

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

RECEIVED
MAR 15 2019
SC Court of Appeals

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.

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

Robert T. Lyles, Esquire (SC Bar 10299)
LYLES & ASSOCIATES, LLC
342 East Bay Street
Charleston, South Carolina 29401
T: (843) 577-7730
F: (843) 577-7172
rtl@lylesfirm.com

Attorney for Petitioner-Respondent

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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.

Robert T. Lyles, Esquire (SC Bar 10299)

LYLES & ASSOCIATES, LLC

342 East Bay Street

Charleston, South Carolina 29401

T: (843) 577-7730

F: (843) 577-7172

rtl@lylesfirm.com

Attorney for Petitioner-Respondent

March 13, 2019

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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v.

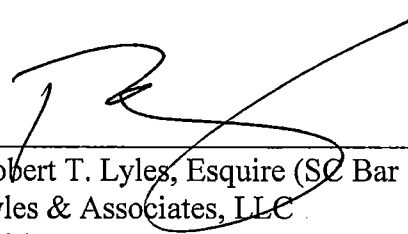
IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Defendants,

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

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 13th day of March, 2019, addressed to the following:

Alan R. Belcher, Jr., Esquire
Elizabeth Wieters, Esquire
Paul B. Trainor, Esquire
Hall Booth Smith, PC
111 Coleman Boulevard, Suite 301
Mount Pleasant, SC 29464
Attorneys for Respondent-Petitioner


Robert T. Lyles, Esquire (SC Bar 10299)
Lyles & Associates, LLC
342 East Bay Street
Charleston, South Carolina 29401
T: (843) 577-7730 / F: (843) 577-7172
rtl@lylesfirm.com
Attorneys for Petitioners

LYLES & ASSOCIATES, LLC

ATTORNEYS AT LAW

342 East Bay Street

Charleston, South Carolina 29401

Telephone: (843) 577-7730

Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

March 13, 2019

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

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SC Court of Appeals

Re: *Stoneledge at Lake Keowee Owners' Association, Inc., et al.*
vs. IMK Development Co., et al. (Bostic Brothers Construction, Inc.)
Appellate Case No. 2019-000041

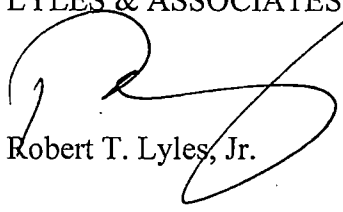
Dear Mr. Shearouse:

Regarding the above-referenced matter, enclosed for filing please find the original and six (6) copies of Petitioner-Respondent's Reply to Respondent-Petitioner's Return to Petitioner-Respondent's Petition for Writ of Certiorari and an original Proof of Service.

Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & ASSOCIATES, LLC


Robert T. Lyles, Jr.

RTL/cw

Enclosures

cc: Clerk, South Carolina Court of Appeals
Alan R. Belcher, Jr., Esquire

LY
Charleston, SC 29401

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201