

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

RECEIVED

Oct 02 2020

SC Court of Appeals

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; Eloy 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 Does 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.

**APPELLANT’S MOTION TO AMEND
ITS INITIAL APPELLANT’S BRIEF / FINAL APPELLANT’S BRIEF**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS OF SOUTH CAROLINA:

Pursuant to Rule 240, SCACR, Appellant Tri-County Roofing, Inc. respectfully moves this Court of an Order allowing Appellant to amend its Initial Appellant’s Brief and by extension its Final Appellant’s Brief. Appellant does not request any substantive changes to arguments but, rather, to correct some arithmetic errors in its Initial Appellant’s Brief. Appellant respectfully submits that the relief requested here comports with Rule 211(b)(2), SCACR.

Appellant additionally requests that all deadlines be held in abeyance until the Court issues its ruling on these motions. The Appellant’s Initial Response Brief was filed with the appellate court on September 25, 2020.

FACTUAL/PROCEDURAL BACKGROUND

This is a construction defect lawsuit that was tried before the Honorable Jennifer B. McCoy from May 6 through 16, 2019. Respondents settled with various defendants both before and after the trial. Thirty-three of the thirty-six defendants named in the caption participated in the lawsuit at some time. There were eight defendants at the start of trial and five when the case went to the jury for deliberations.

The jury returned its verdict on May 16, 2019. The jury rendered its verdict against Complete Building Corporation (“Complete”—the general contractor), Appellant, Eloy Alonzo Vasquez (“Vasquez”—a roofing and waterproofing installer and Appellant’s subcontractor), and Wilson Lucas Sales d/b/a Miracle Siding, LLC (“Miracle”—a siding installer and Appellant’s subcontractor). The jury also awarded Complete \$1,000 on its

contractual indemnity cross claim against Appellant. The jury rendered a defense verdict in favor of W.C. Services, Inc. (“W.C. Services”—the fire sprinkler installer). In a post-verdict hearing, the jury allocated five percent (5%) responsibility each to Miracle and Vasquez.

Appellant timely filed its post-trial motions based on various theories. One of the post-trial arguments addressed setoff of certain settlements that Respondent received both before and after the trial. The post-trial motions hearing was conducted on Friday, June 7, 2019. Appellant was the only defendant that filed post-trial motions because the other parties had either settled or been dismissed from the case, including Complete, Vasquez, and Miracle. At the post-trial motion hearing, Appellant and Respondent presented counterarguments for the total amount of setoff that should be applied to the final jury verdict. Although the conclusions advocated by Appellant and Respondent are different, the arguments were based on the same underlying settlement dollars received by Respondent from the various parties that settled out of the case. This background data is shown in the competing spreadsheet summaries that were submitted to the trial court.

Appellant’s designation number 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”) is attached to this motion as Exhibit “A.” Respondent’s designation number 32 (“June 10, 2019, Email from Jennifer Zambriczki to Judge McCoy’s Clerk Serving Plaintiffs’ Settlement and Release Chart”) is attached to this motion as Exhibit “B.” The base numbers for these completing spreadsheets came from the covenant not to execute, the various settlement agreements, and emails confirming two settlements reached in the underlying case. (Although the various settlement documents referenced here are not attached to this motion, they are referenced in Appellant’s Amended Designation of Matters to be Included in the Record on

Appeal at numbers 57 through 75.) Again, there is no dispute regarding the amounts of these individual settlements—the dispute is over how the settlements should be allocated as setoffs to the jury verdict.

The trial judge issued a Form 4 Order denying Appellant’s post-trial motions on July 23, 2019, which also allocated a portion of the settlement setoffs and reduced the total general verdict amount against Appellant. On July 24, 2019, Appellant received an electronic copy of the filed verdict form, which was retroactively file stamped on May 16, 2019, the last day of trial.

Appellant timely filed its motion to reconsider the Form 4 Order on August 5, 2019. Although Appellant did not abandon any of its post-trial motions, it principally addressed setoff in its motion to reconsider. Respondents e-mailed a memorandum in opposition to the motion to reconsider on August 15, 2019. Appellant filed a return to Respondents memorandum on August 23, 2019. On September 25, 2019, the trial judge entered her final order denying Appellant’s motion to reconsider. Appellant timely filed its notice of appeal with the South Carolina Court of Appeals on October 14, 2019 and served the notice on Respondents and the trial court on October 21, 2019. Although the notice of appeal addressed several issues, the only question Appellant raises in this appeal is the trial court’s setoff determination, which Appellant respectfully states is inadequate.

