THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge



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Case No. 2014-CP-08-02424
Appellate Case No. 2020-000415

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Builders FirstSource-Southeast Group, LLC.....Appellant,

v.

MI Windows and Doors, Inc.; ECC Contracting, LLC; Hurley Services, LLC; and Charleston Exteriors, LLC.....Respondents.

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# INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court inappropriately grant summary judgment to Respondents despite the presence of genuine issues of material fact?

II. Did the Trial Court misunderstand and mischaracterize the relief requested by Appellant as seeking indemnification for its own negligence rather than for the negligence of its subcontractors?

III. Because of its misunderstanding of the relief requested, did the Trial Court inappropriately apply a heightened standard of contract construction to the indemnification language in Appellant's contract?

IV. Did the Trial Court incorrectly hold that the statute of limitations on Appellant's indemnity claims began to run before either a final judgment had been entered against Appellant or a payment had been made by appellant?

V. Did the Trial Court lack jurisdiction to consider the substantive issues raised by Respondents' motions for summary judgment while the underlying *Damico* case was on appeal?

## STATEMENT OF THE CASE

### *A. The Damico Litigation*

The issues in the instant action arise from services provided by the Respondents in connection with original construction of multiple single-family residences comprising a development known as The Abbey at Spring Grove, in Berkeley County, South Carolina. The Abbey at Spring Grove residences are the subject of a separate, previously filed lawsuit, captioned Patricia Damico et al v. Lennar Carolinas, LLC et al, civil action number 2014-CP-08-02424, (the "underlying action" or the "Damico Litigation"). In said underlying action, the plaintiff-owners initially asserted claims alleging deficiencies in design, development, and/or construction against, among others, the alleged developer/general contractor, Lennar Carolinas LLC. Lennar, by its answer and third party complaint, asserted claims against various subcontractors and suppliers involved in original construction, including Appellant Builders FirstSource, who was alleged to have supplied and installed windows and exterior doors.

Builders FirstSource, as a third party defendant in the underlying action, filed its initial answer on December 21, 2015. Thereafter, it moved to amend its pleadings, in order to assert fourth party claims against its own window supplier, MI Windows and Doors, and against its then-known installation subcontractors. Before the referenced motion to amend could be heard, the Trial Court considered, and denied, the motion of the general contractor, Lennar, to compel arbitration. The Court's orders denying that motion and Lennar's motion to

reconsider were appealed to the S.C. Court of Appeals, thus effecting a stay of the proceedings before the Trial Court in the underlying action. While the Court of Appeals issued its order compelling arbitration between Lennar and the Plaintiffs on June 10, 2020, at all times relevant to this case, the underlying Damico Litigation was stayed on appeal.

It bears note that no final judgment or order has been issued against Builders FirstSource, or against any other party, in the underlying action.

***B. The Current Litigation***

While the underlying action was stayed on appeal, in order to preserve its still unasserted claims against its installers, Appellant Builders FirstSource-Southeast Group, LLC, filed the instant action on December 21, 2018, asserting, as direct claims against the designated defendants, those claims which it had previously sought to assert as fourth party claims in the underlying action, i. e., (a) contractual indemnity, (b) equitable indemnity, (c) breach of express and implied warranties, (d) breach of contract, (e) negligence, and (f) contribution, respectively.

Respondents ECC and Charleston Exteriors, as subcontractors to Builders FirstSource, installed windows and doors in connection with the original construction of some of the subject residences. MI Windows and Doors was dismissed from this suit on July 16, 2019 without prejudice by a stipulation between the parties.

Builders FirstSource subsequently filed a motion to stay the instant proceedings, and to consolidate this litigation with the underlying Damico

Litigation. Respondents ECC Contracting, LLC, and Charleston Exteriors, LLC, filed motions for summary judgment as to Builders FirstSource's claims. Arguments on the motion were heard before the court on October 18, 2019.

On December 6, 2019, the Court issued its order granting Respondents' motions for summary judgment. On December 16, 2019, the Appellant filed a motion for reconsideration. Judge Newman requested oral arguments on the motion for reconsideration, which were heard before the Court on January 16, 2020. On February 3, 2020, the Court issued an "Amended Order," again granting Respondents' motions for summary judgment; this order, however, did not address or rule on Appellant's December 16, 2019 motion for reconsideration. Therefore, Appellant filed a second motion for reconsideration on February 13, 2020, asking that the Court explicitly rule on the December 16, 2019 motion for reconsideration. The deadline to file a notice of intent to appeal from the Trial Court's February 3rd amended order was March 4, 2020; thus, Appellant was forced to file a notice of intent to appeal before the Trial Court ruled on its February 13 motion for reconsideration. On March 5, the Trial Court entered its last order to date, explicitly denying the Appellant's motion for reconsideration. Appellant timely filed an amended notice of intent to appeal on March 17, 2020, challenging both the February 3rd Amended Order and the March 5th denial of the motion for reconsideration.

## STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the Trial Court under Rule 56(c),

SCRCP, which is that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004). In reviewing a motion for summary judgment, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005). Any triable issues must go to the jury. Mulherin–Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct.App.2005).

On an appeal from an order granting summary judgment, "the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 219, 616 S.E.2d 722, 729 (Ct. App. 2005); see also Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct.App.2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct.App.2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Nelson v. Charleston County Parks & Recreation

Comm'n, 362 S.C. 1, 605 S.E.2d 744 (Ct.App.2004). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App.2004).

## ARGUMENT

### I. The Trial Court Erred in Granting Summary Judgment to Respondents Despite the Presence of Genuine Issues of Material Fact.

Summary judgment is only appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. SCRCP 56. In granting summary judgment on Appellant's contractual indemnity claim, the Trial Court has made implicit determinations of fact regarding the negligence of the various parties without any evidentiary support in the record.

Appellant is seeking recovery in contractual indemnity from its subcontractors. In South Carolina, the ability to recover damages from one's subcontractor depends on the source of the negligent conduct that caused the damage. As discussed in greater detail below, if a contractor seeks to have a subcontractor indemnify the contractor for the contractor's own negligence, our courts have held the contractor to an elevated burden – the contractor must show that the contractual language granting that right was "clear and unequivocal." See Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 649, 819 S.E.2d 166, 172 (Ct. App. 2018), reh'g denied (Oct. 18, 2018). Whether or not the contract language rises to the level necessary to grant that right has been decided by Courts as a matter of law. See id.

However, there is a second potential source of negligence occasioning the sought-after damages. In South Carolina, a contractor may seek indemnification from its subcontractor for damages resulting from that subcontractor's negligence, whether that subcontractor was the sole source of negligence or whether that subcontractor was concurrently negligent with the general contractor (in the latter scenario, however, recovery would be limited to the proportional share of negligence of the subcontractor). Id. at 645. Such contractual indemnification is not subject to a heightened standard, and the determination – or allocation – of negligence is an issue of fact for the jury.

The Court ruled on an issue of law in determining that Appellant's contract did not allow Appellant to recover indemnification from its Respondent Subcontractors for Appellant's own negligence. However, in dismissing the *entire* contractual indemnity claim, the Trial Court implicitly found that Appellant was likewise unable to recover from its Respondent Subcontractors for the Subcontractors' own negligence. Because this second scenario is not subject to the heightened legal standard, there was no basis for the Court to determine, as a matter of law, that the claim could not survive. And because the issue of whether the subcontractors were in fact negligent is both contested and most properly left for the jury, there was no basis for the Court to determine that the claim could not survive due to a lack of genuine issue of material fact.

The Court's implicit factual determination that the subcontractors were not negligent has not been established by any evidence. No discovery has been done in this case, and very limited discovery has been done in the underlying

Damico litigation. Respondents did not offer any arguments or evidence regarding their negligence or lack thereof. Furthermore, pursuant to SCRCP 56, any issue of fact regarding negligence should have been construed in favor of Appellant, precluding summary judgment on its contractual indemnity claim inasmuch as Appellant seeks indemnification for damages arising out of its subcontractors' negligence.

## II. The Trial Court's Ruling is Premised Upon its Mistaken Finding that Appellant is Seeking to be Indemnified for its Own Negligence.

Appellant is seeking indemnification from the Respondent subcontractors only to the extent that the Respondent subcontractors were negligent (whether solely or concurrently). However, rather than address this specific relief requested, the Trial Court's order repeatedly emphasizes that the contracts between Appellant and Respondents do not meet the heightened standard required to provide Appellant with indemnity rights as to Respondents for *Appellant's own negligence*. The cases the Court quotes in section "C" of its analysis all speak of the indemnitee's "own negligence" or "own negligent acts." Likewise, the Trial Court's holding states that:

> As South Carolina precedent requires that the party seeking to be indemnified bear the burden of proving that the indemnity language be clear and unequivocal ***when seeking to be indemnified for its own negligence***, the Court rules that the specific language from the Master Subcontractor Agreement is confusing, conflicting, and neither unclear [sic] or unequivocal. The Defendants' Motions for Summary Judgment as to the contractual indemnity claims is hereby granted.

