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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2022-001061

Ranjiv Saini,

Appellant,

v.

Arnett Construction, LLC; Atlantic
Engineering, LLC; Ford Plumbing, LLC;
Cohen's Drywall Company, Inc.; Robert
Wasson, d/b/a Wasson Electric; Barbara
P. Russ d/b/a Wasson Heating & Air
Services; Daniel J. Murphy, III, d/b/a
Perfectly Painted; John C. Sullivan;
S.Arch+Studio, LLC; Custom Designers,
LLC/ Enviro-foam Technologies, Inc.;
and Baranov Flooring, LLC; Defendants,

Of which Baranov Flooring, LLC, is the Respondent.

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ISSUES ON APPEAL

I

Did the Circuit Court err in holding that the relation back doctrine under Rule 15, SCRCF, does not apply to a Plaintiff's construction defect claims against a Third-Party Defendant where the third-party claims were properly filed within the statute of limitations and nearly identical to Plaintiff's direct claims against the Third-Party Defendant?

STATEMENT OF THE CASE

This appeal contests the Order of the Charleston County Court of Common Pleas granting Summary Judgment to Respondent Baranov Flooring, LLC's ("Baranov" or "Respondent") on Appellant's direct claims for construction defects based on the statute of limitations. (5/13/2022 Initial Order; 6/30/2022 Order) The Circuit Court's holding should be reversed because Appellant Ranjiv Saini's ("Appellant or Plaintiff") filing of his direct claims against Respondent should relate back to June 16, 2020, when the General Contractor Defendant Arnett Construction ("General Contractor") filed its third-party claims for negligence and indemnity against Respondent (6/16/2020 Arnett Construction, LLC's Sec. Am. Ans. to Am. Compl., Cross-Claims, and Third-Party Compl.).

Appellant's construction defect lawsuit arises from the complete remodel of his condominium on Kiawah Island ("Home" or "Property" or "project"). The project took place from September 15, 2016, to approximately May 1, 2017. (See 8/6/2021 Pl. Sec. Am. Compl. at ¶¶20-21) The project included the complete removal and replacement of the interior walls and finishes, including the complete replacement of the ceramic tile, wood flooring, and insulation. (See Id. at Ex. A) Appellant subsequently began discovering various defects and issues with the workmanship. On June 16, 2017, Plaintiff delivered a "punch list" of items to the General Contractor that he believed were deficient or required repairs. (12/22/2021 Baranov Flooring Mot. Summ. Judg. At Ex. B).

Appellant initially filed his construction defect lawsuit against the General Contractor and known subcontractors on November 14, 2018. (Initial Complaint) (case number 2018-CP-10-5468). The General Contractor answered the Complaint and asserted cross-claims for negligence and indemnity against the subcontractors listed in the Initial Complaint. (1/28/2019

Arnett Construction Ans. Compl. and Cross-Claims). The initial subcontractor defendants did not include all of the subcontractors that the General Contractor hired to perform work related to the deficiencies in the project. Id. Appellant subsequently learned about design deficiencies in the architectural drawings for the Project, and on December 10, 2019, Appellant filed an Amended Complaint by consent adding the architect and his corporation as defendants. (12/10/2019 Am. Compl.).

On June 16, 2020, the General Contractor filed its Second Amended Answer and asserted third-party claims for negligence/gross negligence, breach of warranty, and indemnity against additional subcontractors, including Respondent. (6/16/2020 Arnett Construction, LLC's Sec. Am. Ans. To Am. Compl., Cross-Claims, and Third-Party Compl. ¶¶221-245). The gravamen of each of these third-party claims was that if Appellant prevailed on his construction defect claims then Respondent was liable for any deficiencies in the Project due to its work. At all times material, Respondent has been either a Third-Party Defendant or Defendant to this lawsuit and asserted defenses claiming that there are no deficiencies in its work on the Project. (8/12/2020 Baranov Flooring, LLC's Ans. To Arnett Construction, LLC's Sec. Am. Ans. To Am. Compl., Cross-Claims, and Third Party Compl.). Respondent also participated in discovery without objection.

On March 2, 2021, Appellant filed a Motion for Leave to Amend the Current Complaint, which included an assertion of direct claims against the Third-Party Defendants, including Respondent. (3/2/2021 Mot. Leave Am. Compl.). Respondent opposed the amendment primarily based on the statute of limitations. (3/19/2021 Baranov Mem. Opp. to Pl.'s Mot. for Leave to Am. pp.4-5). The Circuit Court granted the Motion to Amend on July 26, 2021. (7/26/2021 Order).

On August 6, 2021, Appellant filed the Second Amended Complaint asserting direct claims against the Third-Party Defendants, including Respondent. (8/6/2021 Sec. Am. Compl.). The Second Amended Complaint did not assert any new claims and all arose out of the original work on the Project. (Id.) On August 16, 2021, Respondent Answered Appellant's Second Amended Complaint, asserting virtually identical affirmative defenses as it had asserted to the General Contractor's Third-Party Complaint. (8/16/2021 Baranov Ans. Sec. Am. Compl.).