The appellate court has already granted various extensions to both Appellant and Respondent during the present appeal. The court also granted one previous consent motion to allow Appellant to file an Amended Initial Brief and Amended Initial Designation of Matters to be Included on the Appeal in order to provide more specific general record citations (Order granted August 31, 2010). The Initial Brief of Appellant and Designation of Matters to be

Included in the Record on Appeal were filed June 25, 2020. Appellant filed the consent motion to appeal on August 13, 2020, which was subsequently granted August 31, 2020. However, the Amended Initial Brief of Appellant and Amended Designation of Matters to be Included in the Record on Appeal were deemed filed on August 13, 2020. In the interim, Respondent filed its Provisional Initial Brief and Designation of Matters to be Included in the Record on Appeal on August 26, 2020. The order granting the consent motion to amend also provided a new deadline for Respondent to file its initial brief. The Respondent's Initial Brief and Designation of Matters to be Included in the Record on Appeal were filed on September 15, 2020. Appellants Initial Response Brief was filed September 25, 2020. Based on these dates, the deadline for Appellant to serve the Record on Appeal currently falls on October 25, 2020.

LAW/ANALYSIS

The Supreme Court of South Carolina has advised that “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992). Moreover, the rules make clear that the final brief of the parties must match their initial briefs except for the inclusion of the specific citations to the Record on Appeal (Rule 211(b)(1), SCACR) or to “correct obvious typographical errors and misspellings which were contained in the initial brief” (Rule 211(b)(2), SCACR). Appellant submits that its requested relief to correct what it labels as “arithmetic errors” is equivalent to correcting typographical errors and misspellings.

1. Adding a Footnote

Although not an arithmetic error or typographical error *per se*, Appellant realized when

it was drafting its Initial Response Brief that it had inadvertently left out a footnote in its background factual section number four referencing “The Settlements.” Appellant referenced the amounts of the settlements that had been paid to Respondents. On page 21 of the Amended Initial Brief of Appellant, the details of the settlements are inserted as footnotes. The settlement amounts came directly from the settlement agreements that Appellant designated to be included in the record at numbers 57 through 75 and are the same numbers included in the setoff spreadsheets produced by Appellant and Respondent. (see Exhibits “A” and “B” attached to this motion). Appellant requests to add the following footnote in reference to the window product settlement:

Andersen Windows, Inc. settled with Respondents for \$200,000 around April 30, 2019. [email response by TCR dated 6/10/2019; Andersen settlement emails 4/30/2019.]

2. Arithmetic corrections

Appellant addressed the apparent arithmetic errors on pages 8 and 9 of the Initial Response Brief of Appellant. In Footnote 5 on page 8 Appellant notes that “[t]o the extent some arithmetic is incorrect, TCR will petition this court to allow the correction of inadvertent mathematical errors pursuant to Rule 211(b)(2), SCACR.” The numbers reflected below address addition and subtraction totals derived from the same source settlement numbers reflected in the various settlement documents and the setoff charts supplied by Appellant and Respondent. The discussion on pages 8 and 9 of the Initial Response Brief of Appellant support the same argument that Appellant made at the original post-trial motions hearing on June 7, 2019.

Appellant respectfully requests making the following edits that will be reflected in its Final Brief. The edits are noted in bold text and further noted with strikethrough text for the

deletions and underlined text for the replacements.

