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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Civil Action No. 2015-CP-10-00955

Appellate Case No. 2019-001790

Palmetto Pointe At Peas Island 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; CertainTeed 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/a H and A Framing, LLC, H&A Construction, and Hand A Construction; JMC Construction, Inc; JMC Construction, LLC; John Doe 1—15, Defendants,

of which Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc. and Jack Love, individually, and on behalf of all others similarly situated are the Respondents,

and

Tri-County Roofing, Inc.Appellant.

AMENDED DESIGNATION OF MATTERS
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant Tri-County Roofing, Inc. proposes the following be included in the Record on Appeal:

Orders, Judgments, Decrees, and Decisions

1. Dismissal of Claims Against Christopher N. Union and Leonard T. Browne Without Prejudice and Tolling Agreement, filed August 2, 2017;
2. Plaintiffs' Notice of Voluntary Dismissal of Defendant CRG Engineering, Inc. Without Prejudice, filed January 24, 2018;
3. Stipulation of Dismissal with Prejudice of Defendant Cornerstone Construction and Mark Mallory d/b/a Cornerstone Construction Only, filed June 28, 2018;
4. Consent Order of Dismissal with Prejudice of Plaintiffs' Claims Against H&A Framing and Complete Building Corporation's Cross-Claims Against H&A Framing, filed July 10, 2018;
5. Order of Dismissal with Prejudice as to Defendant Novus Architects, Inc., f/k/a SGM Architects, Inc. Only, filed July 12, 2018;
6. Order of Dismissal with Prejudice as to Defendant Alderman Construction, Inc., filed August 9, 2018;
7. Order of Dismissal with Prejudice as to Defendant CertainTeed Corporation Only, filed August 21, 2018;
8. Stipulation of Dismissal with Prejudice as to Cohen's Drywall Company, Inc. Only, filed Sept. 27, 2018;
9. Stipulation of Dismissal with Prejudice of Kelly Flooring Products, Inc. d/b/a Carpet Baggers Only, filed March 1, 2019;
10. Stipulation of Dismissal with Prejudice (CBC Cross-Claims Against) Andersen Windows, Inc. Only, filed May 7, 2019;

11. Form 4 Order regarding trial verdict and Verdict Form – circulated July 23, 2019 but retroactively file stamped on May 16, 2019;
12. Stipulation of Dismissal with Prejudice as to Builders Services Group, Inc. d/b/a Gale Contractor Services Only, filed May 20, 2019;
13. Stipulation of Dismissal as to Defendant Tallent and Sons, Inc., filed May 24, 2019;
14. Consent Order of Dismissal as to Certain Defendants Only [American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston; 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], filed June 6, 2019;
15. Consent Order of Dismissal with Prejudice as to Defendant Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc. Only, filed June 7, 2019;
16. Order of Dismissal with Prejudice as to Certain Defendants [Creekside, Inc.; Mosely Concrete; Andersen Windows, Inc.; Complete Building Corporation; Eloy Alonzo Vasquez; Miracle Siding, LLC, Wilson Lucas Sales d/b/a Miracle Siding, LLC; and Stanley’s Vinyl Fence Designs], filed June 7, 2019;
17. Consent Order for Production of Confidential Settlement Agreements, filed June 7, 2019;
18. Form 4 Order regarding post-trial motions, filed July 23, 2019;
19. Order Denying Tri-County Roofing, Inc.’s Motion to Reconsider, filed September 25, 2019;
20. Tri-County Roofing, Inc.’s Notice of Appeal – filed with the S.C. Court of Appeals on October 14, 2019; filed with the Charleston County Clerk of Court on October 21, 2019;

Pleadings and Related Matters

21. Summons & Complaint, filed Feb. 13, 2015;
22. [Tri-County Roofing, Inc.’s] Answer to Plaintiffs’ Complaint and Third-Party Complaint, and Third-Party Summons, filed April 22, 2015;