On December 22, 2021, Respondent filed its Motion for Summary Judgment or Alternatively for Partial Summary Judgment primarily on the grounds that the statute of limitations barred Appellant's direct claims. (12/22/2021 Baranov Flooring, LLC's Mot. Summ. Judg. With Exhibits) The Honorable Edgar W. Dickson presided over the hearing on the Motion along with the Motions for Summary Judgment filed by Defendants Envirofoam Technologies, Inc., and Custom Designers, LLC, which was held on January 19, 2022. (1/19/2022 Transcript). During this Hearing, counsel for Envirofoam argued multiple times that Appellant's Second Amended Complaint was in fact adding the third-party defendants as new parties to the lawsuit. (1/19/2022 Transcript p. 11 line 2 to p. 12 line, p. 13 line 24 to p.14 line 8). Respondent's counsel adopted this same argument in support of its Motion. (1/19/2022 Transcript p. 18 lines 2 to 11).

On May 13, 2022, the Honorable Edgar W. Dickson granted Respondent's Motion finding that Appellant's Direct Claims were filed over three (3) years after Appellant delivered the punch list of items to the General Contractor on June 16, 2017. The Order also dismissed Appellant's claims for punitive damages against Respondent solely based on its finding that

Appellant's direct claims were barred by the statute of limitations.¹ The Order did not address Appellant's relation back argument, which Appellant had raised in opposition to Respondent's Motion for Summary Judgment. (1/13/2013 Mem. Opp. Mot. Summ. Jud. pp. 9-13).

On May 23, 2022, Appellant filed his Motion to Reconsider and/or Alter or Amend the Order granting Respondent's Motion for Summary Judgment. (5/23/2022 Mot. to Reconsider and/or Alter or Am.). Appellant's Motion re-submitted Appellant's argument that the filing of his direct claims related back to the date the General Contractor filed its third-party claims against Respondent because the direct and third-party claims are virtually identical, the claims arose out of the exact same facts and circumstances, Respondent had notice of the claims within the statute of limitations, and Respondent had been a party to the lawsuit since the third-party claims were filed. (5/23/2022 Mot. Reconsider and/or Alter or Am.). In its Memorandum in Opposition to Appellant's Motion, Respondent re-iterated the argument that Envirofoam's counsel made during oral argument that Appellant's Second Amended Complaint was in fact adding Respondent as a new party to the lawsuit. (5/31/2022 Baranov Memo. In Opp. To Pl.'s Motion to Recon. & Alter or Amend. pp. 3-7).

Judge Dickson denied Appellant's Motion without a Hearing by Order dated June 30, 2022, finding that Appellant could not "piggyback upon another party's compliance with applicable statutory or procedural rules" and that the "Third-Party Complaint is a separate pleading to which [Appellant]'s may not relate back." (6/30/22 Order p.3). Judge Dickson did

¹ The Circuit Court's May 23 and June 30 Orders did not address Respondent's alternative ground for partial summary judgment on the claims to the extent those claims seek punitive damages because its decision on the statute of limitations was dispositive. Accordingly, this appeal does not address that aspect of the Order since it was inherent in the Court's Order dismissing Appellant's claims in full based on the statute of limitations.

not find that the addition of direct claims against Respondent amounted to the addition of a new party. (See id.). Appellant served his Notice of Appeal on July 28, 2022.

STANDARD OF REVIEW

“When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Mead v. Beaufort Cty. Assessor, 419 S.C. 125, 130, 796 S.E.2d 165, 168 (Ct. App. 2016) (citing Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). When interpreting the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (citing Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994)).

“The question of statutory interpretation is one of law for the court to decide.” Mead, 419 S.C. at 130, 796 S.E.2d at 168 (quoting Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 316, 731 S.E.2d 869, 870 (2012)); see e.g., S.C. DOT v. Revels, 411 S.C. 1, 8, 766 S.E.2d 700, 704 (2014) (stating that where an issue left to the discretion of a trial court turns on the interpretation of a statute then “the interpretation of the statute is a question of law that the Court reviews de novo”) Thus, the review of the construction of a Rule of Civil Procedure is de novo, and “[the appellate court is] free to decide questions of law with no deference to the trial court.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

ARGUMENT

The Circuit Court erred in finding the Statute of Limitations bars Appellant's direct claims against Respondent. Appellant's direct claims arise from identical facts as the third-party claims, Respondent was aware of the direct claims prior to the expiration of the statute of limitations, and Respondent had been brought into the lawsuit prior to the statute of limitations running. Allowing the direct claims to relate back will merely force Respondent to defend the merits of Appellant's claims and is consistent with prior decisions interpreting Rule 15(c) and South Carolina's policy of strongly favoring the resolution of the direct claims on the merits. Further, allowing the direct claims to relate back will not violate any of the purposes underlying the statute of limitations. Therefore, this Court should find that Appellant's claims relate back to the filing of the third-party Claims against Respondent under Rule 15(c), SCRPC, as a matter of law, and this Court should reverse the Circuit Court's Order Granting Summary Judgment to Respondent.