- a. On page 20 of the Amended Initial Brief of Appellant, in the first sentence of factual background part four discussing the Settlements: “Prior to the start of trial, Respondents received ~~\$4,937,500~~ \$5,012,500 dollars in settlements.”
- b. On page 21 of the Amended Initial Brief of Appellant, the last sentence of the partial paragraph: “These conceded issue release settlements total ~~\$1,907,500~~ \$1,407,500.”
- c. On page 22 of the Amended Initial Brief of Appellant, the last sentence of the partial paragraph: “These non-issue release settlements total ~~\$2,609,000~~ \$3,605,000.” And the second sentence of the next paragraph: “These post-verdict settlements total ~~\$2,787,500~~ \$1,787,500.”
- d. On pages 42 and 43 of the Amended Initial Brief of Appellant, the first six sentences of the paragraph: “At the time of the post-trial motions hearing, Respondents had received total settlements in the amount of \$6.8M. The settlements that all parties agree were for the issue released items for the HVAC, grading and paving, fireplaces, interior flooring, interior trim and interior railings, concrete, and the window products total ~~\$1,907,500~~ \$1,407,500. Subtracting this figure from Respondents’ original repair estimate yields ~~\$13,250,012~~ \$13,850,012, which figure is close to Mr. Handegan’s revised estimate dated May 7, 2019 of \$13,428,826. TCR acknowledges that the issue released items for the HVAC, grading and paving, fireplaces, interior flooring, interior trim and interior railings, concrete, and the window products are incorporated into the Respondents’ revised trial demand. Prior to trial, Respondents had received settlements of ~~\$3,717,500 or \$4,717,500~~ \$4,012,500 to \$5,012,500, depending on whether the funds from the covenant not to execute befitting Complete are referenced pre-trial or as part of the settlement agreement that was entered on June 6, 2019, twenty-one days after the jury returned its trial verdict. If all the pre-trial settlements were in fact removed from the trial as Respondents apparently advocate now, then Mr. Hendegan’s revised estimate at trial should have been either ~~\$8,632,512 or \$9,632,512~~ \$10,245,012 or \$11,295,012, depending on whether the funds from the covenant not to execute are included.
- e. On page 44 of the Amended Initial Brief of Appellant, in the last sentence of the second paragraph in the Conclusion section: “The total setoffs not designated as issue releases and already accounted for at trial add up to ~~\$4,892,500~~ \$5,392,500.”
- f. On page 45 of the Amended Initial Brief of Appellant, in the last sentence of the third paragraph in the Conclusion section: “With the information currently

available, the general verdict amount should be reduced to reflect a final judgment against TCR of ~~\$2,107,500~~ \$1,607,500.”

CONCLUSION

Based on the discussion above, Appellant respectfully requests an order allowing it to add a footnote and to correct the arithmetic in its initial brief. Appellant submits that these changes do not affect the substance of its arguments.

Respectfully submitted

COLLINS & LACY, P.C.

By: /s/ Andrew N. Cole
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October 2, 2020

ATTORNEYS FOR TRI-COUNTY
ROOFING, INC

EXHIBIT A

Andrew Cole

From: Andrew Cole
Sent: Monday, June 10, 2019 2:47 PM
To: 'Jennifer Zambriczki'; McCoy, Jennifer Law Clerk (Alexandra Heaton)
Cc: Justin Lucey; Josh Evans; Stephanie Drawdy; laura knight; Buckley, Edward D. (Ed); ademato@yctrlaw.com; Rett Kendall; Richelle Campbell; Christopher Adams; Bo Wilson; Brandon Reeser; Wendy McCravy; Tarsha M. Jefferson; Brent M. Boyd; Jim Atkins; James L. Williams
Subject: RE: Palmetto Pointe v. Island Pointe, et al (Case No. 2015CP1000955): Pls' Set-Off Chart
Attachments: Palmetto Pointe settlement spreadsheet rev.6-7-2019.pdf.pdf

Mrs. Heaton,

It appears that Plaintiffs have modified their position from Friday. Attached is another copy of the spreadsheet that I provided the Court on Friday. I do not agree with Plaintiffs' reading of Riley v. Ford Motor Co. or Atkinson v. Orkin, as I addressed on Friday. If you require anything further from me, please let me know.

Regards,

-Andrew

From: Jennifer Zambriczki <jzambriczki@lucey-law.com>
Sent: Monday, June 10, 2019 1:33 PM
To: McCoy, Jennifer Law Clerk (Alexandra Heaton) <jmccoyle@sccourts.org>
Cc: Justin Lucey <jlucey@lucey-law.com>; Josh Evans <jevans@lucey-law.com>; Stephanie Drawdy <sdrawy@lucey-law.com>; laura knight <lknight@lucey-law.com>; Buckley, Edward D. (Ed) <ebuckley@yctrlaw.com>; ademato@yctrlaw.com; Rett Kendall <rkendall@murphygrantland.com>; Richelle Campbell <rcampbell@collinsandlacy.com>; Christopher Adams <cadams@collinsandlacy.com>; Bo Wilson <bwilson@wilsonheyward.com>; Brandon Reeser <breeser@wilsonheyward.com>; Wendy McCravy <wmccravy@wilsonheyward.com>; Tarsha M. Jefferson <tjefferson@collinsandlacy.com>; Brent M. Boyd <bboyd@murphygrantland.com>; Jim Atkins <jatkins@clawsonandstaubes.com>; James L. Williams <jwilliams@collinsandlacy.com>; Andrew Cole <acole@collinsandlacy.com>
Subject: Palmetto Pointe v. Island Pointe, et al (Case No. 2015CP1000955): Pls' Set-Off Chart

