THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2015-CP-10-00955
Appellate Case No. 2019-001520

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, Appellants,

v.

Island Pointe, LLC, Complete Building Corporation, Tri-County Roofing, Inc., WC Services, Inc., Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC, Eloy Alonzo Vasquez, JMC Construction, Inc., and JMC Construction, LLC, Defendants,

Of whom WC Services, Inc., is the Respondent.

INITIAL REPLY BRIEF OF APPELLANTS

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Plaintiffs[1] make the following points in reply to WCS's responsive brief.

ARGUMENT IN REPLY

1. The Attic Sprinkler Requirement and the variance provision are parts of the Folly Beach Sprinkler Ordinance. Accordingly, if the law applicable to this action includes the Folly Beach Sprinkler Ordinance, it necessarily includes the Attic Sprinkler Requirement and the variance provision, too.

To be clear, the Folly Beach Sprinkler Ordinance *is* Section 90.08 of the Folly Beach Code of Ordinances (entitled "Sprinkler Systems"), i.e., the whole code section, in its entirety, while the Attic Sprinkler Requirement is but *part* of the Folly Beach Sprinkler Ordinance, as is the provision allowing "[v]ariences to . . . be granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council." (*See* Court's Ex. 10 [Pls.' Ex. 141]; Pls.' Ex. 1044.) Accordingly, if the law applicable to this action includes the Folly Beach Sprinkler Ordinance (which it does), it necessarily includes the Attic Sprinkler Requirement and the variance provision, too.

2. That WCS was required to comply with NFPA 13-D, which did not require installation of attic sprinklers, is immaterial.

WCS repeatedly points out that it was required to comply with NFPA 13-D and that NFPA 13-D did not require installation of attic sprinklers in the condo

[1] Shorthand references already defined in Plaintiffs' principal brief (e.g., "Plaintiffs" refers to Plaintiffs-Appellants, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated) are continued herein.

units at Palmetto Pointe. (*See* Br. of Resp. pp. 5, 7–9.) This is of no moment. True enough, WCS was required to comply with NFPA 13-D, which did not require installation of attic sprinklers, but this is only a half-truth, as NFPA 13-D was not all that WCS was required to comply with.

Again, the Attic Sprinkler Requirement and the variance provision are parts of the *Folly Beach Sprinkler Ordinance*, not NFPA 13-D. WCS's contract with CBC expressly states that its "[s]cope of work specifically include[s], *but [is] not limited to*" compliance with NFPA 13-D *and* that its work must be "in accordance with the City of Folly Beach's fire sprinkler system requirements (copy of [the Hall Letter] attached)." (Pls.' Ex. 203 (emphasis added).) As expressly stated in the Hall Letter, the Folly Beach Sprinkler Ordinance, a copy of which Mr. Hall enclosed for reference, "covers The City's requirements for fire sprinkler systems." (Pls.' Ex. 679.) Indeed, WCS's own fire code expert, Mark Lazo, testified that the Folly Beach Sprinkler Ordinance was local law, which the Building Code did not displace and to which the Building Code required adherence even if it were to conflict with NFPA 13-D; that WCS was required by its contract with CBC to comply with the Folly Beach Sprinkler Ordinance; and that, absent a variance, the Folly Beach Sprinkler Ordinance imposed the Attic Sprinkler Requirement on all of the condo units at Palmetto Pointe, as they are all two-family dwellings. (*See* Trial Tr. (Week 2) pp. 528:7–532:25.)

3. Without question, the law applicable to this action includes the Folly Beach Sprinkler Ordinance—and, along with it, the Attic Sprinkler Requirement and variance provision therein.