I. Appellant's Direct Claims Relate Back to the Filing of the Third-Party Claims Under Rule 15(c), SCRPC, as a Matter of Law.

Rule 15(c), SCRPC, governs the relation back of amended pleadings under South Carolina Law and provides the following:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Rule 15, SCRPC

The South Carolina Supreme Court adopted the following four-part test for analyzing and applying the relation back doctrine:

(1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Hughes v. Water World Water Slide, 314 S.C. 211, 214, 442 S.E.2d 584, 586 (1994) (quoting Schiavone v. Fortune, 477 U.S. 21, 29, 106 S. Ct. 2379, 2384, 91 L. Ed. 2d 18, 27 (1986)); see also Jackson v. John Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) (reiterating the test for applying Rule 15(c) set forth in Hughes).

“The purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations.” Thomas v. Grayson, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995). The South Carolina Supreme Court has also explained the concept for the relation back doctrine as follows:

Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading.

Patton v. Miller, 420 S.C. 471, 496-97, 804 S.E.2d 252, 265 (2017).

In short, the language of Rule 15(c), SCRPC, the purpose of the Rule and South Carolina jurisprudence interpreting the Rule all focus on whether the claims arise from the same transaction underlying the prior claims and whether the party that the amended claims are asserted against had notice of the claims that relate back so that it is not hauled into Court for the first time via the amended pleading after the statute of limitations has expired. Appellant’s assertion of direct claims against Respondent and relating them back to the filing of the General

Contractor's third-party claims satisfies both the language in Rule 15(c) and the purpose of relation back doctrine.

A. Appellant's Direct Claims Arise from the Same Conduct, Transaction or Occurrence Set Forth in Both the Initial Complaint and the General Contractor's Third-Party Complaint.

Appellant's Initial Complaint was filed on November 14, 2018. In addition to the General Contractor, the Defendants included the engineer of record and certain subcontractors known to Appellant to have performed work on the Project at that time. It alleged various claims that all arise out of and relate to the construction work on Appellant's Home that Defendant General Contractor and the subcontractors it selected and hired, performed from approximately September 15, 2016 to May 1, 2017.

On June 16, 2020, the General Contractor filed its Second Amended Answer and also asserted third-party claims for negligence/gross negligence, breach of warranty, and indemnity against additional subcontractors, including Respondent. Each of the General Contractor's third-party claims arise from the same facts underlying all of Appellant's claims, i.e., the work the Defendants performed on the project, the alleged deficiencies in their work, and the damages Appellant sustained due to those deficiencies. (6/16/2020 Arnett Construction, LLC's Sec. Am. Ans. To Am. Compl., Cross-Claims, and Third-Party Compl. ¶¶221-245). The third-party complaint even incorporates the allegations in the Appellant's complaint as part of the basis for the third-party claims. (*Id.* ¶227) In fact, without the common underlying facts, there would be no possibility for the assertion of the third-party claims.

After being forced to obtain leave to amend from the Circuit Court due to objections to the amendment from various Defendants, including the Third-Party Defendants, Appellant filed his Second Amended Complaint on August 6, 2021. The Second Amended Complaint did not

change any of the original allegations as to work giving rise to the claims. Instead, the change relevant to this appeal is that the Second Amended Complaint added direct claims against Respondent that Plaintiff was already maintaining against the General Contractor and other subcontractors.

It is axiomatic and beyond dispute that both claims and facts asserted in the initial Complaint, General Contractor's Third-Party Complaint, and Plaintiff's Second Amended Complaint are virtually identical. Plaintiff's Second Amended Complaint easily satisfies the requirement in Rule 15(c) that the amended claims arise from the same facts, transaction, or occurrence.

B. Appellant's Amendment to Add Direct Claims Did Not Add Respondent as a Party, and Therefore, the Virtual Identical Nature of the Claims is Sufficient for Them to Relate Back Under Rule 15.

The first part of Rule 15(c), SCRCP, provides the operative standard for Appellant's Second Amended Complaint to relate back to the General Contractor's third-party claims because Respondent is not substituting Respondent for another party or adding Respondent as a new defendant with no prior involvement in this litigation. This portion of the rule only requires that "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." Importantly, the plain language of the second portion of Rule 15(c) makes the additional requirements it sets forth limited to circumstances where the amendment brings a new party into the lawsuit:

An amendment *changing the party* against whom a claim is asserted relates back if the foregoing provision is satisfied *and*, within the period provided by law for commencing the action against him *the party to be brought in by amendment* (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have

known that, but for a *mistake concerning the identity of the proper party*, the action would have been brought against him.

(emphasis added). The foregoing italicized terms clearly limit the second part of Rule 15(c) to circumstances where the amendment brings in a new party in the form of being substituted for another party. See Jackson v. John Doe, 342 S.C. 552, 557-58, 537 S.E.2d 567, 569-70 (Ct. App. 2000) (emphasizing that the second part of Rule 15(c) “clearly speaks to a change in party, not the addition of a defendant to an already existing defendant.”).

