

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable Alexander S. Macaulay, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2019-000041
Lower Court Case No. 2009-CP-37-00652

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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COUNTER-STATEMENTS TO STATEMENT OF THE ISSUES ON APPEAL

- I. In applying this Court's ruling in Joiner v. Bevier, 155 S.C. 340, 152 S.E. 652 (S.C. 1930), the Court of Appeals properly held the trial court invaded the province of the jury by amending the jury's verdict to find each cause of action independently supported a \$5 million verdict.¹
- II. In applying S.C. Code Ann. § 15-38-20(G), the Court of Appeals properly held the \$1 million breach of fiduciary duty award adjudged against Mr. Thoennes was not subject to a set-off from prior-settled tortfeasors.

STATEMENT OF THE CASE

On May 29, 2009, Stoneledge at Lake Keowee Owners' Association, Inc. and various individual homeowners initiated this cause of action in the Oconee County Court of Common Pleas, Civil Action No. 2009-CP-37-0652 (the Plaintiffs/Petitioners-Respondents captioned above are collectively hereinafter referred to as "Stoneledge"). Subsequently, on February 9, 2010, Stoneledge filed suit against Bostic Brothers Construction, Inc. (Respondent-Petitioner hereinafter referred to as "Bostic"). (R. pp. 120-144). Stoneledge's Third Amended Complaint pled the following causes of action: (1) Breach of Warranty of Developers;² (2) Negligence of Developers; (3) Breach of Fiduciary Duty of Developers; (4) Breach of Warranty of Contractors and Subcontractors; (5) Negligence of Contractors and Subcontractors; (6) Negligence of Miller/Player and Associates ("MPA"); and (7) Breach of Express and Implied Warranty of MPA. (R. pp. 172-178).

On October 28, 2013, a jury trial commenced in Oconee County before the Honorable Alexander S. Macaulay. At trial, Stoneledge sought damages totaling \$6.5 million. During the trial, Defendants Marick and IMK were deemed an amalgamated entity, and treated jointly for

¹ Stoneledge at Lake Keowee Owners' Association, Inc., et al. v. Bostic Brothers Construction, Inc., et al., 425 S.C. 276, 301-03, 821 S.E.2d 509, 522-23 (Ct. App. 2018).

² "Developers" identified in Stoneledge's Third Amended Complaint included IMK, Keowee, Ludwig, SDI, Medallion, Integrys, Marick, Bostic, Larry Lollis, William Cox, Bradford Seckinger, John Ludwig, and Rick Thoennes, collectively and individually. (R. p. 170).

purposes of trial (hereinafter collectively, "Marick"). At the close of Stoneledge's case, Bostic moved for a directed verdict as to the statute of limitations, which was denied. (R. p. 1526, line 7 - p. 1547, line 10; p. 1594, line 4 - p. 1595, line 5). Bostic renewed its motion for directed verdict at the close of Defendants' case, which was also denied. (R. p. 1844, line 8 - p. 1849, line 3). On November 7, 2013, the jury returned the following \$5 million verdict (R. pp. 33-35):

- \$3 million for negligence against Marick and Bostic;
- \$1 million for breach of implied warranties against Marick and Bostic; and
- \$1 million for breach of fiduciary duty against Defendants IMK, Integrys, Rick Thoennes, Larry D. Lollis, and William C. Cox, individually.

The jury allocated 60% of the negligence award to Bostic and 40% to Marick and allocated 30% of the breach of implied warranties award to Bostic and 70% to Marick. (R. p. 36). The trial court applied a set-off of \$2,855,911.77 to the entire \$5 million verdict, entering judgment for \$2,144,088.23; and in the instances of breach of implied warranties and negligence, the trial court reduced the \$2,144,088.23 by the percentage of apportionment. (R. pp. 284-292). The trial court entered the entire amount of the judgment as to Bostic.

On November 18, 2013, Bostic timely filed four Post-Trial Motions: (1) a Rule 50, SCRCF Motion for Judgment Notwithstanding the Verdict, arguing that the Court erred in failing to grant Bostic's Motion for Directed Verdict at trial based upon the applicable statute of limitations; (2) a Motion requesting an Order granting a set-off of all funds recovered pre-trial by Stoneledge; (3) a Motion pursuant to Rule 59, SCRCF requesting a new trial absolute; and (4) a Motion pursuant to Rule 59, SCRCF requesting a new trial nisi remittitur.