Attempting to counter Plaintiffs' Arguments I.A. (regarding the trial court's error in denying Plaintiffs judgment as a matter of law on WCS's liability for violating the Building Code by failing to comply with the Attic Sprinkler Requirement[2]) and II. (regarding the trial court's error in refusing to give Plaintiffs' requested jury charges No. 38 and 39[3]), WCS argues that the evidence presented at trial left a reasonable question of fact about whether the law applicable to this action includes the Attic Sprinkler Requirement. (*See, e.g.*, Br. of Resp. pp. 14–15 ("In light of the conflicting evidence and inferences presented at trial, and the resulting factual issue regarding the applicability or inapplicability of the [Folly Beach Sprinkler Ordinance], the trial court correctly declined to charge as the law in this action Plaintiffs' Charge Nos. 38 and 39. Given the record at trial concerning [the Folly Beach Sprinkler Ordinance], it could well have constituted reversible error had the trial court charged the two (2) requested charges as though the [Attic Sprinkler Requirement] of the [Folly Beach Sprinkler Ordinance] were the law applicable to this action.").) This argument is without merit. Indeed, the absence of such a question is clear from WCS's own brief.

WCS concedes that it "was required to comply with" the Hall Letter. (Br. of

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[2] (*See* Br. of Apps. pp. 11–13.)

Resp. p. 5.) And again, the Hall Letter expressly states that the Folly Beach Sprinkler Ordinance "covers The City's requirements for fire sprinkler systems" and encloses a copy of the same for reference. (Pls.' Ex. 679.)

WCS further concedes that "[t]he [accuracy and[4]] authenticity of . . . a copy of [the Folly Beach Sprinkler Ordinance] was stipulated to at trial for reference and publication to the jury during the examination of witnesses . . . ,"[5] thus confirming that the identified copy of the Folly Beach Sprinkler Ordinance—which was made Court's Exhibit 10[6]—is what Plaintiffs claim: a true and correct copy of the City of Folly Beach's duly enacted fire sprinkler system requirements at the relevant time, i.e., a true and correct copy of *the applicable law*. *See* Rule 901(a), SCRE ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."); Rule 1002, SCRE ("To prove the content of a writing, . . . the original writing . . . is required, except as otherwise provided in these rules or by statute."); Rule 1003, SCRE ("A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised

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[3] (*See* Br. of Apps. pp. 14–15.)

[4] (Br. of Resp. p. 14 ("[C]ounsel for [Plaintiffs] and [WCS] stipulated to the accuracy and authenticity of a copy of the [Folly Beach Sprinkler Ordinance] marked as *Court's Ex. 10*; *Pfs' Ex. 141 . . . .*") (italics in original).)

[5] (Br. of Resp. p. 6.)

[6] (Trial Tr. (Week 2) p. 495:5–6; *see also* Trial Tr. (Week 1) pp. 413:17–415:2.)

as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."); S.C. Code Ann. § 19-3-10 ("In all the courts held in this State the printed ordinances of the municipalities in the State, whether they be in pamphlet or book form, shall be admitted into evidence in such courts and shall constitute prima facie evidence of the genuineness of the same, provided the clerk of such municipality certifies to the correctness of the same."[7]).

WCS further concedes that the plain and clear language of the Folly Beach Sprinkler Ordinance (i.e., the plain and clear language of the applicable law) is as Plaintiffs claim, specifically, that it imposed the Attic Sprinkler Requirement on all two-family dwellings (which all of the units at Palmetto Pointe are)[8] absent a "'[v]ariance[] . . . granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council.'" (Br. of Resp. p. 6 (quoting the Folly Beach Sprinkler Ordinance); *see also* Br. of Resp. p. 9 ("[WCS's own] . . . fire code expert witness[,] South Carolina licensed

[7] The stipulation as to authenticity obviated the need for certification by the clerk. (*See* Trial Tr. (Week 1) p. 414:13–16 ("[WCS's Counsel]: [W]e are simply waiving the necessity of calling people to authenticate . . . that they are what they purport to be.").)

[8] (*See* Br. of Resp. p. 6 ("[The Folly Beach Sprinkler Ordinance] contained a table, which indicated that the omission of fire sprinklers from '[a]ttics, not used for living or storage' in '[t]wo-[f]amily' dwellings was *unacceptable* . . . .") (quoting the Folly Beach Sprinkler Ordinance) (emphasis added).)

professional engineer Mark Lazo[,] . . . testified that . . . h[e] read[] the [Hall Letter] as documenting a waiver of attic fire sprinklers *otherwise required* by the [Folly Beach Sprinkler Ordinance].") (emphasis added);[9] Trial Tr. (Week 2) pp. 528:7–532:25 (Mr. Lazo's testimony conceding that the Folly Beach Sprinkler Ordinance was applicable local law that, absent a variance, required the condo units at Palmetto Pointe to comply with the Attic Sprinkler Requirement).)