Here, Appellant’s Second Amended Complaint neither substituted Respondent for another Defendant nor added Respondent as an entirely new defendant because Respondent was already a party to the lawsuit as a Third-Party Defendant with notice of the allegations and actively defending the claims. As a result, the only requirement under Rule 15 for Appellant’s direct claims to relate back is that they arise from the same facts and circumstances as the original pleading bringing Respondent into the lawsuit, which here is the Third-Party Complaint filed by General Contractor.

This interpretation of Rule 15(c) in the context of Third-Party practice is supported by the language of Rule 14. The relevant provision in Rule 14 sets forth a Plaintiff’s right to assert direct claims against a Third-Party Defendant following the filing of Third-Party Complaint:

The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff’s claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13.

Rule 14(a), SCRC. Importantly, the foregoing language makes it clear that a Plaintiff is authorized to assert direct claims against a Third-Party Defendant once that party is brought in via the Third-Party Complaint provided those direct claims “aris[e] out of the [same] transaction or occurrence” as those giving rise to the Plaintiff’s original claims.

Rule 14(c) goes on to allow the court on its own motion or the motion of a party to “order that a party designated as a third-party defendant be joined as a plaintiff or defendant under Rules 19 or 20,” and thereafter, the “designation of such party or his pleading as ‘third party’ shall thereafter be dropped.” The language of Rule 14 does not address the timeliness of a Plaintiff’s assertion of direct claims against the Third-Party Defendant as it relates to the statute of limitations. However, it implicitly recognizes that a Plaintiff’s assertion of direct claims against a Third-Party Defendant is not the filing of a new claim where it arises out of the same transaction or occurrence that is the subject of the Plaintiff’s claim against the Third-Party Defendant. When read together, Rule 14 and Rule 15 require concluding that Rule 14 authorizes a Plaintiff to assert direct claims against a third-party defendant that arise out the same transaction or occurrence as the original claims. Then, under Rule 15(c), those direct claims are allowed to relate back against the Third-Party defendant provided the direct claims satisfy the requirement that they arise out of the same facts and circumstances standard.

This interpretation of Rule 15 in the context of third-party practice and the circumstances presented here is consistent with the South Carolina Supreme Court’s recognition that “Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading.” Patton, 420 S.C. at 496-97, 804 S.E.2d at 265. It also simultaneously prevents the relation back doctrine from conflicting with the rule that the relation back of an amended pleading cannot add a new defendant under Jackson v. John Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) because it recognizes that third-party defendants are, both by their very nature and under the

language of Rule 14, SCRCF, already parties to the proceedings and joining them as a direct defendant does not mean they have to be substituted for another party.

C. Respondent had Clear Notice of the Institution of the Action Within the Statute of Limitations and is in No Way Prejudiced in Defending Against the Merits of Appellant’s Direct Claims Under Rule 15(c).

This Court should reverse the grant of Summary Judgment in favor of Respondent even if it determines the additional requirements set forth in the second part of Rule 15(c), SCRCF, apply to an amendment asserting direct claims against a third-party defendant.

The Circuit Court applied the three (3) year statute of limitations in South Carolina Code Annotated Sections 15-3-530 and the discovery rule Section 15-3-535 to govern the Appellant’s claims for construction defects against both the General Contractor Defendant and Respondent. (5/13/22 Order pp. 3-4) The Circuit Court then found that the three (3) year time period for the claims related to Respondent’s defective tile installation began to run on June 16, 2017, when Appellant submitted a punch list to General Contractor that included issues with the installation of the ceramic tile at the Home. (*Id.* at p.3). At this point in time, Appellant was not aware of Respondent, the fact that Respondent did work on the project, or the scope of Respondent’s work on the project. (*See* 1/19/2022 Trans. Hearing p.18 lines 8 to 18) Thus, the operative date for notice of Appellant’s direct claims under Rule 15(c) is June 16, 2020. (*Id.* at 4) (“Plaintiff would have had until June 16, 2020, to file his claims against Baranov.”) As discussed above, here, Respondent had notice of Appellant’s claims by at least June 16, 2020, when the General Contractor filed its third-party claims.

Once the General Contractor filed its third-party claims, then Respondent unequivocally had notice that Appellant had asserted construction defect claims arising from both the project and aspects of the project attributable to Respondent’s work.

Specifically, the Third-Party Complaint alleges that Respondent was hired to “perform services at [Appellant]’s residence,” and that General Contractor had been sued by Appellant for damages relating to Respondent’s scope of work. (6/16/2020 Arnett Construction, LLC’s Sec. Am. Ans. to Am. Compl., Cross-Claims, and Third-Party Compl. ¶¶222 & 227). It incorporates the allegations of construction defects that Appellant claims in his Complaint, including claims related to installation of the tile. (Id. ¶227) The Third-Party Complaint then alleges that if General Contractor is liable to Appellant, then it can recover any damages due to Appellant from Respondent under claims for negligence, breach of warranty, and indemnity. (6/19/2020 Arnett Constr.’s Sec. Am. Ans. ¶¶229-244).

