

RECEIVED

OCT 09 2019

S.C. SUPREME COURT

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 and Nationwide Mutual Insurance Company, ... Appellants,

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

**RETURN TO NATIONWIDE MUTUAL INSURANCE COMPANY'S RULE 208(b)(7),
SCACR, LETTER AND ITS MOTION FOR CLARIFICATION TO PRESERVE ITS
RIGHT TO RESPOND**

Justin O'Toole Lucey, Esquire
SC Bar No.: 15438
Stephanie L. Drawdy, Esquire
SC Bar No.: 70205
Joshua F. Evans, Esquire
SC Bar No.: 77448
Justin O'Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29201
Telephone: 843.849.8400
E-Mail: jlucey@lucey-law.com

and

Edward D. Buckley, Jr., Esquire
SC Bar No.: 994
Young Clement Rivers, LLP
Post Office Box 993
Charleston, South Carolina 29402
Telephone: 843.577.4000
Email: ebuckley@yrcrlaw.com

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

Respondents Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. and Jack Love (collectively “Palmetto Pointe”) oppose consideration of Appellant Nationwide Mutual Insurance Company (“Nationwide”)’s September 27, 2019 letter, submitted pursuant to Rule 208(b)(7) of the South Carolina Appellate Court Rules (“Letter”), and respond to Nationwide’s Motion for Clarification to Preserve Its Right to Respond.

A. Nationwide’s Letter Is Impermissible

Rule 208(b)(7) permits submission of supplemental citations by letter, without argument, to the Court. *See* Rule 208(b)(7), SCACR (“When pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations....”)(emphasis added). There are no citations or new authorities identified in Nationwide’s Letter. Instead, Nationwide purports to “advise [] the clerk of developments which affect Nationwide’s pending appeal.” Rule 208(b)(7), SCACR, does not permit such a letter and even if it did, Nationwide’s Letter does not contain any “developments”. It is not a “development” that Palmetto Pointe filed an appeal of the judgment in favor of Nationwide’s insured, WC Services, Inc. Nationwide stated in its July 18, 2019 Return to Palmetto Pointe’s Motion to Dismiss that Palmetto Pointe *planned* to appeal that judgment; since then, Palmetto Pointe *did* precisely what was planned, they filed Notice of Appeal.¹ The facts at issue remain unchanged, *e.g.*, there is no judgment which Nationwide’s insured has become legally obligated to pay. Thus, supplementation is inappropriate. Nationwide’s Letter should be disregarded.

¹ Further, an order granting consideration of an amicus brief is not a “development” of which the Court (or Clerk of Court) would be unaware. If Nationwide wishes to brief this matter as an *amicus curiae*, it may move to do so, pursuant to Rule 213, SCACR.

B. Our State Appellate Court Rules Appear to Answer, In Part, Nationwide's Motion For Clarification

Rule 240(b), SCACR, provides that until a motion to dismiss is decided, the time limits for perfecting the appeal are automatically stayed. That is, an undecided motion to dismiss operates to "stop the clock" on deadlines in the appeal.² Therefore, there is no need for a party to this consolidated appeal to preserve its right to respond, for instance, to Tri-County Roofing, Inc.'s Initial Brief. By operation of Rule 240(b), SCACR, initial briefs are not yet due in this consolidated appeal and will not be due until after the Court issues a decision on Palmetto Pointe's Motion to Dismiss. Palmetto Pointe, as a result, believes clarification to this end is unnecessary.

To the extent this Court entertains Nationwide's request, Palmetto Pointe requests confirmation that it will be provided with adequate time to respond to any written filing by any other party or entity.

Respectfully submitted,



Justin O'Toole Lucey, Esquire
SC Bar No.: 15438

Stephanie D. Drawdy, Esquire
SC Bar No.: 70205

Joshua F. Evans, Esquire
SC Bar No.: 77448

Justin O'Toole Lucey, P.A.
415 Mill Street

Mount Pleasant, South Carolina 29201

Telephone: 843.849.8400

E-Mail: jlucey@lucey-law.com

RECEIVED

OCT 09 2019

S.C. SUPREME COURT

² The same was confirmed by Lucey Law Firm via telephone call to the appellate case manager, who informed the Firm that briefing deadlines in this consolidated appeal are "held in abeyance" until there is a decision on the motion to dismiss.

and

Edward D. Buckley, Jr., Esquire
SC Bar No.: 994
Young Clement Rivers, LLP
Post Office Box 993
Charleston, South Carolina 29402
Telephone: 843.577.4000
Email: ebuckley@ycrlaw.com

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

Mount Pleasant, SC
October 7, 2019

RECEIVED

OCT 09 2019

S.C. SUPREME COURT

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 and Nationwide Mutual Insurance Company, ... Appellants,

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

RECEIVED

NOV 09 2019

PROOF OF SERVICE

S.C. SUPREME COURT

I, Justin Lucey, of Justin O'Toole Lucey, P.A., counsel for Respondents, certify that **RESPONDENT'S RETURN TO NATIONWIDE MUTUAL INSURANCE COMPANY'S RULE 208(B)(7), SCACR, LETTER AND ITS MOTION FOR CLARIFICATION TO PRESERVE ITS RIGHT TO RESPOND** was served on all other parties to this appeal on October 7, 2019 a copy thereof deposited in the U.S. Mail properly posted for delivery to the following addressees:

John Lucius McCants, Esquire
ROGERS LEWIS JACKSON
MANN & QUINN, LLC
P.O. Box 11803
Columbia, SC 29211

*Attorneys for Appellant
Builders Mutual Insurance Company*

J.R. Murphy, Esquire
Timothy J. Newton, Esquire
MURPHY GRANTLAND, P.A.
P.O. Box 6648
Columbia, SC 29260

*Attorneys for Appellants
Nationwide Mutual Insurance Company and
Nationwide Mutual Fire
Insurance Company*

Christy E. Mahon, Esquire
SWEENEY WINGATE & BARROW P.A.
1515 Lady Street
Columbia, SC 29201

*Attorneys for Hartford
Fire Insurance Company, Hartford Casualty
Insurance Company, and Hartford Underwriters
Insurance Company*

Steven L. Smith, Esquire
Zachary J. Closser, Esquire
Samuel M. Wheeler, Esquire
SMITH CLOSSER, P.A.
P.O. Box 40578
Charleston, SC 29423

*Attorneys for Respondent
Tri-County Roofing, Inc.*

G. Troy Thames, Esquire
WILSON, JONES, CARTER & BAXLEY, PA
421 Wando Park Blvd., Ste. 100
Mt Pleasant, SC 29464

*Attorneys for Respondent
Stanley's Vinyl Fence Designs*

James A. Atkins, Esquire
CLAWSON AND STAUBES, LLC
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492

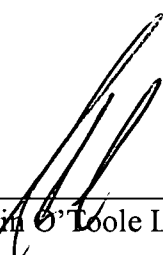
*Attorneys for Respondents
WC Services, Inc.*

Steven M. Klepper, Esq.
KRAMON & GRAHAM
One South Street, Suite 2600
Baltimore, MD 21202-3201

*Attorneys for Hartford
Fire Insurance Company, Hartford Casualty
Insurance Company, and Hartford Underwriters
Insurance Company*

October 7, 2019
Mount Pleasant, SC

By:


Justin O'Toole Lucey, Esq.