

## Long Awaited Lawsuit Pending Verdict: EJ HOA v. Apex Engineering & Metro Builders

The first phase of the longstanding lawsuit between the East Jasper Residential Homeowners Association and the Defendants, Apex Structural Engineering Inc. and Metro Builders LLC., is pending a verdict and a potential second phase after it was finally brought to trial last Saturday at the Lexington County Courthouse. The Plaintiff alleged complaints of Breach of Fiduciary Duty and Negligence, arguing that by failing to notify the HOA of a significant modification made during construction that affected the safety of the East Jasper Residential Tower, both companies breached their duty to act in the best interest of the HOA, resulting in expensive retrofits; and that by failing to conduct wind tunnel testing they failed to meet the standard of care. The Plaintiff did not argue the Breach of Contract charge alleged in the Complaint during the trial.

Designed by Apex Engineering and constructed by Metro Builders, the East Jasper Residential Tower is a 30 story high-rise, making it the tallest building in South Carolina at the time of its construction, which was completed in August of 2014. Reed Alvarez, the president of the East Jasper Residential Tower's HOA, testified that in March of 2016, he received a whistleblower memo from concerned engineer Samuel Greene, alleging that there were structural defects that could cause the East Jasper Residential Tower to collapse. Alvarez stated that shortly after receiving the whistleblower memo, he received a call from Dr. Ellis Chen, a faculty advisor to a Ph.D. student who had identified potential concerns in the East Jasper Residential Tower. Dr. Chen explained that she conducted wind tunnel testing which confirmed her student's findings. Their concerns matched those of the whistleblower; that the substitution of

bolted shear connections in place of welded joints compromised the structural integrity of the building by making it susceptible to quartering winds. This prompted Reed Alvarez to reach out to Dr. Rowan Hightower, a structural engineer who corroborated the findings with calculations based off of structural renderings of the East Jasper Residential Tower. Subsequently, Alvarez called an emergency meeting to explain the situation to the residents, giving notice of the meeting and situation “only 24 hours prior.” At the end of the meeting, the majority voted to initiate the expensive retrofits and pursue litigation to cover the costs. Alvarez testified that while he “did call Apex and Metro multiple times” without response, neither company was invited to the meeting.

Cam Martinez, the lead project manager for Metro Builders, testified that the substitution of bolted connections had “written approval from Apex and passed all codes and met all governing standards.” According to retired city inspector Whitley Carter, who inspected the East Jasper Residential Tower when it was originally built and issued the Certificate of Occupancy, the tower met all codes and passed all inspections “on the first try.” Dr. Ash Forrester, a structural engineer and consultant retained by Apex, described the retrofits as “unnecessary solutions to a nonexistent problem,” and stated that wind tunnel testing was not required by applicable building codes at the time of construction.

It is now up to the Jury to decide whether the Defendants owe any money to the Plaintiff, or if the HOA will have to pay back the costly construction loan by themselves.