THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell
Circuit Court Judge

Opinion No. 2023-UP-241
Appellate Case No. 2019-001375; Circuit Court Case No. 2018-CP-23-3382

John W. Hine and Maria W. Hine..... Petitioners,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, ... Respondents.

APPENDIX

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September 14, 2023

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S.C. SUPREME COURT

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell
Circuit Court Judge

Appellate Case No. 2019-001375
Circuit Court Case No. 2018-CP-23-3382

John W. Hine and Maria W. Hine..... Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, ... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**ORDER**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

This matter is before the Court upon Defendants' Motion for Summary Judgment based upon the fact that Plaintiffs are time barred from bringing the present action. The Court heard oral arguments on June 18, 2019 and reviewed respective submissions, case law and statutory provisions. For the reasons set forth below, Defendants' motions are GRANTED.

I. Facts

This case arises from the sale of a single family home located in Greenville, South Carolina, that occurred on or about July 1, 2008. Agent served as the listing agent for the single family home at issue. Agent was employed by Broker and Company while serving as the listing agent for the single family home at issue. Agent, Timothy McCrory and his brother Michael P. McCrory owned the home. Plaintiffs allege that Agent knew or should have known that the single family home at issue had termite damage that had not been repaired and that the sellers of the property had misrepresented this on the property disclosure form. On April 27, 2012 Plaintiff, John M. Hine who is also a licensed attorney in South Carolina was removing shoe molding around the baseboard in the front bedroom of their home. Once that was removed he discovered extensive damage to the wood studs behind the drywall. It was discovered once a contractor was called that the rim

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joists were also damaged. He wrote a letter to Defendant Seabrook Marchant of The Marchant Company seeking damages and alleging that the termite damage should have been noted by their former agent, Tim McCrory when he and his brother performed work in the basement as noted on the disclosure statement. *See Exhibit A.* The defendants denied knowledge of any undisclosed termite damage. On July 9, 2012, Attorney Hine sent a demand letter seeking damages of $4,000., *Exhibit B.* There was some discussion back and forth and Attorney Hine ultimately decided not to pursue it. *Exhibit C, John Hine deposition, pg. 28 lines 12-14.* Plaintiff Hine apparently failed to follow-up with this claim within the appropriate statute of limitations and admitted so during his deposition. When asked ". . . why aren't you seeking recovery for that work?" he responded "I don't know that I have the evidence to prove that, and I don't know that I'm still entitled to it under the statute of limitations." *Id, pg. 24 lines 14-18.*

Plaintiff continued with renovations to his home, he remodeled a hallway bathroom without incident and then on or about February 3, 2018, while remodeling the master bathroom, he discovered additional termite damage to the subject property and he brought the present litigation on June 18, 2018. During this discovery he claims to have uncovered sheetrock in the stairwell where two 2X4's were sistered between a wood member. The 2X4's had a bar code stamp with a date of September 7, 2005 which was the date that the McCrory brothers purchased the home. Plaintiffs' now claim that this should have been disclosed to them and therefore is the basis for their present litigation. The McCrory brothers were aware of a sheetrock contractor investigating the stairwell to see if the height could be raised but deny noticing any unrepaired termite damage nor were they present when the investigation into the stairway ceiling occurred. The Defendants are not aware of when the 2x4's with the date stamp was placed at the home nor if it was placed there during their ownership.

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Plaintiffs' Amended Complaint alleges the following causes of action against the McCrory brothers, Broker and Company: (1) fraud and misrepresentation; (2) conversion; (3) violation of the South Carolina Residential Property Condition Disclosure Act; (4) violation of S.C. Code Ann. § 40-57-137; (5) negligence; (6) negligent hiring, training, supervision and retention; (7) unjust enrichment; (8) unfair trade practices; and (9) breach of the covenant of good faith and fair dealing.

II. Legal Standard

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct.App.2014), *cert denied.* "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when "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 a judgment as a matter of law." *Id.* (quoting Rule 56(c), SCRCP). "Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id.*

III. Reasoning

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The Defendants specific grounds for their Motion are that Plaintiffs failed to commence this lawsuit within the applicable statute of limitations. There are no genuine issues of material fact relating to the time of the first discovery of the unrepaired termite damage by Plaintiffs in April of 2012.

The undisputed evidence shows that Plaintiffs either knew or should have known about the unrepaired termite damage on or about April 27, 2012 when Plaintiff John Hine wrote a letter to the Broker and Company, dated May 14, 2012, informing them of his discovery of unrepaired termite damage throughout the property. This letter also notes that the property disclosure form completed by the sellers was not accurate with regards to the unrepaired termite damage.[1] Plaintiffs also hired a contractor to inspect the property who found additional unrepaired termite damage.

Accordingly, as early as April 27, 2012, Plaintiffs knew or should have known that there was unrepaired termite damage that was not disclosed to them during the process of purchasing the property. The statute of limitations for Plaintiffs' causes of action is three years[2] and expired on April 27, 2015. Plaintiffs did not file this lawsuit until June 18, 2018, almost three years after the statute of limitations expired.

The undisputed facts show that Plaintiffs failed to commence this action within the applicable statute of limitations; accordingly, their claims must be dismissed. The Plaintiff is now attempting to make the argument that the first attempt to recover for termite damages was abandoned but now he has uncovered subsequent information to further his claim against the defendants. The statute of limitations does not purport to destroy or extinguish a cause of action,

[1] This letter is attached to this Order as Exhibit "A" and Plaintiff has admitted that he wrote this letter.

[2] S.C. Code Ann. § 15-3-530 provides a three year statute of limitations for Plaintiffs' claims. *See Cline v. J.E. FaulknerHomes, Inc.*, 359 S.C. 367, 370, 597 S.E.2d 27, 29 (Ct. App. 2004) (three-year statute of limitations for negligence claims); *ABN Amro Mortg. Grp., Inc. v. SAJJ, LLC,* Civil Action No. 7:05–1720–RBH, 2007 WL 840342, at *5 (D.S.C. March 15, 2007) (three-year statute of limitations for negligent misrepresentation claims); and *Moore v. Benson*, 390 S.C. 153, 160, 700 S.E.2d 273, 277 (Ct. App. 2010) (fraud action "is governed by a three-year statute of limitations period").

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but simply to close the doors of the Courts to a suitor who undertakes to bring his suit upon such cause of action after the lapse of the prescribed period. *Jackson v. Plyler (S.C.1893) 38 S.C. 496, 17 S.E. 255, 37 Am. St. Rep. 782.* The fundamental test in determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it. *Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.* Plaintiffs could have filed their suit in 2012.

Plaintiffs having missed the statute of limitations is now claiming that he has found additional evidence in a different location that allows him to start the clock over again. This novel argument is not supported by case law. A cause of action accrues at the moment when the Plaintiff has a legal right to sue on it, *Id.* Plaintiffs are claiming that the property disclosure statement was misrepresented. This was true when they wrote the demand letter in July of 2012 and it is the same with the current suit filed in 2018.

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for the claims asserted in this action. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987).* Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Austin v. Conway Hosp., Inc.* 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987). One policy behind the statute of limitations is the protection of a defendant from claims where it might be difficult to disprove if not brought until after relevant evidence has been lost and witnesses have become unavailable. Plaintiffs knew a claim existed when it discovered termite damage in an area that was alleged to have been renovated by Defendants, therefore the statute began to run in 2012.

IV. Conclusion

IT IS, THEREFORE, ORDERED THAT, Plaintiffs are barred from pursuing their claims against Defendants' based upon the running of the Statute of Limitations. Defendants' Motions for Summary Judgment are granted.

IT IS SO ORDERED.

_____

ROBIN B. STILWELL
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

July ____, 2019

Greenville, SC

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Greenville Common Pleas

Case Caption: John M Hine , plaintiff, et al vs. Timothy M McCrory , defendant, et al

Case Number: 2018CP2303382

Type: Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-07-22 10:39:45 page 7 of 7

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
	)	
John M. Hine and Maria W. Hine,	)	
	)	**ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND**
Plaintiffs,	)	
	)	
vs.	)	
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	C. A. No.: 2018-CP-23-03382
	)	

This matter comes before the Court pursuant to the Plaintiffs' Motion to Alter or Amend the Court's Order filed July 23, 2019, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The undersigned is sympathetic to Plaintiff's claim and would like to see this matter resolved on its merits. However, the law is clear and this Court must recognize the Statute of Limitations and the public policy served thereby. After having had the opportunity to carefully review the Motion, this Court must respectfully deny the same.

AND IT IS SO ORDERED.

_____
ROBIN B. STILWELL

August _____, 2019
Greenville, South Carolina

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Greenville Common Pleas

Case Caption: John M Hine , plaintiff, et al vs. Timothy M McCrory , defendant, et al

Case Number: 2018CP2303382

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

ELECTRONICALLY FILED - 2018 Jun 18 3:42 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
John M. Hine and Maria W. Hine	)	civil action number:
Plaintiffs,	)	
vs.	)	
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company	)	**COMPLAINT**
	)	**(JURY TRIAL REQUESTED)**
	)	
Defendants.	)	
	)	

The Plaintiffs, John M. Hine and Maria W. Hine, complaining of the Defendants, Timothy M. McCrory, individually and as agent (hereinafter referred to as "Timothy" and/or "Agent"), Michael P. McCrory ("Michael") (collectively referred to as "Sellers"), Seabrook L. Marchant ("Broker"), and The Marchant Company ("Company") (collectively "Defendants"), would respectfully allege and show unto this Honorable Court:

PARTIES, JURISDICTION and VENUE

1. At all relevant times, Plaintiffs have resided in Greenville County, South Carolina.
2. Upon information and belief, at all relevant times, Sellers resided in Greenville County, South Carolina and Broker and Company operated a real estate brokerage company located in Greenville County, South Carolina.
3. Upon information and belief, Company is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principle place of business in Greenville County, South Carolina.
4. The acts and omissions set forth herein took place in Greenville County, South Carolina.
5. This Court has jurisdiction over the parties and subject matter of this litigation.

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6. Venue is appropriate in this Court and in this County.

FACTUAL ALLEGATIONS

7. Upon information and belief Broker is the President/Broker in Charge for Company.

8. Upon information and belief Sellers jointly purchased 416 Leyswood Drive, Greenville, SC 29615 (the "Residence) on September 7, 2005.

9. Upon information and belief Company and/or Broker listed the Residence for sale on or about May 19, 2008.

10. Upon information and belief Defendant Timothy was employed as an agent for Company and/or Broker at all relevant times.

11. Defendant Timothy served as the listing agent for Company and/or Broker for the sale of the Residence.

12. Sellers provided Plaintiffs with a form titled "State of South Carolina Residential Property Condition Disclosure Statement" (the "Disclosure") pursuant to SC Code Section 27-50-40 et seq.

13. The Sellers' Disclosure form indicated that there was no present infestation of wood-destroying insects or organisms or past infestation, the damage from which had not been repaired.

14. Plaintiffs relied on the information provided on the Sellers' Disclosure.

15. On or about June 12, 2008 Plaintiffs entered into a contract with Sellers for the purchase and sale of the Residence.

16. The contracted sales price for the Residence was $175,000.

17. The sale of the Residence was consummated on July 1, 2008.

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18. On or about February 3, 2018, Plaintiffs discovered significant termite damage to the Residence while renovating the master bathroom.

19. The termite damage was not visible until the subfloor of the bathroom was removed.

20. Upon removal of more drywall, paneling, and insulation, more termite damage was discovered in the stairwell of the Residence.

21. Upon information and belief Sellers previously removed a portion of drywall and framing in the ceiling of the stairwell.

22. Upon information and belief Sellers had actual knowledge of termite damage in the stairwell of the Residence and the surrounding structural framing.

23. Upon information and belief, upon discovering the termite damage, Sellers did not repair the damaged framing.

24. Upon information and belief, Sellers attached short sections of new 2x4 wood studs and drywall to the damaged framing in the stairwell, concealing the termite damage.

25. One of the new 2x4 studs placed inside the ceiling of the stairwell was stamped with the date the 2x4 stud was manufactured.

26. The date stamped on the 2x4 stud was September 7, 2005.

FOR A FIRST CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION - Defendants Company and Broker)

27. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

28. Defendant Timothy, in his capacity as an agent for Broker and Company, made numerous representations concerning existing facts. These representations were i) sets of actions; ii)

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communications; iii) failing to provide communications; iv) and failing to provide truthful communications.

29. Plaintiffs relied on the statements of the agent of Broker and Company in the course of the purchase of the Residence.

30. The agent of Broker and Company intentionally misrepresented the condition of the Residence to Plaintiffs and improperly concealed the condition of the Residence, making it impossible for Plaintiffs to discover the misrepresentation upon a normal inspection of the Residence.

31. Company and Broker, through their agent, had a duty to provide truthful information to Plaintiffs concerning the condition of the Residence.

32. The representations made to Plaintiffs were knowingly false.

33. An objective, reasonable person would have viewed the representations as sufficiently important and significant that it would have played a role in their decision making processes.

34. The agent of Company and Broker knew and/or should have known that his statements, actions, omissions, failure to communicate and representations were false. In fact, the agent of Company and Broker was aware that his actions were improper and fraudulent.

35. Company and Broker had a pecuniary interest in the false statements and representations to Plaintiffs and the statements were made by the agent of Company and Broker in furtherance of the business of Company and Broker.

36. The agent of Company and Broker intended for Plaintiffs to rely on his false representations and statements regarding the condition of the Residence.

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37. Plaintiffs were unaware of the actual condition of the Residence.

38. Plaintiffs justifiably relied on false statements and representations made by the agent of Company and Broker that there was no termite damage that had not been repaired in the Residence.

39. Plaintiffs had a right to rely on the statements, claims, and representations of the agent of Company and Broker in addition to the silence of the agent of Company and Broker.

40. As a direct, sole, and proximate result of the actions, omissions, statements, and silence of the agent of Company and Broker, Plaintiffs have suffered harms, losses, and damages.

41. In particular, Plaintiffs have suffered actual, consequential, and other damages for which the law permits recovery.

42. The actions of the agent of Company and Broker were made with sufficient culpability to support an award of both actual and punitive damages.

43. Company and Broker are liable for the actions of their agent.

44. Plaintiffs seek and are entitled to judgement in their favor.

45. Plaintiffs seek and are entitled to recover from Company and Broker the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; c) costs resulting from this action; d) punitive damages; and e) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A SECOND CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION - Defendant Agent)

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46. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

47. Defendant Timothy, in his capacity as an agent of Broker and Company, made numerous representations concerning existing facts. These representations were i) sets of actions; ii) communications; iii) failing to provide communications; iv) and failing to provide truthful communications.

48. Plaintiffs relied on the statements of Agent in the course of the purchase of the Residence.

49. Agent intentionally misrepresented the condition of the Residence to Plaintiffs and improperly concealed the condition of the Residence, making it impossible for Plaintiffs to discover the misrepresentation upon a normal inspection of the Residence.

50. Agent had a duty to provide truthful information to Plaintiffs concerning the condition of the Residence.

51. The representations made to Plaintiffs were knowingly false.

52. An objective, reasonable person would have viewed the representations as sufficiently important and significant that it would have played a role in their decision making processes.

53. Agent knew and/or should have known that his statements, actions, omissions, failure to communicate and representations were false. In fact, Agent was aware that his actions were improper and fraudulent.

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54. Agent had a pecuniary interest in making false statements and representations to Plaintiff and the statements were made by Agent in furtherance of the business of Company and Broker.

55. Agent intended for Plaintiffs to rely on his false representations and statements regarding the condition of the Residence.

56. Plaintiffs were unaware of the actual condition of the Residence.

57. Plaintiffs justifiably relied on false statements and representations made by Agent that there was no termite damage that had not been repaired in the Residence.

58. Plaintiffs had a right to rely on the statements, claims, and representations of Agent in addition to the silence of Agent.

59. As a direct, sole, and proximate result of the actions, omissions, statements, and silence of Agent, Plaintiffs have suffered harms, losses, and damages.

60. In particular, Plaintiffs have suffered actual, consequential, and other damages for which the law permits recovery.

61. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

62. Plaintiffs seek and are entitled to judgement in their favor.

63. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; c) costs resulting from this action; d) punitive damages; and e) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

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FOR A THIRD CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION - Defendants Timothy and Michael)

64. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

65. Defendants Timothy and Michael made numerous representations concerning existing facts. These representations were i) sets of actions; ii) communications; iii) failing to provide communications; iv) and failing to provide truthful communications.

66. Plaintiffs relied on the statements of Defendants Timothy and Michael in the course of the purchase of the Residence.

67. Defendants Timothy and Michael intentionally misrepresented the condition of the Residence to Plaintiffs and improperly concealed the condition of the Residence, making it impossible for Plaintiffs to discover the misrepresentation upon a normal inspection of the Residence.

68. Defendants Timothy and Michael had a duty to provide truthful information to Plaintiffs concerning the condition of the Residence.

69. The representations made to Plaintiffs were knowingly false.

70. An objective, reasonable person would have viewed the representations as sufficiently important and significant that it would have played a role in their decision making processes.

71. Defendants Timothy and Michael knew and/or should have known that their statements, actions, omissions, failure to communicate and representations were false. In fact,

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Defendants Timothy and Michael were aware that their actions were improper and fraudulent.

72. Defendants Timothy and Michael had a pecuniary interest in making false statements and representations to Plaintiff.

73. Defendants Timothy and Michael intended for Plaintiffs to rely on their false representations and statements regarding the condition of the Residence.

74. Plaintiffs were unaware of the actual condition of the Residence.

75. Plaintiffs justifiably relied on false statements and representations made by Defendants Timothy and Michael that there was no termite damage that had not been repaired in the Residence.

76. Plaintiffs had a right to rely on the statements, claims, and representations of Defendants Timothy and Michael in addition to the silence of Defendants Timothy and Michael.

77. As a direct, sole, and proximate result of the actions, omissions, statements, and silence of Defendants Timothy and Michael, Plaintiffs have suffered harms, losses, and damages.

78. In particular, Plaintiffs have suffered actual, consequential, and other damages for which the law permits recovery.

79. The actions of Defendants Timothy and Michael were made with sufficient culpability to support an award of both actual and punitive damages.

80. Plaintiffs seek and are entitled to judgement in their favor.

81. Plaintiffs seek and are entitled to recover from Defendants Timothy and Michael the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; c) costs resulting from this

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action; d) punitive damages; and e) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A FOURTH CAUSE OF ACTION
(CONVERSION - Defendants Company and Broker)

82. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

83. Broker and Company caused funds that belonged to Plaintiffs, and which were located in Plaintiffs' bank account, to be converted.

84. Broker and Company converted said funds to their own use.

85. Broker and Company obtained the funds through illegal, tortious, fraudulent, and other wrongful conduct of Agent.

86. The actions of the agent of Broker and Company were willful, wanton, and in reckless disregard of Plaintiffs' rights.

87. The actions of agent were in furtherance of the business of Broker and Company.

88. But for the illegal, tortious, fraudulent, and other wrongful conduct of the agent of Broker and Company, Plaintiffs would not have transferred funds to Broker and Company.

89. The actions of the agent of Broker and Company were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

90. In particular, Plaintiffs have lost the use of funds (and therefore seeks pre-judgment interest); and have suffered actual, consequential, and other damages for which the law permits recovery.

91. Plaintiffs seek and are entitled to judgement in their favor.

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92. The actions of the agent of Broker and Company were made with sufficient culpability to support an award of both actual and punitive damages.

93. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A FIFTH CAUSE OF ACTION
(CONVERSION - Defendant Agent)

94. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

95. Defendant Timothy, in his capacity as an agent for Broker and Company, caused funds that belonged to Plaintiffs, and which were located in Plaintiffs' bank account, to be converted.

96. Agent converted said funds to his own use and the use of Broker and Company.

97. Agent obtained the funds through illegal, tortious, fraudulent, and other wrongful conduct.

98. The Actions of Agent were willful, wanton, and in reckless disregard of Plaintiff's rights.

99. But for the illegal, tortious, fraudulent, and other wrongful conduct of Agent, Plaintiffs would not have transferred funds to Agent.

100. The actions of Agent were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

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101. In particular, Plaintiffs have lost the use of funds (and therefore seeks pre-judgment interest); and have suffered actual, consequential, and other damages for which the law permits recovery.

102. Plaintiffs seek and are entitled to judgement in their favor.

103. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

104. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A SIXTH CAUSE OF ACTION
(CONVERSION - Defendants Timothy and Michael)

105. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

106. Defendants Timothy and Michael caused funds that belonged to Plaintiffs, and which were located in Plaintiffs' bank account, to be converted.

107. Defendants Timothy and Michael converted said funds to their own use.

108. Defendants Timothy and Michael obtained the funds through illegal, tortious, fraudulent, and other wrongful conduct.

109. The Actions of Defendants Timothy and Michael were willful, wanton, and in reckless disregard of Plaintiff's rights.

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110. But for the illegal, tortious, fraudulent, and other wrongful conduct of Defendants Timothy and Michael, Plaintiffs would not have transferred funds to Defendants Timothy and Michael.

111. The actions of Defendants Timothy and Michael were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

112. In particular, Plaintiffs have lost the use of funds (and therefore seeks pre-judgment interest); and have suffered actual, consequential, and other damages for which the law permits recovery.

113. Plaintiffs seek and are entitled to judgement in their favor.

114. The actions of Defendants Timothy and Michael were made with sufficient culpability to support an award of both actual and punitive damages.

115. Plaintiffs seek and are entitled to recover from the Defendants Timothy and Michael the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A SEVENTH CAUSE OF ACTION
(VIOLATION OF CHAPTER 50 OF TITLE 27 OF THE SOUTH CAROLINA CODE - Defendants Broker and Company)

116. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

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117. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

118. SC Code Section 27-50-70 holds the listing agent liable to a purchaser if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

119. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

120. The actions of the agent of Broker and Company were willful, wanton, and in reckless disregard of Plaintiffs' rights.

121. The actions of Agent were in furtherance of the business of Broker and Company.

122. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

123. The actions of the agent of Broker and Company were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

124. Plaintiffs seek and are entitled to judgement in their favor.

125. The actions of the agent of Broker and Company were made with sufficient culpability to support an award of both actual and punitive damages.

126. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting

from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A EIGHTH CAUSE OF ACTION
(VIOLATION OF CHAPTER 50 OF TITLE 27 OF THE SOUTH CAROLINA CODE - Defendant Agent)

127. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

128. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

129. SC Code Section 27-50-70 holds the listing agent liable to a purchaser if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

130. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

131. The actions of Agent were willful, wanton, and in reckless disregard of Plaintiffs' rights.

132. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

133. The actions of Agent were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

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134. Plaintiffs seek and are entitled to judgement in their favor.

135. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

136. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A NINTH CAUSE OF ACTION
(VIOLATION OF CHAPTER 50 OF TITLE 27 OF THE SOUTH CAROLINA CODE - Defendants Timothy and Michael)

137. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

138. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

139. SC Code Section 27-50-65 holds the owner liable to a purchaser if the owner knew the information on the Disclosure was false, incomplete, or misleading.

140. The actions of Defendants Timothy and Michael were willful, wanton, and in reckless disregard of Plaintiffs' rights.

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141. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

142. The actions of Defendants Timothy and Michael were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

143. Plaintiffs seek and are entitled to judgement in their favor.

144. The actions of Defendants Timothy and Michael were made with sufficient culpability to support an award of both actual and punitive damages.

145. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A TENTH CAUSE OF ACTION
(VIOLATION OF SOUTH CAROLINA CODE SECTION 40-57-137
- Defendants Broker and Company)

146. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

147. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

148. SC Code Section 40-57-137 holds the seller's agent, company, and the broker-in-charge liable to a purchaser for providing false or misleading information if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

149. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

150. The actions of the agent of Broker and Company were willful, wanton, and in reckless disregard of Plaintiffs' rights.

151. The actions of Agent were in furtherance of the business of Broker and Company.

152. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

153. The actions of the agent of Broker and Company were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

154. Plaintiffs seek and are entitled to judgement in their favor.

155. The actions of the agent of Broker and Company were made with sufficient culpability to support an award of both actual and punitive damages.

156. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and

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damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR AN ELEVENTH CAUSE OF ACTION
(VIOLATION OF SOUTH CAROLINA CODE SECTION 40-57-137 - Defendant Agent)

157. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

158. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

159. SC Code Section 40-57-137 holds the seller's agent, company, and the broker-in-charge liable to a purchaser for providing false or misleading information if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

160. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

161. The actions of the Agent were willful, wanton, and in reckless disregard of Plaintiffs' rights.

162. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

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163. The actions of Agent were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

164. Plaintiffs seek and are entitled to judgement in their favor.

165. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

166. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A TWELFTH CAUSE OF ACTION
(NEGLIGENCE - Defendants Broker and Company)

167. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

168. Defendants Broker and Company were negligent at all relevant times in at least the following ways:

a. Defendants Broker and Company owed a duty to Plaintiffs to properly oversee their agent and ensure that he was properly carrying out his duties as a real estate agent; and

b. Defendants Broker and Company violated their duties in part by failing to oversee their agent.