[Amended Order page 8 (emphasis added).] This language shows that the Trial Court believed that Appellant was seeking indemnification for its own negligence,

and that such belief was a foundational part of its ruling. However, *Appellant is not seeking indemnification for its own negligence.*

Appellant repeatedly attempted to draw the Court's attention to the fact that it was not seeking indemnification for its own negligence but was only seeking indemnification for the negligence of its subcontractor. In its Complaint, Appellant asserted that it is "entitled to damages for any negligence, as aforesaid, on the part of [subcontractor] . . ." [Complaint, page 5.] Three times during oral arguments on the motion for summary judgment, counsel for Appellant advised the Court that in this case Appellant is asking that its subcontractors indemnify Appellant *for their negligence.* [Transcript of October 18, 2019 hearing, pages 35, 39-40, 45-46.] In Appellant's Motion for Reconsideration of the Court's December 6, 2019 Order, Appellant pointed out that while Appellant may not be able to maintain indemnity claims for its own negligence, Appellant was entitled to pursue its contractual indemnity claim against Respondents based upon the Respondents' own negligence. [Motion for Reconsideration, pp. 2-3.] And counsel for Appellant reiterated that position in oral arguments on the motion for reconsideration. [Transcript of January 16, 2020 hearing, pages 15-16].

Again, in Appellant's filed Memorandum in Opposition to the Proposed Amended Order Granting Defendants' Motion for Summary Judgment, Appellant represented to the Court that "BFS is *not* seeking to have Defendants indemnify BFS for BFS's own negligence. BFS is seeking to have Defendants indemnify BFS for *Defendants'* own negligence." [Builders FirstSource – Southeast Group,

LLC's Memorandum in Opposition to the Proposed Amended Order Granting Defendants' Motion for Summary Judgment, page 1 (emphasis in original).] Finally, that same Memorandum pointed out to the Court that pursuant to the contract at issue, Appellant was entitled to seek indemnification for losses arising out of property damage:

> ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE.

[Memorandum, page 2.]

Despite all of these representations that Appellant was properly seeking indemnification for the subcontractors' negligence, and not for its own, the Court, without any explanation, ignored Appellant and granted summary judgment as to the entire contractual indemnity claim on the basis that Appellant was seeking to be indemnified for its own negligence. The problem is that the Court's analysis should not have ended there. Rather, as in Concord and Cumberland, discussed below, the Trial Court should have next considered the indemnity claims that were based on the *subcontractor's* own negligence, and should have allowed such contractual indemnity claims against the subcontractor for the subcontractor's own negligence to survive summary judgment.

## III. The Trial Court Inappropriately Applied the Heightened Standard of "Clear and Unequivocal" Articulated in Concord and Cumberland to the Relevant Indemnification Language in Appellant's Contract.

Because the Trial Court mistakenly interpreted Appellant's claims as seeking indemnity for Appellant's own negligence, it erroneously applied the

heightened standard of "clear and unequivocal" as articulated in Concord and Cumberland to the relevant contractual indemnity provisions in Appellant's contracts.

*A. Concord and Cumberland*

An understanding of the 2018 Court of Appeals decision in Concord and Cumberland is essential to the issues before this Court. See Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 649, 819 S.E.2d 166, 172 (Ct. App. 2018), reh'g denied (Oct. 18, 2018). In that case, Superior was a general contractor who hired Muhler as its subcontractor. When Superior was sued by the Concord and Cumberland Horizontal Property Regime, it looked to Muhler for indemnification pursuant to their contract. The contract provided, in relevant part, that:

> To the fullest extent permitted by law, **the Subcontractor shall indemnify and hold harmless** the Owner, the Architect, **the Contractor** (including its affiliates, parents and subsidiaries) and other contractors and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, **arising out of or resulting from the performance of the Subcontractor's Work provided that**
>
> (a) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontractor's Work itself) including the loss of use resulting there from, **to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of the Subcontractor** or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, **regardless of whether it is caused in part by a party indemnified hereunder.**

Id. at 643-44 (emphasis added). Superior claimed that these provisions required Muhler to indemnify Superior and that Superior's right to indemnity was not

lessened by Superior's concurrent negligence. Id. at 645. Muhler countered that the contract did not require them to indemnify Superior for Superior's wrongdoing. Id.

