Judgment denying Nautilus' Motions to Intervene, and a copy of this Order is attached as **Exhibit A**. Because the Circuit Court did not provide an explanation regarding its ruling, Nautilus moved to have the Circuit Court alter or amend its Order and requested that the Circuit Court provide an explanation for the ruling. The Circuit Court denied this motion in its Order/Statement of Judgment Denying Motion to Reconsider, which is attached as **Exhibit B**. Thereafter, Nautilus filed its Notice of Appeal on February 20, 2019 with this Court.

Rule 204(b) provides:

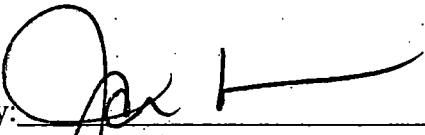
(b) Certification by Supreme Court. In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest

or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

The issue regarding whether an insurer is required to intervene in the underlying lawsuit involving the claims against its insured certainly involves a legal principle of major importance. Based on the Supreme Court's prior decisions in *Newman* and *Heritage*, it appears that the Supreme Court is requiring that insurers intervene in some manner in the underlying lawsuits to request an allocated verdict be provided to determine the insurer's potential duty to indemnify the insured with regard to the damages awarded in the lawsuit. However, as in this case, insurers have been unsuccessful in being allowed to do so because the Circuit Courts, in large measure, have been denying the insurers' motions to intervene for this limited purpose. Given this issue, Nautilus believes the most efficient way to resolve this legal question regarding the procedure for allocating a verdict is to certify this matter under Rule 204(b), SCACR. Therefore, Nautilus respectfully requests that this appeal be certified for immediate review by the Supreme Court.

March 8, 2019.

GALLIVAN, WHITE & BOYD, P.A.

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Attorneys for Appellant Nautilus Insurance
Company

EXHIBIT A

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium
 Property Owners Association, et al.
 PLAINTIFF(S)

Island Pointe, LLC, et al.
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
 Affirmed; Reversed; Remanded; Other

2019 JAN 17 PM 10:30
 STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 COURT OF COMMON PLEAS

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: Motions for Reconsideration of this court's ruling on Motions to Intervene filed by Builders Mutual Insurance Company, Nationwide Mutual Insurance Company, Nautilus Insurance Company, and State Farm Fire and Casualty Company are DENIED.

ORDER INFORMATION

This order ends does not end the case.

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

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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


 _____ 2764 _____ 1/16/18
 Circuit Court Judge Judge Code Date

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

JAN 23 2019

31



JANICE HOLMES
1201 MAIN STREET, SUITE 1200
PO BOX 7368 (29202)
COLUMBIA SC 29202-7368

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order-Motion to Intervene is Denied

CASE NO: 2015CP1000955

Palmetto Pointe at Peas Island Condominium Property Owners A , plaintiff, et al VS Island Pointe

This judgment was entered on the 17th day of January, 2019, and notice mailed first class on Thursday, January 17, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

EXHIBIT B

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-00955

Palmetto Pointe at Peas Island Condominium
Property Owners Association, Inc., et al.

Island Pointe, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2019 FEB - 8 PM 2:36
 FILED
 JULIE J. WILSON
 CLERK OF COURT

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: Defendants Wilson Lucas Sales d/b/a Miracle Siding, LLC and Eloy Alonzo Vasquez's Motion to Alter or Amend the Court's January 17, 2019 Order denying their Motions for Partial Summary Judgment, which were heard on January 11, 2019, is DENIED without hearing.

ORDER INFORMATION

This order ends does not end the case.

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		

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

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2764	2/7/18
Circuit Court Judge	Judge Code	Date

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
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CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



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59



JANICE HOLMES
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COLUMBIA SC 29202-7368

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order-Motion to Alter or Amend is Denied

CASE NO: 2015CP1000955

Palmetto Pointe at Peas Island Condominium Property Owners A , plaintiff, et al VS Island Pointe

This judgment was entered on the 08th day of February, 2019, and notice mailed first class on Monday, February 11, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955

Appellate Case No. 2019-000238

RECEIVED
MAR 08 2019
SC Court of Appeals

Ex Parte:

Nautilus Insurance Company,Appellant

In Re:

Palmetto Pointe at Peas Island Condominium
Property Owners Association, Inc., and Jack Love,
Individually, and on behalf of all others similarly situated, Plaintiffs, v. Island Pointe, LLC;
Leonard T. Brown; Complete Building Corporation; Tri-County Roofing, Inc.; Creekside, Inc.;
American Residential Services, LLC d/b/a Rescue Rooter Charleston; Andersen Windows, Inc.;
Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.;
Christopher N. Union; Builder Services Group, Inc. d/b/a Gale Contractor Services; Novus
Architects, Inc. f/k/a SGM Architects, Inc.; Tallent and Sons, Inc.; W C Services, Inc., CRG
Engineering, Inc.; Certainteed Corporation; Kelly Flooring Products, Inc. d/b/a Carpet Baggers
and John Doe 1-60 Defendants.