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169. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A THIRTEENTH CAUSE OF ACTION
(NEGLIGENCE - Defendant Agent)

170. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

171. Defendant Agent was negligent at all relevant times in at least the following ways:

a. Defendant Agent owed a duty to Plaintiffs to be sure that the true condition of the Residence was properly disclosed to Plaintiffs;

b. Defendant Agent violated his duties in part by failing to disclose the true condition of the Residence even though it was known and/or should have been known to him; and

c. Defendant Agent further violated his duties by allowing a false Disclosure to be presented to Plaintiffs.

172. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

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FOR A FOURTEENTH CAUSE OF ACTION
(NEGLIGENCE - Defendants Defendants Timothy and Michael)

173. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

174. Defendants Timothy and Michael were negligent at all relevant times in at least the following ways:

a. Defendants Timothy and Michael owed a duty to Plaintiffs to be sure that the true condition of the Residence was properly disclosed to Plaintiffs;

b. Defendants Timothy and Michael violated their duties in part by failing to disclose the true condition of the Residence even though it was known and/or should have been known to them; and

c. Defendants Timothy and Michael further violated their duties by allowing a false Disclosure to be presented to Plaintiffs.

175. Plaintiffs seek and are entitled to recover from Defendants Timothy and Michael the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

WHEREFORE, Plaintiffs pray that the Court enter judgment in favor of the Plaintiffs; and for such other and further relief as the Court may deem just and proper.

December 19, 2011
Greenville, South Carolina

S/ John M. Hine
John M. Hine (SC Bar #76216)
The Hine Law Firm, LLC
Post Office Box 17095
Greenville, South Carolina 29606
telephone: (864) 331-0875
facsimile: (864) 762-4510

ATTORNEY FOR THE PLAINTIFF

The Plaintiffs hereby request a jury trial of all issues triable by jury.

Greenville, South Carolina

S/ John M. Hine
John M. Hine

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
John M. Hine and Maria W. Hine	)	civil action number:
Plaintiffs,	)	
vs.	)	
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company	)	**SUMMONS**
	)	
Defendants.	)	
	)	

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Petition on the subscriber at his office located at 619 Halton Rd., Suite 2B, Greenville, South Carolina 29607 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for a default judgment for the relief demanded in the Complaint.

Date: 6/18/18

S/ John M. Hine
John M. Hine
The Hine Law Firm, LLC
PO Box 17095
Greenville, South Carolina 29606
619 Halton Rd., Suite 2B
Greenville, South Carolina 29607
(864) 331-0875
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Attorney for the Petitioners

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**ANSWER ON BEHALF OF DEFENDANT TIMOTHY M. MCCRORY INDIVIDUALLY**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

Defendant Timothy M. McCrory, Individually ("Timothy McCrory"), by and through his undersigned counsel, answers the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. Defendant Timothy McCrory denies each and every allegation not specifically admitted.

2. Upon information and belief, Defendant Timothy McCrory admits Paragraph 1 of the Plaintiffs' Complaint.

3. Defendant Timothy McCrory admits Paragraphs 2 and 3 of the Plaintiffs' Complaint.

4. In response to Paragraph 4 of the Plaintiffs' Complaint, Defendant Timothy McCrory admits the acts took place in Greenville County, South Carolina.

5. Defendant Timothy McCrory admits Paragraphs 5 and 6 of the Plaintiffs' Complaint.

6. Defendant Timothy McCrory admits Paragraphs 7 and 8 of the Plaintiffs' Complaint.

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7. Defendant Timothy McCrory denies Paragraph 9 of the Plaintiffs' Complaint. The residence was listed for sale on May 14, 2008.

8. Defendant Timothy McCrory admits Paragraphs 10, 11, and 12 of the Plaintiffs' Complaint.

9. In response to Paragraph 13 of the Plaintiffs' Complaint, Defendant Timothy McCrory craves reference to the Disclosure Statement and denies any allegations contrary to the plain language contained therein.

10. Defendant Timothy McCrory denies Paragraph 14 of the Plaintiffs' Complaint.

11. Defendant Timothy McCrory denies Paragraph 15 of the Plaintiffs' Complaint. Plaintiffs signed the Contract on May 27, 2008.

12. Defendant Timothy McCrory admits Paragraph 16 and 17 of the Plaintiffs' Complaint.

13. Defendant Timothy McCrory lacks sufficient information to form a belief as to the allegations contained in Paragraphs 18, 19, and 20 of the Plaintiffs' Complaint and therefore deny same and demand strict proof thereof.

14. Defendant Timothy McCrory denies Paragraphs 21, 22, 23 and 24 of the Plaintiffs' Complaint.

15. Defendant Timothy McCrory lacks sufficient information to form a belief as to the allegations contained in Paragraphs 25 and 26 of the Plaintiffs' Complaint and therefore deny same and demand strict proof thereof.

16. Paragraphs 27 through 63 do not purport to state claims against Defendant Timothy McCrory and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

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17. In response to Paragraph 64 of the Plaintiffs' Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 16 above as if set forth herein verbatim.

18. Defendant Timothy McCrory denies Paragraphs 65, 66, and 67 of the Plaintiffs' Complaint.

19. Defendant Timothy McCrory admits Paragraph 68 of the Plaintiffs' Complaint.

20. Defendant Timothy McCrory denies Paragraphs 69, 70, 71, 72, 73, 74, and 75 of the Plaintiffs' Complaint.

21. Defendant Timothy McCrory admits so much of Paragraph 76 of the Plaintiffs' Complaint as alleges Plaintiffs had a right to rely on the statement, claims and representations of Defendant Timothy McCrory. The remaining allegations of Paragraph 76 are denied.

22. Defendant Timothy McCrory denies Paragraphs 77, 78 and 79 of the Plaintiffs' Complaint.

23. Paragraph 80 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 80 is denied.

24. Paragraph 81 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 81 is denied.

25. Paragraphs 82 through 104 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

26. Defendant Timothy McCrory denies Paragraphs 106, 107, 108, 109, 110. 111, 112, and 113 of the Plaintiffs' Complaint.

27. Paragraph 114 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 114 is denied.

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28. Paragraph 115 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 115 is denied.

29. Paragraphs 116 through 136 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

30. In response to Paragraph 137 of the Plaintiffs' Complaint, Defendants Broker and Company re-allege paragraphs 1 through 41 above as if set forth herein verbatim.

31. Defendants Broker and Company deny Paragraph 117 of the Plaintiffs' Complaint.

32. In response to Paragraph 137 of the Plaintiffs' Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 31 above as if set forth herein verbatim.

33. Defendant Timothy McCrory denies Paragraph 138 of the Plaintiffs' Complaint.

34. In response to Paragraph 139 of the Plaintiffs' Complaint Defendant Timothy McCrory craves reference to SC Code Section 27-50-65 and denies any allegations in Paragraph 139 contrary to the plain language contained in the statute.

35. Defendant Timothy McCrory denies Paragraphs 140, 141, 142, and 143 of the Plaintiffs' Complaint.

36. Paragraph 144 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 144 is denied.

37. Paragraph 145 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 145 is denied.

38. Paragraphs 146 through 172 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those

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paragraphs do purport to state claims against Defendant Timothy McCrory individually, they are denied.

39. In response to Paragraph 173 of the Plaintiffs' Complaint, Defendant Timothy McCrory individually re-alleges paragraphs 1 through 38 above as if set forth herein verbatim.

40. Defendant Timothy McCrory individually denies Paragraph 174 of the Plaintiffs' Complaint.

41. Paragraph 175 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 175 is denied.

FOR A SECOND DEFENSE

42. The allegations in Plaintiffs' Complaint fail to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Defendant Timothy McCrory individually so as to bar the Plaintiffs from recovery pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

43. At all times relevant to the allegations in the Complaint, the Defendant Timothy McCrory individually has in no way acted in violation or contravention of any applicable state, local, and/or federal laws or regulations, nor did it perform any acts or fail to perform any acts in bad faith, in any malicious manner, or with corrupt motives.

FOR A FOURTH DEFENSE

44. The conduct of Defendant Timothy McCrory individually is not the proximate cause of Plaintiffs' damages and injuries, if any, which Defendant Timothy McCrory individually specifically denies.

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FOR A FIFTH DEFENSE

45. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, events, or circumstances beyond the control of Defendant Timothy McCrory individually, such that the superseding and/or intervening acts, omissions, occurrences, events, or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SIXTH DEFENSE

46. That any injuries or damages allegedly suffered by Plaintiffs were due to or caused by superseding and/or intervening acts, omissions, occurrences, conduct, or representations made by a third-person, third-parties, and individuals and/or entities other than Defendant Timothy McCrory individually, without his knowledge, consent, or authorization; and these superseding and/or intervening acts, omissions, occurrences, conduct, or representations by a third-party or third-parties or other individuals and/or entities was the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SEVENTH DEFENSE

47. That any injury or damage allegedly suffered by Plaintiffs as a result of the matters alleged in the Complaint could not be avoided and/or were the result of circumstances, events, conditions, conduct, occurrences, ambiguities in records, ambiguities in documents, or information for which Defendant Timothy McCrory individually is not legally responsible as a matter of law; and, thus, Defendant Timothy McCrory individually herewith pleads and asserts this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

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FOR AN EIGHTH DEFENSE

48. That the Plaintiffs' alleged damages, which are expressly denied, were caused, in whole or part, by the Plaintiffs' sole negligence, gross negligence, recklessness, willfulness and/or wanton conduct, acts, or omissions, including, but not limited to, the Plaintiffs' failure to undertake appropriate action(s) or conduct or failure to conduct adequate, reasonable, and prudent due diligence investigations into the real estate transaction and related matters, circumstances, and occurrences of which the Plaintiffs now complain through their allegations in the Complaint; all of which serves as, and are plead as, an affirmative defense and bar to the within action.

FOR A NINTH DEFENSE

49. That the Plaintiffs' claims against Defendant Timothy McCrory individually are barred, in whole or part, under the doctrines or principles of assumption of risk and/or comparative or contributory negligence, all of which doctrines or principles of law are herewith plead as, and serve as, affirmative defenses and bars to the within action.

FOR A TENTH DEFENSE

50. Defendant Timothy McCrory individually pleads the statute of limitations as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

51. The Plaintiffs' claim for punitive damages is in violation of the United States Constitution, Fourteenth Amendment, (Due Process Clause) and the South Carolina Constitution in that there is no objective standard to gauge or limit the amount of punitive damages which can be awarded with sufficient instruction provided in determining the amount of punitive damage which should be awarded.

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FOR A TWELFTH DEFENSE

52. The residential Contract of Sale has the following clauses that are applicable to the allegations of the Complaint: 15. Disclaimer; 16. (C) Inspection; 16. (E) Wood Infestation/Moisture Report; 16. (H) Reinspection/Maintenance; and 20. Disclaimer by Brokers and Agent, all of which serve as defenses to the claims that are asserted against the Defendant Timothy McCrory individually.

WHEREFORE having fully answered the Plaintiffs' Complaint herein, Defendant Timothy M. McCrory individually demands that this action be dismissed with prejudice as to him in all capacities alleged with prejudice; that he be awarded his costs and attorneys' fees under applicable state and federal statutory provisions and case law; and that the Court award such other and further relief as deemed just and proper.

Respectfully submitted,

s/ David A. Anderson
David A. Anderson, S.C. Bar No. 11550
James B. Robey, III S.C. Bar No. 102452
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ATTORNEYS FOR DEFENDANTS TIMOTHY M. MCCRORY INDIVIDUALLY

July 16, 2018

Columbia, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**ANSWER ON BEHALF OF DEFENDANTS TIMOTHY M. MCCRORY AS AGENT, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

Defendants Timothy M. McCrory as Agent ("Agent"), Seabrook L. Marchant ("Broker") and The Marchant Company ("Company") hereinafter collectively referred to as "Defendant Realtors", by and through their undersigned counsel, answer the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. Defendant Realtors deny each and every allegation not specifically admitted.

2. Upon information and belief, Defendant Realtors admit Paragraph 1 of the Plaintiffs' Complaint.

3. Defendant Realtors admit Paragraphs 2 and 3 of the Plaintiffs' Complaint.

4. In response to Paragraph 4 of the Plaintiffs' Complaint, Defendant Realtors admit the acts took place in Greenville County, South Carolina.

5. Defendant Realtors admit Paragraphs 5 and 6 of the Plaintiffs' Complaint.

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6. Defendant Realtors admit Paragraphs 7 and 8 of the Plaintiffs' Complaint.

7. Defendant Realtors deny Paragraph 9 of the Plaintiffs' Complaint. The residence was listed for sale on May 14, 2008.

8. Defendant Realtors admit Paragraphs 10, 11, and 12 of the Plaintiffs' Complaint.

9. In response to Paragraph 13 of the Plaintiffs' Complaint, Defendant Realtors crave reference to the Disclosure Statement and deny any allegations contrary to the plain language contained therein.

10. Defendant Realtors deny Paragraph 14 of the Plaintiffs' Complaint.

11. Defendant Realtors deny Paragraph 15 of the Plaintiffs' Complaint. Plaintiffs signed the Contract on May 27, 2008.

12. Defendant Realtors admit Paragraph 16 and 17 of the Plaintiffs' Complaint.

13. Defendant Realtors lack sufficient information to form a belief as to the allegations contained in Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, and 26 of the Plaintiffs' Complaint and therefore deny same and demand strict proof thereof.

14. In response to Paragraph 27 of the Plaintiffs' Complaint, Defendant Realtors re-allege paragraphs 1 through 13 above as if set forth herein verbatim.

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15. Defendant Realtors deny Paragraphs 28, 29 and 30 of the Plaintiffs' Complaint.

16. Defendant Realtors admit Paragraph 31 of the Plaintiffs' Complaint.

17. Defendant Realtors deny Paragraphs 32, 33, 34, 35, 36, 37 and 38 of the Plaintiffs' Complaint.

18. Defendant Realtors admit Paragraph 39 of the Plaintiffs' Complaint.

19. Defendant Realtors deny Paragraphs 40, 41 and 42 of the Plaintiffs' Complaint.

20. Paragraph 43 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 43 is denied.

21. Paragraphs 44 and 45 set forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraphs 44 and 45 are denied.

22. In response to Paragraph 46 of the Plaintiffs' Complaint, Defendant Realtors re-allege paragraphs 1 through 21 above as if set forth herein verbatim.

23. Defendant Agent admits so much of Paragraph 47 as alleges he made representations as an agent. The remaining allegations of Paragraph 47 are denied.

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24. Defendant Agent lacks sufficient information to form a belief as to the allegations contained in Paragraph 48 of the Plaintiffs' Complaint and therefore denies same and demands strict proof thereof.

25. Defendant Agent denies Paragraph 49 of the Plaintiffs' Complaint.

26. Defendant Agent admits Paragraph 50 of the Plaintiffs' Complaint.

27. Defendant Agent denies Paragraphs 51, 52, 53, 54, 55, 56, and 57 of the Plaintiffs' Complaint.

28. Defendant Agent admits Paragraph 58 of the Plaintiffs' Complaint.

29. Defendant Agent denies Paragraphs 59 and 60 of the Plaintiffs' Complaint.

30. Paragraph 61 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 61 is denied.

31. Paragraphs 62 and 63 set forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraphs 62 and 63 are denied.

32. Paragraphs 64 through 81 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

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33. In response to Paragraph 82 of the Plaintiffs' Complaint, Defendants Broker and Company re-allege paragraphs 1 through 32 above as if set forth herein verbatim.

34. Defendants Broker and Company deny Paragraphs 83, 84, 85, 86, 87, 88, 89, 90 and 91 of the Plaintiffs' Complaint.

35. Paragraph 92 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 92 is denied.

36. Paragraph 93 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 93 is denied.

37. In response to Paragraph 94 of the Plaintiffs' Complaint, Defendant Agent re-alleges paragraphs 1 through 36 above as if set forth herein verbatim.

38. Defendant Agent denies Paragraphs 95, 96, 97, 98, 99, 100, 101, and 102 of the Plaintiffs' Complaint.

39. Paragraph 103 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 103 is denied.

40. Paragraph 104 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 104 is denied.

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41. Paragraphs 105 through 115 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

42. In response to Paragraph 116 of the Plaintiffs' Complaint, Defendants Broker and Company re-allege paragraphs 1 through 41 above as if set forth herein verbatim.

43. Defendants Broker and Company deny Paragraph 117 of the Plaintiffs' Complaint.

44. In response to Paragraph 118 of the Plaintiffs' Complaint Defendants Broker and Company crave reference to SC Code Section 27-50-70 and deny any allegations in Paragraph 118 contrary to the plain language contained in the statute.

45. Defendants Broker and Company deny Paragraphs 119, 120, 121, 122, 123, and 124 of the Plaintiffs' Complaint.

46. Paragraph 125 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 125 is denied.

47. Paragraph 126 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 126 is denied.

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48. In response to Paragraph 127 of the Plaintiffs' Complaint, Defendant Agent re-alleges paragraphs 1 through 47 above as if set forth herein verbatim.

49. Defendant Agent denies Paragraph 128 of the Plaintiffs' Complaint.

50. In response to Paragraph 129 of the Plaintiffs' Complaint Defendant Agent craves reference to SC Code Section 27-50-70 and denies any allegations in Paragraph 129 contrary to the plain language contained in the statute.

51. Defendant Agent denies Paragraphs 130, 131, 132, 133, and 134 of the Plaintiffs' Complaint.

52. Paragraph 135 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 135 is denied.

53. Paragraph 136 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 136 is denied.

54. Paragraphs 137 through 145 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

55. In response to Paragraph 146 of the Plaintiffs' Complaint, Defendants Broker and Company re-allege paragraphs 1 through 54 above as if set forth herein verbatim.

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56. Defendants Broker and Company deny Paragraph 147 of the Plaintiffs' Complaint.

57. In response to Paragraph 148 of the Plaintiffs' Complaint Defendants Broker and Company crave reference to SC Code Section 40-57-350 and deny any allegations in Paragraph 148 contrary to the plain language contained in the statute.

58. Defendants Broker and Company deny Paragraphs 149, 150, 151, 152, 153, and 154 of the Plaintiffs' Complaint.

59. Paragraph 155 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 155 is denied.

60. Paragraph 136 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 156 is denied.

61. In response to Paragraph 157 of the Plaintiffs' Complaint, Defendant Agent re-alleges paragraphs 1 through 60 above as if set forth herein verbatim.

62. Defendant Agent denies Paragraph 158 of the Plaintiffs' Complaint.

63. In response to Paragraph 159 of the Plaintiffs' Complaint Defendant Agent craves reference to SC Code Section 40-57-350 and deny any allegations in Paragraph 159 contrary to the plain language contained in the statute.

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64. Defendant Agent denies Paragraphs 160, 161, 162, 163 and 164 of the Plaintiffs' Complaint.

65. Paragraph 165 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 165 is denied.

66. Paragraph 166 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 166 is denied.

67. In response to Paragraph 167 of the Plaintiffs' Complaint, Defendants Broker and Company re-allege paragraphs 1 through 66 above as if set forth herein verbatim.

68. Defendants Broker and Company deny Paragraph 168 of the Plaintiffs' Complaint.

69. Paragraph 169 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 169 is denied.

70. In response to Paragraph 170 of the Plaintiffs' Complaint, Defendant Agent re-alleges paragraphs 1 through 69 above as if set forth herein verbatim.

71. Defendant Agent denies Paragraph 171 of the Plaintiffs' Complaint.

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72. Paragraph 172 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 172 is denied.

73. Paragraphs 173 through 175 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

FOR A SECOND DEFENSE

74. The allegations in Plaintiffs' Complaint fail to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Defendant Realtors so as to bar the Plaintiffs from recovery pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

75. At all times relevant to the allegations in the Complaint, the Defendant Realtors have in no way acted in violation or contravention of any applicable state, local, and/or federal laws or regulations, nor did it perform any acts or fail to perform any acts in bad faith, in any malicious manner, or with corrupt motives.

FOR A FOURTH DEFENSE

76. The conduct of Defendant Realtors is not the proximate cause of Plaintiffs' damages and injuries, if any, which Defendant Realtors specifically deny.

FOR A FIFTH DEFENSE

77. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, events, or circumstances beyond

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the control of Defendant Realtors, such that the superseding and/or intervening acts, omissions, occurrences, events, or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SIXTH DEFENSE

78. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, conduct, or representations made by a third-person, third-parties, and individuals and/or entities other than Defendant Realtors, without their knowledge, consent, or authorization; and these superseding and/or intervening acts, omissions, occurrences, conduct, or representations by a third-party or third-parties or other individuals and/or entities was the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SEVENTH DEFENSE

79. That any injury or damage allegedly suffered by Plaintiff as a result of the matters alleged in the Complaint could not be avoided and/or were the result of circumstances, events, conditions, conduct, occurrences, ambiguities in records, ambiguities in documents, or information for which Defendant Realtors are not legally responsible as a matter of law; and, thus, Defendant Realtors herewith plead and assert this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

FOR AN EIGHTH DEFENSE

80. That the Plaintiffs' alleged damages, which are expressly denied, were caused, in whole or part, by the Plaintiffs' sole negligence, gross negligence, recklessness, willfulness and/or wanton conduct, acts, or omissions, including, but not limited to, the Plaintiffs' failure to undertake appropriate action(s) or conduct or failure to conduct adequate, reasonable, and

prudent due diligence investigations into the real estate transaction and related matters, circumstances, and occurrences of which the Plaintiff now complains through his allegations in the Complaint; all of which serves as, and are plead as, an affirmative defense and bar to the within action.

FOR A NINTH DEFENSE

81. That the Plaintiffs' claims against Defendant Realtors are barred, in whole or part, under the doctrines or principles of assumption of risk and/or comparative or contributory negligence, all of which doctrines or principles of law are herewith plead as, and serve as, affirmative defenses and bars to the within action.

FOR A TENTH DEFENSE

82. Defendant Realtors complied with the statutory provisions of S.C. Code Section 40-57-350 and plead this statutory provision as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

83. Defendant Realtors plead the statute of limitations as a complete defense to this action.

FOR A TWELFTH DEFENSE

84. The Plaintiffs' claim for punitive damages is in violation of the United States Constitution, Fourteenth Amendment, (Due Process Clause) and the South Carolina Constitution in that there is no objective standard to gauge or limit the amount of punitive damages which can be awarded with sufficient instruction provided in determining the amount of punitive damage which should be awarded.

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FOR A THIRTEENTH DEFENSE

85. S.C. Code Ann. Section 40-57-350 (F) and (h) provides in part: An agent, the company, and the broker in charge are not liable to a buyer for providing the buyer with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete.

FOR A FOURTEENTH DEFENSE

86. S.C. Code Ann. Section 27-50-80 provides in part: the real estate licensee, whether, acting as a listing agent or selling agent, has no duty to inspect the onsite conditions of the property and any improvements.

FOR A FIFTEENTH DEFENSE

87. The residential Contract of Sale has the following clauses that are applicable to the allegations of the Complaint: 15. Disclaimer; 16. (C) Inspection; 16. (E) Wood Infestation/Moisture Report; 16. (H) Reinspection/Maintenance; and 20. Disclaimer by Brokers and Agent, all of which serve as defenses to the claims that are asserted against the Defendant Realtors.

WHEREFORE having fully answered the Plaintiffs' Complaint herein, Defendants Timothy M. McCrory as agent, Seabrook L. Marchant, and The Marchant Company demand that this action be dismissed with prejudice as to them in all capacities alleged with prejudice; that they be awarded their costs and attorneys' fees under applicable state and federal statutory provisions and case law; and that the Court award such other and further relief as deemed just and proper.

Respectfully submitted,

s/ David A. Anderson
David A. Anderson, S.C. Bar No. 11550
James B. Robey, III S.C. Bar No. 102452
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ATTORNEYS FOR DEFENDANTS TIMOTHY M. MCCRORY AS AGENT, SEABROOK L. MARCHANT AND THE MARCHANT COMPANY

July 16, 2018

Columbia, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	***PRO SE* ANSWER ON BEHALF OF DEFENDANT MICHAEL P. McCRORY**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

19 JUL 19 AM 11:07
Paul Wickensimer GREENVILLE CO. SC

Pro Se Defendant Michael P. McCrory answers the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. I deny each and every allegation not specifically admitted.

