

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

PALMETTO POINTE AT PEAS ISLAND ) CASE NO. 2015-CP-10-0955  
CONDOMINIUM PROPERTY OWNERS )  
ASSOCIATION, INC. AND JACK LOVE, )  
INDIVIDUALLY, AND ON BEHALF OF )  
ALL OTHERS SIMILARLY SITUATED, )

Plaintiffs,

VS.

ISLAND POINTE, LLC; COMPLETE )  
BUILDING CORPORATION; TRI-COUNTY )  
ROOFING, INC.; CREEKSIDE, INC.; )  
AMERICAN RESIDENTIAL SERVICES, LLC )  
D/B/A ARS/RESCUE ROOTER )  
CHARLESTON; ANDERSEN WINDOWS, )  
INC.; ATLANTIC BUILDING )  
CONSTRUCTION SERVICES, INC. N/K/A )  
ATLANTIC CONSTRUCTION SERVICES, )  
INC.; 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.; CERTAINTED )  
CORPORATION; KELLY FLOORING )  
PRODUCTS, INC., D/B/A CARPET )  
BAGGERS; CORNERSTONE )  
CONSTRUCTION AND MARK MALLOY )  
D/B/A CORNERSTONE CONSTRUCTION; )  
MIRACLE SIDING, LLC AND WILSON )  
LUCAS SALES D/B/A MIRACLE SIDING, )  
LLC; MARK PALPOINT A/K/A MICAH )  
PALPOINT; ELROY ALONZO VASQUEZ; )  
CHRIS A/K/A JOHN DOE 61; ALDERMAN )  
CONSTRUCTION; STANLEY'S VINYL )  
FENCE DESIGNS; COHEN'S DRYWALL )  
COMPANY, INC.; MOSELY CONCRETE; )  
HAND A FRAMING CONSTRUCTION, LLC )  
A/K/A H&A FRAMING CONSTRUCTION, )  
LLC AND D/B/AH AND A FRAMING, LLC, )

**RECEIVED**

OCT 14 2019

SC Court of Appeals

BY \_\_\_\_\_  
JULIE M. ARMSTRONG  
CLERK OF COURT  
2019 SEP 25 PM 4:11

**FILED**

**ORDER DENYING TRI-COUNTY  
ROOFING, INC.'S MOTION TO  
RECONSIDER**

H&A CONSTRUCTION, AND HAND A )  
CONSTRUCTION; JMC CONSTRUCTION, )  
INC.; JMC CONSTRUCTION, LLC; JOHN )  
DOE 1-15, )

Defendants. )

COMPLETE BUILDING CORPORATION, )  
INC., )

Third-Party Plaintiff, )

VS. )

LEONARD T. BROWNE AND )  
CHRISTOPHER N. UNION, )

Third-Party Defendants. )

CREEKSIDE, INC., )

Third-Party Plaintiff, )

VS. )

CHRISTOPHER N. UNION, )

Third-Party Defendant. )

AMERICAN RESIDENTIAL SERVICES, LLC, )

Third-Party Plaintiff, )

VS. )

VICTOR HUGO HERNANDEZ; HERNANDEZ )  
ELECTRIC, LLC; LILIANA ROJAS FLORES; )  
MARTIN BARR D/B/A PORT CITY )  
STRUCTURED WIRING; KELLER )  
ELECTRIC, LLC; JOHN TOOLIN D/B/A )  
JOHN F. TOOLIN HEAT AND AIR; RUSSELL )  
"RUSTY" HILL D/B/A RUSTY'S HEATING & )  
AIR; and WARREN ANDERSON, )

Third-Party Defendants. )

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This construction defendant case is before the court upon Tri-County Roofing, Inc.'s ("TCR") Motion to Reconsider this Court's Order filed July 23, 2019, which allowed a setoff in favor of TCR in the amount of \$1,670,000.00 against the jury verdict of \$6,500,000.00 actual damages and \$500,000.00 punitive damages. TCR contends that the Court should reconsider and revise its setoff to allow the sum of \$5,415,000.00 rather than the \$1,670,000.00 allowed in my Order.

I have reviewed TCR's motion, Exhibit "A" incorporated therein, (which Exhibit was presented to and considered by the Court in TCR's post-trial motions filed May 28, 2019), the Plaintiffs' Memorandum in Opposition to TCR's Motion to Reconsider, and TCR's reply to Plaintiffs' opposition memorandum. I also have consider the evidence presented at trial as well as the absence of evidence to establish that the setoff TCR seeks is warranted.