Tri-County Roofing, Inc.....Third Party Plaintiff,

v.

Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction; Gutter Works, Inc.
and Michael L. Segars d/b/a Gutter Works; Mr. Gutter; Litchfield Seamless Gutters & Windows,
LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutter; Miracle Siding, LLC and Wilson
Lucas Sales d/b/a Miracle Siding, LLC; Mark Palpoint a/k/a Micah Palpoint; Elroy Alonzo
Vasquez; and Chris a/k/a John Doe 61.....Third-Party Defendants.

And

Complete Building Corporation, Inc.....Third-Party Plaintiff,

v.

Alderman Construction; Stanley's Vinyl Fence Designs; Cohen's Drywall; and Mosley Concrete.....Third-Party Defendants.

Of Whom Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and behalf of all other similarly situated, are the Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Transfer Case to the Supreme Court on other counsel of record by depositing a copy of it in the United States Mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

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<p>Justin O'Toole Lucey, Esq. Stephanie D. Drawdy, Esq. Joshua F. Evans, Esq. Justin O'Toole Lucey, PA 415 Mill St. PO Box 806 (29465) Mt. Pleasant, SC 29464 jlucey@lucey-law.com sdrawdy@lucey-law.com jevans@lucey-law.com</p> <p><i>Attorneys for Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated</i></p>	<p>Edward D. Buckley, Jr., Esq. Young Clement Rivers, LLP PO Box 993 Charleston, SC 29402 ebuckley@yctrlaw.com</p> <p><i>Attorney for Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated</i></p>
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<p>S. Markey Stubbs, Esq. Baker Ravenel & Bender, LLP PO Box 8057</p>	<p>David S. Cobb, Esq. Turner Padget Graham & Laney, PA PO Box 22129</p>

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	<i>John Toolin</i>
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<p>G. Troy Thames, Esq. Willson Jones Carter & Baxley PA 421 Wando Park Blvd., Ste 100 Mt. Pleasant, SC 29464 <u>tthames@wjlaw.net</u> <i>Attorney for Stanley's Vinyl Fence Designs</i></p>	<p>Christopher M. Adams, Esq. James L. Williams, Esq. Collins & Lacy, PC PO Box 12487 Columbia, SC 29211 <u>cadams@collinsandlacy.com</u> <u>jwilliams@collinsandlacy.com</u> <i>Attorneys for Martin Barr and Port City Structured Wiring</i></p>
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(Signature to follow on next page)

GALLIVAN, WHITE & BOYD, P.A.

By: 

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Attorneys for Appellant Nautilus Insurance
Company

March 8, 2019

March 8, 2019

RECEIVED
MAR 08 2019
SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RE: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.,
et al. v. Island Pointe, LLC, et al.
Charleston County Case No.: 2015-CP-10-955
GWB File No.: 4618-141

Dear Ms. Kitchings:

Enclosed please find two (2) copies of Nautilus Insurance Company's Motion to Transfer Case to the Supreme Court with the Proof of Service filed-stamped by the South Carolina Supreme Court in the above-referenced matter. Please file one (1) copy and return a file-stamped copy with the courier.

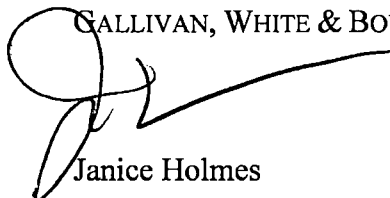
By copy hereof, all counsel of record are being served with the above.

Thank you for your assistance, and should you have any questions please do not hesitate to contact my office.

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.



Janice Holmes

JH:amm
Enclosures
Cc: All Counsel of Record (via email only)

March 8, 2019

RECEIVED
MAR 08 2019
SC Court of Appeals

VIA HAND DELIVERY

The South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
1231 Gervais Street
Columbia, SC 29201

RE: Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc.,
et al. v. Island Pointe, LLC, et al.
Charleston County Case No.: 2015-CP-10-955
Appellate Case No.: 2019-000238
GWB File No.: 4618-141

Dear Mr. Shearouse:

Enclosed please find the original and eight (8) copies of Nautilus Insurance Company's Motion to Transfer Case to the Supreme Court under Rule 204, SCACR with the Proof of Service for filing along with a check in the amount of \$50.00 representing the filing fee in connection with the above-referenced matter. Please file the original and six (6) copies, and return the remaining two (2) copies to the courier which then will file a clocked copy with the South Carolina Court of Appeals.

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

With kind regards, I am

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.


Janice Holmes

JH:amm

Enclosures

Cc: ✓ South Carolina Court of Appeals
All Counsel of Record (via email only)