2. Upon information and belief, I admit Paragraphs 1 through 4 of the Plaintiffs' Complaint.

3. In response to the remaining 171 paragraphs of the Plaintiffs' Complaint, I and my brother, Timothy M. McCrory who sold the property to the Plaintiffs did so with full disclosure of all known conditions affecting the property. I did not misrepresent any information and feel that this matter should be dismissed as it relates to my involvement in this action.

4. I would also like to incorporate by reference any and all applicable defenses to this Complaint as asserted by Defendants Timothy M. McCrory, individually and as agent, Seabrook L. Marchant, and the Marchant Company.

WHEREFORE having fully answered the Plaintiffs' Complaint, I demand that this action be dismissed with prejudice, that I be awarded costs and fees under applicable statutory provisions and case law; and that the Court award such other and further relief as deemed just and proper.

Respectfully submitted,



Michel P. McCrory, *Pro Se* Defendant

July 16, 2018
Columbia, SC

Defendant's Address: 21 Olney Lane
Spartanburg, SC 29307

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**AMENDED ANSWER ON BEHALF OF DEFENDANT TIMOTHY M. MCCRORY INDIVIDUALLY**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

Defendant Timothy M. McCrory, Individually ("Timothy McCrory"), by and through his undersigned counsel, answers the Plaintiffs' Complaint herein as follows:

FOR A FIRST DEFENSE

1. Defendant Timothy McCrory denies each and every allegation not specifically admitted.

2. Upon information and belief, Defendant Timothy McCrory admits Paragraph 1 of the Plaintiffs' Complaint.

3. Defendant Timothy McCrory admits Paragraphs 2 and 3 of the Plaintiffs' Complaint.

4. In response to Paragraph 4 of the Plaintiffs' Complaint, Defendant Timothy McCrory admits the acts took place in Greenville County, South Carolina.

5. Defendant Timothy McCrory admits Paragraphs 5 and 6 of the Plaintiffs' Complaint.

6. Defendant Timothy McCrory admits Paragraphs 7 and 8 of the Plaintiffs' Complaint.

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7. Defendant Timothy McCrory denies Paragraph 9 of the Plaintiffs' Complaint. The residence was listed for sale on May 14, 2008.

8. Defendant Timothy McCrory admits Paragraphs 10, 11, and 12 of the Plaintiffs' Complaint.

9. In response to Paragraph 13 of the Plaintiffs' Complaint, Defendant Timothy McCrory craves reference to the Disclosure Statement and denies any allegations contrary to the plain language contained therein.

10. Defendant Timothy McCrory denies Paragraph 14 of the Plaintiffs' Complaint.

11. Defendant Timothy McCrory denies Paragraph 15 of the Plaintiffs' Complaint. Plaintiffs signed the Contract on May 27, 2008.

12. Defendant Timothy McCrory admits Paragraph 16 and 17 of the Plaintiffs' Complaint.

13. Defendant Timothy McCrory lacks sufficient information to form a belief as to the allegations contained in Paragraphs 18, 19, and 20 of the Plaintiffs' Complaint and therefore deny same and demand strict proof thereof.

14. Defendant Timothy McCrory denies Paragraphs 21, 22, 23 and 24 of the Plaintiffs' Complaint.

15. Defendant Timothy McCrory lacks sufficient information to form a belief as to the allegations contained in Paragraphs 25 and 26 of the Plaintiffs' Complaint and therefore deny same and demand strict proof thereof.

16. Paragraphs 27 through 63 do not purport to state claims against Defendant Timothy McCrory and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

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17. In response to Paragraph 64 of the Plaintiffs' Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 16 above as if set forth herein verbatim.

18. Defendant Timothy McCrory denies Paragraphs 65, 66, and 67 of the Plaintiffs' Complaint.

19. Defendant Timothy McCrory admits Paragraph 68 of the Plaintiffs' Complaint.

20. Defendant Timothy McCrory denies Paragraphs 69, 70, 71, 72, 73, 74, and 75 of the Plaintiffs' Complaint.

21. Defendant Timothy McCrory admits so much of Paragraph 76 of the Plaintiffs' Complaint as alleges Plaintiffs had a right to rely on the statement, claims and representations of Defendant Timothy McCrory. The remaining allegations of Paragraph 76 are denied.

22. Defendant Timothy McCrory denies Paragraphs 77, 78 and 79 of the Plaintiffs' Complaint.

23. Paragraph 80 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 80 is denied.

24. Paragraph 81 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 81 is denied.

25. Paragraphs 82 through 105 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

26. Defendant Timothy McCrory denies Paragraphs 106, 107, 108, 109, 110. 111, 112, and 113 of the Plaintiffs' Complaint.

27. Paragraph 114 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 114 is denied.

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28. Paragraph 115 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 115 is denied.

29. Paragraphs 116 through 136 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

30. In response to Paragraph 137 of the Plaintiffs' Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 29 above as if set forth herein verbatim.

31. Defendant Timothy McCrory denies Paragraph 138 of the Plaintiffs' Complaint.

32. In response to Paragraph 139 of the Plaintiffs' Complaint Defendant Timothy McCrory craves reference to SC Code Section 27-50-65 and denies any allegations in Paragraph 139 contrary to the plain language contained in the statute.

33. Defendant Timothy McCrory denies Paragraphs 140, 141, 142, and 143 of the Plaintiffs' Complaint.

34. Paragraph 144 of the Plaintiffs' Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 144 is denied.

35. Paragraph 145 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 145 is denied.

36. Paragraphs 146 through 172 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory individually, they are denied.

37. In response to Paragraph 173 of the Plaintiffs' Complaint, Defendant Timothy McCrory individually re-alleges paragraphs 1 through 36 above as if set forth herein verbatim.

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38. Defendant Timothy McCrory individually denies Paragraph 174 of the Plaintiffs' Complaint.

39. Paragraph 175 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 175 is denied.

FOR A SECOND DEFENSE

40. The allegations in Plaintiffs' Complaint fail to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Defendant Timothy McCrory individually so as to bar the Plaintiffs from recovery pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

41. At all times relevant to the allegations in the Complaint, the Defendant Timothy McCrory individually has in no way acted in violation or contravention of any applicable state, local, and/or federal laws or regulations, nor did it perform any acts or fail to perform any acts in bad faith, in any malicious manner, or with corrupt motives.

FOR A FOURTH DEFENSE

42. The conduct of Defendant Timothy McCrory individually is not the proximate cause of Plaintiffs' damages and injuries, if any, which Defendant Timothy McCrory individually specifically denies.

FOR A FIFTH DEFENSE

43. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, events, or circumstances beyond the control of Defendant Timothy McCrory individually, such that the superseding and/or

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intervening acts, omissions, occurrences, events, or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SIXTH DEFENSE

44. That any injuries or damages allegedly suffered by Plaintiffs were due to or caused by superseding and/or intervening acts, omissions, occurrences, conduct, or representations made by a third-person, third-parties, and individuals and/or entities other than Defendant Timothy McCrory individually, without his knowledge, consent, or authorization; and these superseding and/or intervening acts, omissions, occurrences, conduct, or representations by a third-party or third-parties or other individuals and/or entities was the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SEVENTH DEFENSE

45. That any injury or damage allegedly suffered by Plaintiffs as a result of the matters alleged in the Complaint could not be avoided and/or were the result of circumstances, events, conditions, conduct, occurrences, ambiguities in records, ambiguities in documents, or information for which Defendant Timothy McCrory individually is not legally responsible as a matter of law; and, thus, Defendant Timothy McCrory individually herewith pleads and asserts this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

FOR AN EIGHTH DEFENSE

46. That the Plaintiffs' alleged damages, which are expressly denied, were caused, in whole or part, by the Plaintiffs' sole negligence, gross negligence, recklessness, willfulness and/or wanton conduct, acts, or omissions, including, but not limited to, the Plaintiffs' failure to undertake appropriate action(s) or conduct or failure to conduct adequate, reasonable, and

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prudent due diligence investigations into the real estate transaction and related matters, circumstances, and occurrences of which the Plaintiffs now complain through their allegations in the Complaint; all of which serves as, and are plead as, an affirmative defense and bar to the within action.

FOR A NINTH DEFENSE

47. That the Plaintiffs' claims against Defendant Timothy McCrory individually are barred, in whole or part, under the doctrines or principles of assumption of risk and/or comparative or contributory negligence, all of which doctrines or principles of law are herewith plead as, and serve as, affirmative defenses and bars to the within action.

FOR A TENTH DEFENSE

48. Defendant Timothy McCrory individually pleads the statute of limitations as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

49. The Plaintiffs' claim for punitive damages is in violation of the United States Constitution, Fourteenth Amendment, (Due Process Clause) and the South Carolina Constitution in that there is no objective standard to gauge or limit the amount of punitive damages which can be awarded with sufficient instruction provided in determining the amount of punitive damage which should be awarded.

FOR A TWELFTH DEFENSE

50. The residential Contract of Sale has the following clauses that are applicable to the allegations of the Complaint: 15. Disclaimer; 16. (C) Inspection; 16. (E) Wood Infestation/Moisture Report; 16. (H) Reinspection/Maintenance; and 20. Disclaimer by Brokers

and Agent, all of which serve as defenses to the claims that are asserted against the Defendant Timothy McCrory individually.

WHEREFORE having fully answered the Plaintiffs' Complaint herein, Defendant Timothy M. McCrory individually demands that this action be dismissed with prejudice as to him in all capacities alleged with prejudice; that he be awarded his costs and attorneys' fees under applicable state and federal statutory provisions and case law; and that the Court award such other and further relief as deemed just and proper.

Respectfully submitted,

s/ David A. Anderson
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ATTORNEYS FOR DEFENDANTS TIMOTHY M. MCCRORY INDIVIDUALLY

July 23, 2018

Columbia, SC

ELECTRONICALLY FILED - 2018 Jul 23 9:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

ELECTRONICALLY FILED - 2018 Aug 15 4:18 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
John M. Hine and Maria W. Hine Plaintiffs, vs.	)	civil action number: 2018-CP-23-03382
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company Defendants.	)	**FIRST AMENDED COMPLAINT (JURY TRIAL REQUESTED)**

The Plaintiffs, John M. Hine and Maria W. Hine, complaining of the Defendants, Timothy M. McCrory, individually and as agent (hereinafter referred to as "Timothy" and/or "Agent"), Michael P. McCrory ("Michael") (collectively referred to as "Sellers"), Seabrook L. Marchant ("Broker"), and The Marchant Company ("Company") (collectively "Defendants"), would respectfully allege and show unto this Honorable Court:

PARTIES, JURISDICTION and VENUE

1. At all relevant times, Plaintiffs have resided in Greenville County, South Carolina.
2. Upon information and belief, at all relevant times, Sellers resided in Greenville County, South Carolina and Broker and Company operated a real estate brokerage company located in Greenville County, South Carolina.
3. Upon information and belief, Company is a corporation organized and existing pursuant to the laws of the State of South Carolina with its principle place of business in Greenville County, South Carolina.
4. The acts and omissions set forth herein took place in Greenville County, South Carolina.
5. This Court has jurisdiction over the parties and subject matter of this litigation.

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6. Venue is appropriate in this Court and in this County.

FACTUAL ALLEGATIONS

7. Upon information and belief Broker is the President/Broker in Charge for Company.

8. Upon information and belief Sellers jointly purchased 416 Leyswood Drive, Greenville, SC 29615 (the "Residence) on September 7, 2005.

9. Upon information and belief Company and/or Broker listed the Residence for sale on or about May 19, 2008.

10. Upon information and belief Defendant Timothy was employed as an agent for Company and/or Broker at all relevant times.

11. Defendant Timothy served as the listing agent for Company and/or Broker for the sale of the Residence.

12. Sellers provided Plaintiffs with a form titled "State of South Carolina Residential Property Condition Disclosure Statement" (the "Disclosure") pursuant to SC Code Section 27-50-40 et seq. A true and accurate copy of the Disclosure is attached hereto as Exhibit A and incorporated herein by reference.

13. The Sellers' Disclosure form indicated that there was no present infestation of wood-destroying insects or organisms or past infestation, the damage from which had not been repaired.

14. Plaintiffs relied on the information provided on the Sellers' Disclosure.

15. On or about June 12, 2008 Plaintiffs entered into a contract with Sellers for the purchase and sale of the Residence.

16. The contracted sales price for the Residence was $175,000.

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17. The sale of the Residence was consummated on July 1, 2008.

18. On or about February 3, 2018, Plaintiffs discovered significant termite damage to the Residence while renovating the master bathroom.

19. The termite damage was not visible until the subfloor of the bathroom was removed.

20. Upon removal of more drywall, paneling, and insulation, more termite damage was discovered in the stairwell of the Residence.

21. Upon information and belief Sellers previously removed a portion of drywall and framing in the ceiling of the stairwell.

22. Upon information and belief Sellers had actual knowledge of termite damage in the stairwell of the Residence and the surrounding structural framing.

23. Upon information and belief, upon discovering the termite damage, Sellers did not repair the damaged framing.

24. Upon information and belief, Sellers attached short sections of new 2x4 wood studs and drywall to the damaged framing in the stairwell, concealing the termite damage.

25. One of the new 2x4 studs placed inside the ceiling of the stairwell was stamped with the date the 2x4 stud was manufactured.

26. The date stamped on the 2x4 stud was September 7, 2005.

FOR A FIRST CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION - Defendants Company and Broker)

27. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

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28. Defendant Timothy, in his capacity as an agent for Broker and Company, made numerous representations concerning existing facts. These representations were i) sets of actions; ii) communications; iii) failing to provide communications; iv) and failing to provide truthful communications.

29. Plaintiffs relied on the statements of the agent of Broker and Company in the course of the purchase of the Residence.

30. The agent of Broker and Company intentionally misrepresented the condition of the Residence to Plaintiffs and improperly concealed the condition of the Residence, making it impossible for Plaintiffs to discover the misrepresentation upon a normal inspection of the Residence.

31. Company and Broker, through their agent, had a duty to provide truthful information to Plaintiffs concerning the condition of the Residence.

32. The representations made to Plaintiffs were knowingly false.

33. An objective, reasonable person would have viewed the representations as sufficiently important and significant that it would have played a role in their decision making processes.

34. The agent of Company and Broker knew and/or should have known that his statements, actions, omissions, failure to communicate and representations were false. In fact, the agent of Company and Broker was aware that his actions were improper and fraudulent.

35. Company and Broker had a pecuniary interest in the false statements and representations to Plaintiffs and the statements were made by the agent of Company and Broker in furtherance of the business of Company and Broker.

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36. The agent of Company and Broker intended for Plaintiffs to rely on his false representations and statements regarding the condition of the Residence.

37. Plaintiffs were unaware of the actual condition of the Residence.

38. Plaintiffs justifiably relied on false statements and representations made by the agent of Company and Broker that there was no termite damage that had not been repaired in the Residence.

39. Plaintiffs had a right to rely on the statements, claims, and representations of the agent of Company and Broker in addition to the silence of the agent of Company and Broker.

40. As a direct, sole, and proximate result of the actions, omissions, statements, and silence of the agent of Company and Broker, Plaintiffs have suffered harms, losses, and damages.

41. In particular, Plaintiffs have suffered actual, consequential, and other damages for which the law permits recovery.

42. The actions of the agent of Company and Broker were made with sufficient culpability to support an award of both actual and punitive damages.

43. Company and Broker are liable for the actions of their agent.

44. Plaintiffs seek and are entitled to judgement in their favor.

45. Plaintiffs seek and are entitled to recover from Company and Broker the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; c) costs resulting from this action; d) punitive damages; and e) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A SECOND CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION - Defendant Agent)

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46. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

47. Defendant Timothy, in his capacity as an agent of Broker and Company, made numerous representations concerning existing facts. These representations were i) sets of actions; ii) communications; iii) failing to provide communications; iv) and failing to provide truthful communications.

48. Plaintiffs relied on the statements of Agent in the course of the purchase of the Residence.

49. Agent intentionally misrepresented the condition of the Residence to Plaintiffs and improperly concealed the condition of the Residence, making it impossible for Plaintiffs to discover the misrepresentation upon a normal inspection of the Residence.

50. Agent had a duty to provide truthful information to Plaintiffs concerning the condition of the Residence.

51. The representations made to Plaintiffs were knowingly false.

52. An objective, reasonable person would have viewed the representations as sufficiently important and significant that it would have played a role in their decision making processes.

53. Agent knew and/or should have known that his statements, actions, omissions, failure to communicate and representations were false. In fact, Agent was aware that his actions were improper and fraudulent.

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54. Agent had a pecuniary interest in making false statements and representations to Plaintiff and the statements were made by Agent in furtherance of the business of Company and Broker.

55. Agent intended for Plaintiffs to rely on his false representations and statements regarding the condition of the Residence.

56. Plaintiffs were unaware of the actual condition of the Residence.

57. Plaintiffs justifiably relied on false statements and representations made by Agent that there was no termite damage that had not been repaired in the Residence.

58. Plaintiffs had a right to rely on the statements, claims, and representations of Agent in addition to the silence of Agent.

59. As a direct, sole, and proximate result of the actions, omissions, statements, and silence of Agent, Plaintiffs have suffered harms, losses, and damages.

60. In particular, Plaintiffs have suffered actual, consequential, and other damages for which the law permits recovery.

61. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

62. Plaintiffs seek and are entitled to judgement in their favor.

63. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; c) costs resulting from this action; d) punitive damages; and e) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

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FOR A THIRD CAUSE OF ACTION
(FRAUD AND MISREPRESENTATION - Defendants Timothy and Michael)

64. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

65. Defendants Timothy and Michael made numerous representations concerning existing facts. These representations were i) sets of actions; ii) communications; iii) failing to provide communications; iv) and failing to provide truthful communications.

66. Plaintiffs relied on the statements of Defendants Timothy and Michael in the course of the purchase of the Residence.

67. Defendants Timothy and Michael intentionally misrepresented the condition of the Residence to Plaintiffs and improperly concealed the condition of the Residence, making it impossible for Plaintiffs to discover the misrepresentation upon a normal inspection of the Residence.

68. Defendants Timothy and Michael had a duty to provide truthful information to Plaintiffs concerning the condition of the Residence.

69. The representations made to Plaintiffs were knowingly false.

70. An objective, reasonable person would have viewed the representations as sufficiently important and significant that it would have played a role in their decision making processes.

71. Defendants Timothy and Michael knew and/or should have known that their statements, actions, omissions, failure to communicate and representations were false. In fact,

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Defendants Timothy and Michael were aware that their actions were improper and fraudulent.

72. Defendants Timothy and Michael had a pecuniary interest in making false statements and representations to Plaintiff.

73. Defendants Timothy and Michael intended for Plaintiffs to rely on their false representations and statements regarding the condition of the Residence.

74. Plaintiffs were unaware of the actual condition of the Residence.

75. Plaintiffs justifiably relied on false statements and representations made by Defendants Timothy and Michael that there was no termite damage that had not been repaired in the Residence.

76. Plaintiffs had a right to rely on the statements, claims, and representations of Defendants Timothy and Michael in addition to the silence of Defendants Timothy and Michael.

77. As a direct, sole, and proximate result of the actions, omissions, statements, and silence of Defendants Timothy and Michael, Plaintiffs have suffered harms, losses, and damages.

78. In particular, Plaintiffs have suffered actual, consequential, and other damages for which the law permits recovery.

79. The actions of Defendants Timothy and Michael were made with sufficient culpability to support an award of both actual and punitive damages.

80. Plaintiffs seek and are entitled to judgement in their favor.

81. Plaintiffs seek and are entitled to recover from Defendants Timothy and Michael the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; c) costs resulting from this

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action; d) punitive damages; and e) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A FOURTH CAUSE OF ACTION
(CONVERSION - Defendants Company and Broker)

82. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

83. Broker and Company caused funds that belonged to Plaintiffs, and which were located in Plaintiffs' bank account, to be converted.

84. Broker and Company converted said funds to their own use.

85. Broker and Company obtained the funds through illegal, tortious, fraudulent, and other wrongful conduct of Agent.

86. The actions of the agent of Broker and Company were willful, wanton, and in reckless disregard of Plaintiffs' rights.

87. The actions of agent were in furtherance of the business of Broker and Company.

88. But for the illegal, tortious, fraudulent, and other wrongful conduct of the agent of Broker and Company, Plaintiffs would not have transferred funds to Broker and Company.

89. The actions of the agent of Broker and Company were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

90. In particular, Plaintiffs have lost the use of funds (and therefore seeks pre-judgment interest); and have suffered actual, consequential, and other damages for which the law permits recovery.

91. Plaintiffs seek and are entitled to judgement in their favor.

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92. The actions of the agent of Broker and Company were made with sufficient culpability to support an award of both actual and punitive damages.

93. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A FIFTH CAUSE OF ACTION
(CONVERSION - Defendant Agent)

94. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

95. Defendant Timothy, in his capacity as an agent for Broker and Company, caused funds that belonged to Plaintiffs, and which were located in Plaintiffs' bank account, to be converted.

96. Agent converted said funds to his own use and the use of Broker and Company.

97. Agent obtained the funds through illegal, tortious, fraudulent, and other wrongful conduct.

98. The Actions of Agent were willful, wanton, and in reckless disregard of Plaintiff's rights.

99. But for the illegal, tortious, fraudulent, and other wrongful conduct of Agent, Plaintiffs would not have transferred funds to Agent.

100. The actions of Agent were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

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101. In particular, Plaintiffs have lost the use of funds (and therefore seeks pre-judgment interest); and have suffered actual, consequential, and other damages for which the law permits recovery.

102. Plaintiffs seek and are entitled to judgement in their favor.

103. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

104. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A SIXTH CAUSE OF ACTION
(CONVERSION - Defendants Timothy and Michael)

105. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

106. Defendants Timothy and Michael caused funds that belonged to Plaintiffs, and which were located in Plaintiffs' bank account, to be converted.

107. Defendants Timothy and Michael converted said funds to their own use.

108. Defendants Timothy and Michael obtained the funds through illegal, tortious, fraudulent, and other wrongful conduct.

109. The Actions of Defendants Timothy and Michael were willful, wanton, and in reckless disregard of Plaintiff's rights.

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110. But for the illegal, tortious, fraudulent, and other wrongful conduct of Defendants Timothy and Michael, Plaintiffs would not have transferred funds to Defendants Timothy and Michael.

111. The actions of Defendants Timothy and Michael were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

112. In particular, Plaintiffs have lost the use of funds (and therefore seeks pre-judgment interest); and have suffered actual, consequential, and other damages for which the law permits recovery.

113. Plaintiffs seek and are entitled to judgement in their favor.

114. The actions of Defendants Timothy and Michael were made with sufficient culpability to support an award of both actual and punitive damages.

115. Plaintiffs seek and are entitled to recover from the Defendants Timothy and Michael the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A SEVENTH CAUSE OF ACTION
(VIOLATION OF CHAPTER 50 OF TITLE 27 OF THE SOUTH CAROLINA CODE - Defendants Broker and Company)

116. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

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117. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

118. SC Code Section 27-50-70 holds the listing agent liable to a purchaser if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

119. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

120. The actions of the agent of Broker and Company were willful, wanton, and in reckless disregard of Plaintiffs' rights.

121. The actions of Agent were in furtherance of the business of Broker and Company.

122. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

123. The actions of the agent of Broker and Company were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

124. Plaintiffs seek and are entitled to judgement in their favor.

125. The actions of the agent of Broker and Company were made with sufficient culpability to support an award of both actual and punitive damages.

126. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting

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from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION
(VIOLATION OF CHAPTER 50 OF TITLE 27 OF THE SOUTH CAROLINA CODE - Defendant Agent)

127. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

128. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

129. SC Code Section 27-50-70 holds the listing agent liable to a purchaser if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

130. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

131. The actions of Agent were willful, wanton, and in reckless disregard of Plaintiffs' rights.

132. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

133. The actions of Agent were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

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134. Plaintiffs seek and are entitled to judgement in their favor.

135. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

136. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A NINTH CAUSE OF ACTION
(VIOLATION OF CHAPTER 50 OF TITLE 27 OF THE SOUTH CAROLINA CODE - Defendants Timothy and Michael)

137. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

138. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

139. SC Code Section 27-50-65 holds the owner liable to a purchaser if the owner knew the information on the Disclosure was false, incomplete, or misleading.

140. The actions of Defendants Timothy and Michael were willful, wanton, and in reckless disregard of Plaintiffs' rights.

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141. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

142. The actions of Defendants Timothy and Michael were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

143. Plaintiffs seek and are entitled to judgement in their favor.

144. The actions of Defendants Timothy and Michael were made with sufficient culpability to support an award of both actual and punitive damages.

145. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A TENTH CAUSE OF ACTION
(VIOLATION OF SOUTH CAROLINA CODE SECTION 40-57-137
- Defendants Broker and Company)

146. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

147. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

148. SC Code Section 40-57-137 holds the seller's agent, company, and the broker-in-charge liable to a purchaser for providing false or misleading information if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

149. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

150. The actions of the agent of Broker and Company were willful, wanton, and in reckless disregard of Plaintiffs' rights.

151. The actions of Agent were in furtherance of the business of Broker and Company.

152. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

153. The actions of the agent of Broker and Company were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

154. Plaintiffs seek and are entitled to judgement in their favor.

155. The actions of the agent of Broker and Company were made with sufficient culpability to support an award of both actual and punitive damages.

156. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and

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damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR AN ELEVENTH CAUSE OF ACTION
(VIOLATION OF SOUTH CAROLINA CODE SECTION 40-57-137 - Defendant Agent)

157. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

158. Defendants Timothy and Michael made statements on the Disclosure that they reasonably knew, or should have known, were false, incomplete, and/or misleading regarding the past infestation of wood destroying insects, the damage from which had not been repaired.

159. SC Code Section 40-57-137 holds the seller's agent, company, and the broker-in-charge liable to a purchaser for providing false or misleading information if the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading.

160. Because Defendant Timothy was also serving as the seller's agent, he had actual knowledge that the statements made on the Disclosure were false, incomplete, and/or misleading.

161. The actions of the Agent were willful, wanton, and in reckless disregard of Plaintiffs' rights.

162. Purchasers would not have purchased the Residence had the Disclosure been truthful about the presence of termite damage that had not been repaired.

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163. The actions of Agent were the direct, actual, legal, and proximate cause of the harms and losses which are set forth below.

164. Plaintiffs seek and are entitled to judgement in their favor.

165. The actions of Agent were made with sufficient culpability to support an award of both actual and punitive damages.

166. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery; and g) attorney's fees.

FOR A TWELFTH CAUSE OF ACTION
(NEGLIGENCE - Defendants Broker and Company)

167. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

168. Defendants Broker and Company were negligent at all relevant times in at least the following ways:

a. Defendants Broker and Company owed a duty to Plaintiffs to properly oversee their agent and ensure that he was properly carrying out his duties as a real estate agent; and

b. Defendants Broker and Company violated their duties in part by failing to oversee their agent.

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169. Plaintiffs seek and are entitled to recover from Broker and Company the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A THIRTEENTH CAUSE OF ACTION
(NEGLIGENCE - Defendant Agent)

170. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

171. Defendant Agent was negligent at all relevant times in at least the following ways:

a. Defendant Agent owed a duty to Plaintiffs to be sure that the true condition of the Residence was properly disclosed to Plaintiffs;

b. Defendant Agent violated his duties in part by failing to disclose the true condition of the Residence even though it was known and/or should have been known to him; and

c. Defendant Agent further violated his duties by allowing a false Disclosure to be presented to Plaintiffs.

172. Plaintiffs seek and are entitled to recover from Agent the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

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FOR A FOURTEENTH CAUSE OF ACTION
(NEGLIGENCE - Defendants Defendants Timothy and Michael)

173. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

174. Defendants Timothy and Michael were negligent at all relevant times in at least the following ways:

a. Defendants Timothy and Michael owed a duty to Plaintiffs to be sure that the true condition of the Residence was properly disclosed to Plaintiffs;

b. Defendants Timothy and Michael violated their duties in part by failing to disclose the true condition of the Residence even though it was known and/or should have been known to them; and

c. Defendants Timothy and Michael further violated their duties by allowing a false Disclosure to be presented to Plaintiffs.

175. Plaintiffs seek and are entitled to recover from Defendants Timothy and Michael the following: a) One Hundred Seventy-Five Thousand and 00/100 Dollars ($175,000.00); b) other amounts as they appear or are determined by Plaintiff; (c) pre-judgement interest; d) costs resulting from this action; e) punitive damages; and f) such other further injuries, harms, losses, and damages which are placed into evidence and for which the law permits recovery.

FOR A FIFTEENTH CAUSE OF ACTION
(NEGLIGENT HIRING, TRAINING, SUPERVISION, AND RETENTION - Defendants Broker and Company)

176. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

177. At all times relevant hereto, Defendants Broker and Company owed Plaintiffs and other members of the public a duty of reasonable care in hiring, training, supervising and retaining their employees, agents, and/or volunteers.

178. Defendants Broker and Company breached their duties in at least the following ways:

a. Failing to properly hire and train their employees, agents, and/or volunteers;

b. Promoting an environment that encouraged their employees, agents, and/or volunteers to provide false information on seller disclosure forms;

c. Promoting an environment that encouraged their employees, agents, and/or volunteers to place sales above ethics and/or compliance with South Carolina law;

d. Failing to properly supervise their employees, agents, and/or volunteers;

e. Failing to properly discipline their employees, agents, and/or volunteers for the their dishonest and fraudulent conduct;

f. Failing to ensure that their employees, agents, and/or volunteers complied with all applicable state and federal statutory and common laws; and

g. Failing to act reasonably under the circumstances

179. At all times relevant hereto, Defendant Timothy was employed by or acted as agent of Defendants Broker and Company.

180. At all times relevant hereto, Defendant Timothy acted within the scope of his employment and agency of Defendants Broker and Company.

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181. At all times relevant hereto, the officers, directors, and other senior leaders of Defendant Company knew or reasonably should have known of the acts and omissions of the Defendant Timothy yet either intentionally or negligently failed to take any measures to stop the actions of Defendant Timothy.

182. At all times relevant hereto, Defendant Timothy acted with the actual or implicit permission of Defendant Broker and Company.

183. Plaintiffs have suffered damages as a direct and proximate cause of Defendants Broker and Company's negligent hiring, training, supervision and retention of their employees, agents, and/or volunteers.

184. At all times pertinent hereto, Defendants Broker and Company acted willfully, wantonly, and in reckless disregard of Plaintiff's rights.

185. Plaintiffs are entitled to an award of actual and punitive damages caused by Defendants Broker and Company's conduct as described herein.

FOR A SIXTEENTH CAUSE OF ACTION
(UNJUST ENRICHMENT - All Defendants)

186. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

187. Plaintiffs conferred valuable benefits upon Defendants, including, but not limited to, paying the full purchase price to Defendants.

188. Defendants realized those benefits.

189. Retention of those funds by Defendants under the circumstance alleged herein above, make it unjust for Defendants to retain the funds without refunding Plaintiffs for the decreased value of the house.

190. As a direct and proximate result of Defendants' unjust enrichment, Plaintiffs are entitled to receive the difference in the price paid and the actual value of the property had the termite damage been disclosed.

FOR A SEVENTEENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES - All Defendants)

191. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

192. Defendants' act and omissions, as alleged hereinabove, constitute unfair and deceptive acts.

193. Defendants' acts and omissions, as alleged hereinabove, impact the public interest and are capable of repetition.

194. Plaintiffs have suffered damages as a direct and proximate cause of Defendants' unfair and deceptive acts.

195. At all times pertinent hereto, Defendants acted willfully, wantonly, and in reckless disregard of Plaintiffs' rights.

196. Defendant Company is vicariously liable for the unfair and deceptive acts of its employees and/or agents as described herein.

197. Plaintiffs' are entitled to an award of actual and punitive damages caused by Defendants' willful, wanton, and reckless conduct.

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FOR AN EIGHTEENTH CAUSE OF ACTION
(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING - All Defendants)

198. The allegations set forth throughout this complaint are hereby incorporated by reference to the extent they do not undermine or contradict this cause of action (such as would be the case in pleadings in the alternative).

199. Defendants are obligated by contract and common law to act in good faith and deal fairly with buyers such as Plaintiffs.

200. The purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance.

201. Defendants breached this duty in at least the following ways:

a. Falsely claiming that all known termite damage had been disclosed;

b. Failing to comply with South Carolina statutory and common law; and

c. Allowing Plaintiffs to purchase the property under the mistaken assumption that all known termite damage had been repaired.

202. Plaintiff suffered damages as a direct and proximate cause of Defendants' breach of the covenant of good faith and fair dealing.

203. Plaintiffs' are entitled to an award of actual and punitive damages caused by Defendants' willful, wanton, and reckless conduct.

WHEREFORE, Plaintiffs pray that the Court enter judgment in favor of the Plaintiffs, that Defendants be held liable for actual and punitive damages; an award of attorney's fees and

costs as allowed by law and for such other and further relief as the Court may deem just and proper.

August 15, 2018
Greenville, South Carolina

S/ John M. Hine
John M. Hine (SC Bar #76216)
The Hine Law Firm, LLC
Post Office Box 17095
Greenville, South Carolina 29606
telephone: (864) 331-0875
facsimile: (864) 762-4510

ATTORNEY FOR THE PLAINTIFF

The Plaintiffs hereby request a jury trial of all issues triable by jury.

Greenville, South Carolina

S/ John M. Hine
John M. Hine

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EXHIBIT A

(see attached)

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LLR

Property Address 1158864

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article I requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: TMM 5/14/08 / MM 5/25/08 Seller Date / Buyer Date

Rev. 1/03 MPM 5/14/08 MM 5/25/08

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure ~~40's + 60's~~ 43yrs	☐	☒	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering 5yrs.	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace X heat pump ___ baseboard ___ b. Cooling source: central X wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas X propane ___ oil ___ d. Approximate age of heating unit ?/cooling unit ? 10yrs. maybe	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure? a. water supply is: city/county X community system__private well__ b. water pipes are: copper X galvanized__PVC/CPVC__polybutelene__	☐	☒	☐
8. Septic system? a. Type system: septic tank__community system__ connected to city/county system X city/county system available ___ b. Does the system require a pump? Yes __ No __ ? Don't think so c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☒	☐
10. Present infestation, or damage **WHICH HAS NOT BEEN REPAIRED** from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No____	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum __ pool__ hot tub __ spa __ attic fan X - Disconnected exhaust fan __ ceiling fan X sump pump __ irrigation system __ cable tv wiring or satellite dish X security system __ or other systems ___	☐	☒	☐

Initials: TNM Seller 5/14/08 Date JMM Buyer 5/25/08 Date
MVH 5/25/08

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REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☐	☒	☐
a. Is the property affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws),	☐	☒	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☒	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

13) The 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock. Ask Seller for all work done.

Initials: [illegible] Seller 5/14/08 Date [illegible] Buyer 5/25/08 Date

Rev. 1/03

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"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 416 Leyswood Drive

The property is currently: owner-occupied ___ leased X in an estate ___ in foreclosure ___
vacant ___(If vacant, how long?) ___
Owner's Name(s): Tim McCrory and Mike McCrory
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: Tim M. McCrory Date: 5/14/08

Owner Signature: Mike McCrory Date: 5/14/08

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: [signature] Date: 5/25/08

Purchaser Signature: Maria W. Shine Date: 5/25/08

(This form is approved by the South Carolina Real Estate Commission.)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**ANSWER ON BEHALF OF DEFENDANTS TIMOTHY M. MCCRORY AS AGENT, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

Defendants Timothy M. McCrory as Agent ("Agent"), Seabrook L. Marchant ("Broker") and The Marchant Company ("Company") hereinafter collectively referred to as "Defendant Realtors", by and through their undersigned counsel, answer the Plaintiffs' Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. Defendant Realtors deny each and every allegation not specifically admitted.

2. Upon information and belief, Defendant Realtors admit Paragraph 1 of the Plaintiffs' Amended Complaint.

3. Defendant Realtors admit Paragraphs 2 and 3 of the Plaintiffs' Amended Complaint.

4. In response to Paragraph 4 of the Plaintiffs' Amended Complaint, Defendant Realtors admit the acts took place in Greenville County, South Carolina.

5. Defendant Realtors admit Paragraphs 5 and 6 of the Plaintiffs' Amended Complaint.

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6. Defendant Realtors admit Paragraphs 7 and 8 of the Plaintiffs' Amended Complaint.

7. Defendant Realtors deny Paragraph 9 of the Plaintiffs' Amended Complaint. The residence was listed for sale on May 14, 2008.

8. Defendant Realtors admit Paragraphs 10, 11, and 12 of the Plaintiffs' Amended Complaint.

9. In response to Paragraph 13 of the Plaintiffs' Amended Complaint, Defendant Realtors crave reference to the Disclosure Statement and deny any allegations contrary to the plain language contained therein.

10. Defendant Realtors deny Paragraph 14 of the Plaintiffs' Amended Complaint.

11. Defendant Realtors deny Paragraph 15 of the Plaintiffs' Amended Complaint. Plaintiffs signed the Contract on May 27, 2008.

12. Defendant Realtors admit Paragraph 16 and 17 of the Plaintiffs' Amended Complaint.

13. Defendant Realtors lack sufficient information to form a belief as to the allegations contained in Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, and 26 of the Plaintiffs' Amended Complaint and therefore deny same and demand strict proof thereof.

14. In response to Paragraph 27 of the Plaintiffs' Amended Complaint, Defendant Realtors re-allege paragraphs 1 through 13 above as if set forth herein verbatim.

15. Defendant Realtors deny Paragraphs 28, 29 and 30 of the Plaintiffs' Amended Complaint.

16. Defendant Realtors admit Paragraph 31 of the Plaintiffs' Amended Complaint.

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17. Defendant Realtors deny Paragraphs 32, 33, 34, 35, 36, 37 and 38 of the Plaintiffs' Amended Complaint.

18. Defendant Realtors admit Paragraph 39 of the Plaintiffs' Amended Complaint.

19. Defendant Realtors deny Paragraphs 40, 41 and 42 of the Plaintiffs' Amended Complaint.

20. Paragraph 43 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 43 is denied.

21. Paragraphs 44 and 45 set forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraphs 44 and 45 are denied.

22. In response to Paragraph 46 of the Plaintiffs' Amended Complaint, Defendant Agent re-alleges paragraphs 1 through 21 above as if set forth herein verbatim.

23. Defendant Agent admits so much of Paragraph 47 as alleges he made representations as an agent. The remaining allegations of Paragraph 47 are denied.

24. Defendant Agent lacks sufficient information to form a belief as to the allegations contained in Paragraph 48 of the Plaintiffs' Amended Complaint and therefore denies same and demands strict proof thereof.

25. Defendant Agent denies Paragraph 49 of the Plaintiffs' Amended Complaint.

26. Defendant Agent admits Paragraph 50 of the Plaintiffs' Amended Complaint.

27. Defendant Agent denies Paragraphs 51, 52, 53, 54, 55, 56, and 57 of the Plaintiffs' Amended Complaint.

28. Defendant Agent admits Paragraph 58 of the Plaintiffs' Amended Complaint.

29. Defendant Agent denies Paragraphs 59 and 60 of the Plaintiffs' Amended Complaint.

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30. Paragraph 61 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 61 is denied.

31. Paragraphs 62 and 63 set forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraphs 62 and 63 are denied.

32. Paragraphs 64 through 81 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

33. In response to Paragraph 82 of the Plaintiffs' Amended Complaint, Defendants Broker and Company re-allege paragraphs 1 through 32 above as if set forth herein verbatim.

34. Defendants Broker and Company deny Paragraphs 83, 84, 85, 86, 87, 88, 89, 90 and 91 of the Plaintiffs' Amended Complaint.

35. Paragraph 92 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 92 is denied.

36. Paragraph 93 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 93 is denied.

37. In response to Paragraph 94 of the Plaintiffs' Amended Complaint, Defendant Agent re-alleges paragraphs 1 through 36 above as if set forth herein verbatim.

38. Defendant Agent denies Paragraphs 95, 96, 97, 98, 99, 100, 101, and 102 of the Plaintiffs' Amended Complaint.

39. Paragraph 103 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 103 is denied.

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40. Paragraph 104 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 104 is denied.

41. Paragraphs 105 through 115 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

42. In response to Paragraph 116 of the Plaintiffs' Amended Complaint, Defendants Broker and Company re-allege paragraphs 1 through 41 above as if set forth herein verbatim.

43. Defendants Broker and Company deny Paragraph 117 of the Plaintiffs' Amended Complaint.

44. In response to Paragraph 118 of the Plaintiffs' Amended Complaint Defendants Broker and Company crave reference to SC Code Section 27-50-70 and deny any allegations in Paragraph 118 contrary to the plain language contained in the statute.

45. Defendants Broker and Company deny Paragraphs 119, 120, 121, 122, 123, and 124 of the Plaintiffs' Amended Complaint.

46. Paragraph 125 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 125 is denied.

47. Paragraph 126 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 126 is denied.

48. In response to Paragraph 127 of the Plaintiffs' Amended Complaint, Defendant Agent re-alleges paragraphs 1 through 47 above as if set forth herein verbatim.

49. Defendant Agent denies Paragraph 128 of the Plaintiffs' Amended Complaint.

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50. In response to Paragraph 129 of the Plaintiffs' Amended Complaint Defendant Agent craves reference to SC Code Section 27-50-70 and denies any allegations in Paragraph 129 contrary to the plain language contained in the statute.

51. Defendant Agent denies Paragraphs 130, 131, 132, 133, and 134 of the Plaintiffs' Amended Complaint.

52. Paragraph 135 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 135 is denied.

53. Paragraph 136 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 136 is denied.

54. Paragraphs 137 through 145 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

55. In response to Paragraph 146 of the Plaintiffs' Amended Complaint, Defendants Broker and Company re-allege paragraphs 1 through 54 above as if set forth herein verbatim.

56. Defendants Broker and Company deny Paragraph 147 of the Plaintiffs' Amended Complaint.

57. In response to Paragraph 148 of the Plaintiffs' Amended Complaint Defendants Broker and Company crave reference to SC Code Section 40-57-350 and deny any allegations in Paragraph 148 contrary to the plain language contained in the statute.

58. Defendants Broker and Company deny Paragraphs 149, 150, 151, 152, 153, and 154 of the Plaintiffs' Amended Complaint.

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59. Paragraph 155 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 155 is denied.

60. Paragraph 136 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 156 is denied.

61. In response to Paragraph 157 of the Plaintiffs' Amended Complaint, Defendant Agent re-alleges paragraphs 1 through 60 above as if set forth herein verbatim.

62. Defendant Agent denies Paragraph 158 of the Plaintiffs' Amended Complaint.

63. In response to Paragraph 159 of the Plaintiffs' Amended Complaint Defendant Agent craves reference to SC Code Section 40-57-350 and deny any allegations in Paragraph 159 contrary to the plain language contained in the statute.

64. Defendant Agent denies Paragraphs 160, 161, 162, 163 and 164 of the Plaintiffs' Amended Complaint.

65. Paragraph 165 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 165 is denied.

66. Paragraph 166 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 166 is denied.

67. In response to Paragraph 167 of the Plaintiffs' Amended Complaint, Defendants Broker and Company re-allege paragraphs 1 through 66 above as if set forth herein verbatim.

68. Defendants Broker and Company deny Paragraph 168 of the Plaintiffs' Amended Complaint.

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69. Paragraph 169 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 169 is denied.

70. In response to Paragraph 170 of the Plaintiffs' Amended Complaint, Defendant Agent re-alleges paragraphs 1 through 69 above as if set forth herein verbatim.

71. Defendant Agent denies Paragraph 171 of the Plaintiffs' Amended Complaint.

72. Paragraph 172 sets forth Plaintiffs' claims for damages which require 5no response. To the extent a response is deemed required, Paragraph 172 is denied.

73. Paragraphs 173 through 175 do not purport to state claims against Defendant Realtors and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Realtors, they are denied.

74. In response to Paragraph 176 of the Plaintiffs' Amended Complaint, Defendants Broker and Company re-allege paragraphs 1 through 73 above as if set forth herein verbatim.

75. Defendants Broker and Company deny Paragraphs 177 through 185 of the Plaintiffs' Amended Complaint.

76. In response to Paragraph 186 of the Plaintiffs' Amended Complaint, Defendant Realtors re-allege paragraphs 1 through 75 above as if set forth herein verbatim.

77. Defendant Realtors deny Paragraphs 187 through 190 of the Plaintiffs' Amended Complaint.

78. In response to Paragraph 191 of the Plaintiffs' Amended Complaint, Defendant Realtors re-allege paragraphs 1 through 77 above as if set forth herein verbatim.

79. Defendant Realtors deny Paragraphs 192 through 197 of the Plaintiffs' Amended Complaint.

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80. In response to Paragraph 198 of the Plaintiffs' Amended Complaint, Defendant Realtors re-allege paragraphs 1 through 79 above as if set forth herein verbatim.

81. Defendant Realtors admit Paragraphs 199 and 200 of the Plaintiffs' Amended Complaint.

82. Defendant Realtors deny Paragraphs 201 through 203 of the Plaintiffs' Amended Complaint.

83. Defendant Realtors deny the "Wherefore" Paragraph of the Plaintiffs' Amended Complaint.

FOR A SECOND DEFENSE

84. The allegations in Plaintiffs' Amended Complaint fail to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Defendant Realtors so as to bar the Plaintiffs from recovery pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

85. At all times relevant to the allegations in the Complaint, the Defendant Realtors have in no way acted in violation or contravention of any applicable state, local, and/or federal laws or regulations, nor did it perform any acts or fail to perform any acts in bad faith, in any malicious manner, or with corrupt motives.

FOR A FOURTH DEFENSE

86. The conduct of Defendant Realtors is not the proximate cause of Plaintiffs' damages and injuries, if any, which Defendant Realtors specifically deny.

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FOR A FIFTH DEFENSE

87. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, events, or circumstances beyond the control of Defendant Realtors, such that the superseding and/or intervening acts, omissions, occurrences, events, or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SIXTH DEFENSE

88. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, conduct, or representations made by a third-person, third-parties, and individuals and/or entities other than Defendant Realtors, without their knowledge, consent, or authorization; and these superseding and/or intervening acts, omissions, occurrences, conduct, or representations by a third-party or third-parties or other individuals and/or entities was the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SEVENTH DEFENSE

89. That any injury or damage allegedly suffered by Plaintiff as a result of the matters alleged in the Complaint could not be avoided and/or were the result of circumstances, events, conditions, conduct, occurrences, ambiguities in records, ambiguities in documents, or information for which Defendant Realtors are not legally responsible as a matter of law; and, thus, Defendant Realtors herewith plead and assert this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

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FOR AN EIGHTH DEFENSE

90. That the Plaintiffs' alleged damages, which are expressly denied, were caused, in whole or part, by the Plaintiffs' sole negligence, gross negligence, recklessness, willfulness and/or wanton conduct, acts, or omissions, including, but not limited to, the Plaintiffs' failure to undertake appropriate action(s) or conduct or failure to conduct adequate, reasonable, and prudent due diligence investigations into the real estate transaction and related matters, circumstances, and occurrences of which the Plaintiff now complains through his allegations in the Complaint; all of which serves as, and are plead as, an affirmative defense and bar to the within action.

FOR A NINTH DEFENSE

91. That the Plaintiffs' claims against Defendant Realtors are barred, in whole or part, under the doctrines or principles of assumption of risk and/or comparative or contributory negligence, all of which doctrines or principles of law are herewith plead as, and serve as, affirmative defenses and bars to the within action.

FOR A TENTH DEFENSE

92. Defendant Realtors complied with the statutory provisions of S.C. Code Section 40-57-350 and plead this statutory provision as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

93. Defendant Realtors plead the statute of limitations as a complete defense to this action.

FOR A TWELFTH DEFENSE

94. The Plaintiffs' claim for punitive damages is in violation of the United States Constitution, Fourteenth Amendment, (Due Process Clause) and the South Carolina Constitution

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in that there is no objective standard to gauge or limit the amount of punitive damages which can be awarded with sufficient instruction provided in determining the amount of punitive damage which should be awarded.

FOR A THIRTEENTH DEFENSE

95. S.C. Code Ann. Section 40-57-350 (F) and (h) provides in part: An agent, the company, and the broker in charge are not liable to a buyer for providing the buyer with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete.

FOR A FOURTEENTH DEFENSE

96. S.C. Code Ann. Section 27-50-80 provides in part: the real estate licensee, whether, acting as a listing agent or selling agent, has no duty to inspect the onsite conditions of the property and any improvements.

FOR A FIFTEENTH DEFENSE

97. The residential Contract of Sale has the following clauses that are applicable to the allegations of the Complaint: 15. Disclaimer; 16. (C) Inspection; 16. (E) Wood Infestation/Moisture Report; 16. (H) Reinspection/Maintenance; and 20. Disclaimer by Brokers and Agent, all of which serve as defenses to the claims that are asserted against the Defendant Realtors.