On January 22, 2015, the trial court entered an Order Denying Defendants' Post-Trial Motions. (R. p. 18). On February 19, 2015, Bostic timely filed a Rule 59(e), SCRCF Motion to Alter or Amend Judgment and asked the trial court to reconsider its post-trial Order entered in

the case because the Order did not specifically address Bostic's Post-Trial Motions, i.e., Motion for New Trial Absolute, Motion for New Trial Nisi Remittitur, Motion for Judgment Notwithstanding the Verdict and Motion for Set-Off. (R. pp. 2188-2191). On March 13, 2015, the trial court denied the Motion. (R. pp. 3-4).

On March 3, 2015 and March 20, 2015, Bostic timely filed its Notice of Appeal and Second Amended Notice of Appeal. On December 7, 2017, oral arguments were held before the South Carolina Court of Appeals. On October 10, 2018, the Court of Appeals filed Opinion No. 5601 (termed "Stoneledge II" by the Court of Appeals), which forms the basis of this reply brief.³ On November 21, 2018 Bostic filed a Petition for Rehearing, which was denied by the Court of Appeals on December 13, 2018. (App. Ex. Q). On January 14, 2019, Bostic filed a petition for Writ of Certiorari for review by this Court. On February 4, 2019, Stoneledge filed a cross-petition for Writ of Certiorari. This Honorable Court, by Order dated August 6, 2019, granted both Petitions.

STATEMENT OF FACTS

This construction defect lawsuit emanated from a multi-family townhome project located on Lake Keowee in Oconee County, South Carolina, which consisted of multiple phases of development ("the Project"). Bostic was the initial general contractor of record and obtained building permits to construct the first thirty-seven units as part and parcel of Phase I of the Project in August 2002. (R. p. 1467, line 5; pp. 2365-2406). Bostic's principals, Jeff and Joe Bostic, had ownership interests in Defendant Keowee Townhouses, LLC, which operated as the developer of the Project. (R. p. 926, lines 15-22). After starting the Project and completing

³ Both Opinion No. 5601 ("Stoneledge II") and Opinion No. 5600 ("Stoneledge I") were filed on October 10, 2018. The Court of Appeals' Opinion in the instant matter, Op. No. 5601, incorporates by reference Op. No. 5600: "Our opinion in Stoneledge I adequately addresses the second and third issues Bostic raises in this appeal."

construction of approximately twelve units, Bostic entered into bankruptcy proceedings. (R. p. 708, lines 1-9).

On the brink of foreclosure, Keowee Townhouses, LLC sold the remaining, partially completed twenty-five units in Phase I of the Project. These partially completed units were sold to Defendant IMK Development Co., LLC ("IMK"), a development company comprised of Defendants Marick Home Builders, LLC ("Marick"), and Integrys Holdings, LLC ("Integrys"). (R. p. 1420, lines 6-16). At a considerable discount, the sale was completed on March 30, 2005. At the time IMK purchased the units, Rick Thoennes was the license holder and managing member for Marick. (R. p. 1431, lines 23-25). Shortly thereafter, Marick assumed the role of general contractor, obtained new building permits on the twenty-five partially completed units, and in 2005 began work on the Project. (R. p. 1438, lines 3-8). At that time, Rick Thoennes assigned Nathan Hornaday as the superintendent for the Project. (R. p. 756, lines 7-14).

In mid-2005, after assuming control of the Project. Marick created a homeowner's association named Stoneledge at Lake Keowee Owners' Association, Inc. (the "HOA"), established bylaws, and elected HOA board members including Rick Thoennes, William Cox, and Tim Roberson. (R. p. 508, line 23 - p. 509, line 8). Marick remained in control of the HOA until September 2008. (R. p. 604, lines 9-21). In September 2008, Marick transferred control of the HOA to the individual homeowners. (R. p. 604, lines 9-14). Neither Bostic nor Defendant Keowee Townhouses, LLC had any active involvement in the HOA.