At trial, plaintiff presented evidence of actual damages in excess of \$12,000,000.00. Their earlier estimate which predated most of the settlement plaintiffs received, was \$15,257,000.00. That estimate was introduced at trial by the defendants. The jury awarded actual damages of \$6,500,000.00. The court cannot parce the jury's award to determine which items or portions of plaintiffs' claims it accepted or, conversely, which items it allowed. The plaintiffs presented evidence that they had reduced their damages estimate and eliminated a number of defects from the \$15,257,000.00 jury's consideration prior to the close of the evidence.

TCR has not demonstrated to the court that it is entitled to a dollar-for-dollar setoff of all sums Plaintiffs have received from the settling defendants, nor can TCR do so based upon the record before me.

I find that TCR has failed to establish that the settlements plaintiffs received in excess of \$1,670,000.00 are damages awarded against a settling joint tortfeasors who has compensated the Plaintiff for the same claim and for the same injury. S.C. Code Ann. §15-38-50; Smith v. Widener, 397 S.C. 468, 471-472, 724 S.E. 2<sup>nd</sup> 188, 190 (Ct. App.2012). Here, the record before the Court reflects that only \$1,670,000.00 in settlement meets those criteria. The remaining settlements, as allocated by the settling defendants and the plaintiffs, compensate the Plaintiffs for different injuries from those tried to verdict. Hawkins v. Pathology Assoc. of Greenville, P.A., 330 S.C. 92, 114-115, 498 S.E. 2<sup>nd</sup> 395, 407 (Ct. App. 1998). By way of illustration, H and A Framing paid \$500,000.00 for damages to shear walls, window installation, deflecting floors and framing defects. Arguably, none of that settlement represents compensation for damages which are included in the jury's verdict against TCR. Nevertheless, the court in the exercise of its discretion, accepted the plaintiffs' allocation of \$50,000.00 of that sum as damages potentially representing TCR's joint liability, and the court included that amount in its setoff. The court analyzed each of the settlements in the same manner.

Where, as here, the moving party seeks to setoff damages which are not compensation for the same damages encompassed with the jury's verdict, the Court must determine whether the plaintiffs' allocations with the settlement defendants amount to an unfair windfall to the plaintiffs. TCR has failed to meet its burden of persuasion to demonstrate to the court that the allocations, though clearly beneficial to the plaintiffs, are unfair or unjust.

As the Supreme Court elucidated in Riley v. Ford Motor Co., 414 S.C. 185, 186, 777 S.E. 2d 824, 831 (2015),

A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most

advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

*Id.* (citations and quotations omitted). Thus, a Court cannot “disturb the settling parties’ agreed-upon allocation solely because the apportionment may have been advantageous to [Plaintiff].” *Id.*

Again, by way of illustration, the design professional, Novus Architects settled for \$600,000.00. TCR has not demonstrated any evidence in the record to establish that Novus was, or ever could be, jointly responsible for TCR’s hundreds or perhaps, thousands of code violations in the defective installation of otherwise non-defective materials such as roof shingles and siding. Yet, TCR advocates for a setoff in the entire amount of the Novus payment. The court found initially and now reaffirms its earlier finding that TCR has not established that the Novus settlements and other like settlement overlap or coincide with the damages the jury awarded against it.

The court notes also and has considered that counsel for the general contractor, Complete Building Corp. (“CBC”) argued extensively to the jury that the jury should exclude from its award damages for which the plaintiffs had been compensated prior to submission of the case to the jury. On its face, the award of approximately half the plaintiffs’ claimed damages indicates that the jury may have done that here.

The court has analyzed each and every settlement, the allocations the settling parties argued upon the record in this case, and TCR’s arguments with regard to each of those payments. The court is convinced and finds that the setoff in the amount of \$1,670,000.00 actual damages is

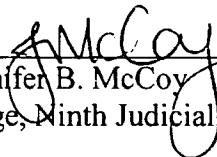
appropriate, just and fair. TCR is not entitled to any setoff for the \$500,000.00 punitive damages awarded against it.

THEREFORE, the court orders that TCR's motion is denied;

FURTHER, that the judgment entered in the amount of \$5,330,000.00 reflects the setoff to which TCR is entitled; and

FURTHER, that the entry of judgment in the amount of \$5,330,000.00 against TCR remains the order of this court.

IT IS SO ORDERED.

  
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Jennifer B. McCoy  
Judge, Ninth Judicial Circuit

September 24, 2019  
Charleston, S.C.