FOR A SIXTEENTH DEFENSE

98. Plaintiffs' claims under the unfair trade practices act should be dismissed as the alleged actions of Defendant Realtors did not have an impact on the public interest as the alleged actions only affected parties to a private transaction; and the alleged actions are not capable of

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repetition. Furthermore, Defendant Realtors state that they operated within a regulated industry and, therefore, are exempt from liability under the unfair trade practices act pursuant to S.C. Code Ann. § 39-5-40.

WHEREFORE having fully answered the Plaintiffs' Amended Complaint herein, Defendants Timothy M. McCrory as agent, Seabrook L. Marchant, and The Marchant Company demand that this action be dismissed with prejudice as to them in all capacities alleged with prejudice; that they be awarded their costs and attorneys' fees under applicable state and federal statutory provisions and case law; and that the Court award such other and further relief as deemed just and proper.

Respectfully submitted,

s/ David A. Anderson
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James B. Robey, III S.C. Bar No. 102452
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ATTORNEYS FOR DEFENDANTS TIMOTHY M. MCCRORY AS AGENT, SEABROOK L. MARCHANT AND THE MARCHANT COMPANY

August 20, 2018

Columbia, SC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**ANSWER ON BEHALF OF DEFENDANT TIMOTHY M. MCCRORY INDIVIDUALLY**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

Defendant Timothy M. McCrory, Individually ("Timothy McCrory"), by and through his undersigned counsel, answers the Plaintiffs' Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. Defendant Timothy McCrory denies each and every allegation not specifically admitted.

2. Upon information and belief, Defendant Timothy McCrory admits Paragraph 1 of the Plaintiffs' Amended Complaint.

3. Defendant Timothy McCrory admits Paragraphs 2 and 3 of the Plaintiffs' Amended Complaint.

4. In response to Paragraph 4 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory admits the acts took place in Greenville County, South Carolina.

5. Defendant Timothy McCrory admits Paragraphs 5 and 6 of the Plaintiffs' Amended Complaint.

6. Defendant Timothy McCrory admits Paragraphs 7 and 8 of the Plaintiffs' Amended Complaint.

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7. Defendant Timothy McCrory denies Paragraph 9 of the Plaintiffs' Amended Complaint. The residence was listed for sale on May 14, 2008.

8. Defendant Timothy McCrory admits Paragraphs 10, 11, and 12 of the Plaintiffs' Amended Complaint.

9. In response to Paragraph 13 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory craves reference to the Disclosure Statement and denies any allegations contrary to the plain language contained therein.

10. Defendant Timothy McCrory denies Paragraph 14 of the Plaintiffs' Amended Complaint.

11. Defendant Timothy McCrory denies Paragraph 15 of the Plaintiffs' Amended Complaint. Plaintiffs signed the Contract on May 27, 2008.

12. Defendant Timothy McCrory admits Paragraph 16 and 17 of the Plaintiffs' Amended Complaint.

13. Defendant Timothy McCrory lacks sufficient information to form a belief as to the allegations contained in Paragraphs 18, 19, and 20 of the Plaintiffs' Amended Complaint and therefore deny same and demand strict proof thereof.

14. Defendant Timothy McCrory denies Paragraphs 21, 22, 23 and 24 of the Plaintiffs' Amended Complaint.

15. Defendant Timothy McCrory lacks sufficient information to form a belief as to the allegations contained in Paragraphs 25 and 26 of the Plaintiffs' Amended Complaint and therefore deny same and demand strict proof thereof.

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16. Paragraphs 27 through 63 do not purport to state claims against Defendant Timothy McCrory and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

17. In response to Paragraph 64 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 16 above as if set forth herein verbatim.

18. Defendant Timothy McCrory denies Paragraphs 65, 66, and 67 of the Plaintiffs' Amended Complaint.

19. Defendant Timothy McCrory admits Paragraph 68 of the Plaintiffs' Amended Complaint.

20. Defendant Timothy McCrory denies Paragraphs 69, 70, 71, 72, 73, 74, and 75 of the Plaintiffs' Amended Complaint.

21. Defendant Timothy McCrory admits so much of Paragraph 76 of the Plaintiffs' Amended Complaint as alleges Plaintiffs had a right to rely on the statement, claims and representations of Defendant Timothy McCrory. The remaining allegations of Paragraph 76 are denied.

22. Defendant Timothy McCrory denies Paragraphs 77, 78 and 79 of the Plaintiffs' Amended Complaint.

23. Paragraph 80 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 80 is denied.

24. Paragraph 81 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 81 is denied.

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25. Paragraphs 82 through 104 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

26. In response to Paragraph 105 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 25 above as if set forth herein verbatim.

27. Defendant Timothy McCrory denies Paragraphs 106, 107, 108, 109, 110, 111, 112, and 113 of the Plaintiffs' Amended Complaint.

28. Paragraph 114 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 114 is denied.

29. Paragraph 115 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 115 is denied.

30. Paragraphs 116 through 136 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory, they are denied.

31. In response to Paragraph 137 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory re-alleges paragraphs 1 through 30 above as if set forth herein verbatim.

32. Defendant Timothy McCrory denies Paragraph 138 of the Plaintiffs' Amended Complaint.

33. In response to Paragraph 139 of the Plaintiffs' Amended Complaint Defendant Timothy McCrory craves reference to SC Code Section 27-50-65 and denies any allegations in Paragraph 139 contrary to the plain language contained in the statute.

34. Defendant Timothy McCrory denies Paragraphs 140, 141, 142, and 143 of the Plaintiffs' Amended Complaint.

35. Paragraph 144 of the Plaintiffs' Amended Complaint sets forth legal conclusions which require no response. To the extent a response is deemed required, Paragraph 144 is denied.

36. Paragraph 145 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 145 is denied.

37. Paragraphs 146 through 172 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory individually, they are denied.

38. In response to Paragraph 173 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory individually re-alleges paragraphs 1 through 37 above as if set forth herein verbatim.

39. Defendant Timothy McCrory individually denies Paragraph 174 of the Plaintiffs' Amended Complaint.

40. Paragraph 175 sets forth Plaintiffs' claims for damages which require no response. To the extent a response is deemed required, Paragraph 175 is denied.

41. Paragraphs 176 through 185 do not purport to state claims against Defendant Timothy McCrory individually and therefore require no response. To the extent those paragraphs do purport to state claims against Defendant Timothy McCrory individually, they are denied.

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42. In response to Paragraph 186 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory individually re-alleges paragraphs 1 through 41 above as if set forth herein verbatim.

43. Defendant Timothy McCrory individually denies Paragraphs 187 through 190 of the Plaintiffs' Amended Complaint.

44. In response to Paragraph 191 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory individually re-alleges paragraphs 1 through 43 above as if set forth herein verbatim.

45. Defendant Timothy McCrory individually denies Paragraphs 192 through 197 of the Plaintiffs' Amended Complaint.

46. In response to Paragraph 198 of the Plaintiffs' Amended Complaint, Defendant Timothy McCrory individually re-alleges paragraphs 1 through 45 above as if set forth herein verbatim.

47. Defendant Timothy McCrory individually admits Paragraphs 199 and 200 of the Plaintiffs' Amended Complaint.

48. Defendant Timothy McCrory individually denies Paragraphs 201 through 203 of the Plaintiffs' Amended Complaint.

49. Defendant Timothy McCrory individually denies the "Wherefore" Paragraph of the Plaintiffs' Amended Complaint.

FOR A SECOND DEFENSE

50. The allegations in Plaintiffs' Amended Complaint fail to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against Defendant

Timothy McCrory individually so as to bar the Plaintiffs from recovery pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

51. At all times relevant to the allegations in the Complaint, the Defendant Timothy McCrory individually has in no way acted in violation or contravention of any applicable state, local, and/or federal laws or regulations, nor did it perform any acts or fail to perform any acts in bad faith, in any malicious manner, or with corrupt motives.

FOR A FOURTH DEFENSE

52. The conduct of Defendant Timothy McCrory individually is not the proximate cause of Plaintiffs' damages and injuries, if any, which Defendant Timothy McCrory individually specifically denies.

FOR A FIFTH DEFENSE

53. That any injuries or damages allegedly suffered by Plaintiff were due to or caused by superseding and/or intervening acts, omissions, occurrences, events, or circumstances beyond the control of Defendant Timothy McCrory individually, such that the superseding and/or intervening acts, omissions, occurrences, events, or circumstances are the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SIXTH DEFENSE

54. That any injuries or damages allegedly suffered by Plaintiffs were due to or caused by superseding and/or intervening acts, omissions, occurrences, conduct, or representations made by a third-person, third-parties, and individuals and/or entities other than Defendant Timothy McCrory individually, without his knowledge, consent, or authorization; and these superseding and/or intervening acts, omissions, occurrences, conduct, or representations by

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a third-party or third-parties or other individuals and/or entities was the proximate cause of the claimed injuries and damages, if any, as a matter of law.

FOR A SEVENTH DEFENSE

55. That any injury or damage allegedly suffered by Plaintiffs as a result of the matters alleged in the Complaint could not be avoided and/or were the result of circumstances, events, conditions, conduct, occurrences, ambiguities in records, ambiguities in documents, or information for which Defendant Timothy McCrory individually is not legally responsible as a matter of law; and, thus, Defendant Timothy McCrory individually herewith pleads and asserts this as an affirmative defense and/or avoidance and complete bar to this action and any monetary relief sought.

FOR AN EIGHTH DEFENSE

56. That the Plaintiffs' alleged damages, which are expressly denied, were caused, in whole or part, by the Plaintiffs' sole negligence, gross negligence, recklessness, willfulness and/or wanton conduct, acts, or omissions, including, but not limited to, the Plaintiffs' failure to undertake appropriate action(s) or conduct or failure to conduct adequate, reasonable, and prudent due diligence investigations into the real estate transaction and related matters, circumstances, and occurrences of which the Plaintiffs now complain through their allegations in the Complaint; all of which serves as, and are plead as, an affirmative defense and bar to the within action.

FOR A NINTH DEFENSE

57. That the Plaintiffs' claims against Defendant Timothy McCrory individually are barred, in whole or part, under the doctrines or principles of assumption of risk and/or

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comparative or contributory negligence, all of which doctrines or principles of law are herewith plead as, and serve as, affirmative defenses and bars to the within action.

FOR A TENTH DEFENSE

58. Defendant Timothy McCrory individually pleads the statute of limitations as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

59. The Plaintiffs' claim for punitive damages is in violation of the United States Constitution, Fourteenth Amendment, (Due Process Clause) and the South Carolina Constitution in that there is no objective standard to gauge or limit the amount of punitive damages which can be awarded with sufficient instruction provided in determining the amount of punitive damage which should be awarded.

FOR A TWELFTH DEFENSE

60. The residential Contract of Sale has the following clauses that are applicable to the allegations of the Complaint: 15. Disclaimer; 16. (C) Inspection; 16. (E) Wood Infestation/Moisture Report; 16. (H) Reinspection/Maintenance; and 20. Disclaimer by Brokers and Agent, all of which serve as defenses to the claims that are asserted against the Defendant Timothy McCrory individually.

FOR A THIRTEENTH DEFENSE

61. Plaintiffs' claims under the unfair trade practices act should be dismissed as the alleged actions of Defendant Timothy McCrory individually do not have an impact on the public interest as the alleged actions only affected parties to a private transaction; and the alleged actions are not capable of repetition. Furthermore, Defendant Timothy McCrory individually

states that it operated within a regulated industry and, therefore, is exempt from liability under the unfair trade practices act pursuant to S.C. Code Ann. § 39-5-40.

WHEREFORE having fully answered the Plaintiffs' Amended Complaint herein, Defendant Timothy M. McCrory individually demands that this action be dismissed with prejudice as to him in all capacities alleged with prejudice; that he be awarded his costs and attorneys' fees under applicable state and federal statutory provisions and case law; and that the Court award such other and further relief as deemed just and proper.

Respectfully submitted,

s/ David A. Anderson
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ATTORNEYS FOR DEFENDANTS TIMOTHY M. MCCRORY INDIVIDUALLY

August 20, 2018

Columbia, SC

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

John M. Hine and Maria W. Hine,)
Plaintiffs,)
vs.) Case No. 2018-CP-23-03382
Timothy M. McCrory, individually)
and as agent, Michael P. McCrory,)
Seabrook L. Marchant and The)
Marchant Company,)
Defendants.)
_____)

HEARING TRANSCRIPT

The above-mentioned Non-Jury Motion Hearing was taken on the 18th day of June, 2019, before the Honorable Robin B. Stilwell, commencing at the hour of 11:30 a.m. at the Greenville County Circuit Court, Greenville, South Carolina:

APPEARANCES:

John Michael Hine, Esquire
THE HINE LAW FIRM
P.O. Box 17095
Greenville, South Carolina 29606
Attorney for Plaintiff

APPEARANCES (CONTINUED):

Alexandre Nicolas MacClenahan, Esquire
THE MACCLENAHAN LAW FIRM
223 West Stone Avenue
Greenville, South Carolina 29609
Attorney for Plaintiff

David Allen Anderson, Esquire
RICHARDSON PLOWDEN
P.O. Drawer 7788
Columbia, South Carolina 29202
Attorney for Defendant Timothy McCrory

H. Chase Harbin, Esquire
LAW OFFICE OF H. CHASE HARBIN
419 Lardry Street
Greenville, South Carolina 29601
Attorney for Defendant Michael McCrory

REPORTED BY: Sandy Satterwhite, Court Reporter
P.O. Box 742
Roebuck, South Carolina 29376
(864) 706-5698
satterwhite@charter.net

BY THE COURT:

John M. Hine versus Timothy M. McCrory, and that's Case Number 2018-CP-23-3382. It appears to be a Motion for Summary Judgment. Well, it looks like one Motion for Summary Judgment joined in by multiple parties; is that correct?

BY MR. ANDERSON:

That's correct, Your Honor.

BY THE COURT:

Okay. All right. Okay. I'll be happy to hear from you.

BY MR. ANDERSON:

May it please the Court, Your Honor?

BY THE COURT:

Yes.

BY MR. ANDERSON:

David Anderson. I represent Tim McCrory, individually, and as agent Seabrook Marchant and The Marchant Company. We've got a Motion for Summary Judgment that was filed. I have two copies, Your Honor, if the Court would like to ---

BY THE COURT:

Yes, please.

BY MR. ANDERSON:

This is the court file, but it may be easier to look at the exhibits, Your Honor.

BY THE COURT:

All right. Thank you.

BY MR. ANDERSON:

Your Honor, this is a residential property disclosure case. It's involving termite damage, and please allow me to provide a brief overview or background of the facts and parties of this matter.

I represent Tim McCrory. Tim McCrory and his brother, Mike, Michael McCrory, owned a home, 416 Leyswood, and they sold it to the Hines. At the time that they sold the home, Tim McCrory was an agent for The Marchant Company, and so The Marchant Company is a named party in this matter, as well as the broker-in-charge, Seabrook Marchant.

They were brothers, and in September 7th of 2005, they purchased a home jointly, and they were --- they indicated that one was living with their mother and one was working and renting. So they decided to pull their assets together and buy this home. This home was an older home that required some fixing up, and so the repairs and fixing up that the brothers did during the time that they owned the home was changing some flooring. They went and refurbished some rooms in the basement area. They took out paneling and put in drywall, and things of that nature.

A --- after living in the home for about three years, the brothers both became engaged, and they were looking to sell the home because one brother was moving to Spartanburg and the other brother was getting married here, and so they placed their --- their home on the market, and Attorney John Hine and his wife ultimately purchased the home.

They purchased the home, Your Honor, and after having an inspection of the home and purchased the home, then during the Hines' ownership of the home, in April of 2012, Mr. Hine was doing some do-it-yourself projects with the home, removed some shoe molding in the home and found termite damage.

This is an area, and he took that and peeled back and found more termite damage, and some of the termite damage was in the same, at least above the area that was work performed by the McCrory brothers.

So as a result of that, Your Honor, in May 14th of 2012, a letter detailing the allegations, and it is marked as Exhibit A in my brief, detailing the allegations of misrepresenting the property and indicating that the letter was sent to The Marchant Company, the broker-in-charge, indicating that their --- their agent was the one that placed this home in the stream of commerce and seeking reparations.

Your Honor, another letter was sent, and it's Exhibit B, that was seeking demand, a demand letter seeking damages for the termite damage.

Your Honor, nothing else came about this letter. Attorney Hine did not pursue the matter. There were no payments made. There was no --- the area was corrected by the homeowner; and then the homeowner, Mr. Hine, continued with the do-it-yourself projects, and in February of 2018, while remodeling his master bath, they pulled back some wallboard in the stairwell and saw additional termite damage, additional wood studs that had a date stamped on the wood studs that they peeled back in the stairwell of 7 September 2005, and, Judge, just coincidentally, the same date that the McCrory brothers had purchased the home.

In deposition testimony the McCrory brothers indicated that they were looking to expand the roof or the ceiling height in the stairwell. They had asked the contractor to come in to see if that could be raised. That contractor went in and did some exploratory work and said it was too difficult to raise, too --- that that could not be done with the expenses that they were going to be faced with, so they closed that back up. The McCrory brothers weren't home during that time frame, so they didn't see any additional termite damage in that area.

Your Honor, my clients, of course, to this day denied ever knowing of any additional termite damage that was there. They do know, however, and it was clearly noted that there was termite damage that had to be repaired during when the Hines purchased the home. The McCrory brothers did not have the home under a bond during the time that they owned the home. The CL-100 report indicated that there were termites there, but they were inactive. There were no live termites found in the home.

Your Honor, what the Plaintiff is seeking now is they're seeking damages for unrepaired termite damage that was misrepresented to them. They sought that in 2012, and they're seeking that now in the suit that's been brought in 2018. On the face value they sought claims for this back in 2012, and they missed their opportunity to do so. They should have pursued in 2012 the action, because it's the same causes of action. It is the same damage that is present.

The fundamental test to determine whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it. Mr. Hine could have enforced that in 2012 and chose not to do so. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered

by the exercise of reasonable diligence.

The Court, the causes of actions existed the moment when a Plaintiff has a legal right to sue. The Plaintiffs knew a claim existed when they first discovered termite damage in an area alleged to have been renovated; therefore the statute began to run during that time frame.

Your Honor, the Defendants would respectfully like to just briefly go through with the Court the exhibits that are attached to our Motion.

BY THE COURT:

Okay.

BY MR. ANDERSON:

Your Honor, Exhibit A, of course, is a letter that was dated May 14, 2012, from Attorney Hine. In that two-page letter he clearly states that the letter is being sent to you, Seabrook Marchant and The Marchant Company, and it also copied Tim McCrory, as agent at the time, indicating that work was done in the basement, noted in paragraph 13 of the Disclosure Statement the damage would have been discovered and substantively was required to be disclosed, and as a result of the failure to disclose that damage, he has incurred extensive costs.

Your Honor, exhibit, and attached to that letter was the Property Disclosure Statement that my clients filled, completed back when the home was transferred, as well as

the damages from the contractor that the Hines engaged to do repair work. Exhibit B, Your Honor, is a July 9th, 2012, demand letter to Marchant Company, to Seabrook Marchant, copying Tim McCrory seeking a demand of $4,000 at that particular time.

Your Honor, Exhibit C is a deposition excerpt of John Hine, and in this excerpt we --- I asked Attorney Hine why he did not pursue the cause of action in 2012, and I think it's telling to the Court that he says, "I don't know that I have evidence to prove that, and I don't know that I'm still entitled to it under the statute of limitations." He is making now a separate determination or a separate claim as it relates to his termite damage than the termite damage that was referenced back in 2012. He's saying that he's found two separate instances of termite damage that were not contiguous in his estimation. "So just because I discovered one didn't mean I knew about the other one." So he's defining this termite damage from 2012 to 2018. There's no indication that the Defendants had any kind of action that prevented him from filing a suit in 2012.

Your Honor, Exhibit Number D is a CL-100 report that was originally a part of the transaction when the Hines purchased the home. In that report, Your Honor, it's highlighted that --- that there were signs that --- of

termite damage, that there is evidence of previous infestation of subterranean termites and other wood destroying insects and it's visible evidence of prior subterranean termite treatment, and the property described has not been treated or it's under contract with their firm. So the Hines had knowledge of that at that particular time.

That or the second page of that CL-100 report clearly talks about that there have been repairs, and it ends up by stating, "Please note repairs have been made in the garage area but some damage remains and should be evaluated by a licensed builder," and that was signed by the Hines on July 1st of 2008.

Exhibit E is the Home Inspection Report that the Hines got when they purchased the property, and I would just point out to the Court on page six of that, they're talking about floor joists. This home inspector said, "Recommending consult a qualified foundation contractor to evaluate and correct pest damage at joists located near center to rear area of garage/basement area to promote intended use."

Exhibit F, after they started, after they first found evidence of termite damage, the Hines decided to put the home under a bond, and they contacted the Sargent Pest Solutions in March 14th of 2013, and in that bond it's

checked, "Existing affected wood and live termites." The second page of that in the graph, it says, "Possible hidden termite damage in the rear area of their home." So the Hines knew, at least termite damage in 2013, when they had the house put under a bond.

Finally, Your Honor, Exhibit G states is a deposition excerpt from Mrs. Hine, and when I asked, "When did you and your husband first determine that you had termite damage in your home?"

She answered, "April 27th of 2012."

And I asked, "Your husband wrote a letter to Seabrook Marchant and The Marchant Company to provide them notice of that," and the answer was, "Yes."

Your Honor, it's unfortunate that the Hines have experienced this termite damage, but they have missed the opportunity, pursuant to the statute, to bring this action within three years, and we respectfully ask this Court to grant our Motion for Summary Judgment based upon the three year statute of limitations.

BY THE COURT:

Is there anything you need to add?

BY MR. HARBIN:

Judge, I would just add one thing, one specific thing, and I agree with what Mr. Anderson has presented to the Court. Specifically, my client, Mike McCrory, one of the

brothers that owned the house, now that this is, what, 12 years from the day of sale, they're specifically prejudiced by not being able to locate these folks that have worked on the house for them. So the sheetrock, if you use the term contractor, I would say it's really a sheetrock installer, not necessarily somebody who is a contractor, but the sheetrock installer is obviously a pivotal witness in this as it would have been the person that would have placed the date stamped two-by-four, which is really a nailer size structural thing, but at any rate, that person is in the wind now. Maybe they would have been in the wind in 2012, but certainly a lot better chance to find that fella, you know, between the sale in 2007 and the first discovery in 2012. Now an additional seven years have passed, and so we're presented with the problem having to disprove a negative or to prove a negative, rather.

So just to put on the record specific prejudice related to the statute of limitations we can't find what is probably the star witness in this particular dispute.

BY THE COURT:

All right. Mr. Hine?

BY MR. HINE:

Thank you, Your Honor. May it please the Court?

John Hine for the Plaintiffs, Alex MacClenahan,

co-counsel. I'll start with Mr. Harbin's last statement. Nobody would love to talk to that guy more than me. I'll be honest with you, and the reason we can't talk to him is because they don't know where he worked. They don't know his name. They don't know how he got paid. They have no receipts. They have no records.

In the deposition of Tim McCrory he admitted that he acted as the general contractor on the project renovating the two rooms in the basement, doing renovations upstairs. Michael McCrory, I think, referred to himself as essentially a painter. He would paint everything, boards and that kind of stuff; and so if Tim McCrory acted as the general contractor and if one of his subs messed up, it should --- it's on him. He's supposed to know what his subcontractors are doing. He scheduled who to come in. He scheduled what time they should come there.

I would love to talk to this drywall guy. I'll be honest with you, I don't think he exists. I think Tim did it, and I think he knows it was there. These weren't nailers. There was a --- there was a stringer that was cut and removed. I think it's because it was damaged by termites they stuck in these new pieces of wood and then attached drywall to it. So the reason it took 12 years for this to come to light is because it was covered up by somebody else, not me. I had no idea it existed. When

they were asked about the removal of that drywall, they denied it at every turn. They --- they --- in their Request to Admit, they denied that the drywall had been removed. It wasn't until a ten minute back and forth in depositions that Tim McCrory finally admitted, "Yes, they only way new wood can get behind drywall is for that drywall to be taken down." It took ten minutes in a deposition for him to finally admit that, and so at every turn he's denied anything has even been touched in that stairwell until he was backed into a corner and then he said, "Oh, I didn't do it. It was done while I was gone. I had no idea what, who did it or what they did. They just told me, 'Hey, we can't raise the ceiling in the stairwell.'"

But I'm jumping ahead of myself, Your Honor. I do want to point out this is a Summary Judgment Motion. We're not here to argue the underlining merits of the case. The question is: Is there a question of fact for the jury to decide? At a minimum I think there is. When was the discovery of the termite damage reasonable? Mr. Anderson pointed out that we got a termite letter when we bought the house, that we had a home inspection when we bought the house. Those two things said, "Hey, there's some indications that termites have been here before. You should get a licensed contractor to come check it out," so

we did that. We had two people come in and check it out. They both signed off and said, "Everything looks good. No structural damage. Repairs have been made." So we were under the impression that everything had been remedied, and then we find out, "No, that's not actually the case."