The Trial Court found, and the Court of Appeals agreed, that in order for Superior to prevail on a claim seeking indemnity *for its own negligence*, it would need to show that the contract language granting that right met the heightened standard of being clear and unequivocal. Id. at 649. The Court of Appeals noted that this heightened standard applied regardless of whether Superior was seeking indemnification for its own sole negligence or for its own concurrent negligence. Id. Because the Court found that the language did not meet the heightened standard, it held that the contract did not require Muhler to indemnify Superior for Superior's own negligence, and instead "*limited indemnification to damages resulting from the work Muhler performed.*" Id. at 645. This merits repeating: Superior could not collect indemnification from Muhler for damages arising out of Superior's own negligence; however, Superior *could* collect indemnification from Muhler for damages arising out of Muhler's own negligence – regardless of whether Muhler's negligence was sole or concurrent.

*B. Misapplication to Claims at Issue*

The parties in this case have agreed that the contractual language at issue is nearly identical to that in Concord and Cumberland. The only difference is that instead of seeking indemnity for Appellant's own negligence, Appellant has limited the relief sought to the negligence of its subcontractors. This is the exact relief allowed under Concord and Cumberland, which "limited

indemnification to damages resulting from the work [the subcontractor] performed." Id. at 645. Therefore, the Trial Court should not have granted summary judgment on Appellant's contractual indemnification claim.

But the Trial Court did grant summary judgment, and it did so by applying an erroneous, heightened standard of contract construction to Appellant's contracts. This Court in Concord and Cumberland acknowledged that "typically, courts will construe an indemnification contract in accordance with the rules of the construction of contracts generally," and it is only "when an indemnity clause purports to relieve an indemnitee from the consequences of its own negligence [that] our case law requires strict construction of the clause." Concord & Cumberland, 424 S.C. at 647 (internal quotations omitted). Because Appellant, as the Indemnitee, is not and has not been seeking indemnification from the consequences of its own negligence, but only that of its subcontractors, it was an error for the Court to apply the heightened standard of clear and unequivocal outlined in Concord and Cumberland. Instead, the Court should have interpreted the contract "in accordance with the rules of the construction of contracts generally." The parties contracted for a series of rights, and one such right was that Appellant was entitled to seek indemnification for losses arising out of property damage to the extent caused by the negligence of the subcontractor. The Trial Court should not have dismissed this right on summary judgment.

*C. Appellant's Contract*

The Contracts governing the indemnity claims in this case were executed by Appellant and ECC Contracting, and by Appellant and Charleston Exteriors, in

2008 and 2012, respectively. The indemnity language is the same in both. In its order, the Trial Court quoted two different paragraphs of the Contract's indemnity provision, misunderstanding that these two provisions apply to completely separate scenarios, and the Trial Court apparently assumes, without stating, that these provisions somehow contradict each other in a way that renders Appellant's indemnity claims void.

The indemnity provision of the Contract between Appellant and Respondent contains four Paragraphs. The Trial Court's order pulls quotes from two different paragraphs of the contract. The first section highlighted in the order accurately quotes that Appellant may seek indemnification for losses arising out of, among other things, property damage:

> ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE.

[Charleston Exteriors, LLC's Motion for Summary Judgment with Exhibits, page 9] This paragraph expressly permits Appellant to recover from Respondent Subcontractors for the negligent acts or omissions of said subcontractors, and is consistent with the Court of Appeal's holding in Concord and Cumberland.

The Trial Court's order then goes on to quote a different paragraph of the Indemnity Provision. This selection has been taken out of context, and applies only to losses

> ARISING OUT OF OR RESULTING FROM **BODILY INJURY** TO, OR SICKNESS, DISEASE, OR DEATH OF, THE SUBCONTRACTOR, ANY AGENT, EMPLOYEE, OR

REPRESENTATIVE OF THE SUBCONTRACTOR, OR ANY OF ITS SUBCONTRACTORS . . .

[Charleston Exteriors, LLC's Motion for Summary Judgment with Exhibits, page 9 (emphasis added).] This case involves claims for property damage, not bodily injury. Thus, the second paragraph in the order cited by the Trial Court is irrelevant to this case and should not have factored into its decision. Instead, the applicable indemnity provision in this case is the first paragraph, which, consistent with Concord and Cumberland, limits recoverable indemnity to the negligence of the subcontractor.

