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S.C. SUPREME COURT

IN 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

Ex Parte:

Builders Mutual Insurance Company, Nationwide Mutual
Fire Insurance Company, Nationwide Mutual Insurance
Company, and Nautilus Insurance Company,.....Appellants,

In Re:

Palmetto Pointe at Peas Island Condominium Property
Owners Association, Inc. and Jack Lowe, 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 Building
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 Does 1-60,..... Defendants,

And

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 Lowe, individually, and
on behalf of all others similarly situated, Tri-County
Roofing, Inc., Stanley’s Vinyl Fence Designs, WC
Services, Inc., Elroy Alonzo Vasquez, and Miracle Siding,
LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC,
are..... Respondents,

**RETURN TO PLAINTIFFS-RESPONDENTS’
MOTION TO DISMISS APPEAL
OR, ALTERNATIVELY, TO HOLD APPEAL IN ABEYANCE**

Pursuant to Rule 240(e), SCACR, Appellant Nationwide Mutual Insurance
Company (hereinafter “Nationwide Mutual”) submits the following Return to Plaintiffs-

Respondents' Motion to Dismiss Appeal of Nationwide Mutual Insurance Company or, Alternatively, to Hold Appeal in Abeyance Pending Final Disposition of Plaintiffs' Motion for a New Trial Against Nationwide Mutual's Insured, which was originally dated July 8, 2019 and was re-filed on July 15, 2019.

Nationwide Mutual moved to intervene in this action due to Supreme Court precedent holding that unless a liability insurer raises certain issues in the action brought against its insured, the insurer cannot adjudicate the issue in a separate proceeding. Auto Owners v. Newman, 385 S.C. 187, 198, 684 S.E.2d 541, 547 (2009). Nationwide petitioned to intervene in order to conduct discovery for the limited purpose of obtaining factual evidence necessary for allocating between covered and non-covered damages, and of participating in the drafting of a special verdict form or submitting special interrogatories to the jury to support such an allocation. (Nationwide Mut. Mot. to Intervene filed May 7, 2018 at ¶¶ 17-18.)

The trial court denied Nationwide Mutual's petition to intervene, and this appeal followed. While this appeal was pending, the trial court lifted the automatic stay and the Plaintiffs' claims against WC Services, Inc. were tried. The jury returned a verdict in favor of WC Services. However, the Plaintiffs filed post-trial motions, including a motion for a new trial.

What the Plaintiffs' post-trial motions were pending, the deadline for Nationwide Mutual's Initial Brief came due. Accordingly, Nationwide Mutual filed its Initial Brief. Nationwide Mutual noted that the trial court could grant the Plaintiffs' post-trial motions and that Nationwide Mutual will not have another opportunity to raise the issue. (Nationwide Mutual Init. Br., p. 3 n.1.)

After the Plaintiffs filed their motion to dismiss Nationwide Mutual's appeal, the trial court denied the Plaintiffs' post-trial motions as to WC Services. (Form 4 Order filed July 15, 2019, attached.) However, final judgment has not yet been entered. See Russell v. Wachovia Bank, N.A., 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006) ("An order is not final until it is entered by the clerk of court, and until the order or judgment is entered by the clerk of court, the judge retains control of the case."); Rule 58(a)(2), SCRCP.

Furthermore, the Plaintiffs have indicated they plan to appeal the judgment. If the defense verdict is reversed on appeal, the Plaintiffs' claims against WC Services may have to be re-tried. Should that occur, Nationwide would have to reassert its petition to intervene under current law. However, "an unappealed ruling, right or wrong, is law of the case." Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). The law of the case doctrine bars a party from relitigating issues that have been decided in a prior appeal at a subsequent point in the same case. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015).

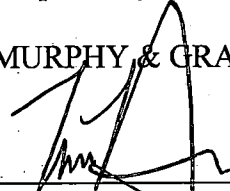
Nationwide Mutual recognizes that the possibility of a re-trial may seem remote at this point. However, in the immortal words of Yogi Berra, "it ain't over until it's over." The Plaintiffs cannot establish that Nationwide Mutual lacks standing to maintain this appeal.

Judicial economy also weighs against dismissal or holding Nationwide Mutual's appeal in abeyance. Consolidated appeals were transferred to this Court for a ruling on an issue that is ripe for resolution. It would waste judicial resources to split the appeals and address them separately. Moreover, the Plaintiffs may decide not to appeal, in which case Nationwide Mutual's pending appeal could be dismissed.

For the reasons set forth above, Nationwide Mutual requests that the Plaintiffs' Motion be denied.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



Timothy J. Newton, Esquire
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney Nationwide Mutual Insurance
Company

Columbia, SC
July 18, 2019

Other Counsel of Record:

Justin O'Toole Lucey, Esq.
Stephanie D. Drawdy, Esq.
Joshua F. Evans, Esq.
Justin O'Toole Lucey, P.A.
P.O. Box 806 (29465)
415 Mill Street
Mt. Pleasant, South Carolina 29464
843-849-8400

jlucey@lucey-law.com

sdrawdy@lucey-law.com

jevans@lucey-law.com

Attorneys for Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated

Edward D. Buckley, Jr., Esq.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, South Carolina 29402
843-577-4000
ebuckley@ycrlaw.com

Attorney for Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and on behalf of all others similarly situated

Andrew N. Cole, Esq.
Collins and Lacey
Post Office Box 12487
Columbia, South Carolina 29211
803-256-2660
acole@collinsandlacy.com
Attorney for Respondent Tri County Roofing, Inc.