Given the specificity of the foregoing allegations and incorporation of Appellant’s Complaint into the Third-Party Complaint, it is inconceivable that Respondent did not have notice of Appellant’s lawsuit and that the action asserted construction defect claims directly related to Respondent’s scope of work on the project. In fact, since that time, Respondent has appeared through counsel and actively participated in discovery, defending against General Contractor’s claims and denying any deficiencies associated with its work on Appellant’s home. (8/12/2020 Baranov’s Ans. To Arnett Construction LLC’s Sec. Am. Ans. To Am. Compl. and Third-Party Compl.).

The addition of Appellant’s direct claims also did not prejudice Respondent under Rule 15, SCRCP. For the relation back of a pleading to be prejudicial the Amended Pleading must place Respondent at some disadvantage beyond merely having to defend the merits of Appellant’s claims. Patton v. Miller, 420 S.C. 471, 491, 804 S.E.2d 252, 262-63 (2017) (“The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-

moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”) The specific nature of the notice to Respondent via the Third-Party Complaint and the fact those claims are virtually identical to Appellant’s direct claims, forecloses any argument that Appellant’s addition of his direct claims against Respondent via the Second Amended Complaint somehow caused any type of prejudice to Respondent or even adversely impacted its defense of the claims.

The Supreme Court’s decision in Patton is instructive and supports a finding that Appellant’s addition of direct claims does not prejudice Respondent. In Patton, the Plaintiff incorrectly filed the initial complaint in a representative capacity rather than in her individual capacity and subsequently sought to amend the complaint to bring it in her individual capacity after the statute of limitations had run. Id. at 492, 804 S.E.2d at 263. The Circuit Court denied the Motion to Amend and then granted the Defendant’s Motion for Summary Judgment.

In reversing the Circuit Court’s decision, the Patton Court specifically addressed the prejudice requirement under Rule 15 and whether the amended Complaint, if allowed, would have related back to the original complaint. Id. at 489-498, 804 S.E.2d at 261-266. The Patton Court held that both the amendment was not prejudicial to the Defendants and that the relation back doctrine applied even though the Plaintiff’s capacity changed because it did not affect the defenses asserted:

In this case, all three defendants were well aware of the claim for medical expenses because the claim was included in each original complaint. It made no difference to the defendants as to the merits of the claim whether Patton brought it in her own or her representative capacity. There is no indication defendants' procedural or evidentiary presentation would have varied at all if Patton had been allowed to amend the complaint to assert the claim in her individual capacity. While permitting the amendment would cause the defendants to face the merits of the amended claim, the defendants' opportunity to defend the claim on the merits

was no different than it would have been if Patton had originally brought the claim in her own capacity. There was no new issue presented by Patton's proposed amendment, the amendment would have caused the defendants no disadvantage as to the merits they did not already face, and therefore, there is no prejudice.

Id. at 492, 804 S.E.2d at 263.

Here, the same reasoning and conclusion reached in Patton apply equally to Appellant's direct claims against Respondent. As in Patton, the gravamen of both the third-party claims and Appellant's direct claims is that Respondent's work was defective and that the alleged deficiencies have damaged Appellant.

A side-by-side comparison of the affirmative defenses Respondent asserted in its answers to the third-party claims and Plaintiff's Second Amended Complaint makes the lack of prejudice to Respondent clear:

Affirmative Defenses in Answer to Third-Party Complaint	Affirmative Defenses in Answer to Appellant's Second Amended Complaint
Comparative negligence; Negligence of another; Superseding negligence; Lack of notice; Failure to give notice of breach of warranty; Mitigation of damages; Waiver and/or estoppel; Failure to state a claim; Economic loss rule; Exclusion/modification/limitation of remedies; Disclaimer of remedies; Exclusion/modification/limitation of warranty; Disclaimer of warranty; Expiration of warranty; Failure to comply with contractual conditions precedent; Failure to comply with statutory conditions precedent; Statute of frauds; Right to cure;	Comparative negligence; Negligence of another; Superseding negligence; Lack of notice; Failure to give notice of breach of warranty; Mitigation of damages; Waiver and/or estoppel; Failure to state a claim; Economic loss rule; Exclusion/modification/limitation of remedies; Disclaimer of remedies; Exclusion/modification/limitation of warranty; Disclaimer of warranty; Expiration of warranty; Failure to comply with contractual conditions precedent; Failure to comply with statutory conditions precedent; Statute of frauds; Right to cure;

Unclean hands, Spoliation of evidence; Joint tortfeasors; Laches; Statute of limitations/statute of repose; Anti-indemnity statute; Incorporation of defenses raised by others; Accord and satisfaction; Defense to indemnity & contribution; Limitation of punitive; and Reservation and non-waiver.	Unclean hands; Spoliation of evidence; Joint tortfeasors; Laches; Statute of limitations/statute of repose; Incorporation of defenses raised by others; Accord and satisfaction; Limitation of punitive; and Reservation and non-waiver.
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The addition of Appellant’s direct claims did not materially alter Respondent’s defense as shown by Respondent’s mirror-like regurgitation of its affirmative defense. These defenses, if successful, would defeat Appellant’s claims or the General Contractor’s third-party claims against Respondent.