COUNTERARGUMENTS⁴

Stoneledge is asking this Court to review issues the Court of Appeals correctly held were errors of law and necessitated reversal or constituted the jury's findings of fact supported by the

⁴ In the spirit of brevity, Bostic asserts counterarguments to Sections I and II of Stoneledge's Brief and intertwines its counterarguments by reference, as both counterarguments are pertinent and responsive to Stoneledge's Brief.

evidence, which must remain undisturbed. Sections I and II of Stoneledge's Brief were addressed and properly disposed of by the Court of Appeals in Stoneledge, 425 S.C. at 301-03, 821 S.E.2d at 522-23.⁵

I. THE COURT OF APPEALS PROPERLY REVERSED AN ERROR OF LAW BY FINDING THE TRIAL COURT'S AMENDMENT OF THE VERDICT WAS IMPROPER

In an action at law, tried by a jury, the Court of Appeals' review of the action "extends merely to correcting errors of law. We will not disturb the facts determined by the jury unless there is no evidence which reasonably supports the jury's findings." R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 430-31, 540 S.E.2d 113, 117 (Ct. App. 2000); Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976); Brown v. Smalls, 325 S.C. 547, 481 S.E.2d 444 (Ct. App. 1997).

A. The Court of Appeals Properly Reversed an Error of Law

The Court of Appeals properly corrected the trial court's amendment of the jury's verdict whereas each cause of action independently supported a \$5 million verdict. In doing so, the trial court "invaded the province of the jury." Stoneledge, 425 S.C. at 301-03, 821 S.E.2d at 522-23 (citing Joiner v. Bevier, 155 S.C. 340, 152 S.E. 652, 657 (S.C. 1930) ("A jury's verdict should be upheld, when it is possible to do so, and carry into effect what was clearly the jury's intention. It is our duty to enforce a verdict, not to make it."))).

"It is not for the trial court to say what it thinks the verdict *should* be." Camden v. Hilton, 360 S.C. 164, 173, 600 S.E.2d 88, 92 (Ct. App. 2004) (emphasis added). As previously proffered, the jury returned a \$3 million verdict for negligence as to Bostic and Marick, a \$1 million verdict for breach of warranty for Bostic and Marick, and a \$1 million verdict for breach

⁵ See Section F, entitled "Set-off", Stoneledge, 425 S.C. at 301-03, 821 S.E.2d at 522-23.

of fiduciary duty as to Mr. Thoennes. The trial court rewrote the verdict to find each cause of action independently supported a \$5 million award, despite the jury's intent to assign distinct amounts to each claim and to distinct defendants. For the trial court to amend the verdict to allocate \$5 million to each cause of action was an error of law. The Court of Appeals properly reversed the trial court on this issue, as it was error of law for the trial court to unilaterally amend the verdict to what it thought the verdict should be, after the jury had made its own factual determination.

B. The Court of Appeals Properly Held a \$1 Million Breach of Fiduciary Duty Award Against Bostic Was Improper as the Cause of Action Was Never Asserted

Stoneledge contends that since the award is to be "cumulative," \$5 million should be adjudged against each defendant. A cumulative award is merely the addition of multiple verdicts for multiple causes of action. See Keeter v. Alpine Towers Intern., Inc., 2012 WL 11867308 (Ct. App. June 27, 2012) (holding that a cumulative award, adding multiple verdicts for multiple causes of action against one defendant, was the proper award, rather than an election of remedies). In Keeter, the plaintiff proceeded to trial against one defendant, alleging three causes of action against that defendant. Id. After a jury awarded a verdict for each cause of action, the trial court required the plaintiff to elect its remedy and choose which cause of action under which he would recover. Id. at *12. The court rejected the election of remedies approach, stating, "[b]ecause [the plaintiff] sought only one remedy, the doctrine of election of remedies does not apply." Id. at *9. The court found that the jury intended the three verdicts to constitute a cumulative award and remanded for entry of judgment against the sole defendant for the total of the three verdicts. Id. at *12. Unlike Keeter, here we have several defendants and distinct causes of action which are not common to all.

In entering a \$5 million judgment against Bostic, the trial court included a \$1 million breach of fiduciary duty award for a cause of action which was never asserted against Bostic. (R. p. 1847 lines 6-10 - "I do not have a claim against Bostic for a breach of fiduciary duty."). Stoneledge's error in their argument is that Bostic cannot be held liable, cumulatively, for a cause of action and hence for a damage for which it was never sued. It is axiomatic that Bostic cannot be adjudged a \$5 million verdict against it, which is inclusive of a \$1 million finding for breach of fiduciary duty, when Bostic was never sued for breach of fiduciary duty. The Court of Appeals correctly concluded it was an error of law for the trial court to rewrite the verdict against Bostic inclusive of these damages.