[9] Plaintiffs, of course, disagree with Mr. Lazo about the supposed "waiver" of the Attic Sprinkler Requirement. The point here, however, is that even Mr. Lazo recognized that the Attic Sprinkler Requirement was "otherwise required." In other words, he conceded the applicability of the Attic Sprinkler Requirement but for his waiver theory and thus, by extension, conceded that unless he is correct about his waiver theory allowing WCS to do "otherwise" (which he is not) WCS was indeed "required" to comply with the Attic Sprinkler Requirement (which it was, but did not).

4. Given that the law applicable to this action includes the Folly Beach Sprinkler Ordinance—and, along with it, the Attic Sprinkler Requirement and variance provision therein—at a minimum (i.e., even assuming, *arguendo*, Plaintiffs were not entitled to judgment as a matter of law as to WCS's liability for violating the Building Code by failing to comply with the Attic Sprinkler Requirement), the trial court erred in refusing to give Plaintiffs' requested jury charges on this applicable law (i.e., Plaintiffs' requested jury charges No. 38 and 39[10]).

Given that the law applicable to this action includes the Folly Beach Sprinkler Ordinance—and, along with it, the Attic Sprinkler Requirement and variance provision therein—at a minimum (i.e., even assuming, *arguendo*, Plaintiffs were not entitled to judgment as a matter of law as to WCS's liability for violating the Building Code by failing to comply with the Attic Sprinkler Requirement), the trial court erred in refusing to give Plaintiffs' requested jury charges No. 38 and 39, then again in denying Plaintiffs a new trial in response to their post-trial motion raising this error.

As explained in Plaintiffs' principal brief, the requested jury charges were applicable to the case in light of the issues duly raised and evidence duly presented

[10] Plaintiffs' requested jury charge No. 38 instructs that the Building Code does not nullify any provisions of local, state or federal law. (Ex. A to Pls.' Mot. for New Trial Against WCS at Plaintiffs' proposed charge No. 38.) Mr. Lazo expressly agreed with the substance of this charge. (*See* Trial Tr. (Week 2) p. 532:15–20.) Plaintiffs' requested jury charge No. 39 is the relevant substance of the Folly Beach Sprinkler Ordinance regarding the Attic Sprinkler Requirement and the variance provision. (Ex. A to Pls.' Mot. for New Trial Against WCS at Plaintiffs' proposed charge No. 39.) Mr. Lazo expressly agreed with the substance of this charge, too. (*See* Trial Tr. (Week 2) pp. 528:7–532:25.)

and correctly stated *the* controlling law regarding the Attic Sprinkler Requirement, and the trial court plainly prejudiced Plaintiffs by refusing to give them. *Sanders v. Western Auto Supply Co.*, 256 S.C. 490, 497, 183 S.E.2d 321, 325 (1971) (holding where, as here, "the requested instruction stated a sound principle of law, which was applicable to the case and not otherwise covered by the charge, its refusal was error, requiring a new trial"). The following from the charge that the trial court did give on negligence per se helps illustrate the point:

> Where there is a duty arising from a statute, ordinance, or regulation and the plaintiff shows the defendant violated the statute, ordinance, or regulation, such violation is negligence per se. The violation of any of the provisions of a statute, ordinance, or regulation is negligence per se. That is, negligence in and of itself, negligence as a matter of law. Negligence per se simply means you, the jury, need not decide if a defendant acted as would a reasonable person or entity under the same circumstances. The statute, ordinance, or regulation fixes the standard of conduct required of a defendant, leaving you merely to decide whether the defendants breached the statute, ordinance, or regulation.