23. Answer [by Victor Apat, *pro se*, and on behalf of Defendant Complete Building Corporation only], filed April 27, 2015;
24. Defendant Complete Building Corporation, Inc.'s Answer and Crossclaims, filed July 22, 2015;
25. Tri-County Roofing, Inc.'s Answer to Complete Building Corporation, Inc.'s Crossclaims, filed August 5, 2015;
26. Amended Summons and Plaintiffs' Amended Complaint, filed November 4, 2016;
27. [Tri-County Roofing, Inc.'s] Answer to Plaintiffs' Amended Complaint and Renewed Third-Party Complaint, filed November 23, 2016;
28. Complete Building Corporation's Answer to Amended Complaint and Crossclaims, filed Nov. 29, 2016;
29. [Tri-County Roofing, Inc.'s] Answer to Complete Building Corporation's Answer to Amended Complaint and Crossclaims, filed Dec. 16, 2016;
30. Second Amended Summons and Plaintiffs' Second Amended Complaint, filed Nov. 2, 2017;
31. Novus Architects, Inc. f/k/a SGM Architects, Inc.'s Answer to Plaintiffs' Second Amended Complaint and Cross-Claims, filed November 16, 2017;
32. Tri-County Roofing, Inc.'s Answer to Plaintiffs' Second Amended Complaint and Cross-Claims Against Cornerstone Construction and Mark Mallow 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, Eloy Alonzo Vasquez, and Chris a/k/a John Doe 61, filed Nov. 17, 2017;
33. Tri-County Roofing, Inc.'s Answer to Novus Architects, Inc. f/k/a SGM Architects, Inc.'s Cross-Claims asserted in Response to Plaintiffs' Second Amended Complaint – filed December 1, 2017;
34. Complete Building Corporation, Inc.'s Answer to Second Amended Complaint and Crossclaims, filed December 11, 2017;
35. Tri-County Roofing, Inc.'s Answer to Cross-Claims of Complete Building Corporation, Inc. in Response to Plaintiffs' Second Amended Complaint, filed April 18, 2018;

36. Defendants Wilson Lucas Sales d/b/a Miracle Siding, LLC and Eloy Alonzo Vasquez's Motions for Special Verdicts Pursuant to Rule 49, SCRPC, filed May 6, 2019;
37. Complete Building Corporation's Motion *in Limine* to Exclude Evidence Related to Released Claims, filed May 6, 2019;
38. Complete Building Corporation's Joinder of Pre-Trial Motions, filed May 6, 2019;
39. Tri-County Roofing, Inc.'s Omnibus Motions *in Limine*, filed May 6, 2019;
40. Tri-County Roofing, Inc.'s Motion for Special Verdicts Pursuant to Rule 49 of the South Carolina Rules of Civil Procedure Claims, filed May 6, 2019;
41. Tri-County Roofing, Inc.'s Post-Trial Motions Following the Trial on May 6-16, 2019, filed May 28, 2019;
42. Tri-County Roofing, Inc.'s Notice of Motion and Motion to Compel Supplemental Discovery Responses from Plaintiffs, filed May 28, 2019
43. Tri-County Roofing, Inc.'s Notice of Motion and Motion Compelling Plaintiffs to Elect Remedies Between Its Warranty and Negligence Claims, filed May 28, 2019;
44. Motion to Dismiss Certain Defendants [Creekside, Inc.; Mosely Concrete; Andersen Windows, Inc.; Complete Building Corporation; Eloy Alonzo Vasquez; Miracle Siding, LLC, Wilson Lucas Sales d/b/a Miracle Siding, LLC; and Stanley's Vinyl Fence Designs], filed June 4, 2019;
45. Tri-County Roofing, Inc.'s Rule 59(e), SCRPC Motion to Reconsider the Form 4 Order Filed July 23, 2019, filed Aug 5, 2019;
46. Plaintiffs' Memorandum in Opposition to Defendant Tri-County Roofing's Motion to Reconsider the Court's Final Order, **dated** August 15, 2019;
47. Tri-County Roofing, Inc.'s Return to Plaintiff's Memorandum in Opposition to The Motion to Reconsider, filed August 26, 2019;

Transcripts

48. Trial transcript for week one (May 6-10, 2019), pgs. 1-12, 95-96, 106-109, 112-113, 115-117, 155, 171-220, 306-307, 311-312, 318-**321**, 325-327, 332, 339-340, 372, 373, 377-378, 382, 386-397, 407-412, 415, 420, 427-430, 434-439, 444-445, 448-452, 457-462, 464, 466-468, 473-474, 491-496, 500-505, 507, 523-526, **538**-561, 572-580, 585-670, 679-681, 721-752, 759-764, 767-769, 775-776, 781-**790**, 796-798;

49. Trial transcript for week two (May 13-16, 2019), pgs. 1-7, 11, 15-16, 21-61, 64-116, 119-204, 211-271, 273-274, 296, 300, 304, 306-307, 313-321, 325-336, 340-491, 493-500, 513-515, 522-528, 535-540, 547-553, 568-570, 574-577, 599-615, 631-637, 656-657, 663-667, 669, 680-687, 690-776, 779-789, 795-864;
50. Transcript of post-trial motions hearing on June 6, 2019, pgs. 1-3, 24-60;

