

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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MAR 14 2019

APPEAL FROM OCONEE COUNTY  
Alexander S. Macaulay, Circuit Court Judge

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S.C. SUPREME COURT

Opinion No. 5601 (Ct. App. filed October 10, 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,  
Petitioners-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 Which Bostic Brothers Construction, Inc. is the Respondent-Petitioner.

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**PETITIONER-RESPONDENT'S REPLY TO RESPONDENT-PETITIONER'S  
RETURN TO PETITIONER-RESPONDENT'S PETITION FOR WRIT OF  
CERTIORARI**

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## STATEMENT OF THE CASE

Petitioner-Respondent Stoneledge at Lake Keowee Owners' Association Inc. filed a Petition for Certiorari to the Supreme Court on February 4, 2019. Respondent-Petitioner Bostic Brothers Construction, Inc. ("Bostic") filed a Return on March 4, 2019.

### ARGUMENT

#### **I. The Trial Judge Did Not Amend the Jury's Verdict; He Properly Interpreted the Verdict Based on His Observation of the Entire Trial.**

Without any objection from Bostic or Marick, the trial judge properly determined that the jury intended a cumulative award. This was a proper interpretation of the jury's award. *See Howard v. Kirton*, 144 S.C. 89, 142 S.E. 39, 43 (1928) ("It was the duty of the trial judge to decide what the verdict meant, and, in reaching his conclusion thereabout, it was his duty to take into consideration not only the language of the verdict, but all the matters that occurred in the course of the trial.") The Plaintiff asserted three causes of action but only sought one remedy – the cost of repair damages – for one injury – defective common elements in a townhome development. Much like the circumstances in *Keeter* (which Bostic cites) the issue arose from the verdict form. *See Keeter v. Alpine Towers Int'l, Inc.*, No. 2012-UP-692, 2012 WL 11867308, at \*10 (S.C. Ct. App. June 27, 2012). The verdict form allowed the jury to write its verdict for each cause of action and includes a place for a damages amount. The use of three blanks left the verdict ambiguous when returned. Counsel for the Plaintiff requested an interpretation from the court. The trial judge made this interpretation and defense counsel made no objection. If counsel wanted to make an objection or request an inquiry from the jury, they could have done so. Instead, the trial judge determined based on "all the matters that occurred in the course of the trial" that the

jury intended for the amounts to be added together for a total verdict — a determination properly within his discretion.

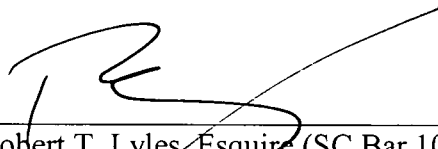
## **II. The Trial Judge Properly Applied the Set-Off.**

Application of the set-off to the breach of fiduciary claim was within the trial court's discretion. Bostic erroneously maintains that the South Carolina Contribution Among Joint Tortfeasors Act (SCCAJA) provides the only basis for a setoff. However, although the SCCAJA provides for reduction of the verdict to account for amounts paid by settling tortfeasors, a setoff is equitable in nature and may apply when the SCCAJA does not apply. *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))). In this case, 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 reduction in the amount of the verdict to ensure that the HOA did not recover twice.

## **CONCLUSION**

Petitioner-Respondent Stoneledge at Lake Keowee Owners' Association Inc. respectfully requests this Court grant its Petition for Certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'R. Lyles', written over a horizontal line.

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March 13, 2019

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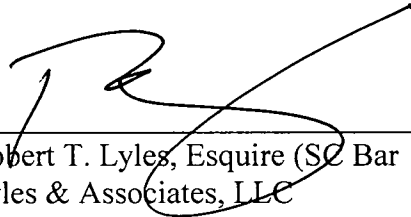
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Of Which Bostic Brothers Construction, Inc. is the Respondent-Petitioner.

**PROOF OF SERVICE**

I certify that I have served the Petitioner-Respondent's Reply to Respondent-Petitioner's Return to Petitioner-Respondent's Petition For Writ Of Certiorari on counsel for the Respondent-Petitioner by depositing a copy in the United States Mail, First Class postage prepaid, this 13<sup>th</sup> day of March, 2019, addressed to the following:

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