II. THE COURT OF APPEALS DID NOT ERR IN HOLDING THE \$1 MILLION AWARD AGAINST MR. THOENNES FOR BREACH OF FIDUCIARY DUTY WAS NOT SUBJECT TO A SET-OFF

The jury returned a verdict in favor of Stoneledge for \$5,000,000; \$3,000,000 on the negligence cause of action against Marick and Bostic, \$1,000,000 on the breach of implied warranty cause of action against Marick and Bostic, and \$1,000,000 for the breach of fiduciary duty cause of action against Thoennes and other directors. In invading the province of the jury, the trial court amended the jury's verdict to find that each cause of action independently supported a \$5 million verdict. The Court of Appeals properly corrected the trial court's amendment of the jury's verdict whereas the trial court determined that each cause of action independently supported a \$5 million verdict. Stoneledge, 425 S.C. 276, 302, 821 S.E.2d 509, 522 (Ct. App. 2018).

A. The Court of Appeals Properly Found the Jury's Verdict and Allocation of Damages to the Three Separate Causes of Action Should Stand

Inferred in its holding, the Court of Appeals determined the jury's findings were reasonably supported by the evidence and should not be disturbed. By reading the verdict form,

it is evident the jury allocated damages to each cause of action and further apportioned certain causes of action based upon its own findings of fact and weighing of the evidence.

Stoneledge asserts there was no evidence the damages were anything other than cost to repair, and the \$5 million jury verdict was a single damage - the cost to repair - and this figure constituted the sole measure of damages for each of the causes of action. On the contrary, Marick and Bostic had their own distinct theories of liability since Bostic was the original general contractor on Phase I and Marick was the subsequent general contractor.

Due to the nature of their roles in the Phase I, both parties presented evidence that it was not responsible for a certain measure of damages attributable to the other, pursuant to either the negligence theory or breach of warranty theory. As the subsequent general contractor to the project, Marick presented evidence and argued to the trial court it was not responsible for damages attributable to repairs to Bostic's original work in Phase I since Bostic permitted and obtained certificates of occupancy for many of the units (R. p. 1156, line 11 - p. 1157, line 14; R. p. 1610, line 2 - p. 1611, line 17). The parties presented competing evidence as to whether Bostic, as original contractor, or Marick, as subsequent general contractor, was responsible for Phase I. (R. p. 1352, lines 14-18; R. p. 1440, lines 12-23; R. p. 1449, lines 2-17; R. p. 1464, lines 1-6.) Plaintiff presented evidence Marick had an obligation as the subsequent general contractor for conditions of the project upon arrival, and Plaintiff understood Marick wished to argue to the jury it was responsible for a "smaller portion of the pie than Bostic's" and its liability was limited to the work that Marick did. (R. p. 1043, line 8 - p. 1044, line 24; R. p. 1611, line 24 - p. 1612, line 16.)

Moreover, there were distinguishable damages at trial that jury could have found were the direct result of the breach of fiduciary duty claim. Defense counsel argued at the directed verdict

stage of trial that the "breach of fiduciary duty in this case is limited to damages that occurred because of the failure to inspect, or alleged failure to inspect, find and repair the issues which [plaintiffs' expert] has indicated on the damages underneath the envelope. And Mr. Folk has testified to a limit of two hundred and fifty thousand dollars." (R. p. 1633, lines 10-16.) Moreover, counsel for Bostic argued the breach of fiduciary duty claim against the Board was the homeowners' remedy at law for the Board's failure to timely file suit against Bostic. (R. p. 1845, lines 1-21.)

The trial court agreed that the verdict form would "be as to each cause of action if it applies to the defendants. In other words, . . . under the breach of fiduciary duty . . . the verdict will be as to the plaintiff and then the defendants to which that applies." (R. p. 1847, lines 19 - 24). Although, Stoneledge seeks to consolidate all the claims to one injury, it is evident from the verdict form that the jury came to a different conclusion in its fact-finding. The jury clearly found the damages resulting from Mr. Thoennes' breach of fiduciary duty to the homeowners pursuant to his position on the Board totaled \$1 million in damages. The jury may have dedicated certain items in the repair estimate to Thoennes' failure to inspect or failure to find and repair issues as it was argued at trial. Stoneledge argues the Court of Appeals arbitrarily allocated the verdict as to specific damages for each cause of action. However, the Court of Appeals' allocation was not arbitrary. It was applying the verdict awards for each cause of action as provided by the jury on its verdict form.