## IV. The Trial Court Incorrectly Held that the Statute of Limitations on Appellant's Indemnity Claims Began to Run Before a Final Judgment had been Entered Against Appellant or a Payment had been Made by Appellant.

The Trial Court's Amended Order further holds that the contractual indemnity claims are barred by the statute of limitations. However, the South Carolina Supreme Court has made it clear that claims for indemnification do not accrue until a judgment is entered. See First General Services of Charleston, Inc. v. Miller, 314 S.C. 439, 444, 445 S.E.2d 446, 449 (S.C. 1994). Because no judgement has been entered, the statute of limitations has not even begun, much less expired, on Appellant's indemnification claims, and thus the Respondents' motions for summary judgment on this ground ought to have been denied. The Trial Court's order, determining that the statute of limitations had expired, notwithstanding the absence of any entry of judgment, is clearly contrary to authoritative Supreme Court ruling, and should be reversed.

The Trial Court thought it relevant, for purposes of analyzing the statute of limitations argument, to differentiate between contracts for indemnity against loss and contracts for indemnity against liability. However, for indemnity against a liability, the liability must be established by a Court decision; for indemnity against a loss, the loss must be established by an actual payment made. Neither of those instances has happened here, and thus, under either theory, the statute of limitations has not even begun to run on Plaintiff's indemnity claim.

Furthermore, even assuming that the payment of attorneys' fees constituted a "loss" sufficient to trigger the running of the statute of limitations, the only attorneys' fees that would be barred would be those few dates outside the statute of limitations. Because Appellant filed this action on December 21, 2018, a three-year statute of limitations would bar attorneys' fees accrued prior to December 21, 2015 – the date on which Appellant filed its answer in the Damico Litigation. Thus, only attorneys' fees incurred prior December 21 of 2015 could potentially be barred. Plaintiff still has a viable claim for all attorneys' fees incurred after December 21, 2015.

## V. The Trial Court Lacked Jurisdiction to Hear Respondents' Summary Judgment Motion Because the Underlying Damico Litigation was on Appeal.

Because the underlying Damico Litigation was appealed before Appellant had the opportunity to assert claims against additional subcontractors, including Respondent subcontractors, Appellant filed this action in order to protect the timeliness of those claims. Appellant then requested a stay of the claims asserted herein until such time as the Damico Litigation came back down from

the Appellate Court and the claims could be consolidated with that litigation. The reason a stay and consolidation was appropriate was because the Trial Court did not have the jurisdiction to rule on any substantive issues in this case while the underlying Damico Litigation was on appeal.

"Lack of subject matter jurisdiction can be raised at any time . . . and can be raised sua sponte by the court." Badeaux v. Davis, 337 S.C. 195, 205, 522 S.E.2d 835, 840 (Ct. App. 1999). Additionally, "[l]ack of subject matter jurisdiction may not be waived, even by consent of the parties." Id.

Because the underlying action was on appeal, all matters affected by the appeal, including those in Respondents' summary judgment motion, should have been automatically stayed. The Trial Court was without jurisdiction to make substantive determinations affecting the underlying Damico case. For this reason, Appellant has argued from the beginning that the Trial Court must stay the proceedings until they may be consolidated with the underlying case. The Trial Court's summary judgment order should be voided for lack of jurisdiction, and the case should be consolidated with the Damico litigation.

## CONCLUSION

Because the Trial Court inappropriately granted summary judgment in spite of the existence of genuine issues of material fact; because the Trial Court misconstrued or misunderstood that Appellant was seeking indemnification only for their subcontractors' negligence; because the Trial Court improperly applied a heightened standard of contract construction to the Appellant's indemnity claims; and because the Trial Court incorrectly determined that the Appellant's claims

were barred pursuant to the statute of limitations, this Appellant respectfully requests that this Court reverse the Trial Court's order granting summary judgment to Respondents. Additionally, and/or in the alternative, because the Trial Court did not have jurisdiction to rule on claims affecting the substantive issues of motions relating to an underlying case that was stayed on appeal, Appellant respectfully requests that this Court void the Trial Court's order granting summary judgment and require the entry of an order consolidating this case with the underlying Damico Litigation.

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July 22, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

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Case No. 2014-CP-08-02424
Appelate Case No. 2020-000413

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Builders FirstSource-Southeast Group, LLC.....Appellant,

v.

