

IN THE STATE OF SOUTH CAROLINA

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In the Supreme Court

SEP 27 2019

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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,

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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,

**APPELLANT NATIONWIDE MUTUAL INSURANCE COMPANY’S
MOTION FOR CLARIFICATION
TO PRESERVE ITS RIGHT TO RESPOND**

Appellant Nationwide Mutual Insurance Company (hereinafter “Nationwide Mutual”) hereby requests, in the abundance of caution, that it be provided time to respond

to any briefs, motions, or other filings that may affect its appeal that are made while its appeal is held in abeyance. By way of explanation, Nationwide Mutual would show the following:

This appellate case was originally comprised of five (5) consolidated appeals. Three of the five consolidated appeals (those filed by FCCI Insurance Company, Nautilus Insurance Company, and Nationwide Mutual Fire Insurance Company) have been dismissed. The two that remain pending are Builders Mutual Insurance Company's (hereinafter "Builders Mutual") appeal and Nationwide Mutual's appeal.

Plaintiffs-Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Lowe, individually, and on behalf of all others similarly situated (hereinafter collectively "Palmetto Pointe") filed a 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 around July 8, 2019, and re-filed it on July 15, 2019. Palmetto Pointe's Motion has been briefed, but the Court has not yet ruled upon the Motion.

While Palmetto Pointe's Motion has been pending, the online court docket shows the appeal has "Held in Abeyance." Counsel for Nationwide Mutual has been informed that Palmetto Pointe's deadlines for filing briefs have been suspended due to the pending motion.

Nevertheless, other filings have been made in the appellate case, and the Court has issued orders specifying deadlines. In particular, the Court granted a motion for leave to file an amicus brief by Hartford Fire Insurance Company, Hartford Casualty Insurance

Company, and Hartford Underwriters Insurance Company (hereinafter collectively “Hartford”) and, by Order filed September 26, 2019, set a deadline for filing response briefs as of fifteen (15) days of that Order.

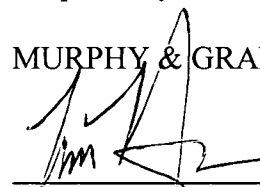
Additionally, Tri-County Roofing, Inc. (hereinafter “Tri-County”) has filed its initial brief. Motions for extension of time to respond to that brief have been made. Tri-County’s brief appears to be directed to Builders Mutual only, but its arguments affect Nationwide Mutual’s position.

Rule 214, SCACR, does not specify the effect of briefs and motions in one appeal on the parties to another consolidated appeal. The undersigned assumes that Nationwide Mutual does not need to respond to briefs and motions filed in Builders Mutual’s appeal. However, in the abundance of caution, and in order to avoid waiver, clarification is requested from the Court.

Accordingly, Nationwide Mutual respectfully requests that this Court allow it time to respond to Hartford’s Amicus Brief if this Court denies Palmetto Pointe’s pending motion. Nationwide Mutual also requests that the Court clarify whether it is permitted to respond Tri-County’s arguments, and if so, in what time frame.

Respectfully submitted,

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September 27, 2019

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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,

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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 correspondence advising the Clerk of developments which affect Nationwide's pending appeal and Appellant, Nationwide Mutual Insurance Company's Motion For Clarification To Preserve Its Right to Respond, via regular and/or electronic mail, on September 27, 2019, to the following attorneys of record:

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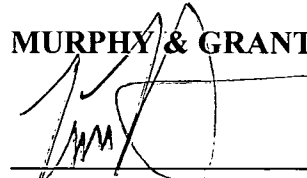
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[signature page follows]

Respectfully submitted,

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

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