When we were painting my daughter's nursery before she was born in the corner bedroom upstairs, I noticed that when I removed shoe molding, there was a large gap between the floor and the baseboard, and I cut a small hole in the drywall. I found a lot of termite damage. I called a contractor in. They remedied the situation. We pulled down drywall. Everywhere we saw termite damage we pulled down drywall until we didn't see any more termite damage.

So I took care of everything that I knew existed, and then, when I looked at the facts and I approached the McCrory's, and I said, "Hey, I think you knew about this," they denied it. They said, "No, we didn't. We didn't know about that. We never saw it." I didn't have any evidence. I had some suspicions, but you can't bring suspicions to court and win a case, and it costs $4,000. I said, "You know what? It's not worth $4,000." Even if I had filed that case back in 2012, it would have been for $4,000, because I had no idea that the rest of this

existed. It wasn't until, and then Mr. Anderson pointed out that I did have a termite bond placed on the house in 2013. I saw some termite wings in the basement and the rear of the house. I had it treated immediately. The inspector walked around the house, didn't see any other signs of termites, and he noted in the report that there could be un --- you know, unseen damage behind these walls in the house. There is no damage in that area of the house. I renovated the bathroom in that area of the house, no damage. I pulled out everything in the basement, no damage in that --- in that area of the house. It wasn't until I started renovating the master bathroom that I found the floor joists that were damaged. I traced that back to the stairwell, and then by chance found some new studs in the stairwell behind the drywall. Luckily, they had a bar code on it so that I could say, "This was placed here after you purchased the house," and then they had the audacity to accuse me and my wife of placing those studs in the drywall during the deposition. They said, "We don't know how it got there. Maybe you put it there."

And my lawyer said, "I'm sorry. Wait. You think they took down the drywall, put up new studs, put drywall back up, repainted it all, took the drywall back down and then took pictures to try to frame you for this?"

"Well, anything is possible."

No, not anything is possible, but I think, Your Honor, we've got at least a question for the jury of when it was reasonable for me to discover this termite damage. Based on the facts, it was latent damage that I didn't know existed. I've got the package that I filed, Your Honor, and I've got some cases in there, as well, and in the Santee Portland Cement case, Your Honor, I think is most appropriate for our situation. A plant was built. There were 13 cement silos. One of the silos had cracks in it. The company brought in somebody to repair those cracks. Then another silo got cracks in it. A company was brought in to repairs those cracks and said everything was okay, and then a third silo collapsed, Your Honor, and it killed two people, and then they sued; and they said, "No, the statute of limitations, you knew there were cracks in the first one."

"Well, just because we knew there were cracks in the first one didn't mean we knew that all these latent defects were in there," and so it was at least at a minimum a question for the jury to decide when is it reasonable. Nobody ever told me, "Hey, you should destructive investigations to find if there's any more termite damage." All we knew was the front of the house had termite damage. It looked like it had all been repaired, and it looked like it all had been taken care

of. We had no idea. The only people that knew there was damage in the stairwell when we bought that house was Tim McCrory and Mike McCrory, and they, on the disclosure, said, "There was no termite damage." They knew that was wrong. They falsified that document, and then The Marchant Company, because Tim McCrory was an agent, The Marchant Company is responsible for his actions, as well, but, Your Honor, at a minimum I think we have a question for the jury to decide when was it reasonable for me to discover that termite damage and is that a latent defect? Is it separate, as I've alleged that it wasn't contiguous. We did everything we needed to do to fix it, and Mr. Anderson wants to use hindsight to look back and say, "Well, since we found all this other termite damage, you should have known then to do this investigation." You can't. You can't take information you learn later and apply it to, you know, future or past dates and try to say, "Hey, you should have done it because of what you found now, that means you should have done it before." You can't do that, Your Honor.

BY THE COURT:

All right. Thank you, Mr. Hine. I appreciate it.

BY MR. ANDERSON:

Your Honor?

BY THE COURT:

Yes, sir?

BY MR. MACCLENAHAN:

Can I quickly just to sum up? Some of what Mr. Hine was saying is it's important to remember, you know, we're --- to determine a Summary Judgment Motion, honestly, Your Honor, you know, determining the issues of fact is for the jury to consider here, and we are looking at this is in the light most favorable, in this instance, John Hine, the party.

At the deposition, and I conducted the depositions of the Defendants and asked the questions of them. Each of the Defendants admitted that it was reasonable for the Plaintiffs to rely on the initial disclosure that said no termite damage. They admitted at the deposition it was reasonable for John and Maria Hine to rely on the contractor who came during the home inspection period when they bought the house, that they found a little termite damage. They had a contractor come. That contractor fixed it and said nothing else needed to be done. All the Defendants admitted it was reasonable for John and Maria Hine to rely on that. Then in 2012, when the Hines discovered the damage in their daughter's room, they sent the letter. The Defendants all deny any knowledge of it, and they testified that it was reasonable for John and Maria Hine to rely on their representations that they

didn't know about any termite damage. This was news to them.

So all along the Defendants admit that the Hines had acted reasonably and relying on the expert termite inspectors, the expert contractors, the disclosure form. They said it was perfectly reasonable for them to rely on that. It was only when the Hines discovered the hidden termite damage in the basement that was behind this piece of wood that had a date stamped on it, a bar code on it, rather, that the Hines now discovered, "You know what? Despite all these things I knew, someone was lying to me," and that was the McCrory's, and that's when this action got brought. This is a separate damage from what happened in the bedroom, as Mr. Hine said, other than a $4,000 lawsuit. This is the whole house, down in the basement. I mean its extensive termite damage and just happened when he remodeled that day.

So for the Defendants to give their Summary Judgment Motion, Your Honor, they're saying that even though they admit that at all times the Hines acted reasonable in their actions and what they did, the Court should ignore that testimony, because no jury would ever hear the testimony and admission of the Defendants and hold that against them. You're going to have to ignore all that and say, "They acted unreasonably." On its face the

Defendants create the issue of fact here, Your Honor. They're the ones who testified under oath repeatedly that the Hines acted reasonably. To now come in and say, "Ignore my testimony. There's no issue of material fact." It, you know, kind of defies logic.

So for those reasons, Your Honor, the reasons that Mr. Hine said in his argument, their Motion for Summary Judgment should be dismissed.

BY THE COURT:

Okay. All right.

BY MR. ANDERSON:

Your Honor, may I ---

BY THE COURT:

Sure.

BY MR. ANDERSON:

--- briefly reply?

Our case that we've cited, and I can hand the Court up a copy, it is in the Gibson versus Bank of America case. The key element is reasonable diligence is notice, and reasonable diligence requires that a party act with some promptness where facts and circumstances would put a person on notice that some right has been invaded or that some claim against another party might exist.

The statute begins to run at this point and not when an injured party comprehends the full extent of the damage

it's trying to adhere. It's when they first had the notice, and the letter is May of 2012 where he is seeking recovery for termite damage that was alleged to have been misrepresented is when he first had knowledge, and our courts have repeatedly found that, you know, with our Supreme Court and our Court rulings; and I also cite in my brief the Cline v Faulkner Homes case where the identity of a party was not found until four years after the fact. The case was tried, actual and punitive were awarded. The Court of Appeals reversed that, and both of these are cited in my cases that I've got these here to present to the Court if the Court wants to see it.

BY THE COURT:

Okay. All right. You all have given me a lot of documents, and I'll review this in context with the case law that you've submitted, as well.

So have you all mediated, yet?

BY MR. ANDERSON:

Yes, Your Honor.

BY MR. HINE:

Yes, sir.

BY THE COURT:

You have. Okay. All right. Well, I'll take it under advisement.

(HEARING CONCLUDED AT 12:00 NOON)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF SPARTANBURG)

This is to certify that the within hearing was taken on the 18th day of June, 2019;

That the within witnesses were duly sworn to tell the truth and that the foregoing is an accurate transcript of the testimony given under oath;

That copies of all exhibits, if any, entered herein are attached hereto and made a part of this record;

That the undersigned court reporter, a Notary Public for the State of South Carolina, is not an employee or relative of any of the parties, counsel or witness and is in no manner interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal at Spartanburg, South Carolina, this 28th day of October, 2019.



Sandra Satterwhite
Notary Public for South Carolina
My Commission Expires: 3/8/27

(SEAL)

ELECTRONICALLY FILED - 2019 Apr 17 3:19 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**DEFENDANTS TIMOTHY M. MCCRORY AS AGENT, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY'S MOTION FOR SUMMARY JUDGMENT**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	
	)	

TO: PLAINTIFFS JOHN M. HINE, ESQUIRE, AND MARIA W. HINE AND COUNSEL ALEXANDRA MacCLENAHAN, ESQUIRE:

Please take notice that Defendants Timothy M. McCrory as Agent ("Tim McCrory"), Seabrook L. Marchant ("Marchant") and The Marchant Company ("Company") hereinafter collectively referred to as "Defendant Realtors," will move before the Presiding Judge at 10:00 a.m. on the tenth (10^{th}) day after the service hereof, or as soon thereafter as counsel may be heard, for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

I. Background

This is a Residential property disclosure case where the Plaintiff Purchasers claim the property disclosure was misrepresented and after their time to file this claim had expired, Plaintiffs inexplicably seeks to have the statute of limitations re-start to allow this suit. This case stems from the sale of a single family home located at 416 Leyswood Drive, Greenville, South Carolina 29615 ("subject property") that occurred on July 1, 2008. Tim McCrory, who was a real estate agent for Seabrook Marchant and the Company also served as the listing agent for the subject property. Tim McCrory and his brother, Michael P. McCrory, both owned the

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subject property. Plaintiffs allege that McCrory knew or should have known that the subject property had termite damage that had not been repaired. They also allege that the McCrory brothers misrepresented this on the corresponding property disclosure form.

On April 27, 2012 Plaintiff, John M. Hine who is, since May of 2007, a licensed attorney in South Carolina was removing shoe molding around the baseboard in the front bedroom of the subject property when he discovered extensive termite damage to the wood studs behind the drywall. It was later discovered by a contractor that the rim joists were also damaged. Mr. Hine wrote a letter to Defendant Seabrook Marchant of The Marchant Company seeking damages and alleging that the termite damage should have been noted by their former agent, Tim McCrory, when he and his brother performed work in the basement, as noted on the disclosure statement. *See*, Exhibit A. The Defendants denied knowledge of any undisclosed termite damage on the disclosure statement.

On July 9, 2012, Mr. Hine sent a demand letter seeking damages in the amount of $4,000. *See, Exhibit B.* There was some discussion back and forth and Mr. Hine, ultimately, decided not to pursue his claim for undisclosed termite damages. *See*, Exhibit C, Depo of John Hine, pg. 28, lines 12-14. Mr. Hine, apparently, failed to follow-up with this claim within the appropriate statute of limitations and admitted so during his deposition. When asked ". . . why aren't you seeking recovery for that work?" Mr. Hine responded "I don't know that I have the evidence to prove that, and I don't know that I'm still entitled to it under the statute of limitations." *Id.* at pg. 24, lines 14-18.

When the Plaintiffs purchased the subject property in 2008, the CL-100 wood infestation report issued prior to closing, and signed by both Plaintiffs, mentioned signs of past infestations and treatment. *See*, Exhibit D. Specifically, this report noted areas which were obstructed from

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view or inaccessible, evidence of past infestation to include scorn marks from termite shelter tubes with damage to sills, joist and sub-floor on the right side of garage, and to the sill right rear of garage. Further, on page 1 of this report, termite inspector checked the box under "Damage Observed (If Any): Item C- "Will not be corrected by this company; recommend that structure be thoroughly and completely evaluated by a qualified building expert licensed or registered with the S.C. Department of Labor, Licensing, and Regulations, Residential Builder's Commission and that needed repairs be made." Additionally, prior to closing, the Plaintiffs had a property inspection completed by Pillar to Post. This inspection report, among other things reported, "[R]ecommend consult a qualified foundation contractor to evaluate and correct pest damage at joists located near center to rear area of garage / basement area to promote intended use". *See*, Exhibit E. The subject property was not under bond during the time of the McCrory's ownership and that was also disclosed. Plaintiffs were on notice by these reports of past termite damage and the potential of present termite damage. Once Mr. Hine began doing do-it-yourself projects on the home, he found additional termite damage behind the wall in the front bedroom. He then contacted Sargent Pest Solutions, Inc. to inspect the premises and place the subject property under an active bond contract. The Residential Treatment Contract shows the subject property was inspected on March 28, 2013 and, further, shows that the subject property was being treated for existing live termites. *See*, Exhibit F. It also shows that "Possible Hidden Damage" existed in the rear portion of the home. *Id.*

Plaintiffs continued with renovations to the subject property and remodeled a hallway bathroom, without incident, and then on or about February 3, 2018, while remodeling the master bathroom, they discovered additional termite damage to the subject property. This additional area of damage is what Plaintiffs have based the present litigation on. Mr. Hine claims to have

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uncovered sheetrock in the stairwell where two 2X4's were discovered. These 2X4's had a bar code stamp with a date of September 7, 2005 which, coincidentally, was the date that the McCrory brothers purchased the subject property. Plaintiffs now claim that the placement of this wood would have put someone on notice of unrepaired termite damage and thus starting the statute of limitations clock all over again which cannot be done.

The McCrory brothers stated that they had left for work with no sheetrock disturbed and when they returned there was new sheetrock installed in the stairwell that had to be painted. The sheetrock contractor was investigating the stairwell to determine if the height of the stairwell ceiling could be raised; however, they deny noticing any unrepaired termite damage. They were not present when the investigation of the stairway ceiling occurred. What is undisputedly evident is that prior to the purchase and during the time of renovations to the home by the Plaintiffs, significant signs of termite activity were uncovered and known to Plaintiffs. This is not surprising since every report issued has noticed signs of termite damage and recommend the Plaintiffs perform additional investigation for the potential of additional damage.

Plaintiffs' Amended Complaint alleges the following causes of action against Tim McCrory, Marchant and the Company: (1) fraud and misrepresentation; (2) conversion; (3) violation of the South Carolina Residential Property Condition Disclosure Act; (4) violation of S.C. Code Ann. § 40-57-137; (5) negligence; (6) negligent hiring, training, supervision and retention; (7) unjust enrichment; (8) unfair trade practices; and (9) breach of the covenant of good faith and fair dealing.

II. Legal Standard

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt,* 411 S.C. 138, 143, 767 S.E.2d 451,

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453 (Ct.App.2014), *cert denied.* "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when "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 a judgment as a matter of law." *Id.* (quoting Rule 56(c), SCRCP). "Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id.*

III. Argument

The specific grounds for this Motion are that Plaintiffs failed to commence this lawsuit within the applicable statute of limitations. There are no genuine issues of material fact relating to Plaintiffs first discovering the alleged unrepaired termite damage. It was first discovered in April of 2012 when Mr. Hine was removing the shoe molding in his front bedroom, as noted in his letter of May 14, 2012 See, Exhibit A.

The statute of limitations does not purport to destroy or extinguish a cause of action but simply to close the doors of the Courts to a suitor who undertakes to bring his suit upon such cause of action after the lapse of the prescribed period. *Jackson v. Plyler (S.C.1893) 38 S.C. 496, 17 S.E. 255, 37 Am. St. Rep. 782.* The fundamental test in determining whether a cause of

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action has accrued is whether the party asserting the claim can maintain an action to enforce it. *Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.*

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for the claims asserted in this action. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987).* Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Austin v. Conway Hosp., Inc.* 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987). Therefore, the test is not whether the particular plaintiff actually knew a claim existed. *Rumpf v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 395, 593 S.E.2d 183, 187 (Ct. App. 2004). The test is when a person ***could or should have known*** through reasonable diligence that some cause of action exists against another person rather than when a person obtains actual knowledge of a potential claim or of the facts giving rise thereto. *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998).

The key element of reasonable diligence is notice. Reasonable diligence requires that a party act with some promptness where facts and circumstances would put a person on notice that some right has been invaded or that some claim against another party might exist. *Gibson v. Bank of Am.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009*); see also Dean v. Ruscon Corp.*, 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996). The statute begins to run at this point and **not** when:

- the advice of counsel is sought;
- a full-blown theory of recovery is developed; or
- ***the injured party comprehends the full extent of the damage*.**

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Gibson, 383 S.C. at 406, 680 S.E.2d at 782; *see also Dean*, 321 S.C. at 363-64, 468 S.E.2d at 647; *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); *Dorman*, 331 S.C. at 184-85, 500 S.E.2d at 789; *Barr v. City of Rock Hill*, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (Ct. App. 1998).

The undisputed evidence shows that Plaintiffs either knew or should have known about the alleged unrepaired termite damage on or about April 27, 2012. In fact, Mr. Hine wrote a letter to Marchant and the Company, dated May 14, 2012, informing them of his discovery of the alleged unrepaired termite damage throughout the subject property.[1] His letter also states that the property disclosure form, completed by the sellers, was not accurate with regards to the unrepaired termite damage.[2] Plaintiffs also hired a contractor, in early 2013, to inspect the property. The contractor found additional unrepaired termite damage. Accordingly, as early as April 27, 2012, Plaintiffs knew or should have known that there was unrepaired termite damage. The statute of limitations for Plaintiffs' causes of action is three years[3] and it expired on April 27, 2015. Plaintiffs did not file this lawsuit until June 18, 2018, almost three years after the statute of limitations had expired. The Original 175 paragraph long Complaint, consisting of 23 pages actually has a signature date of December 19, 2011 yet it was not filed until June 18, 2018.

[1] Mrs. Hine also testified that the first time she and Mr. Hine discovered that they had termite damage in their home was April 27, 2012. See Exhibit G, Depo of Maria Hine, pg. 15, lines 15-25. Mrs. Hines also testified that her husband had provided notice of the same to the Defendant Realtors, *Id.*

[2] This letter is attached to this Motion as Exhibit "A" and Mr. Hines has admitted that he wrote this letter.

[3] S.C. Code Ann. § 15-3-530 provides a three year statute of limitations for Plaintiffs' claims. *See Cline v. J.E. FaulknerHomes, Inc.*, 359 S.C. 367, 370, 597 S.E.2d 27, 29 (Ct. App. 2004) (three-year statute of limitations for negligence claims); *ABN Amro Mortg. Grp., Inc. v. SAJJ, LLC*, Civil Action No. 7:05–1720–RBH, 2007 WL 840342, at *5 (D.S.C. March 15, 2007) (three-year statute of limitations for negligent misrepresentation claims); and *Moore v. Benson*, 390 S.C. 153, 160, 700 S.E.2d 273, 277 (Ct. App. 2010) (fraud action "is governed by a three-year statute of limitations period").

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This would suggest that the Plaintiffs previously contemplated filing the Complaint but, instead, to their detriment filed it eight (8) years later, well outside of the three year statute.

The Plaintiffs are now arguing that though their first attempt to recover for termite damages was abandoned, they have now uncovered subsequent information which somehow allows them to start the clock over with regard to pursuing their claims against the Defendant Realtors. This novel argument; however, is **unsupported** by case law **and is neither credible nor persuasive**. A cause of action accrues at the moment when the plaintiff has a legal right to sue. Plaintiffs, and Mr. Hine in particular, who is a practicing attorney, knew a claim existed when they discovered termite damage in an area that was alleged to have been renovated by Defendant Realtors; therefore, the applicable statute of limitations began to run in 2012. Any subsequent areas of termite damage and/or report(s) the Plaintiff discovered and/or received simply reinforces the application of the statute of limitations defense.

The undisputed facts show that Plaintiffs failed to commence this action within the applicable statute of limitations; accordingly, their claims must be dismissed as a matter of law.

IV. Conclusion

Based upon the above, Defendant Realtors request that this Court grant their Motion and that they recover costs incurred herein. Defendant Realtors also pray for such other relief, general and special, legal, or equitable, to which they may be justly entitled.

[Signature Page Follows]

Respectfully submitted,

s/ David A. Anderson

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April 17, 2019
Columbia, SC

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May 14, 2012

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

Re: Property located at 416 Leyswood Drive

Dear Mr. Marchant:

I purchased 416 Leyswood Drive, Greenville, SC 29615 (the "Property") on July 1, 2008 from Michael and Timothy McCrory (collectively "Sellers"). Timothy was also the Sellers' Agent for the transaction and was employed by The Marchant Company (the "Company") at the time. Sellers signed a State of South Carolina Residential Property Condition Disclosure Statement on May 14, 2008 (the "Disclosure"). Paragraph 10 of the Disclosure indicated that there was no present infestation or damage which had not been repaired from past infestation of wood destroying insects or organisms. The comments to Paragraph 13 stated that "[t]he 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock."

On April 27, 2012 I removed the shoe molding around the baseboard in the bedroom on the front corner of the house in order to paint the baseboards. As I was removing the shoe molding, I noticed that a large gap formed as the molding got closer to the exterior corner of the house. Upon further inspection it was discovered that some sort of caulk or silicone had been injected into the gap and painted to make it less noticeable. Once the shoe molding had been removed I discovered extensive damage to the wood studs behind the dry wall. A contractor was called in to further inspect the damage and it was discovered that the rim joists were damaged too.



00010

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

As a result of the damage discovered in the upstairs bedroom, the finished ceiling in the room of the basement located directly below the bedroom had to be removed, along with the soffit and ductwork located in that portion of the basement. As the repairs were being completed further damage was uncovered along a double joist that ran above a cinder block wall as well as damage to the headers of both windows in the upper bedroom.

This letter is being sent to you as a result of Timothy's status as the Seller's Agent and his employment by you. When the work was done in the basement as noted in Paragraph 13 of the Disclosure, the damage would have been discovered and subsequently was required to be disclosed. As a result of the failure to disclose the damage I have incurred extensive costs. Timothy owed a duty as the listing agent to disclose the damage which was not repaired. Pursuant to § 27-50-70 of the South Carolina Code the listing agent is liable for the misrepresentation.

I have attached the invoices from the contractor who has performed the repairs to the house. Please note that there are additional miscellaneous expenses for painting, baseboard, and crown molding which have not yet been calculated.

Please call my office at your earliest convenience to discuss this matter.

Sincerely yours,

John M. Hine, Esq.

Enclosures

CC: Timothy McCrory (w/ encl.)

ELECTRONICALLY FILED - 2019 Apr 17 3:19 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

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GALT INNOVATIONS

PROPOSAL

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
www.galtinnovations.com
eli@galtinnovations.com or mike@galtinnovations.com

	NAME			
	John Hine			
BUYER/ OWNER	ADDRESS 416 Leyswood Drive	CITY Greenville	STATE/ZIP SC 29615	PHONE 864-884-4051
	ALTERNATE ADDRESS (IF ANY) jhine@hinelawfirm.com	CITY	STATE/ZIP	PHONE

Date: 5/1/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Option 1: 730.00
Demolition of sheetrock from corner of wall out approximately 7' right and 4'6" left to the ceiling. Remove rotten framing. Furnish and installation of new 2x4 framing with sheathing where possible. New R-13 insulation in walls. Plastic sheeting to be supplied to cover bed and to tape and zipper seal bedroom door.

Option 2: 250.00
Above work, plus- hang and finish new sheetrock where existing to be removed- includes hanging, tape, mud, and sand to be ready for paint, add:

Option 3: 750.00
Furnish and install 10 - 2x8-16 floor joists in basement to firm up existing floor system. Includes thru bolting to the existing joists for strength. Includes disconnecting and reconnecting wiring where necessary. Where it is not possible to get full 2x8 in place, contactor to give owner credit or attempt to install 2x6 in lieu of 2x8.

Option 4: 1,750.00
Demolition of downstairs ceiling, rotten bands, rotten floor joists. New framing to include double bands at rot, new floor system sistered on to existing floor joists (spanned wall to wall). Rework HVAC pipe and soffit as necessary. Furnish and installation of new sheetrock on ceiling, mud, tape, and sand to be ready for painting. Includes removal and haul of all debris. Owner to provide painting.

Qualifications (Original bid not to include):
1 Unforeseen/hidden conditions.
2 Additions or reductions in scope following signed contract will be handled by Change Order.
3 Owner to supply power and water as necessary.
4 No permitting included. Owner to supply plat if Greenville city permit required.
5 Owner to install salvaged casing at windows, base, and shoemold.

Proposed Schedule: Job is expected to require 5 working days. This is an approximation only given for convenience. Working days are defined as Monday - Friday (8am - 4pm).