(Trial Tr. (Week 2) pp. 807:16–808:3). As the trial court recognized, a claim of negligence per se is premised on "the violation of any of the provisions of a[n] . . . ordinance . . . [that] fixes the standard of conduct required of a defendant, leaving [the jury] merely to decide whether the defendants breached the . . . ordinance . . . ." Obviously, the jury could not possibly give adequate consideration to whether WCS breached the applicable legal standard fixed by the Folly Beach Sprinkler

Ordinance (which was accurately set forth in Plaintiffs' requested jury charge No. 39) without being instructed as to what that standard is. *See Peters v. K-Mart Corp.*, 322 S.C. 404, 406–07, 472 S.E.2d 248, 250 (1996) (finding error in the trial court's refusal to charge the statutory definition of the crime of shoplifting in a defamation case against a retailer, because the definition was a key element of the statutory merchant's defense and its absence from the jury instructions prevented the jury's adequate consideration thereof).

Lastly, WCS's point about the Folly Beach Sprinkler Ordinance having not been admitted into evidence is a red herring. First off, the substance of the ordnance *is* in evidence via witness testimony (*see, e.g.*, Mr. Lazo's above-cited testimony). Again, WCS conceded that "[t]he [accuracy and[11]] authenticity of . . . a copy of [the Folly Beach Sprinkler Ordinance] was stipulated to at trial for reference *and publication to the jury during the examination of witnesses* . . . ." (Br. of Resp. p. 6 (emphasis added).) Moreover, and in any event, jury charges instruct the jury on the *law*, not the evidence. *See Wall v. Suits*, 318 S.C. 377, 382, 458 S.E.2d 43, 46 (Ct. App. 1995) ("Ordinarily, a trial judge has a duty to give a requested instruction that correctly states the *law* applicable to the issues and the evidence.") (emphasis added). And while it is true that, unlike state law, local

[11] (Br. of Resp. p. 14 ("[C]ounsel for [Plaintiffs] and [WCS] stipulated to the accuracy and authenticity of a copy of the [Folly Beach Sprinkler Ordinance] marked as *Court's Ex. 10*; *Pfs' Ex. 141* . . . .") (italics in original).)

ordinances are not subject to judicial notice,[12] as explained, this obstacle was overcome via stipulation.

5. Given that the law applicable to this action includes the Folly Beach Sprinkler Ordinance—and, along with it, the Attic Sprinkler Requirement and variance provision therein—the only reasonable conclusion capable of being drawn from the evidence is that WCS violated the Building Code by failing to comply with the Attic Sprinkler Requirement.

WCS argues, "There was evidence introduced at trial that [it] was not required to install fire sprinklers within the attics at Palmetto Pointe in compliance with [the Folly Beach Sprinkler Ordinance]." (Br. of Resp. pp. 4–5.) This argument is without merit.

As explained above and in Plaintiffs' principal brief, the Folly Beach Sprinkler Ordinance and, in turn, the Attic Sprinkler Requirement and variance provision therein, is—without question—the law applicable to this action, and there is likewise no question as to what this law required: It required fire sprinklers to be installed in the attics of all the units at Palmetto Pointe absent a "[v]ariance[] . . . granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council." (*See* Pls.' Ex. 141; Pls.' Ex. 1044.)

Properly applying the applicable law in accordance with its plain and clear

[12] *Steinberg v. S.C. Power Co.*, 165 S.C. 367, 163 S.E. 881 (1932) (local ordinances are not subject to judicial notice, but instead must be proved before the

meaning,[13] the analysis here is simple. There is no dispute about whether fire sprinklers were installed in the attics of the condos at Palmetto Pointe: they were not. The *only* way this is not a violation of the Attic Sprinkler Requirement is if a "[v]ariance[]" was "granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council." (*See* Pls.' Ex. 141; Pls.' Ex. 1044.) Accordingly, the *only* relevant evidence on this point is evidence of or from which it could reasonably be concluded that such a variance was granted. There is none.

None of the evidence to which WCS points in an attempt to cloud this issue is relevant. Not the absence of sprinkler systems repairs in Mr. Schweickhardt's reports. Not Mr. Constantine's certification identifying NFPA 13-D as the

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lower court or tribunal).