Here, the facts and circumstances establish that Respondent had notice of Appellant’s claims when General Contractor filed its third-party claims, which was within the applicable statute of limitations, and the addition of Appellant’s claims, via the Second Amended Complaint, did not prejudice to Respondent under Rule 15, SCRPC.

II. Relating Back Appellant’s Direct Claims to the Third-Party Claims is Consistent With South Carolina Law, South Carolina Policy, and Persuasive Authority.

South Carolina decisions interpreting and applying the relation back doctrine under Rule 15(c) have not addressed whether an amendment that adds direct claims against a third-party defendant relates back to the filing of a third-party complaint. Instead, the primary decisions interpreting Rule 15(c) have focused on a Plaintiff’s amended pleading that changed the capacity in which the lawsuit was brought or where a Plaintiff sought to relate back an amended pleading that added an entirely new defendant to the lawsuit. See Thomas v. Grayson, 318 S.C. 82, 456 S.E.2d 377 (1995) (addressing an amendment where a Plaintiff initially sued in her capacity as a representative of the estate, appointed in Michigan, and then later amended the Complaint to

assert the claims in her capacity as the representative of the estate, appointed in South Carolina); and Jackson v. John Doe, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App. 2000) (finding Rule 15(c), SCRPC, did not relate back where a new defendant was added based on the fact “the language of Rule 15(c) clearly speaks to a *change* in party, not the *addition* of a defendant ...”) (emphasis added). Allowing Appellant’s amendment to relate back in the present case furthers South Carolina’s policy favoring the resolution of claims on the merits. Additionally, it will not violate the policy considerations underlying the statute of limitations and is consistent with third-party practice under Rule 14(a), SCRPC and persuasive authority addressing this issue in the same context as the present case.

South Carolina Supreme Court decisions have allowed the relation back of an amended pleading where the amendment merely changed the capacity of a party, rather than bringing an entirely new party into the proceedings. As discussed, *supra*, in Patton v. Miller 420 S.C. 471, 492, 804 S.E.2d 252, 263 (2017), the Court addressed whether an amended pleading related back where it changed the status of the Plaintiff from suing in a representative capacity to suing in Plaintiff’s individual capacity. Similar to Patton, in Thomas v. Grayson, 318 S.C. 82, 456 S.E.2d 377 (1995), the Court addressed an amendment where a Plaintiff initially sued in her capacity as a representative of the estate, appointed in Michigan, and then later amended the Complaint to assert the claims in her capacity as the representative of the estate, appointed in South Carolina. Id. at 84-85, 456 S.E.2d at 378.

In both of these cases, the South Carolina Supreme Court held that the change in the Plaintiff’s representative capacity was allowed to relate back. In reaching its decision, the Patton Court emphasized that the purpose of Rule 15 is to allow claims to be resolved in the merits rather than the statute of limitations. 420 S.C. at 492, 804 S.E.2d at 263. The Thomas Court

reasoned that the change in capacity did not amount to the bringing of a new cause of action and allowing the amendment to relate back “[did] not defeat the legitimate use of the statute of limitations.” 318 S.C. at 89, 456 S.E.2d at 380. Allowing Appellant’s direct claims to relate back to the Third-Party Complaint in the context of the present case is consistent with and supported by the reasoning of both Patton and Thomas.

As in Patton, allowing Appellant’s Second Amended Complaint to relate back will merely require Respondent to defend against appellant’s claims in the capacity of a direct defendant rather than continuing to defend those claims in the form of derivative, third-party claims based on identical facts and circumstances as those asserted by the General Contractor. As noted above, the defenses to both Appellant’s direct claims and the General Contractor’s claims are virtually identical.

As in Thomas, allowing the amendment to relate back will not defeat the legitimate use of the statute of limitations. In support of its Motion for Summary Judgment, Respondent emphasized the following policies that support the application of the statute of limitations: “[to] stimulate activity, punish negligence, and promote repose by giving stability and security to human affairs”; “to promote and achieve finality in litigation;” and to “provide potential defendants with certainty that after a set period of time, they will not be hailed [sic] into court to defend time-barred claims.” (12/22/2021 Baranov Flooring, LLC’s Mot. Summ. Judg. p.5).

None of the foregoing principles are even affected by allowing Appellant’s direct claims to relate back to the third-party claims. Further, and more importantly, none of the policies for the statute of limitations are promoted by dismissing Appellant’s direct claims against Respondent.

First, dismissing Appellant's direct claims it will not promote repose by giving stability and security because General Contractor was already pursuing virtually identical claims against Respondent via the third-party Claims, and General Contractor will continue to pursue its third-party claims even if Appellant's direct claims are dismissed. For this same reason, finding the statute of limitations bars Plaintiff's direct claims will not promote or achieve finality in the litigation as Defendant Baranov will remain a defendant and continue to defend the virtually identical third-party claims.