Subsequent to the Court of Appeals properly reinstating the jury's verdict and its allocation of damages to the three separate causes of action, the Court's next step was determining how the trial court should allocate the set-off, if any, that Marick and Thoennes would be entitled to. In its finding that "none of the settlement proceeds should be set off against

Thoennes' liability for breach of fiduciary duty”,⁶ the Court of Appeals noted that “Thoennes' fiduciary duty to the HOA was the result of his position on the Board of the HOA.” Stoneledge, 425 S.C. at 302, 821 S.E.2d 509 at 523.

Stoneledge contends that although Thoennes was on the Board of the HOA, his position on the Board was a result of his involvement as a developer, and in acting as a developer, the measure of damages for breach of fiduciary duty was the cost of repair. See Stoneledge’s Brief p. 9, subsection b.

In 2005, in response to the Stoneledge homeowners' complaints, Mr. Thoennes, as managing member of Marick and a HOA member, undertook to correct those defects. (R. p. 1464, lines 1–6). Stoneledge’s own witness, Robert White, admitted that Mr. Thoennes was a board member of the HOA. (R. p. 450, lines 1–2; p. 1343, lines 1–13) (“[Marick/IMK] controlled the Stoneledge H.O.A. from the period of 2005 to 2008. That is, they sat on the board. They made decisions for the H.O.A.”); (testimony indicating that Rick Thoennes, amongst others, were HOA Board members). Subsequent board members Donna Furnari, Steve Taylor, and Robert White all testified the only change in the HOA (in 2008) was its members, not the entity itself. (R. p. 1342, lines 8–18). The rights and responsibilities of the HOA were, in form and substance, the same in 2008 as they were when Marick/IMK controlled the HOA in 2005.

Yet, despite evidence to the contrary, Stoneledge argues Thoennes’ breach of fiduciary duty emanates from the fiduciary duty of a developer and was not from his position on the Board of the HOA. Regardless, a breach of a fiduciary duty does not benefit from a set-off, as breach of

⁶ “Based on the record, it does not appear any Board members settled with the HOA prior to trial. Therefore, none of the settlement proceeds should be set off against Thoennes' liability for breach of fiduciary duty because none of the settlement proceeds would have included any amount for damages resulting from a breach of fiduciary duty. Accordingly, Thoennes is responsible for the \$1 million award for breach of fiduciary duty, subject to any claims he may have for contribution from any other defendants.” Stoneledge, 425 S.C. at 302-03, 821 S.E.2d 509 at 523.

fiduciary duty is expressly excepted from the South Carolina Contribution Among Tortfeasors Act ("SCCATA").

B. The Court of Appeals Properly Corrected an Error of Law as a Breach of Fiduciary Duty Claim is Not Subject to Set-off Under S.C. Code Ann. § 15-38-20(G)

As stated, Mr. Thoennes' fiduciary duty to the HOA emanated from his Board position with the HOA. None of Board Members settled with the HOA prior to trial, thus, the Court of Appeals properly held the \$1 million award against Mr. Thoennes for breach of fiduciary duty does not benefit from a set-off from prior-settled tortfeasors. The Court found "none of the settlement proceeds should be set-off against Thoennes' liability for breach of fiduciary duty because none of the settlement proceeds would have included any amount for damages resulting from a breach of fiduciary duty." Stoneledge, 425 S.C. at 303, 821 S.E.2d 509 at 523.

Stoneledge asserts that because the damage or injury (cost of repair), was the same as to each cause of action, i.e., the injury the Plaintiff suffered as to each defendant was all the same, then the entire award should have been subject to the \$2.85 million set-off.⁷ Stoneledge relies upon Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188 (Ct. App. 2012), to further their argument. However, Smith is inherently distinct from the instant case, because "the injury Smith suffered as a result of the *tortious conduct* of all defendants was the same." Id. at 472, 724 S.E.2d at 190 (emphasis added). Here, the claim involves a cause of action for breach of fiduciary duty which is expressly excepted from SCCATA. Counsel for Bostic also argued at trial that the breach of fiduciary duty claim was excepted from the SCCATA and thus there needed to be three separate damages for each cause of action on the verdict form. (R. p. 1897 lines 4-24.)

⁷ This figure is merely an approximation used throughout Bostic's Reply.