[13] The rules of statutory construction apply to the construction of municipal ordinances. *See Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (2009) (applying rules of statutory construction to county zoning ordinance); *see also Whaley v. Dorchester County Zoning Bd. of Appeals*, 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999) ("A municipal ordinance is a legislative enactment and is presumed to be constitutional."). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)).

governing standard or his testimony that Fire Chief Tittle did not request him to revise his design to incorporate the Attic Sprinkler Requirement. Not Mr. Christopher's testimony about being instructed to exclude fire sprinklers from the attics. Not Mr. Lazo's interpretation of the Hall Letter.[14] Not even Mr. Lazo's testimony that Fire Chief Tittle told him the Attic Sprinkler Requirement was neither required nor enforced at Palmetto Pointe.[15] Obviously, none of this constitutes direct evidence of the required "[v]ariance[] . . . granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council;" nor is it evidence from which a reasonable inference can be drawn that such a variance was granted. At best, it is fodder for impermissible speculation, plainly insufficient to create a jury question. *The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005) ("[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.")

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[14] To be clear, there is no mention of the word "attic" in the Hall Letter, much less of a "[v]ariance[]" of the Attic Sprinkler Requirement having been "granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council." (*See* Pls.' Ex. 679.)

[15] As Mr. Lazo agreed, "just because the building official didn't catch [WCS] failing to put the sprinklers in the attics as required by the [Folly Beach Sprinkler Ordinance] doesn't mean it's okay." (Trial Tr. (Week 2) pp. 533:2–534:3.) And, in any event, the gap between what Fire Chief Tittle allegedly told Mr. Lazo about the Attic Sprinkler Requirement not being required or enforced at Palmetto Pointe and the conclusion that the required "[v]ariance[]" was actually "granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council" can only be filled by impermissible speculation.

Given that the law applicable to this action includes the Folly Beach Sprinkler Ordinance—and, along with it, the Attic Sprinkler Requirement and variance provision therein—as a matter of law, the one and only safe harbor for not complying with the Attic Sprinkler Requirement is a "[v]arience[] . . . granted after a hearing by the Fire Chief, Building Official and member of the building industry appointed by the City Council." The evidence to which WCS points to try to get around this point is simply beside the point and, as a practical matter, confirms the absence of any evidence of the required variance—indeed, WCS never actually argues that such evidence exists.

Contrary to WCS's contention, no evidence was introduced at trial that it was not required to install fire sprinklers within the attics at Palmetto Pointe in compliance with the Folly Beach Sprinkler Ordinance. Interpreting a municipal ordinance is a matter of *law*, not fact. *City of Myrtle Beach v. Juel P. Corp.*, 344 S.C. 43, 47, 543 S.E.2d 538, 540 (2001) ("When interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used. The determination of legislative intent is a matter of law.") (internal citation omitted). Even viewed in the light most favorable to WCS, every bit of what it cites as creating a question of *fact* is trumped by the mandate of the applicable *law*: either comply with the Attic Sprinkler Requirement or obtain a "[v]ariance[] . . . granted after a hearing by the Fire Chief, Building Official and member of the

building industry appointed by the City Council." Properly judged against this clear *legal* standard, it is clear the cited *facts* are insufficient to allow a reasonable jury to conclude the standard was met by WCS.

6. The only reasonable conclusion capable of being drawn from the evidence is that WCS violated the Building Code by failing to install the fire sprinkler systems in accordance with the Sprinkler Plans and damaged the Firewalls: The Sprinkler Plans were sealed by Christopher Constantine, the engineer who, as WCS acknowledges, "sealed and submitted the certification of the fire sprinkler system at Palmetto Pointe to the Office of the South Carolina State Fire Marshall;"[16] there is no evidence of any other plans; and WCS's argument about a lack of evidence that it was responsible for sealing penetrations of the Fire Walls is a red herring.