Second, it will not protect Respondent from being hauled into Court to defend against time-barred or stale claims because it has been a defendant since June 16, 2020. Again, Appellant's amendment does not add Respondent as a new party; the amendment merely changed Respondent's capacity from a third-party defendant to a direct defendant.

Allowing Appellant's Claims to relate back to the filing of the Third-Party Complaint also is consistent with Rule 14(a), SCRCP, which provides the following:

The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13.

Rule 14(c) goes on to allow a party or the court on its own motion may "order that a party designated as a third-party defendant be joined as a plaintiff or defendant under Rules 19 or 20," and thereafter, the "designation of such party or his pleading as 'third party' shall thereafter be dropped." The language of Rule 14 does not address the timeliness of a Plaintiff's assertion of direct claims against the Third-Party Defendant as it relates to the statute of limitations. However, it implicitly recognizes that a Plaintiff's assertion of direct claims against a Third-

Party Defendant is not the filing of a new claim where it arises out of the same transaction or occurrence that is the subject of the Plaintiff's claim against the Third-Party Defendant.

Persuasive authority addressing the issue presented in this appeal also supports allowing Appellant's direct claims to relate back to the filing of the third-party claims against Respondent. The Supreme Court of Florida, has addressed this exact issue in similar circumstances and found a relation back rule, that is similar to South Carolina's relation back rule, allowed a Plaintiff's claims to relate back to the filing of third-party claims.²

In Caduceus Props., LLC, v. Graney, 137 So. 3d 987 (Fla. 2014), a building owner sued an architect for the defective design of an HVAC system and the architect filed a third-party claim against its subcontractors it hired to prepare the actual design. Id. at 988-89. The Plaintiff later moved to amend the Complaint to assert direct claims against the subcontractors based on their involvement in designing the HVAC system. The attempt to amend was outside the statute of limitations. The Caduceus Court specifically addressed the novel issue presented in this case and held "an amended complaint filed after the statute of limitations period has expired, naming a party who was previously a third-party defendant as a party defendant, relates back ... to the filing of the third-party complaint." Id. at 994.

In reaching its conclusion, the Caduceus Court relied upon the same rationale for the relation back doctrine as that relied upon by the South Carolina Supreme Court: the relation back rule is grounded in the notion of fair notice and lack of prejudice to the defendant. Id. at 992. The key inquiry is whether the third-party was put on notice of the conduct, transaction, or occurrence from which the plaintiff's claims against the defendant arose. Id. at 992-93. The

² Florida's relation back rule provides the following: "When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading." FL. R. Civ. P. 1.190(c).

Caduceus Court also reasoned that the assertion of direct claims against a third-party defendant via an amendment did not bring an entirely new defendant into the case, finding it only changed the status of a third-party defendant that had been actively defending the litigation. This is important because, like South Carolina, the Florida Courts have held the relation back doctrine does not allow for the addition of a completely new Defendant to the lawsuit.

The Caduceus Court also emphasized that allowing the application of the relation back doctrine in these circumstances was even more apparent when viewed in light of “the purpose the purpose served by statutes of limitations,” observing:

Statutes of limitations are designed to protect defendants from unusually long delays in the filing of lawsuits and to prevent prejudice to defendants from the unexpected enforcement of stale claims. As Judge Van Nortwick pointed out in his dissent in Graney, the purpose underlying statutes of limitations—namely, preventing lack of notice and prejudice to the defendant—is not implicated where the plaintiff’s amended complaint relates back to the filing of the third-party complaint, as long as the third party was brought into the suit prior to the expiration of the statute of limitations and the plaintiff’s claims concern the same conduct, transaction, or occurrence at issue in the third-party complaint.

Id. at 992 (internal citations omitted)

This reasoning and result in Caduceus are consistent with South Carolina decisions addressing the relation back doctrine, which also focus on the Defendant’s notice of the claims and prejudice and also whether the amendment brings the defendant into the case for the first time. Its holding that the relation back doctrine applies to Plaintiff’s direct claims against third-party defendants where the third-party defendants were added to the lawsuit within the statute of limitations and the direct claims arise from the same facts and circumstances as the third-party claims is a logical extension of South Carolina precedent on Rule 15(c) and the relation back doctrine. Accordingly, this Court should amend its order to follow this same reasoning and find

that Appellant's claims against Respondent relate back to the General Contractor's filing of its third-party claims and are timely as a matter of law.

Allowing Appellant's Second Amended Complaint to relate back to the General Contractor's filing of its Third-Party Complaint finds even more support when one takes into account the routine difficulty of obtaining the identity of the subcontractors (or even sub-subcontractors) involved in a project that plaintiffs routinely encounter in faulty construction cases. In the context of modern construction, it is common for a homeowner (or purchaser of new construction) to deal solely with the general contractor or builder when entering into or agreeing upon a project. It is increasingly rare for a homeowner to contract with or have any information on the subcontractors or tradesmen that perform various aspects of the work on the subject property. The general contractor or builder then select and retain the specific subcontractors that complete the work. As a result, this unique context allows circumstances where the plaintiff in a construction defect may not even know the existence of a subcontractor that should be a defendant until the general contractor (which is aware of both the claims and the subcontractors it hires) brings the subcontractor in via a third-party complaint.