Sent on behalf of Justin Lucey, Esquire:

Dear Ms. Heaton:

In response to the set-off chart first received from Defendant TCR during the hearing last Friday, please see attached Plaintiffs' proposed set-off chart. An original of this spreadsheet will be sent to chambers following this email in case the Court would like to make its own edits.

Respectfully submitted,

Justin Lucey

Jennifer C. Zambriczki

**Remote Senior Paralegal
Justin O'Toole Lucey, PA
Cell: 843-813-7441**

Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. et al. v. Complete Building Corporation, et al.

Civil Action No. 2015-CP-10-00955

*Spreadsheet to assist with Post-Trial discussions regarding set off**

<u>Name of Defendant</u>	<u>Scope of Work</u>	<u>Settlement Amount</u>	<u>Issue Release Settlement Amount*</u>	<u>Date on Settlement Agreement:</u>
Island Pointe, LLC	Developer	unkn.		dismissal at trial 5/16/2019
Leonard T. Browne, individually	Developer	unkn.		8/2/2017
1 Complete Building Corporation	General Contractor	\$ 2,137,500.00		7/10/2018 & 6/6/2019
Tri-County Roofing, Inc.	Roofing, siding, and waterproof membranes			
2 Creekside, Inc.	Paint & caulk siding, trim, etc.	\$ 150,000.00		6/6/2019
3 American Residential Services, LLC d/b/a ARS/Rescue Rooter Charleston	HVAC		\$ 795,000.00	4/23/2019
18 Andersen Windows, Inc.	Window product manufacturer		\$ 200,000.00	4/20/2019
4 Atlantic Building Construction Services, Inc. n/k/a Atlantic Construction Services, Inc.	Framing (bldgs, windows, decks, roofs, etc.)	\$ 700,000.00		4/5/2019
Christopher N. Union, individually	Developer	unkn.		8/2/2017
5 Builder Service's Group, Inc. d/b/a Gale Contractor Services	Fireplaces	\$ 22,500.00		7/24/2018
6 Novus Architects, Inc. f/k/a SGM Architects, Inc.	Architect	\$ 650,000.00		2/22/2018
7 Tallent and Sons, Inc.	Grading & paving		\$ 195,000.00	2/2/2019
W C Services, Inc.	Fire sprinkler installation	Defense verdict @ trial 5/16/2019		n/a
CRG Engineering, Inc.	Civil engineers	unkn.		1/23/2018
8 Certainteed Corporation	Manufacturer of asphalt roofing shingles, fiber cement siding & aluminum trim	\$ 35,000.00		7/12/2018
9 Kelly Flooring Products, Inc. d/b/a Carpet Baggers	Carpet and wood flooring installer		\$ 25,000.00	1/25/2019
John Doe 1 [never joined in lawsuit]	Manufacturer/supplier	n/a		n/a
John Doe 2-60 [never joined in lawsuit]	Unknown subcontractors	n/a		n/a
10 Cornerstone Construction and Mark Malloy d/b/a Cornerstone Construction	Siding & flashing	\$ 150,000.00		4/25/2018
11 Miracle Siding, LLC and Wilson Lucas Sales d/b/a Miracle Siding, LLC	Siding & flashing	\$ 325,000.00		5/28/2019
Mark Palpoint a/k/a Micah Palpoint [never joined in lawsuit]	Waterproofing	n/a		n/a
12 Eloy Alonzo Vasquez	Roofing, flashing & deck waterproofing	\$ 325,000.00		5/28/2019
Chris a/k/a John Doe 61 [never joined in lawsuit]	Waterproofing	n/a		
13 Alderman Construction	Interior trim & railings		\$ 75,000.00	6/19/2018
14 Stanley's Vinyl Fence Designs	Exterior residential railings	\$ 295,000.00		5/8/2019
15 Cohen's Drywall	Insulation & drywall	\$ 125,000.00		7/12/2018
16 Mosley Concrete	Concrete		\$ 95,000.00	4/29/2019