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

Galt Innovations carries full general liability and worker's compensation insurance.
Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
All our subcontractors carry their respective insurances as required.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

X

GALT INNOVATIONS

Formerly PALMETTO BUILDING AND RENOVATION

INVOICE# 1224

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
www.galtinnovations.com
eli@galtinnovations.com or mike@galtinnovations.com

BUYER/ OWNER	NAME **John Hine**			
	ADDRESS 416 Leyswood Drive	CITY Greenville	STATE/ZIP SC 29615	PHONE 864-884-4051
	ALTERNATE ADDRESS (IF ANY) jhine@hinelawfirm.com	CITY	STATE/ZIP	PHONE

Date: 5/25/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Final bill per contract log.	3,780.00
Total:	**$ 3,780.00**

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

Galt Innovations carries full general liability and worker's compensation insurance.
Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
All our subcontractors carry their respective insurances as required.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

X

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GALT INNOVATIONS

PROPOSAL

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
www.galtinnovations.com
eli@galtinnovations.com or mike@galtinnovations.com

	NAME			
BUYER/ OWNER	**John Hine**			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	jhine@hinelawfirm.com			

Date: 5/1/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Option 1: 730.00
Demolition of sheetrock from corner of wall out approximately 7' right and 4'6" left to the ceiling. Remove rotten framing. Furnish and installation of new 2x4 framing with sheathing where possible. New R-13 insulation in walls. Plastic sheeting to be supplied to cover bed and to tape and zipper seal bedroom door.

Option 2: 250.00
Above work, plus- hang and finish new sheetrock where existing to be removed- includes hanging, tape, mud, and sand to be ready for paint, add:

Option 3: 750.00
Furnish and install 10 - 2x8-16 floor joists in basement to firm up existing floor system. Includes thru bolting to the existing joists for strength. Includes disconnecting and reconnecting wiring where necessary. Where it is not possible to get full 2x8 in place, contactor to give owner credit or attempt to install 2x6 in lieu of 2x8.

Qualifications (Original bid not to include):
1 Unforeseen/hidden conditions.
2 Additions or reductions in scope following signed contract will be handled by Change Order.
3 Owner to supply power and water as necessary.
4 No permitting included. Owner to supply plat if Greenville city permit required.
5 Owner to install salvaged casing at windows, base, and shoemold.

Proposed Schedule: Job is expected to require 5 working days. This is an approximation only given for convenience. Working days are defined as Monday - Friday (8am - 4pm).

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

Galt Innovations carries full general liability and worker's compensation insurance.
Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
All our subcontractors carry their respective insurances as required.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

X

GALT INNOVATIONS

Formerly PALMETTO BUILDING AND RENOVATION

Change Order # 1

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
eli@galtinnovations.com or mike@galtinnovations.com

BUYER/ OWNER	NAME **John Hine**			
	ADDRESS 416 Leyswood Drive	CITY Greenville	STATE/ZIP SC 29615	PHONE 864-884-4051
	ALTERNATE ADDRESS (IF ANY) jhine@hinelawfirm.com	CITY	STATE/ZIP	PHONE

We propose to furnish the following work:

All labor and materials to repair and shore up triple beam rot; includes electrical and HVAC work. 800.00

Total: **$ 800.00**

Material Allowances:

n/a

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of _1_ year(s) from the date of completion.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

_____ X _____ _____

Owner Initials_____
Contractor Initials_____
Date_____

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Property Address 11588864 - 416 Weyswood Drive

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: TMM Seller 5/14/08 Date / MLH Buyer 5/25/08 Date
Rev. 1/03 MLH 5/14/08 MLH 6/25/08

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure 43yrs	☐	☒	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering 5yrs.	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace X heat pump ___ baseboard ___ b. Cooling source: central X wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas X propane ___ oil ___ d. Approximate age of heating unit 7 /cooling unit ? 10yrs. maybe	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county X community system ___ private well ___ b. water pipes are: copper X galvanized ___ PVC/CPVC ___ polybutelene ___	☐	☒	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system X city/county system available ___ b. Does the system require a pump? Yes ___ No ___ ? Don't think so c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☒	☐
10. Present infestation, or damage **WHICH HAS NOT BEEN REPAIRED** from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan X disconnected exhaust fan ___ ceiling fan X sump pump ___ irrigation system ___ cable tv wiring or satellite dish X security system ___ or other systems ___	☐	☒	☐

Initials: ___ Seller 5/19/08 Date ___ Buyer 5/25/08 Date

Rev. 1/03

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REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☐	☒	☐
a. Is the property affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws).	☐	☒	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☒	☐

"IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.

13) The 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock. Ask Seller for all work done.

Initials: THM Seller 5/24/08 Date JMM Buyer 5/25/08 Date

Rev. 1/03

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"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 416 Leyswood Drive

The property is currently: owner-occupied X leased ___ in an estate ___ in foreclosure ___
vacant ___ (If vacant, how long?) ___

Owner's Name(s): Tim McCrory and Mike McCrory

Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: Timothy M. McCrory Date: 5/14/08

Owner Signature: [signature] Date: 5/14/08

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

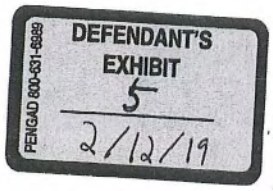
Purchaser Signature: [signature] Date: 5/25/08

Purchaser Signature: Maria W. Shine Date: 5/25/08

(This form is approved by the South Carolina Real Estate Commission.)

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The Hine Law Firm, LLC

John M. Hine
LL. M. in Taxation

Post Office Box 17095
Greenville, SC 29606
www.hinelawfirm.com
jhine@hinelawfirm.com

870 Cleveland St., Unit 1B
Greenville, SC 29601
Telephone (864) 331-0875
Fax (864) 331-8646

July 9, 2012

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

Sent via email only to seabrook@marchantco.com

Re: Demand Letter

Dear Mr. Marchant:

Pursuant to my previous email I am requesting that you send payment directly to me in the amount of $4,000.00 to reimburse me for the cost of the repairs to my house. Please be advised that I have taken considerable steps to keep the cost of the repairs to my home as low as possible. I have completed a significant amount of work myself and am not currently seeking any reimbursement for my time. Please send a check to the following address within 15 days.

PO Box 17095
Greenville, SC 29606

Sincerely yours,

John M. Hine, Esq.

cc: Timothy McCrory (via email)



STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE and MARIA W. HINE,

Plaintiffs,

vs. C/A NO. 2018-CP-23-03382

TIMOTHY M. McCRORY, individually and as agent, MICHAEL P. McCRORY, SEABROOK L. MARCHANT, and THE MARCHANT COMPANY,

Defendants.

DEPOSITION OF: JOHN M. HINE

DATE: February 12, 2019

TIME: 1:02 p.m.

LOCATION: The Hine Law Firm
619 Halton Road
Suite 2B
Greenville, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: ERIC S. GLAZIER, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Asheville, NC (828) 785-5699

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
JOHN M. HINE and MARIA W. HINE:

THE MACCLENAHAN LAW FIRM
BY: ALEXANDRE N. MACCLENAHAN
223 W. Stone Avenue
Greenville, SC 29609
(864) 382-3340
alex@macclenahanlaw.com
and
THE HINE LAW FIRM
BY: JOHN M. HINE
619 Halton Road
Suite 2B
Greenville, SC 29607
(864) 331-0875
jhine@hinelawfirm.com

ATTORNEYS FOR DEFENDANTS
TIMOTHY M. McCRORY, SEABROOK L. MARCHANT, and THE MARCHANT COMPANY
RICHARDSON, PLOWDEN & ROBINSON, P.A.
BY: DAVID A. ANDERSON
1900 Barnwell Street
Columbia, SC 29201
(803) 771-4400
danderson@richardsonplowden.com

ALSO PRESENT:
ANDREW SMITH, Legal Videographer
TIMOTHY McCRORY,
MICHAEL McCRORY,
SEABROOK MARCHANT,
ANNE MARCHANT

(INDEX AT REAR OF TRANSCRIPT)

PROCEEDINGS

- - - - -

VIDEOGRAPHER: We are now on the record. Today's date is February 12, 2019. The time on the monitor is 1:02 p.m. This is the video deposition of John Hine, taken by counsel for the defendant. The location is 619 Halton Road, Suite 2B, Greenville, South Carolina, 29606.

My name is Andrew Smith, legal videographer, representing A. William Roberts, Jr., and Associates. This deposition is being taken in the matter of John and Maria Hine versus Timothy McCrory, et al, Case Number 2018-CP-23-03382.

Counsel, please introduce yourselves for the record.

MR. ANDERSON: David Anderson, counsel for Tim McCrory, individually and as agent, Seabrook L. Marchant, and the Marchant Company.

MR. MACCLENAHAN: I am Alex MacClenahan, and I represent John and Maria Hine, the plaintiffs. And I guess, David, maybe put on the record again, Chase Harbin has notified that he is representing -- I always forget which McCrory; I'm sorry -- Michael, right, and he was notified that these depositions were scheduled and consented

to us proceeding with them without his presence, as he had a conflict for today.

THE WITNESS: And my name is John Hine. I'm also counsel for Maria Hine.

VIDEOGRAPHER: May the court reporter swear the witness.

JOHN HINE,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. ANDERSON:

Q. John, I guess you are familiar with the civil -- rules of civil procedure as far as depositions are taken, since you're a licensed attorney in the state of South Carolina.

A. Yes, sir.

Q. And you sat through your wife's deposition. This is my opportunity today to ask some questions about the suit that you've brought, and we'll get started with that.

Can you tell me a little bit about yourself, as far as when and where you were born and your education?

A. I was born in Sumter, South Carolina, at Shaw Air Force base on February 24th, 1982. I went to Sumter High School, attended Thomas Sumter

for one year in high school. I went to Clemson for undergrad. Then I attended the University of South Carolina and got my JD from the University of South Carolina, graduating in December of 2003 from USC.

After that I went to the University of Florida, Levin College of Law, where I received my Master of Laws in taxation. And that was in July of 2008, is when I graduated, I believe.

Then I moved up to Greenville, where I worked at a small tax boutique here in town for a little less than a year, and then I started my own practice. And I've been practicing on my own since then. So that was about 2009, I opened up my own practice here in Greenville.

Q. All right. When did you receive your tax degree?

A. That was in 2008.

Q. And your law degree was received when?

A. Did I say '03? I did college in 2003, law school in 2006, December of 2006.

Q. And the tax firm that you worked with here was named what?

A. It was formerly Thomas and Fisher. Now it's Thomas, Fisher, Sinclair, and Edwards.

Q. And your practice is primarily composed

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house; please note that there are additional miscellaneous expenses for painting baseboard and crown molding which have yet to be calculated.

I'm not sure if I actually included the disclosure statement, but I think I did. I think it was attached to it as well.

Q. The Galt Innovations proposal that's attached to it, was this work actually performed?

A. I'm not sure if -- there's several options listed on the first page. I'm not sure if option three was actually performed or not, but they did come in and repair the termite damage.

There was -- I had some questions about the previous repairs that had been done, and asked them to -- what it would cost to shore up those floor joists and replace them with a full span, and they didn't actually do that work.

Q. They did not?

A. No.

Q. Was that work ever done?

A. Yes.

Q. Who did that work?

A. I did that work.

Q. So the second page of this shows a $3,780 repair?

Page 23

A. Yes.

Q. Was that done?

A. Yes. It indicates that it's the final bill for the contract log.

Q. And the third page has three different options again. Do you know whether that work was done?

A. Again, I think option three may have been that additional work that was unrelated to the termite damage that I discovered. It was more related to the previous repairs that had been made.

Q. Okay. And there's a change order number one that's there, $800, it says to shore up a triple beam rod.

A. I think that was additional termite damage that they found as they were going through the repair process in addition to just the corner of the house.

Q. All right. So as we sit here today, is any of this work being asked to be done? Let me rephrase that.

The areas that Galt Innovations worked on, do you consider those areas satisfactory?

A. Yes.

Q. Are you recovering or attempting to

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recover damages for this work?

A. No.

Q. And why not?

A. Because I don't -- this came and went, and this isn't part of the current litigation.

Q. The current litigation is about termite infestations that were withheld, correct, or misrepresented?

A. Correct.

Q. And this letter was about termite infestation that was misrepresented, correct?

A. In the corner of the house, in the front corner of the bedroom.

Q. And so why aren't you seeking recovery for that work?

A. I don't know that I have the evidence to prove that, and I don't know that I'm still entitled to it under the statute of limitations.

Q. All right. So you're making a separate determination that between this work and the work that's as a result of the suit that was filed in 2018?

MR. MACCLENAHAN: Object to the form.

A. Can you repeat that question?

Q. You're making a separate determination

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or a separate claim as it relates to this termite damage than the termite damage that's referenced in your suit filed in 2018?

MR. MACCLENAHAN: Object to the form.

A. I am saying that I have found two separate instances of termite damage that were not contiguous. So just because I discovered one didn't mean that I knew about the other one.

Q. All right. But you first discovered termite damage in your home in April of 2015?

A. I discovered --

MR. MACCLENAHAN: Objection to --

A. I discovered about $5,000 worth of this termite damage in my home in 2012.

MR. MACCLENAHAN: You said 2015. That was my objection.

Q. All right. That was April of 2012?

A. Correct.

Q. Now, did you ask Galt to check around your home for any other potential damage?

A. No, I did not ask them to do any kind of exploratory inspection to see what else was there. I just asked them to fix the termite damage that was uncovered, and as they tore down drywall, you know, in the ceiling of the basement room under

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Ansley's bedroom, and as they took down the wall in the bedroom upstairs, whatever we discovered, they repaired, and then when they stopped, you know, uncovering termite damage, they stopped tearing down the walls.

Q. Would it have been reasonable to ask them to look at other areas of the home?

MR. MACCLENAHAN: Object to the form.

A. I think that would have been beyond what was necessary at that point.

Q. When Century Termite came out, you asked them to review or to look around your home to see whether there was any other damage?

MR. MACCLENAHAN: Excuse me. I think you mean Sargent.

A. You mean Sargent Pest?

Q. Sargent. Excuse me.

A. I asked him to look around. I think he conducted a search to see if he saw any termite damage, but he did not see any signs of termite or termite damage other than what was uncovered by removing the drywall in the bedroom.

Q. Was there any response to your letter that was Exhibit Number 1?

A. Yes.

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Q. What was that response?

A. There was some back-and-forth about whether or not the McCrorys knew about the termite damage. They indicated that they had no knowledge of any termite damage. And I believe I was informed that Nathan Galbreath was going to be -- or represented Seabrook Marchant at that point, and I asked him if he would accept service for his client, and I was told that I believe Tim McCrory was also going to have a lawyer at that point.

But I decided not to move forward after those -- we had tried to plan a meeting to sit down and talk about everything, and I believe Tim was the one that said, I don't think it's -- we're not going to agree; it's not necessary to have that meeting. And that's just kind of where it ended.

Q. Did you have a complaint drafted at that time?

A. No, I did not.

Q. Exhibit Number 5 is a letter that you wrote in July of 2019?

(DFT. EXH. 5, 7/9/2012 DEMAND LETTER, was previously marked for identification.)

BY MR. ANDERSON:

Q. Do you recall that letter?

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A. I don't recall specifically, but it's my signature, on my letterhead.

Q. All right. You were demanding 4,000 at that point?

A. Yes. According to the letter, yes.

Q. And where did you get that figure from?

A. I believe it's from what I paid the contractor, and probably what I paid in materials. I painted the room myself and put the trim work up myself and that kind of thing to try to save some money. As my wife mentioned, I'm stingy.

Q. So you did not pursue that further after that letter was written?

A. I don't believe so.

Q. What -- when was the next time that you saw issues with the home?

MR. MACCLENAHAN: Object to the form.

A. The next time that I saw issues with the home was when I was doing the demolition for my master bathroom. I removed the subfloor in the master bathroom and there was a -- two floor joists that were sistered together, and there was damage in the middle of those two floor joists. So that was the next time that I saw termite damage.

Q. Who do you think sistered those two

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floor joists together?

A. I believe when the home was originally constructed, I think it was just a double beam that was put in.

Q. Now, was that the next renovation or the next work you did on your home or...

A. No.

Q. What was the first -- correction. Let me rephrase that.

After your daughter's room was renovated and Galt did their work, you determined to do some additional renovation work with your home; is that correct?

A. Yes. I renovated the hall bathroom.

Q. And during that renovation process did you note any termite issues?

A. No, I did not.

Q. All right. And so when did you complete that work?

A. That work was completed prior to the demolition of the master bathroom, but I don't recall the exact date that that was completed.

Q. All right. And then it was during the time frame that you were renovating the master bath, is when you discovered some additional

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OFFICIAL SOUTH CAROLINA WOOD INFESTATION REPORT

THIS REPORT VALID FOR 45 DAYS ONLY. THIS REPORT MAY NOT BE USED IN A REAL ESTATE CLOSING AFTER 45 DAYS. THIS REPORT IS NOT TO BE CONSTRUED AS A GUARANTEE OR WARRANTY AGAINST FUTURE INFESTATION OR DAMAGE. IT IS RECOMMENDED BY THE DEPARTMENT OF PESTICIDE REGULATION, REGULATORY AND PUBLIC SERVICE PROGRAMS, AND THE SOUTH CAROLINA PEST CONTROL ASSOCIATION THAT THE PURCHASER OF THE STRUCTURE, RATHER THAN THE SELLER, OBTAIN THIS WOOD INFESTATON REPORT.

Date: 6/3/2008 File No. DW20080601

This is to report that a qualified inspector employed by the below named firm has carefully inspected readily accessible areas, including attics and crawl spaces which permit entry, of the property located at the below address for termites, other wood-destroying insects, and fungi. The inspection for fungi and fungi damage commonly called water damaged wood, rot or decay is limited to the area below the first main floor of the structure as defined by DPRPN-198. This report specifically excludes hidden areas and areas not readily accessible, and the undersigned pest control operator disclaims that he has made any inspection of such hidden areas or of such areas not readily accessible.

The inspection described has been made on the basis of visible evidence, and special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood-destroying insects. Probing and/or sounding of those areas and other visible and accessible wood members showing evidence of infestation was performed. This report is submitted without warranty, guarantee, or representation as to concealed evidence of infestation or damage or as to future infestation.

If there is evidence of active infestation or past infestation of termites and/or other wood-destroying insects or fungi, it must be assumed that there is some damage to the building caused by this infestation; however any visible damage to a wood member in accessible areas has been reported. The below-named firm's inspectors are not engineers or builders, and you may wish to call a qualified engineer or expert in the building trade to provide their opinion as to whether there is structural damage to the property.

LOCATION AND DESCRIPTION OF PROPERTY INSPECTED: 416 LEYSWOOD DRIVE GREENVILLE, SC 29615

SINGLE FAMILY DWELLING WITH BASEMENT BRICK AND BLOCK FOUNDATION

TYPE OF TRANSACTION: FHA_____ VA_____ CONVENTIONAL_____ LOAN ASSUMPTION_____ CASH SALE_____

IF ANY OF THE FOLLOWING ITEMS ARE MARKED YES, DESCRIBE ON REVERSE.	Check Only Appropriate Items YES	NO
WERE ANY OF THE AREAS OF THE PROPERTY OBSTRUCTED OR INACCESSIBLE?	[X]	[ ]
INFESTATION:		
1. There is visible evidence of active: (A) subterranean termites	[ ]	[X]
(B) other wood-destroying insects	[ ]	[X]
2. There is visible evidence of a previous infestation of:		
(A) subterranean termites	[X]	[ ]
(B) other wood-destroying insects	[ ]	[X]
3. There is visible evidence of prior subterranean termite treatment	[X]	[ ]
4. There is evidence below the first main floor of the presence of:		
(A) active wood-destroying fungi (wood moisture content 28% or above)	[ ]	[X]
(B) wood-destroying fungi is present but not active (less than 28% wood moisture content)	[X]	[ ]
5. There is evidence of the presence of excessive moisture conditions below the first main floor (20% or above wood moisture content, standing water, etc.) 12%	[ ]	[X]
DAMAGE: Termite, other wood-destroying insects and fungi (Note: reporting of fungi damage to wood, commonly called water damage, decay or rot, is limited to the area below the first main floor of the structure as defined by DPRPN-198.) At the time of our inspection, there were visibly damaged wooden members (e.g. insect damage to columns, sills, joists, plates, door jambs, headers, exterior stairs, porches, or fungi damage below the first main floor)	[X]	[ ]
If the answer is "YES", specify causes and location(s) on back.		

DAMAGE OBSERVED (IF ANY)	Check Appropriate Block Below
A. Will be or has been corrected by this company	[ ]
B. Will be or has been corrected by another company (see attached contract)	[ ]
C. Will not be corrected by this company; recommend that structure be thoroughly and completely evaluated by a qualified building expert licensed or registered with the S.C. Department of Labor, Licensing, and Regulations, Residential Builder's Commission and that needed repairs be made	[X]
D. In our opinion there is insufficient visible damage to recommend repair. (Explanation on the reverse side why repair was not recommended.)	[ ]

TREATMENT	Check Appropriate Block Below
1. The property described was treated by us for the prevention or control of N/A on N/A (Date of Treatment)	[ ]
A waiver has been issued and is attached to this form	[ ]
The present treatment warranty will expire on N/A and may be renewed initially at $ N/A by the owner.	
2. The property described has not been treated by us and is not now under contract with our firm.	[X]

SEE OTHER SIDE OF THIS REPORT FOR ADDITIONAL CONDITIONS GOVERNING THIS REPORT.

CL-100 Approved by the South Carolina Pest Control Association, Inc., and the Division of Regulatory and Public Service Programs Of Clemson University. Revised 3/99 Supercedes earlier versions.

(OVER)

EXHIBIT D tabbies

MARCHANT 000001

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CONDITIONS GOVERNING THIS REPORT

Please read carefully.

This report is based on the observations and opinions of our inspector. It must be noted that all buildings have some wood members which are not visible or accessible for inspection. It is not always possible to determine the presence of infestation without extensive probing and in some cases actual dismantling of parts of the structure being inspected.

All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible, areas of finished rooms, areas concealed by wall coverings, floor coverings, insulation, furniture, equipment, stored articles, or any portion of the structure in which inspection would necessitate tearing out or marring finished work. We do not move furniture, appliances, equipment, etc. Plumbing leaks may not be apparent at time of inspection. If evidence of such leaks is disclosed, liability for the correction of such leaks is specifically denied. No opinion can be rendered as to infestation or damage on the portion of sheathing, siding or other susceptible material which continues below soil grade.

The areas of the substructure and attic that are accessible and open for inspection have been inspected. The substructure is defined as that portion of the building below the first main floor living space.

Detached garages, sheds, lean-tos, fences, or other buildings on the property are not included in this inspection report unless specifically noted.

The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon.

REMARKS.

THIS SPACE IS TO BE USED TO DETAIL ANY "YES" ANSWERS FROM THE FRONT OF THIS FORM. INCLUDE ITEM NUMBER WITH EACH EXPLANATION. CLARIFICATION AND EXPLANATION OF OTHER ITEMS MAY ALSO BE INCLUDED.

PLEASE READ ABOVE REMARKS.

INACCESSIBLE OR OBSTRUCTED AREAS / COULD NOT PROPERLY INSPECT INTERIOR OF HOME DUE TO FURNITURE, STORED ARTICLES AND APPLIANCES BLOCKING VISUAL INSPECTION. COULD NOT INSPECT WALL STUDS, SILLS, JOIST AND SUB-FLOOR IN BASEMENT AREA DUE TO WALL AND CEILING COVERINGS BLOCKING VISUAL INSPECTION. COULD NOT INSPECT LEFT SIDE OF ATTIC DUE TO LOCATION OF ACCESS DOOR.

PREVIOUS INFESTATION / SCORN MARKS FROM TERMITE SHELTER TUBES WITH DAMAGE TO SILLS, JOIST AND SUB-FLOOR WAS NOTED RIGHT SIDE OF GARAGE AND TO SILL RIGHT REAR OF GARAGE AT TIME OF INSPECTION.

PRIOR TREATMENT / DRILL HOLES TO EXTERIOR FOUNDATION WALL INDICATES PREVIOUS TERMITE TREATMENT.

FUNGI / WOOD DESTROYING FUNGI PRESENT THROUGHOUT BASEMENT AREA, BUT NOT ACTIVE, WOOD MOISTURE CONTENT WAS BELOW 20% AT TIME OF INSPECTION.

DAMAGE / PLEASE SEE PREVIOUS INFESTATION. ALSO DISCOLORED WOOD WAS NOTED AROUND HVAC DUCT BOOT REAR OF UTILITY ROOM AT TIME OF INSPECTION.

PLEASE NOTE / REPAIRS HAVE BEEN MADE IN GARAGE AREA BUT SOME DAMAGE REMAINS AND SHOULD BE EVALUATED BY A LICSENCED BUILDER.