WCS refers to the Sprinkler Plans (a/k/a Plaintiffs' Exhibit 705) as "purport[ing] to be [its] drawings of the fire sprinklers" and asserts they were not "signed, sealed, or approved by any engineer, designer, or code official as 'final' or 'for construction.'" (Br. of Resp. p. 10.) But, as WCS acknowledges, Mr. Constantine was the engineer who "sealed and submitted the certification of the fire sprinkler system at Palmetto Pointe to the Office of the South Carolina State Fire Marshall,"[17] and it is plain on inspection of the Sprinkler Plans that Mr. Constantine's seal is indeed thereon. (Pls.' Ex. 705.) Moreover, Mr. Constantine testified that a sprinkler system "in accordance with the plans [he] approved and certified . . . wouldn't [have] a single fire sprinkler pipe penetrating the fire walls

[16] (Br. of Resp. p. 8.)

in the attic" and that he did not certify compliance with any sprinkler system that penetrates the Fire Walls. (Trial Tr. (Week 2) p. 476:5–22.)

The evidentiary conflict WCS urges is illusory. WCS does not contend that the record actually contains conflicting sets of plans. Mr. Lazo admitted that the Sprinkler Plans of record were the only such plans he had seen—which plans, he also noted, corresponded to what the plumbing drawings show. (Trial Tr. (Week 2) pp. 534:4–535:15.) Rather, WCS contends that the Sprinkler Plans of record might not be the final plans and that there might be some other, unidentified set of plans out there, plans different from and superseding the Sprinkler Plans of record, plans that—unlike the Sprinkler Plans of record—it did follow. Besides being irreconcilable with the Mr. Constantine's testimony—the logic of which does not even allow for the possibility of such a mystery set of plans—by its own terms, WCS's argument still does not describe a situation where there actually is a jury question. What WCS describes is not a conflict between *evidence* and conflicting *evidence*, but a conflict between *evidence* and conflicting *speculation*.

Lastly, WCS's argument about a lack of evidence that it was responsible for sealing penetrations of the Fire Walls is a red herring. As noted above, according to the Sprinkler Plans, i.e., the only set of such plans of record, and, beyond that, Mr. Constantine's testimony above referenced, the sprinkler system was not

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[17] (Br. of Resp. p. 8.)

supposed to penetrate the Fire Walls to begin with.

7. Assuming, *arguendo*, it is material, the trial court's error in admitting Mr. Schweickhardt's disputed testimony is amply addressed in Plaintiffs' principal brief; however, Plaintiffs would note here that WCS's brief confirms that this testimony is indeed immaterial.

As WCS states, "Mr. Schweickhardt was not asked and did not relay to the jury what he had been told by the out of court declarant, George Tittle, but rather was asked what he did or rather did not do as a result of his conversation." (Br. of Resp. p. 12.) WCS's concession that Mr. Schweickhardt's testimony says nothing of what he and Mr. Tittle spoke about, but only of what Mr. Schweickhardt did or did not do after speaking with Mr. Tittle on a subject(s) the jury did not know, and thus could only speculate about, confirms that Mr. Schweickhardt's testimony has no proper (i.e., non-speculative) probative value as to whether WCS violated the Building Code by failing to comply with the Attic Sprinkler Requirement.

8. Again, regardless of its admissibility and even construing it in the light most favorable to WCS, Mr. Lazo's testimony about his conversation with Fire Chief Tittle is irrelevant to whether WCS violated the Building Code by failing to comply with the Attic Sprinkler Requirement.

See point No. 5 above.

CONCLUSION

For the foregoing reasons, along with those set forth in their principal brief, Plaintiffs ask this Honorable Court to reverse the trial court and remand this case for a new trial against WCS on damages only or, as a lesser alternative, a new trial absolute.

Respectfully submitted,

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August 27, 2020

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I, Russell G. Hines, of Young Clement Rivers, LLP, counsel for Appellants, Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc., and Jack Love, individually, and on behalf of all others similarly situated, certify that the **INITIAL REPLY BRIEF OF APPELLANTS** was served on all other parties to this appeal on August 27, 2020, via email (see attached) to their following counsel of record:

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August 27, 2020

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Jim,

Attached please find the Initial Reply Brief of Appellants in the above-referenced matter. It will be filed with the Court of Appeals via separate email.

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