Allowing the homeowner's amendment to a complaint, like Appellant's in this case, to relate back to the general contractor's third-party complaint allows the homeowner to pursue a decision on the merits of the claims against the subcontractor provided they are added to the lawsuit as third-party defendant within the statute of limitations. Conversely, affirming the Circuit Court's ruling in the present case will require the dismissal of a homeowner plaintiff's direct claims despite the fact the subcontractor had notice of the claims within the statute of limitations and is already defending the merits of virtually identical claims in the exact same litigation.

CONCLUSION

The Circuit Court's May 23, 2022 and June 30, 2022 orders should be vacated and Appellant's direct claims against Respondent should be restored in full, including Appellant's claim for punitive damages against Respondent, and allowed to proceed as they are not barred by the statute of limitations.

Dated: October 24, 2022

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Oct 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2022-001061

Ranjiv Saini,

Appellant,

v.

Arnett Construction, LLC; Atlantic
Engineering, LLC; Ford Plumbing, LLC;
Cohen's Drywall Company, Inc.; Robert
Wasson, d/b/a Wasson Electric; Barbara
P. Russ d/b/a Wasson Heating & Air
Services; Daniel J. Murphy, III, d/b/a
Perfectly Painted; John C. Sullivan;
S.Arch+Studio, LLC; Custom Designers,
LLC/ Enviro-foam Technologies, Inc.; and
Baranov Flooring, LLC; Defendants,

Of which Baranov Flooring, LLC, is the

Respondent.

PROOF OF SERVICE

I certify that on October 24, 2022, I served Appellant's Designation and Appellant's Initial Brief on Respondent Baranov Flooring, LLC, by the electronic filing system used by the South Carolina Court Courts and in accordance with the South Carolina Supreme Court's May 6, 2022 Amended Order establishing the methods for the electronic filing and service of documents under Rule 262 of the South Carolina Appellate Court Rules by depositing a copy of these documents in the United States Mail, first class postage prepaid, on October 24, 2022, addressed to Respondent's attorney of record, Stacey P. Canaday, Post Office Box 2055, Beaufort, South Carolina 29901-2055, and sending these documents to Attorney Canaday via

email to Attorney Canaday's AIS e-mail address. A copy of the email is enclosed with this Proof of Service.

October 24, 2022

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Attorneys for Appellant

Subject: Appellant's Designation of Matter & Initial Brief--Appellate Case No. 2022-001061 , Saini, Appellant, v. Arnett Construction, LLC, et. al., of which Baranov Flooring, LLC is Respondent

Date: Monday, October 24, 2022 at 4:18:42 PM Eastern Daylight Time

From: James Floyd

To: staceycanaday@tgdcpa.com

CC: egressman@kelleykronenberg.com, agbilbrey@jhcooper.com, jtc@jhcooper.com, shiplaw@jhcooper.com, kwalker@ethridgelawgroup.com, jduncan@ethridgelawgroup.com, lirodriguez@kelleykronenberg.com, John@charlestonlawoffices.com, Paralegal2@charlestonlawoffices.com, jross@rcaalaw.com, pcristaldi@rcaalaw.com, morganreeves@tgdcpa.com, jduncan@ethridgelawgroup.com, dkidd@ethridgelawgroup.com, knegrin@rclawsc.com, kwhite@rclawsc.com, jenkins@besthoneycutt.com, dean@besthoneycutt.com, morganreeves@tgdcpa.com, dani@besthoneycutt.com, legensperger@rclawsc.com, esheets@rclawsc.com

Attachments: image001.png, 2022-10-24 Ltr. Canaday Serving Designation & Initial Brief.pdf, 2022-10-24 Appellant Designation of Matter (Final).pdf, 2022-10-24 App. Initial Brief.FINAL.pdf

Good afternoon Stacey,

I hope you are well and had a great weekend. Attached for service upon you is Appellant's Designation of Matter and Initial Brief. I am sending these to your email address on file in the AIS system per the Supreme Court's May 6, 2022, Amended Order on service under Rule 262, SCACR. Out of an abundance of caution, I am also sending a hard copy of these documents to your office address via First Class Mail.

I have also copied counsel for the other parties on this correspondence. Let me know if you have any issues opening the attachments.

Thanks

Please note that my office address has moved to 3255 Maybank Highway, Johns Island, SC 29455.

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October 24, 2022

VIA U.S. MAIL, FIRST CLASS, & EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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RECEIVED
Oct 24 2022
SC Court of Appeals

RE: Saini, Appellant, v. Arnett Construction, LLC, et. al.,
Appellate Case No. 2022-001061

Dear Ms. Kitchings:

I hope you are well. Please find enclosed for filing a hard copy of Appellant's Designation, Appellant's Initial Brief, and the prof of service for these filings in the above-referenced appeal. I have also sent an electronic copy of these documents via e-mail to the address above.

Please let my office know if we can provide any additional information for the Court or if you need anything else from my office. Thank you for your assistance with this matter.

Sincerely,

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