

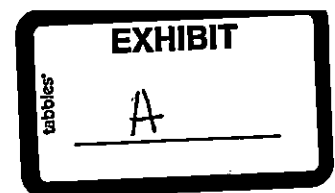
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SEP 29 2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SC Court of Appeals

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-3455



Six Fifty Six Owners Association, Inc., et al.,
Plaintiffs,
vs.
Winsor South, LLC, et al.,
Defendants.

**ORDER GRANTING DEFENDANTS
HURLEY SERVICES, LLC AND
CHARLESTON EXTERIORS' MOTION
FOR SUMMARY JUDGMENT AGAINST
THE CLAIMS OF BUILDERS FIRST
SOURCE-SOUTHEAST GROUP, LLC**

This matter came before the Court on March 5, 2020 on Defendants Hurley Services, LLC and Charleston Exteriors' Motion for Summary Judgment against the claims of Builders First Source-Southeast Group, LLC.

FACTUAL BACKGROUND

This litigation arises out of alleged construction defects at Six Fifty Six Coleman Boulevard, a twelve-building townhome community in Mount Pleasant, SC ("the Project"). Builders First-Source is a Delaware limited liability company that furnishes building supplies and turn-key contracting services as a licensed general contractor. It is undisputed that Builders First-Source holds an unlimited commercial general contractor's license (License No. 112969) with the South Carolina Labor Licensing & Regulation ("SC-LLR"), and Terry Rosamond is Builders First-Source's representative that serves as the "qualifying party" for such licensure in this state. Defendant supplied and installed windows and doors as a subcontractor of the Ryland Group for only the "Ryland Phase" buildings at the Project, which consists of nine (9) buildings that were constructed in 2013 and 2014. It is undisputed that Builders First-Source furnished the windows, related flashings, and caulk and provided superintendents to oversee such installation for the Ryland Phase buildings at the Project.

Builders First-Source filed a third-party complaint in the present litigation on May 9, 2017 asserting third-party claims against Hurley for contractual indemnity, breach of express and implied

warranties, breach of contract, and negligence. Hurley was ultimately made a direct defendant by Plaintiffs and Builders First-Source then asserted cross-claims against Hurley in lieu of it previously asserted third-party claims, but on all the same causes of action and grounds. Builders First-Source's operative cross-claims are contained in Builders First-Source's Answer to Plaintiffs' Third Amended Complaint filed on January 24, 2019. Builders First-Source's cross-claims allege that they are entitled to be indemnified in the amount which Builders First-Source "may pay in satisfaction" of Plaintiffs' claim "plus Builders First-Source [sic] costs for defense, inclusive of attorneys' fees, without regard for the fault of either Hurley or Builders First-Source.

Defendant Hurley Services, LLC is now before the Court on their Motion for Summary Judgment against the claims of Builders First-Source. Charleston Exteriors joins the Motion.

STANDARD OF REVIEW

"Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008). A party's "response to the motion must set forth specific facts, *admissible in evidence*, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him." *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 453 (Ct. App. 1988) (emphasis added). Summary judgment "is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 388, 701 S.E.2d 776, 779 (2010).

DECISION

Based on the submitted Motions and Oral Arguments the Court hereby finds:

- (1) There exists no genuine issue as to any material fact and Hurley Services and Charleston Exteriors are entitled to judgment dismissing all cross-claims against it as a matter of law;
- (2) Builders First Source-Southeast Group, LLC's cross-claims are barred by the doctrine of collateral estoppel because of Judge Clifton Newman's order filed on February 3, 2020 in the case of Builders Firstsource-Southeast Group, LLC v. MI Windows and Doors, Inc., et al, Case No. 2018-CP-08-2547. Specifically, the Court references and adopts the court's analysis in Paragraphs B and C therein.
- (3) Builders First Source-Southeast Group, LLC's cross-claims for breach of contract, breach of express and implied warranty, and negligence are "merely disguised . . . claims for equitable indemnity" and fail as a matter of law. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);
- (4) Builders First Source-Southeast Group, LLC's cross-claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal, are against public policy and the laws of South Carolina, and thus, fail as a matter of law. *See Concord and Cumberland HPR v. Concord and Cumberland, LLC*, 2018 WL 3748616 (S.C. Ct. App. 2018).

CONCLUSION

Therefore, it is ordered that Defendants Hurley Services, LLC and Charleston Exterior's Motion for Summary Judgment against the claims of Builders First Source-Southeast Group, LLC is GRANTED.

And it is SO ORDERED.

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Six Fifty Six Owners Association Inc , plaintiff, et al VS Winsor
South Llc , defendant, et al
Case Number: 2016CP1003455
Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134