17	H and 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 H and A Construction	Framing	\$ 500,000.00		1/31/2018
	JMC Construction, Inc. and JMC Construction, LLC	Minimal siding repairs	Directed verdict @ trial 5/9/2019		n/a
3	Victor Hugo Hernandez, Hernandez Electric, LLC	Electrical		no \$ paid, but see ARS settlement	4/23/2019
3	Liliana Rojas Flores	Electrical		see ARS settlement	4/23/2019
3	Martin Barr d/b/a Port City Structured Wiring	Electrical		see ARS settlement	4/23/2019
3	Keller Electric, LLC	Electrical		see ARS settlement	4/23/2019
3	John Toolin d/b/a John F. Toolin Heat and Air	HVAC		see ARS settlement	4/23/2019
3	Russell "Rusty" Hill d/b/a Rusty's Heating & Air	HVAC		see ARS settlement	4/23/2019
3	Warren Anderson	HVAC		see ARS settlement	4/23/2019
TOTALS:			\$ 5,415,000.00	\$ 1,385,000.00	\$ 6,800,000.00
				\$ 152,350.00	11%
Actual Damages verdict amount:			\$ 6,500,000.00		
Punitive Damages awarded by the jury vs. Tri-County:			\$ 500,000.00		
Total verdict amount relevant to the set off discussions for Tri-County:			\$ 7,000,000.00		
Total set off that should be applied:			\$ 5,415,000.00	\$ 152,350.00	
TOTAL estimated, revised verdict amount:			\$ 1,585,000.00	\$ 1,432,650.00	

**Plaintiffs provided copies of the settlement agreements numbered 1-15 & 17 above on June 6, 2019, after Plaintiffs and Tri-County agreed to a confidentiality order. However, the italicized numbers and dates above reflect items that are not included and/or answered with the documents that were provided. To the extent that counsel for Tri-County is able to insert a number or date based upon information and belief, this information is included.*

OTHER PARTIES:					
	Gutter Works, Inc. and Michael L. Segars d/b/a Gutter Works (gutters)^	Gutter installer	\$ 2,500.00		w/ TCR 12/1/2016
	Mr. Gutter (gutters)^	Gutter installer	\$ 2,500.00		w/ TCR 12/1/2016
	Litchfield Seamless Gutters & Windows, LLC and Thomas Litchfield d/b/a Litchfield Seamless Gutters (gutters)^	Gutter installer	\$ 2,500.00		w/ TCR 12/1/2016
TOTALS:			\$ 7,500.00		
	Curry Engineers, LLC	Project engineer	Unkn.		Unkn.

EXHIBIT B

Andrew Cole

From: Jennifer Zambriczki <jzambriczki@lucey-law.com>
Sent: Monday, June 10, 2019 1:33 PM
To: McCoy, Jennifer Law Clerk (Alexandra Heaton)
Cc: Justin Lucey; Josh Evans; Stephanie Drawdy; laura knight; Buckley, Edward D. (Ed); ademato@yclaw.com; Rett Kendall; Richelle Campbell; Christopher Adams; Bo Wilson; Brandon Reeser; Wendy McCravy; Tarsha M. Jefferson; Brent M. Boyd; Jim Atkins; James L. Williams; Andrew Cole
Subject: Palmetto Pointe v. Island Pointe, et al (Case No. 2015CP1000955): Pls' Set-Off Chart
Attachments: Release Chart Peas (6.10.19).pdf

Sent on behalf of Justin Lucey, Esquire:

Dear Ms. Heaton:

In response to the set-off chart first received from Defendant TCR during the hearing last Friday, please see attached Plaintiffs' proposed set-off chart. An original of this spreadsheet will be sent to chambers following this email in case the Court would like to make its own edits.

