

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**

**Jan 12 2021**

**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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**MOTION FOR AN ORDER ALLOWING APPELLANT TO FILE  
AND SERVE ITS INITIAL REPLY BRIEF IN RESPONSE TO RESPONDENTS'  
INITIAL BRIEF FILED DECEMBER 23, 2020**

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Appellant Tri-County Roofing moves for an order allowing it to file its initial reply brief that was filed in response to the Respondent's most recent filing. Appellant in fact filed its brief titled "Appellant's Initial Response Brief to Respondent's Initial Brief Filed December 23, 2020" on January 4, 2021 pursuant to Rule 208(b)(3), SCACR. This brief was the first response to the Respondent's Initial Brief that was filed on December 23, 2020. Due to a prior Order by the Court of Appeals, Appellant was given leave to file a Second Amended Initial Brief, which was filed on November 24, 2020. Therefore, Respondent's initial brief that was filed on December 23, 2020, was in response to Appellant's Second Amended Initial Brief. Correspondingly, "Appellant's Initial Response Brief to Respondent's Initial Brief Filed December 23, 2020" is the initial response to the Respondent's Initial Brief that it filed on December 23, 2020. However, by letter dated January 8, 2021, the Honorable V. Claire Allen, Clerk, requesting that "appellant must file a motion requesting permission to file the amended initial reply brief." Appellant files this motion and respectfully requests that its brief filed on January 4, 2021 be accepted as is.

**BACKGROUND AND DISCUSSION**

This appeal was commenced with the filing of Appellant's Notice of Appeal on October 14, 2019. After receiving several extensions, Appellant timely filed its Initial Brief of Appellant and Designation of Matters to be Included in the Record on Appeal on June 25, 2020. Respondent obtained several extensions to file its initial brief. While these extensions were still running, Appellant filed a consent motion to file an Amended Initial Brief and Amended Designations on August 13, 2020 in order to correct some scrivener's errors as well as clarify some record

designations contained in its initial brief. Because an order granting the amendment had not yet been entered, Respondent filed a provisional initial brief and designation of matters to be included in the record on appeal on August 26, 2020. The Court granted Appellant's motion to amend its initial brief on August 31, 2020 and set a new deadline for Respondent to file its response to this brief. On September 15, 2020, Respondent filed its Initial Brief and Designation of Matters to be Included in the Record on Appeal. Appellant filed its Initial Response Brief on September 25, 2020.

Appellant next filed three motions on October 2, 2020. The first was a motion to strike part of Respondent's designation of items to be included in the record on appeal. The second was a motion to recuse the Honorable Stephanie P. McDonald from presiding in this appeal due to an ownership interest in the Respondent's property. The third was a motion to allow Appellant to file a second amended initial brief in order to correct some mathematical errors and to correct some other scrivener's errors that were discovered when Appellant's counsel was working on its response brief. Respondent withdrew the record designations that were objected to by Appellant. On October 12, 2020, Respondent filed a return to Appellant's second motion to amend challenging the second amended initial brief. Having not yet received a ruling on the pending motions, Appellant filed its Final Brief of Appellant and Final Response Brief of Appellant on November 3, 2020.

On November 5, 2020, the Court issued its Order regarding the pending motions. The motion to recuse was deemed moot because Judge McDonald had already disqualified herself from the appeal. The motion to file a second amended initial brief was granted and provided new deadlines for Appellant to file its second amended brief and for Respondent to file an amended initial brief thereafter. Appellant filed its Second Amended Brief on November 24, 2020. Around

this time, counsel for Respondent pointed out to counsel for Appellant some corrections necessary regarding the previously filed Record on Appeal. Having received no additional edits to the record on appeal, Appellant filed the Record on Appeal (Corrected) on December 11, 2020. Apparently, Respondent did intend to supplement its prior record designations when it was going to file its revised initial brief and, therefore, the December 11<sup>th</sup> record filing was incorrect. By a letter dated December 15, 2020, Mrs. Allen noted that the corrected record that was filed on December 11, 2020 was premature and will not be considered.

Respondent filed its new Initial Brief and Designation of Matters to be included in the Record on Appeal on December 23, 2020. Respondent included four new documents plus one additional page from the second week of the trial transcript in its revised record designation. Respondent included more changes in its revised initial brief. Respondent cited four new cases, one new statute, and one new civil procedure rule in its brief. Respondent made hundreds of edits and changes to its prior brief in its Initial Brief filed on December 23, 2020. Respondent substantially rewrote its counter-statement of issues on appeal as well as the language within the document, like the factual subsection (B)(ii) titled “Allocation of Framer [sic] Settlements” and subsection (B)(iii) titled “Allocation of Novus Settlement.” Respondent revised its Standard of Review. Respondent added a new Argument now at section A regarding issue preservation and substantially rewrote its argument now at section B regarding the Complete setoff arguments and now at section C regarding the remaining setoffs. In fact, the only sections that Respondent did not revise are the section now found at section (B)(iv) and the conclusion.

Appellant filed its brief titled “Appellant’s Initial Response Brief to Respondent’s Initial Brief filed December 23, 2020” on January 4, 2021. Appellant included this long title to distinguish this response from its earlier response brief that was filed after a now replaced initial

brief of by the Respondent. Appellant based and filed its Second Amended Initial Brief on the corrections it identified in its second motion to amend. Thereafter, Appellant understood that Respondent was allowed to revise and file an amended Initial Brief. With all of the revised and new information that Respondent included in its revised Initial Brief filed on December 23, 2020, Appellant drafted and filed its last Initial Response Brief on January 4, 2021 accordingly.

Therefore, Appellant respectfully requests that the Court accept its Initial Response Brief that was filed on January 4, 2021. As the above discussion reveals, this brief is a direct and proper response to the last brief that Respondent filed on December 23, 2020. This motion is supported by the South Carolina Appellate Court Rules 240 (motions and petitions generally), 208 (initial briefs), 209 (designation of matter to be included in the record on appeal), 210 (record on appeal), 211 (final briefs), and 212 (supplemental record).

Respectfully submitted

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January 12, 2021

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THE STATE OF SOUTH CAROLINA

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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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**PROOF OF SERVICE**

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I certify that I have served a true copy of the Motion for an Order Allowing Appellant to File and Serve Its Initial Reply Brief in Response to Respondents' Initial Brief Filed December 23, 2020, upon all parties via email, on January 12, 2021, addressed as follows:

January 12, 2021

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all others similarly situated***