MI Windows and Doors, Inc.; ECC Contracting, LLC; Hurley Services, LLC; and Charleston Exteriors, LLC.....Respondents.

The undersigned counsel hereby certifies that she has served the foregoing Appellant's Initial Brief upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on the 22nd day of July, 2020 addressed to the following attorneys of record:

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July 22, 2020

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Clerk of Court
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Re: Builders FirstSource Southeast Group, LLC v. ECC Contracting LLC, MI Windows and Doors, Inc., Hurley Services, LLC, Charleton Exteriors LLC
Case No.: 2020-000415
Civil Action No.: 2018-CP-08-02547
Our File No: 11742 1 SPH

Dear Ms. Kitchings:

Please find enclosed herewith for filing *Initial Brief of Appellant* and *Appellant's Designation of Matter*, along with the respective *Certificates of Service*, with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

Catherine L. Floeder

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CLF/bms
Enclosures
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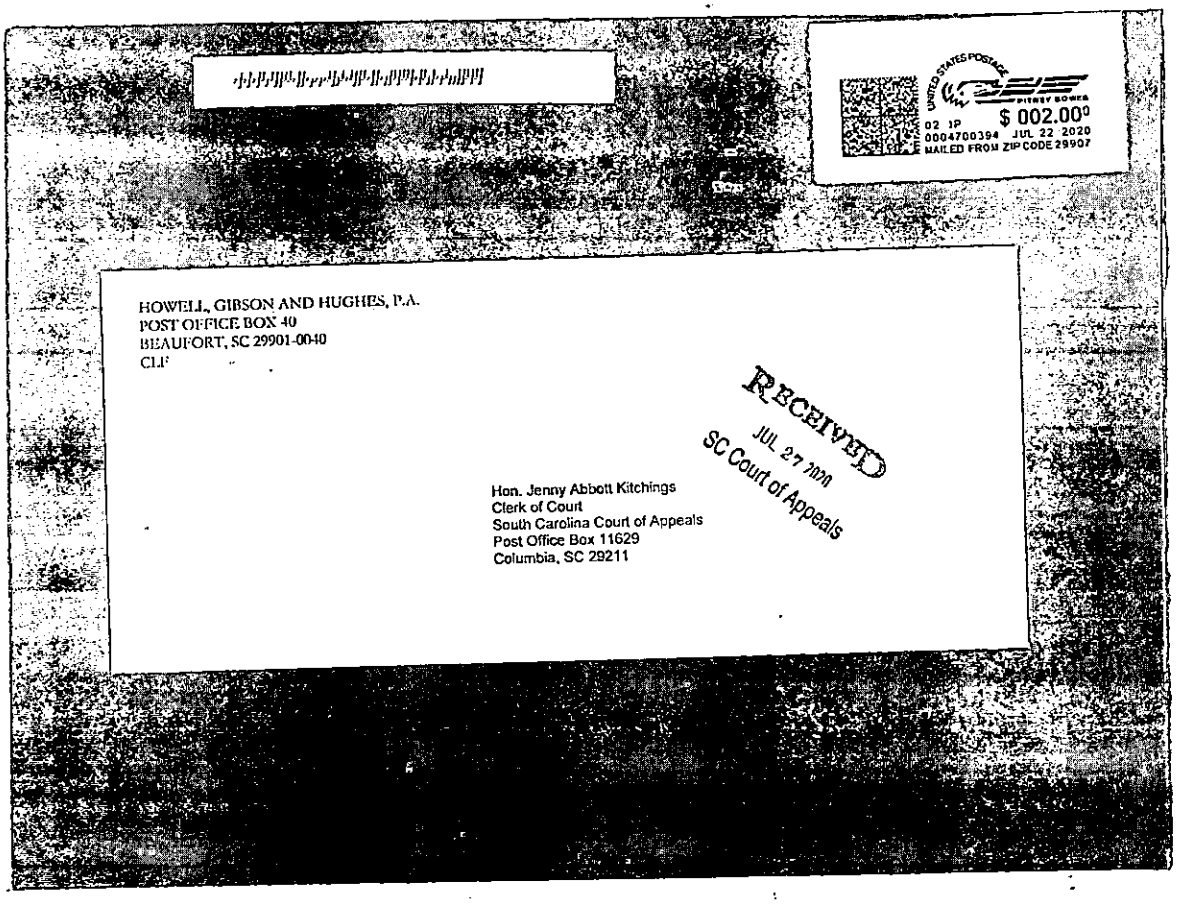

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