Respectfully submitted,

Justin Lucey

Jennifer C. Zambriczki
Remote Senior Paralegal
Justin O'Toole Lucey, PA
Cell: 843-813-7441

RELEASE CHART

<u>Tab from TCR Notebook</u>	<u>Date</u>	<u>Defendant</u>	<u>Entitled to Set Off</u>	<u>Excluded either due to Issue Release or not submitted to jury at trial</u>	<u>Scope</u>	<u>Additional Comments</u>
13	07/09/18	Alderman		\$ 75,000.00	Interior Handrails	Issue Release: Issue and Related Damage Not Presented to Jury
3	04/23/19	ARS		\$ 795,000.00	HVAC/Electrical	Issue Release: Issue and Related Damage Not Presented to Jury
9	01/25/19	CarpetBaggers		\$ 25,000.00	Flooring	Issue Release: Issue and Related Damage Not Presented to Jury
18	04/30/19	Andersen		\$ 200,000.00	Window Product	Issue Release: Issue and Related Damage Not Presented to Jury
16	06/06/19	Mosley		\$ 95,000.00	Driveways	Issue Release: Issue and Related Damage Not Presented to Jury
5	07/19/18	Gale		\$ 22,500.00	Fireplaces	Issue Release: Issue and Related Damage Not Presented to Jury
10	03/28/18	Cornerstone	\$ 150,000.00		Siding	
14	05/07/19	Stanley	\$ 295,000.00		Guardrails	
2	06/06/19	Creekside	\$ 150,000.00		Painting/Caulking	
11	06/06/19	Miracle Sales	\$ 325,000.00		Siding	
12	06/06/19	Vasquez	\$ 325,000.00		Roofing/Decks	
8	07/12/18	CertainTeed	\$ 35,000.00		Materials	
15	07/12/18	Cohen's	\$ 62,500.00	\$ 62,500.00	Drywall/Insulation	Insulation Not Litigated; Only Drywall/Firewall Issues Litigated
7	02/22/19	Tallent		\$ 195,000.00	Site Drainage	Not litigated
4	04/12/19	Atlantic	\$ 75,000.00	\$675,000.00	Framing*/+	1) Principal Issue Settled was Shear Walls - from Dec. 2017 Britt Peters Depositions - Sheer Wall repair was not litigated and was never in Estimate; 2) Second Principal Issue Settled - Window Installation - Not Litigated; Only Window Trim Caulk Joint, a Siding Issue, was Litigated; 3) Deflecting Floors discussed at trial, but Not Included in Damage Estimate
17	01/31/18	H&A Framing	\$ 50,000	\$ 450,000.00	Framing*/+	(same as above)
6	02/02/18	Novus/SGM	\$ 65,000	\$ 585,000.00	Architect /+	Different Duties Arising Out of Diffent Contracts. <i>Atkinson versus Orkin Exterminating Company, Incorporated</i> , 361 S.C. 156, 159-60, 604 S.E.2d 385, 387 (2004)
1	07/10/18	CBC		\$ 1,000,000.00	General Contractor	Allocated Issues and Related Damage Not Presented to Jury. <i>See Riley v. Ford Motor Co. (See Page 5 of 6/6/19 Release)</i>
1	06/06/19	CBC	\$ 137,500.00	\$ 1,000,000.00	General Contractor**	Allocated Pursuant to <i>Riley v. Ford Motor Co.</i> 414 S.C. 185, 196, 777 S.E.2d 824, 831 (2015) (<i>See Page 5 of 6/6/19 Release</i>)

TOTAL \$ 1,670,000.00 \$ 5,180,000.00

Gross Verdict \$7,000,000.00
Less Set Off
Amount \$1,670,000.00
Judgment \$5,330,000.00

*Repair of consequential damages to framing caused by e.g., leaky decks was included, but framing defects were not included. It was shown at trial that the required balcony slope was created by the framer; it was the drip edge and high fascia and sub-fascia below the drip edge that caused the lipping at edge of balconies

** Portion allocated to exterior railings included in setoff

/+ On these three settlements, 10% of the settlement has been allocated to setoff to account for any inadvertant overlap in issues.

THE STATE OF SOUTH CAROLINA

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Jennifer B. McCoy, Circuit Court Judge

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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.

PROOF OF SERVICE

I certify that I have served a true copy of the Appellant's Motion to Amend its Initial Appellant's Brief / Final Appellant's Brief upon all parties via email, on October 2, 2020, addressed as follows:

October 2, 2020

By: /s/ Andrew N. Cole
ANDREW N. COLE, ESQUIRE
SC Bar No. 68384
acole@collinsandlacy.com
Post Office Box 12487
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ATTORNEYS FOR TRI-COUNTY
ROOFING, INC.

Other Counsel of Record:

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-and-

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Condominium Property Owners Association, Inc.
And Jack Love, Individually, and on behalf of
all others similarly situated***