Special Considerations for Motions, Objections, Rulings, and Proffers

51. **Email from counsel for Plaintiff to Judge McCoy forwarding proposed verdict form, dated May 15, 2019;**
52. **Email from counsel for Complete Building Corporation to Judge McCoy forwarding proposed verdict form, dated May 15, 2019;**
53. **Email from counsel for Tri-County Roofing to Judge McCoy forwarding proposed verdict form, dated May 15, 2019;**
54. **Email from counsel for Miracle Siding and Vasquez to Judge McCoy forwarding proposed verdict form, dated May 15, 2019;**
55. **Email from Judge McCoy forwarding the proposed verdict form that was submitted by counsel for WC Services, dated May 14, 2019;**
56. Email response **by counsel for Tri-County Roofing** to Plaintiff's **counsel's** email to Judge McCoy on June 10, 2019, dated June 10, 2019;
57. **Covenant** Agreement regarding Complete Building Corporation, dated July 10, 2018;
58. Settlement Agreement, Release, Mutual Release and Agreement to Indemnify As to Complete Building Corporation, dated June 6, 2019;
59. Settlement Agreement and Mutual Release as to Creekside, Inc., dated June 6, 2019;
60. Settlement Agreement and Mutual Release as to American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston and its Subcontractors, dated April 23, 2019;
61. Settlement Agreement and Mutual Release as to Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc., dated April 5, 2019;

62. Settlement Agreement and Mutual Release as to Builder Services Group, Inc. d/b/a Gale Contractor Services, dated July 24, 2018;
63. Settlement Agreement and Release [for Novus Architects], dated February 22, 2018;
64. Settlement Agreement, Release, Mutual Release, and Agreement to Indemnify as to Tallent and Sons, Inc., dated February 22, 2019;
65. Settlement Agreement, Release, Mutual Release and Agreement to Indemnify as to CertainTeed Corporation, dated July 12, 2018;
66. Waiver, Release and Settlement Agreement [for Kelly Flooring Products, Inc. d/b/a Carpet Baggers], dated January 25, 2019;
67. Settlement Agreement and Release [for Mark Mallory d/b/a Cornerstone Construction], dated April 25, 2018;
68. Settlement Agreement and Release as to Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC, undated [likely entered May 28, 2019];
69. Settlement Agreement and Release as to Eloy Alonzo Vasquez, undated [likely entered May 28, 2019];
70. Settlement Agreement [for Alderman Construction], dated June 19, 2018;
71. Settlement Agreement and Mutual Release as to Stanley's Vinyl Fence Designs, undated [likely entered May 8, 2019];
72. Settlement Agreement and Mutual Release as to Cohen's Drywall Company, Inc., dated July 12, 2018;
73. Emails regarding the settlement of Moseley Concrete crossclaims – dated May—June 2019;
74. Release and Settlement Agreement [for H and A Framing Construction, LLC, H and A Framing Construction, LLC a/k/a H&A Framing Construction, LLC and d/b/a Hand A Framing, LLC and Hand A Construction], dated January 31, 2018;
75. Email regarding the settlement of Andersen Windows, dated April 30, 2019;

Trial Exhibits

- 76. Exhibit 5A – Complete Building Corporation and Palmetto Pointe Subcontract, dated December 27, 2005;
- 77. Exhibit 9 – Complete Building Corporation and Tri-County Roofing, Inc. Subcontract, dated April 17, 2006;
- 78. Exhibit 22 – Complete Building Corporation Change Order #12, dated April 3, 2008;
- 79. Exhibit 29 – Tri-County Roofing Change Order #5, dated August 24, 2007;
- 80. Exhibit 36 – Tri-County Roofing Change Order #12, dated February 15, 2008;
- 81. Exhibit 677 – Handegan Revised Estimate, dated December 21, 2017; and
- 82. Exhibit 931 – Watkins Services preliminary Draft Estimate, dated February 13, 2019;
- 83. **Exhibit 789 – Certificates of Occupancy**

Certificate of Counsel

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,

COLLINS & LACY, P.C.

By: /s/ Andrew N. Cole
ANDREW N. COLE, ESQUIRE
SC Bar No. 68387
acole@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803.256.2660 (voice)
803.771.4484 (fax)

August 13, 2020
Columbia, South Carolina

ATTORNEYS FOR TRI-COUNTY
ROOFING, INC.

Other Counsel of Record:

Justin O. Lucey, Esquire
Stephanie Drawdy, Esquire
Joshua F. Evans, Esquire
Lucey Law Firm
415 Mill Street
Mt. Pleasant, SC 29464
jlucey@lucey-law.com
sdrawdy@lucey-law.com
jevans@lucey-law.com

-and-

Edward D. Buckley, Jr., Esquire
Post Office Box 993
Charleston, SC 29402
ebuckley@ycrlaw.com
***Counsel for Palmetto Pointe At Peas Island
Condominium Property Owners Association, Inc.
And Jack Love, Individually, and on behalf of
all others similarly situated***