

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.

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**APPELLANT’S MOTION TO RECUSE THE HONORABLE STEPHANIE P.  
McDONALD FROM PRESIDING OVER ANY PORTION OF THIS APPEAL**

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

Appellant respectfully moves and requests that the Honorable Stephanie P. McDonald be excluded from presiding over any arguments, panels, or decisions regarding this pending appeal. The basis of this motion is that Judge McDonald has an ownership interest in and is a member of the Respondent Palmetto Pointe At Peas Island Condominium Property Owners Association, Inc.

**FACTUAL/PROCEDURAL BACKGROUND**

This is a construction defect lawsuit that was tried before the Honorable Jennifer B. McCoy from May 6 through 16, 2019. The subject of the lawsuit involved the Palmetto Point at Peas Island condominiums. Judge McDonald is the owner of unit 1641 at Palmetto Pointe. She gave a deposition discussing her ownership in Palmetto Pointe and knowledge of the litigation on April 15, 2019. Judge McDonald purchased her unit in December 2011. [See Exhibit “A”: J. McDonald Deposition Excerpt.] Public records on-line show that Judge McDonald still owns her unit at Palmetto Pointe. [See <https://sc-charleston.publicaccessnow.com/RealPropertyRecordSearch/RealPropertyInfo.aspx?p=310000086#> (last checked October 1, 2020, at 4:24pm)]

The issue in the current appeal involves Appellant’s challenge of the amount of setoff allocated by the trial judge during post-trial proceedings. Appellant respectfully

argues that the trial judge's setoff allocation is inadequate. 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.

The Initial Brief of Appellant and Designation of Matters to be Included in the Record on Appeal were filed June 25, 2020. 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.

### **LAW/ANALYSIS**

The same recusal rules for trial court judges should apply to appellate court judges. "A judge should disqualify [her]self in a proceeding in which his impartiality might reasonably be questioned." Christy v. Christy, 317 S.C. 145, 149, 452 S.E.2d 1, 3 (Ct.App.1994), cert den. (April 11, 1995) (quoting Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR). Indeed, the Code of Judicial Conduct reinforces that a judge shall not hear or decide a matter where the judge has a conflict or could be subject to possible bias. See Rule 501, SCACR (Canon 3, titled: A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently). In Ness v. Eckerd Corp., 350 S.C. 399, 566 S.E.2d 193 (Ct.App.2002), the appellate court found that the trial judge properly recused himself from further action in the case when he learned that one of his brothers had a relationship with the corporate defendant. "A trial judge must recuse [her]self if the judge or the judge's spouse or a person within the third degree of relationship to either of them, or the spouse of such a person is known to the judge to have more than a de minimis interest that could be substantially affected by the proceeding." Id. at 403, 566 S.E.2d at 196 (citing

Canon 3(E)(1)(d)(iii), Code of Judicial Conduct, Rule 501, SCACR (internal quotations and edit notations omitted)).

**CONCLUSION**

Respectfully, in order to avoid even the impression of bias or impropriety, The Honorable Stephanie P. McDonald should be excluded from presiding over any portion of this pending appeal.

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**

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 PALMETTO POINTE AT PEAS ISLAND CONDOMINIUM PROPERTY  
OWNERS ASSOCIATION, INC. AND JACK LOVE,  
4 INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY  
SITUATED,

5  
6 Plaintiffs,

7 vs.

CASE NO. 2015-CP-10-0955

8 ISLAND POINTE, LLC; COMPLETE BUILDING CORPORATION;  
TRI-COUNTY ROOFING, INC.; CREEKSIDE, INC.; AMERICAN  
RESIDENTIAL SERVICES, LLC D/B/A ARS/RESCUE ROOTER  
9 CHARLESTON; ANDERSEN WINDOWS, INC.; ATLANTIC  
BUILDING CONSTRUCTION SERVICES, INC. N/K/A ATLANTIC  
10 CONSTRUCTION SERVICES, INC.; BUILDER SERVICES  
GROUP, INC. D/B/A GALE CONTRACTOR SERVICES; NOVUS  
11 ARCHITECTS, INC., F/K/A SGM ARCHITECTS, INC.;  
TALLENT AND SONS, INC.; WC SERVICES, INC.; CRG  
12 ENGINEERING, INC.; CERTAINTED CORPORATION; KELLY  
FLOORING PRODUCTS, INC., D/B/A CARPET BAGGERS;  
13 CORNERSTONE CONSTRUCTION AND MARK MALLOY D/B/A  
CORNERSTONE CONSTRUCTION; MIRACLE SIDING, LLC AND  
14 WILSON LUCAS SALES D/B/A MIRACLE SIDING, LLC; MARK  
PALPOINT A/K/A MICAH PALPOINT; ELROY ALONZO  
15 VASQUEZ; CHRIS A/K/A JOHN DOE 61; ALDERMAN  
CONSTRUCTION; STANLEY'S VINYL FENCE DESIGNS;  
16 COHEN'S DRYWALL COMPANY, INC.; MOSELY CONCRETE;  
HAND A FRAMING CONSTRUCTION, LLC AND D/B/A H AND A  
17 FRAMING, LLC, H&A CONSTRUCTION, and HAND A  
CONSTRUCTION; JMC CONSTRUCTION, INC.; JMC  
18 CONSTRUCTION, LLC; JOHN DOE 1-15,

19 Defendants.

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20 (Caption Continued on Page 2)

DEPOSITION OF: STEPHANIE P. McDONALD

21 DATE: April 15, 2019

22 TIME: 12:33 PM

23 REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

24 A. WILLIAM ROBERTS, JR., & ASSOCIATES  
25 Fast, Accurate & Friendly



1           A.    No.  I think Vic Apat's wife might own  
2 a unit.  I don't know.  They did at some point.  
3 But I don't know them.  I wouldn't know them if I  
4 saw them.

5           Q.    Okay.  Fair enough.  And when did you  
6 purchase your townhome at 1641, I believe it is?

7           A.    Yes.  December 2011, I believe.

8           Q.    And do you recall who you purchased the  
9 townhome from?

10          A.    From my law partner, Sandy Senn.

11          Q.    Oh, okay.

12          A.    S-E-N-N.

13          Q.    S-E-N-N.  Okay.  I see that now.

14          A.    Well, she was -- actually, my former  
15 law partner at that time.

16          Q.    Where did you practice before going on  
17 the bench?

18          A.    At Senn, McDonald & Leinbach.

19          Q.    Oh, okay.  Was that based here in  
20 Charleston?

21          A.    Yes.  Wesley Drive.

22          Q.    And did Miss Senn provide you with a  
23 property condition disclosure report?

24          A.    I'm sure she did or gave it to Ben  
25 Peeples, who did my closing.

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and

Tri-County Roofing, Inc. ....Appellant.

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PROOF OF SERVICE  
\_\_\_\_\_

I certify that I have served a true copy of the Appellant's Motion to Recuse The Honorable Stephanie P. McDonald from Presiding Over any Portion of this Appeal upon all parties via email, on October 2, 2020, addressed as follows:

October 2, 2020

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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***