Steven L. Smith, Esq.
Zachary J. Closser, Esq.
Samuel M. Wheeler, Esq.
Smith Closser, P.A.
Post Office Box 40578
Charleston, South Carolina 29423
843-760-0220
Attorneys for Respondent Tri County Roofing, Inc.

James A. Atkins, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
800-774-8242
jatkins@clawsonandstaubes.com
Attorney for Respondent W C Services, Inc.

Bonum S. Wilson, III, Esq.
Brandon T. Reeser, Esq.
Wilson & Heyward, LLC
Post Office Box 13177
Charleston, South Carolina 29422
843-762-4567
bwilson@wilsonheyward.com
breeser@wilsonheyward.com
Attorneys for Respondents Miracle Siding, LLC, Wilson Lucas Sales d/b/a Miracle Siding, LLC and Eloy Alonzo Vasquez

John L. McCants, Esq.
Rogers Lewis Jackson Mann and Quinn, LLC
P.O. Box 11803 (29211)
1901 Main Street, Suite 1200

Columbia, SC 29201

803-978-2834

jmccants@rogerslewis.com

Attorney for Appellant Builders Mutual Insurance Company

Janice Holmes, Esq.

Shelley S. Montague, Esq.

Gallivan White & Boyd, P.A.

Post Office Box 7368

Columbia, South Carolina 29202

803-779-1833

iholrnes@GWBlawfirm.com

smontague@GWBlawfirm.com

Attorneys for Appellant Nautilus Insurance Company

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.

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

FILED
 2019 JUL 15 AM 11:09
 JULIE J. HARRIS
 CLERK OF COURT
 DISTRICT COURT
 TRIBUNAL

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

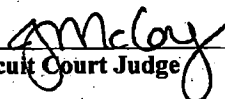
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Plaintiff's Motion for JNOV and/or New Trial as to WC Services, Inc., is DENIED. Defendant WC Services, Inc., may submit a proposed formal order by August 1, 2019.

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.


 Circuit Court Judge

2764
 Judge Code

7/15/19
 Date

IN 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

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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 Does 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 Lowe,
Individually, and on behalf of all others similarly situated,
Tri-County Roofing, Inc.; Stanley's Vinyl Fence Designs;
and WC Services, Inc. are Respondents,

PROOF OF SERVICE

I certify that I have served the Return to Plaintiffs-Respondents' Motion to Dismiss Appeal or, Alternatively, to Hold Appeal in Abeyance, via regular and electronic mail, on July 18, 2019, to the following attorneys of record:

Justin O'Toole Lucey, Esq.
Stephanie D. Drawdy, Esq.
Joshua F. Evans, Esq.
Justin O'Toole Lucey, P.A.
P.O. Box 806 (29465)
415 Mill Street
Mt. Pleasant, South Carolina 29464
843-849-8400
jlucey@lucey-law.com
sdrawdy@lucey-law.com
jevans@lucey-law.com

Attorneys for Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and on behalf of all others similarly situated

Edward D. Buckley, Jr., Esq.
Young Clement Rivers, LLP
Post Office Box 993
Charleston, South Carolina 29402
843-577-4000
ebuckley@ycrlaw.com

Attorneys for Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated

Andrew N. Cole, Esq.
Collins and Lacey
Post Office Box 12487
Columbia, South Carolina 29211
803-256-2660
acole@collinsandlacy.com

Steven L. Smith, Esq.
Zachary J. Closser, Esq.
Samuel M. Wheeler, Esq.
Smith Closser, P.A.
Post Office Box 40578
Charleston, South Carolina 29423
843-760-0220

Attorneys for Tri County Roofing, Inc.

James A. Atkins, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
800-774-8242
jatkins@clawsonandstaubes.com

Attorney for W C Services, Inc.

Bonum S. Wilson, III, Esq.
Brandon T. Reeser, Esq.
Wilson & Heyward, LLC
Post Office Box 13177
Charleston, South Carolina 29422
843-762-4567
bwilson@wilsonheyward.com
breeser@wilsonheyward.com

Attorneys for Respondents Miracle Siding, LLC, Wilson Lucas Sales d/b/a Miracle Siding, LLC and Eloy Alonzo Vasquez

John L. McCants, Esq.
Rogers Lewis Jackson Mann and Quinn, LLC
Post Office Box 11803 (29211)
1901 Main Street, Suite 1200
Columbia, SC 29201
jmccants@rogerslewis.com

Attorney for Appellant Builders Mutual Insurance Company

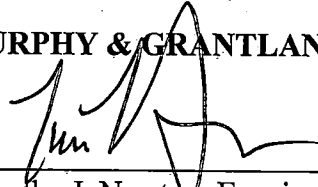
Janice Holmes, Esq.
Shelley S. Montague, Esq.
Gallivan White & Boyd, P.A.
Post Office Box 7368
Columbia, South Carolina 29202
803-779-1833
iholmes@GWBlawfirm.com
smontague@GWBlawfirm.com

Attorneys for Nautilus Insurance Company

[signature page follows]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

A handwritten signature in black ink, appearing to read 'Tim', is written over a horizontal line.

Timothy J. Newton, Esquire

P.O. Box 6648

Columbia, SC 29260

(803) 782-4100

*Attorney for Nationwide Mutual Fire
Insurance Company*