South Carolina Code Chapter 38, titled the "South Carolina Contribution Among Tortfeasors Act" excludes application of set-off for a claim of breach of fiduciary duty. See S.C. Code Ann. § 15-38-20(G).

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasor from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

...

(G) This chapter does not apply to breaches of trust or of other fiduciary obligation.

S.C. Code Ann. §§ 15-38-50 and 15-38-20(G) (emphasis added).

Under South Carolina law, “[i]f a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation.” Lester v. S.C. Workers’ Comp. Comm’n., 334 S.C. 557, 561, 514 S.E.2d 751, 752 (S.C. 1999) (citing Miller v. Doe, 312 S.C. 444, 441 S.E.2d 319 (S.C. 1994)). Note that the code does not read this “*section*”, but rather provides this “*chapter*” does not apply to breaches of trust or breaches of fiduciary obligation. The legislature intentionally employed the word “*section*” or the word “*chapter*” in various places in the Act. *Compare* S.C. Code Ann. § 15-38-10 (“This *chapter* may be cited as the Uniform Contribution Among Tortfeasors Act.”) and S.C. Code Ann. § 15-38-60 (“Construction of *chapter*[:] This *chapter* shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those that enact it.”) *with* S.C. Code Ann. § 15-38-15(F) (“This *section* does not apply to a defendant whose conduct

is . . . grossly negligent . . . ") (emphasis added). Here, the legislature intended to use the word "chapter" in certain instances of the Act where the legislature is indicating the applicability of a certain subpart to the entire act (chapter) as opposed to a particular section.

The Supreme Court of South Carolina has repeatedly declared that "the legislature intends to accomplish something by its choice of words, and would not do a futile thing." Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005) (emphasis added, and citation omitted). Accordingly, in interpreting a statute, "the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless." Florence Cnty. Democratic Party v. Florence Cnty. Republican Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (emphasis added) (citing Hinton v. S.C. Dept of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004)). By its clear and unambiguous language, SCCATA prohibits its application to breach of fiduciary duties. If the Court of Appeals had affirmed the trial court's application of a set-off to the \$1 million award for breach of fiduciary duty under SCCATA, the Court of Appeals would have rendered Section 15-38-20(G) meaningless.

C. Stoneledge's Proposed Set-off Calculations Invades the Province of the Jury

Lastly, Stoneledge provides their recommendation as to how the verdict should be set-off and apportioned. However, the verdict form did not provide for apportionment of breach of fiduciary duty, and Stoneledge's calculations are contrary to the jury's findings, and their proposed calculations invade the province of the jury. See Joiner v. Bevier, 155 S.C. 340, 152 S.E.2d 652, 657 (S.C. 1930).⁸

⁸ For brevity, Bostic incorporates herein by reference its Brief, filed on September 20, 2019, which sets forth its arguments as to set-off and apportionment, as its counterargument to Stoneledge on these issues.

III. CONCLUSION

Respondent-Petitioner respectfully requests this Honorable Court affirm the Court of Appeals' proper application of this Court's ruling in Joiner v. Bevier, 155 S.C. 340, 152 S.E. 652 (S.C. 1930), in reversing an error of law by holding the trial court improperly invaded the province of the jury by amending the jury's verdict to find each cause of action independently supported a \$5 million verdict; and affirm the Court of Appeals' application of S.C. Code Ann. § 15-38-20(G), in holding the \$1 million breach of fiduciary duty award adjudged against Mr. Thoennes is not subject to a set-off from prior-settled tortfeasors.

Respectfully submitted,



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Dated: This 9th day of October 2019

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 10 2019

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable Alexander S. Macaulay, Circuit Court Judge
S.C. SUPREME COURT

Appellate Case No. 2019-000041
Lower Court Case No. 2009-CP-37-00652

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, *Stoneledge*,

v.

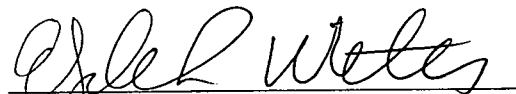
IMK Development Co., LLC, Larry D. Lollis, William C. Cox, Integrys Keowee Development, LLC, Marick Home Builders, LLC, Bostic Brothers Construction, Inc., Rick Thoennes, Defendants,

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

PROOF OF SERVICE

I certify that I have served Respondent-Petitioner's Reply to Brief of Stoneledge by way of U.S. Mail, stamped First Class delivery, on October 9, 2019, addressed to Stoneledge's attorneys of record, addressed as follows:

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