PLEASE SEE ATTACHED DISCLAIMER.

Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in this property. I do further state th that neither I nor the company for which I am acting is associated in any way with any party to this transaction.

LICENSE NUMBER OF PERSON SIGNING THIS REPORT

C0016041
(MUST BE CERTIFIED IN CATEGORY 7A)

Firm: HUNTER PEST ELIMINATION, LLC

BY: Derek Wear C

Business License Number: B0002468

ADDRESS: 703 VALLEY CREEK DR.

OF FIRM: GREER, SC 29651

ACKNOWLEDGEMENT:

PURCHASER ACKNOWLEDGES THAT A COPY OF THIS REPORT HAS BEEN REVIEWED AND RECEIVED.

7/1/08 4/1/08
DATE ACKNOWLEDGED

PURCHASER'S SIGNATURE

MARCHANT
000002

PROPERTY AND SITE

LIMITATION: Restricted/No Access ☐ Debris/Obstruction ☐ Snow/Ice Cover ☐ Shrub ☑
CONDITIONS: Sunny ☑ Cloudy/Overcast ☐ Rain/Snow ☐ Approx. Temperature 77
Dry Ground ☑ Approx. Hydrant Distance

BUILDING Approx. Years Old 30-50 Condo ☐ Rural ☐
Ranch ☑ Bi-Level ☐ 2 Story ☐ 3 Story ☐
Semi-Detached ☐ Plex Row/Town ☐ Other ☐

LANDSCAPING *Slope to House* ☐ **Good Condition**
Flower Bed ☑ Hedge/Shrub ☑ Tree/Vine ☑ Ravine ☐
Earth to Wood ☐ *Site Erosion* ☐ *No Swale* ☐ *Other* ☐

DRIVEWAY *Slopes to House* ☐ **No Visible Damage Noted**
Paving Stone ☐ Gravel ☐ Concrete ☑ Asphalt ☐

WALKWAY/PATH *Slopes to House* ☐ **No Visible Damage Noted**
Paving Stone ☐ Patio Block ☐ Concrete ☑ Asphalt ☐

PORCH *Unsecured* ☐ **No Visible Damage Noted**
Metal ☐ Wood ☐ Concrete ☑ Brick ☑
Crack/Spalling ☐ *Corrosion* ☐ *Rot* ☐ *Repaint* ☐
LIGHTING None ☐ *Unsecured* ☐ **Not Applicable**
RECEPTACLE Damaged/No Cover ☐ **Not Applicable**
RAILING *Unsecured* ☐ **Not Applicable**
Metal ☐ Wood ☐ *Incomplete* ☐ *None* ☑

DECK/ PATIO *Unsecured* ☐ **Visible Damage Noted**
Wood ☑ Brick/Block ☐ Concrete ☐ Metal ☐
Slope to House ☐ Paving Stone ☐ Patio Block ☐ Stone ☐
Crack ☑ *Deterioration* ☐ Mold/Mildew ☐ *Rot* ☐
RAILING *Unsecured* ☐ **No Visible Damage Noted**
Metal ☐ Wood ☑ *Incomplete* ☐ *None* ☐

RETAINING WALL *Not Stable* ☐ **Visible Damage Noted**
No Weep Holes ☐ Wood ☐ Concrete ☑ Stone ☐
Crack ☑ *Deterioration* ☑ *Rot* ☐ *Leans* ☐

BUILDING

It is recommended that any deficiencies and the components/systems related to these deficiencies noted in the report be evaluated/inspected and repaired as needed by licensed contractors/professionals PRIOR TO THE CLOSE OF ESCROW. Further evaluation PRIOR to the close of escrow is recommended so a properly licensed professional can evaluate our concerns further and inspect the remainder of the system or component that may be outside our area of expertise or the scope of our inspection. Please call our office for any clarification or further questions.

DRIVEWAY

Driveway is cracking / heaving. Condition is typical for concrete and is considered cosmetic. Correct as needed.

DECK/PATIO

Correct cracked rear corner of concrete slab at basement walk out as needed.

Extra Comments Continued Next Page...

Pillar To Post Professional Home Inspection

For the purpose of this report your house faces: West

FRONT

EXHIBIT E tabbies

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RETAINING WALL

Correct the loose bricks at the front brick retaining wall to promote intended use.
The rear concrete retaining wall requires maintenance / correction at this time to promote intended use. Cracks and typical deterioration observed.

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LIMITATION Clearance ☐ Seasonal Storm Window ☐ Debris/Obstruction ☐ Shrub ☑
Snow/Ice Cover ☐ Restricted/No Access ☐ Parged ☐ Other

FOUNDATION WALL Not Exposed ☐ **No Visible Damage Noted**
Poured Concrete ☐ Block ☐ Brick ☑ Stone ☐
Exterior Rigid Insulation ☐ PWF/Wood ☐ Piling/Pier ☐
Crack/Spalling ☐ Mildew/Mold ☐ Stain/Rot ☐ Frost Heave ☐

WALL SURFACE No Ground Clearance ☐ **No Visible Damage**
Aluminum ☐ Composite ☐ Brick ☑ Stone ☐
Stucco ☐ Vinyl Siding ☐ Wood Siding ☐ Steel/Shgl ☐
Split/Loose ☐ Repoint ☐ Repaint ☐ Recaulk ☐
Crack/Spalling ☐ Mildew/Mold ☐ Stain/Rot ☐ Blister/Peel ☐

WINDOWS Inspected with Binoculars ☐ **No Visible Damage Noted**
Storm ☐ Unsecured ☐ Repaint ☐ Recaulk ☐
Weather-strip ☐ Mildew/Mold ☐ Stain/Rot ☐ Poor Trim ☐

WINDOW WELL Improper Drainage ☐ **Not Applicable**

DOORS Binds ☐ Damaged ☐ **Operational**
Storm ☑ Unsecured ☐ Repaint ☐ Recaulk ☐
Weather-strip ☐ Mildew/Mold ☐ Stain/Rot ☐ Split/Dent ☐

LIGHTING None ☐ Unsecured ☐ **Not Operational**
RECEPTACLE Damaged/No Cover ☐ **Operational**
Install GFCI ☐ Reverse Polarity ☐ *No Ground* ☑ *Open Ground* ☐

BASEMENT WALKOUT Covered ☐ **No Visible Damage Noted**
Poor Condition ☐ No Railing ☐ No Drain ☐ Leak ☐
Crack ☑ Mildew/Mold ☐ Frost Heave ☐ Reparge ☐

DOORS
Recommend seal the concrete cracks at the rear basement walk out door threshold to prevent moisture infiltration.

LIGHTING
Recommend determine cause for inoperable exterior lights at rear deck, north side entry and security light over garage to promote intended operation.

RECEPTACLE
North side entry doorbell is inoperable. Correct to promote intended use.

Garage

GARAGE / CARPORT

TYPE Attached ☐ Built-In ☑ Detached ☐ Single ☑ Double ☐ Insulated/Heated ☐ Attic Access ☐

DOOR Binds ☐ Damaged ☐ **Operational**
Automatic ☐ Sectional ☐ Wood ☐ Metal ☑
Adjust Auto Stop ☐ No Safety Stop ☐ Stain/Rot ☐ Corrosion ☐

FLOOR Crack ☑ Settlement ☐ **No Visible Damage Noted**
Asphalt ☐ Concrete ☑ Gravel ☐ Stain/Rot ☐

WALL No Fire Barrier ☐ **No Visible Damage Noted**
Drywall/Plaster ☐ Block ☑ Wood ☐ Stain/Rot ☐
WINDOW Binds ☐ Damaged ☐ **Not Applicable**

CEILING No Fire Barrier ☐ **No Visible Damage Noted**
Drywall/Plaster ☐ Crack ☐ Wood ☐ Stain/Rot ☐

LIGHTING None ☐ Unsecured ☐ **Not Operational**
RECEPTACLE Damaged/No Cover ☐ **Operational**
Install GFCI ☐ Reverse Polarity ☐ No Ground ☑ Open Ground ☐
CIRCUIT WIRE Concealed ☐ Unsecured ☐ Improper ☐

ACCESS DOOR To Home **Operational**
Auto Door Close ☐ Metal Clad ☐ Wood ☑ Composite ☐
Gas Proof ☐ Damaged ☐ Stain/Rot ☐ Corrosion ☐

DOOR
A large amount of stored personal items in the garage prevented a complete evaluation and not all electrical outlets could be tested. Further evaluation recommended when seller has vacated premises.

WINDOW
Basement windows could not be accessed and were not tested.

LIGHTING
Change / install light bulbs at ceiling fixtures to determine operation.

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ROOF STRUCTURE

INSPECTED BY: Binocular ☐ *Roof Edge* ☐ Walk On ☑ No Access ☐

LIMITATION Deck/Patio ☐ Gravel/Flat ☐ *Height* ☐ *Steep Slope* ☐ Rain/Snow/Ice Cover ☐
Solar Panel ☐ *Fragile* ☐ *Other*

MAIN ROOF Flat ☐ Gable ☑ Valley ☐ Hip ☐ Shed ☐ Other ☐ Est. Age Pitch

GUTTER/DOWNSPOUT *Unsecured* ☐ **No Visible Damage Noted**
TYPE Aluminum ☑ Galvanized ☐ Copper ☐ Plastic ☐
Incomplete ☐ Dent/Split ☐ *Corrosion* ☐ *Leak* ☐
DRAINAGE Above Ground ☑ Below Ground ☑ Spill/Roof ☐
Extend Leader ☐ *Redirect Leader* ☐ Clean ☐

FASCIA/SOFFIT *Not Vented* ☐ **No Visible Damage Noted**
Aluminum ☑ Wood ☐ Vinyl ☐ Other ☐
Loose ☐ Mildew/Mold ☐ Stain/Rot ☐ *Corrosion* ☐

COVERING *# of Layers* 1 **No Visible Damage Noted**
Asphalt Shingle ☐ Conc/Clay Tile ☐ Wd. Shingle ☐ Wd. Shake ☐
Fibreglass Shingle ☐ Tar/Gravel ☐ Metal ☐ Other ☐
Nail Pop/Exposed ☐ Loose/Missing ☐ *Broken* ☐ *Crack* ☐
Patched ☐ Mildew/Mold ☐ Stain/Rot ☐ *Worn* ☐
Curl/Claw ☐ Fungus/Moss ☐ *Improper Installation* ☐

LIFE EXPECTANCY Typical ☑ Middle/End ☐ *Exceeded* ☐

ACCESSORY *Unsecured* ☐ **No Visible Damage Noted**
Air/Exhaust Vent ☑ Vent Stack ☐ Turbine ☐ Elec. Mast ☐
Solar Panel ☐ Skylight ☐ Antenna ☐ Dish ☐

FLASHING Concealed ☑ **No Visible Damage Noted**
Chimney ☑ Dormer ☐ Drip Edge ☐ Flat Roof ☐
Skylight ☐ Roof to Wall ☑ Stack ☐ Valley ☑
Roll Roofing ☐ Alum./Galv. ☐ Copper/Lead ☐ Rubber ☐
Gap/Loose/Crack ☐ *Deterioration* ☐ *Corrosion* ☐ *Tarred* ☐
Reseal/Recaulk ☐ *Improper* ☐ *Replace When Re-Roofing* ☐

CHIMNEY / VENT *Leaning* ☐ **No Visible Damage Noted**
Fireplace ☑ Furnace ☐ Gas Insert ☐ Other ☐
Brick ☑ Metal ☐ Wood ☐ Stucco ☐
Crack ☑ *Deterioration* ☐ *Corrosion* ☐ *Loose* ☐
Abandoned ☐ *No Wind Cap* ☐ *Metal Liner Required* ☐

CHIMNEY CAP *None* ☑ **No Visible Damage Noted**
Concrete ☐ Masonry ☐ Metal ☑ Other ☐
Crack/Spalling ☐ *Deterioration* ☐ *Corrosion* ☐ *Loose* ☐

VISIBLE FLUE LINER *None* ☑ **Not Applicable**
Brick/Block ☐ Clay ☑ Metal ☐ Metal Insert ☐
Rain Cap ☐ *Deterioration* ☐ *Corrosion* ☐ *Loose* ☐
Crack/Spalling ☐ *Improper* ☐ Advise Cleaning/Sweeping ☑

SECONDARY ROOF Flat ☐ Gable ☐ Hip/Valley ☐ Shed ☐ Other ☐ Est. Age Pitch

COVERING *# of Layers* 1 **Not Applicable**
Asphalt Shingle ☐ Conc/Clay Tile ☐ Wd. Shingle ☐ Wd. Shake ☐
Fibreglass Shingle ☐ Tar/Gravel ☐ Metal ☐ ☐
Nail Pop/Exposed ☐ Loose/Missing ☐ *Broken* ☐ *Crack* ☐
Patched ☐ Mildew/Mold ☐ Stain/Rot ☐ *Worn* ☐
Curl/Claw ☐ Fungus/Moss ☐ *Improper Installation* ☐

LIFE EXPECTANCY Typical ☐ Middle/End ☐ *Exceeded* ☐

GUTTER/DOWNSPOUT

Cracked underground drain at rear southeast corner will require further evaluation and correction as needed to promote intended drainage.

CHIMNEY/VENT

Recommend seal the cracks at the top of the chimney to prevent moisture infiltration.

CHIMNEY CAP

Consider installation of a chimney cap to provide weather protection.

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ATTIC

LIMITATION: No Access ☐ Sealed ☐ Stored Items ☐ Looked In ☑ Entered ☐ Hatch ☐ Pull Down ☑ Insulated ☑

STRUCTURE Truss ☐ Rafter ☑ — No Visible Damage Noted
Warped ☐ Stain/Rot ☐ Sag/Loose ☐ Split ☐

SHEATHING *Condensation* ☐ — No Visible Damage Noted
Composite ☐ Thermal Board ☐ Plywood ☐ Board ☑
R Felt/R Paper ☐ Mildew/Mold ☐ Sag/Loose ☐ Stain/Rot ☐

INSULATION Estimated Depth 4 inch — Not Applicable
Radiant Barrier ☐ Concealed ☐ Finished ☐ None ☐
Vapor Barrier ☐ Fibreglass ☐ Mineral ☐ Cellulose ☐
Wood Shavings ☐ Rigid Plastic ☐ Foam ☐ Other ☐
Batt ☐ Blown/Loose ☑ *Sprayed* ☐ *Required* ☐

VENTILATION *None* ☐ — Visible Damage Noted
Soffit ☑ Gable End ☑ Turbine ☐ Mechanical ☐
Baffles ☐ Roof/Ridge ☑ *Blocked* ☐ *Required* ☐

EXHAUST DUCT *Concealed* ☐ — No Visible Damage Noted
Not Insulated ☐ *Into Attic* ☑ Plastic/Flex ☐ Metal ☐

ELECTRICAL *Concealed* ☑ — Visible Damage Noted
Abandoned ☐ *Knob & Tube* ☐ *Open Splice* ☑ *Frayed* ☐

VENTILATION

North and south gable end vents appear to be clogged or blocked with debris. Recommend further evaluation and cleaning as needed to promote intended ventilation. Attic whole house fan is covered with insulation and not operational.

EXHAUST DUCT

Recommend extend the guest bath vent fan exhaust to the exterior through an approved vent to prevent moisture accumulation in attic.

Extra Comments Continued Next Page...

ELECTRICAL SERVICE / PANEL

SERVICE ENTRANCE Underground ☐ Overhead ☑ No Conduit ☐
120-Volt ☐ 120/240 Volt ☑ *Unsecured* ☐ Frayed ☐
ENTRANCE CABLE Concealed ☑ Aluminum ☐ Copper ☐
MAIN DISCONNECT Cartridge Fuse ☑ Breaker ☐
DISCONNECT RATING 0 *Amps* Have Electrician Evaluate ☑

DISTRIBUTION PANEL *Not Opened* ☐ — No Visible Damage Noted
Location Garage *Non Standard Installation* ☐
Obstructed ☐ *Unsecured* ☐ *Corrosion* ☐ *Obsolete* ☐
PANEL RATING *100* Amps Room for Expansion ☐
FUSE *Breaker* ☑ Glass/Screw ☐ Cartridge ☐ Time Delay ☐
GFCI Breaker ☐ AFCI Breaker ☐ Blown/Broken ☐ *Over-Fused* ☐

CIRCUIT WIRE *Improper* ☐ — No Visible Damage Noted
Aluminum ☐ *Copper* ☑ Copper Clad ☐ Other ☐
Non - Metallic Sheathed ☐ Armoured Cable ☐ Knob & Tube ☐
Double Tapping ☑ *Spliced* ☐ *Corrosion* ☐ *Scorched* ☐
GROUNDING *Concealed* ☑ Ground Rod ☐ Water Main ☐
Improper Connection/Installation ☐ Meter By-Pass/Jumper ☐
BONDING *Concealed* ☑ Water Pipe ☐ Gas Pipe ☐
Improper Connection/Installation ☐ *Corrosion* ☐ *Unsecured* ☐

AUXILIARY PANEL Concealed ☐ — No Visible Damage Noted
Location Closet behind furnace *Non Standard Installation* ☐
Not Opened ☐ *Unsecured* ☐ *Corrosion* ☐ *Obsolete* ☐
DISCONNECT RATING *100* Amps Have Electrician Evaluate ☑
PANEL RATING *0* Amps Room for Expansion ☐
FUSE *Breaker* ☑ Glass/Screw ☐ Cartridge ☐ Time Delay ☐
GFCI Breaker ☐ Blown/Broken ☐ *Over-Fused* ☐ *Scorched* ☐

WIRE

Double tapping observed at the main breaker and one 20 amp breaker, missing blank plates at open breaker slots, suspect electrical wiring too the rear exterior lights (off living room), open splice at the garage ceiling fan will require a complete evaluation and correction as needed by a qualified electrician of the entire electrical system to promote the safe intended use of the system.

Extra Comments Continued Next Page...

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ELECTRICAL

Recommend consult a qualified electrician to evaluate the open electrical splices in the attic and correct for intended use.

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FUSE

Multiple double taps at the sub panel behind the furnace will require a complete evaluation and correction as needed by a qualified electrician to promote intended operation. Double tapping is not an uncommon occurrence. An electrician must determine whether the breaker is capable of supporting the double tap.

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LIMITATION	*Finished* ☑		Clutter ☑	Dry Weather ☑ *Dry Ground* ☑
FLOOR *Crack* ☑	Concrete ☑		**No Visible Damage Noted**	
Carpet ☐	Ceramic ☐	Vinyl ☐	Wood/Lam. ☐	
WALL *Crack* ☐	Concealed ☐		**No Visible Damage Noted**	
Mildew/Mold ☐	Block ☑	Brick/Stone ☐	PWF/Wood ☐	
CEILING *Stain* ☐	*Unfinished* ☑		**No Visible Damage Noted**	
Drywall/Plaster ☐	Acoustic ☑	Wood ☐	Tile ☐	
WINDOW Binds ☐	Not Tested ☐			**Not Applicable**
Single/Dbl. Hung ☐	Cas./Awning ☐	*Sliding/Fxd* ☐	Bay/Bow ☐	
Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl/V.Cld ☐	Wd./Vnyl/Fxd ☐	
Damaged ☐	*Mildew/Mold* ☐	*Stain/Rot* ☐	*Repaint* ☐	
DOOR *Binds* ☐	*Damaged* ☐			**Operational**
Pocket ☐	Hinged ☑	Wood ☑	Composite ☐	
LIGHTING	*Minimal* ☐	*Unsecured* ☐		**Operational**
RECEPTACLE	*Damaged/No Cover* ☐			**Operational**
Install GFCI ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐	
CIRCUIT WIRE	Concealed ☐	*Unsecured* ☐	*Improper* ☐	
HEAT SOURCE	*None* ☐	Thermostat ☐	Electric ☐	
Air Register ☑	Convector/Radiator ☐		Radiant ☐	
BASEMENT STAIRWAY	Unsecured ☐		**No Visible Damage Noted**	
Carpet ☑ Vinyl ☐	Wood ☐	Worn ☐	Trip Hazard ☐	
RAILING	*Unsecured* ☐		**No Visible Damage Noted**	
Metal ☐	Wood ☑	Incomplete ☐	None ☐	
FLOOR JOIST	Concealed ☑		**Visible Damage Noted**	
Unsecured ☐	Split ☐	Stain/Rot ☐	Other ☐	
BRIDGING	Concealed ☑		**No Visible Damage Noted**	
Continuous ☐	X-Metal ☐	X-Wood ☐	Solid Wood ☑	
SILL PLATE	Concealed ☑		**No Visible Damage Noted**	
Moisture Gasket ☐	*Mildew/Mold* ☐	*Stain/Rot* ☐	*No Anchors* ☐	
BEAM Unsecured ☐	Concealed ☑		**No Visible Damage Noted**	
Laminate ☐	Metal ☐	Wood ☑	*Sag* ☐	
POST On Slab ☐	Concealed ☐		**No Visible Damage Noted**	
Adjustable ☐	Brick/Block ☐	Metal ☑	Wood ☐	
BEARING WALL	Concealed ☐			**Not Applicable**
COLD ROOM	*Improper Door* ☐			**Not Applicable**
Concrete ☐	Brick/Block ☐	Stone ☐	Parged ☐	
Earth Floor ☐	*Mildew/Mold* ☐	*Stain/Damp* ☐	*Crack* ☐	
CRAWL SPACE	*No Access* ☐			**Not Applicable**
Vapor Barrier ☐	Insulated ☐	Entered ☐	Looked In ☐	
Crack ☐	*Mildew/Mold* ☐	*Stain/Rot* ☐	Damp ☐	
Earth Floor ☐	Concrete ☐		*Moisture Barrier Required* ☐	
PIPES/ DUCTS	*Unsecured* ☐	*Leak* ☐	Insulated ☐	
VENTILATION	Mechanical ☐	*Blocked* ☐	*Required* ☐	
SLAB ON GRADE	*Concealed* ☑		**No Visible Damage Noted**	
On Piling/Pier ☐		On Poured Concrete ☑	Floating ☐	
Crack ☑	*Frost Heave* ☐	*Settling* ☐	*Leak* ☐	

DOOR

Correct crack at inside of door leading to downstairs as needed. Condition considered cosmetic.

FLOOR JOIST

Recommend consult a qualified foundation contractor to evaluate and correct pest damage at joists located near center to rear area of garage / basement area to promote intended use.

CRAWL SPACE

Interior floors slope at some areas of the home. Condition is very typical for an older home and may be the result of settling. It is beyond the scope of this inspection to determine the cause of floors that are not level. Recommend consult a qualified foundation contractor for further evaluation as your budget allows.

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HEATING/COOLING/VENTILATION

DATA PLATE: Not Legible ☐ Incomplete ☐ Model G5RA096C-16 Btu Input 96,000 Est. Age

LIMITATIONS: Clean-Out Does Not Open ☐ Oil/Propane Tank Not Visible ☐ System Operating AC/Heat ☐
System Shut-Off/Inoperative ☐ Piping/Ducts Concealed ☐ Weather/Temperature ☐

SMOKE DETECTORS	Basement ☐	1st Floor ☑	2nd Floor ☐	3rd Floor ☐	Other
CO DETECTORS	Basement ☐	1st Floor ☐	2nd Floor ☐	3rd Floor ☐	Other

THERMOSTAT/HUMIDISTAT	Unsecured ☐		Operational	
Location Hallway		Programmable ☐	Standard ☑	
FUEL SOURCE	Gas ☑	Oil ☐	Wood/Pellet ☐	Electric ☐
HEAT TYPE	Convector ☐	Forced Air ☑	Radiator ☐	
BURNER TYPE	Conventional ☐	Mid ☑	High ☐	
HEATING SYSTEM			Advise Service/Repair Contract ☑	
AIR REQUIREMENT	Internal ☑	External ☐	Inadequate ☐	
VENTING	Flue ☑	Sidewall ☐	Metal ☑	Plastic ☐
Improper Rises ☐	Unsecured ☐	Corrosion ☐	Soot ☐	
LIFE EXPECTANCY	Typical ☐	Middle/End ☑	Exceeded ☐	
GAS BURNER	Not Checked ☐		Operational	
BURNER	Corrosion ☐		Advise Adjustment ☐	
IGNITION	Electronic ☑		Pilot & Thermocouple ☐	
HEAT SHIELD	Missing ☐	Corrosion ☐	Soot ☐	
PROPANE TANK/PIPING	Unsecured ☐	Corrosion ☐	Kink/Leak ☐	
OIL BURNER BLOWER	Not Checked ☐		Not Applicable	
BURN CHAMBER	Deterioration ☐		Advise Adjustment ☐	
Burn Through ☐	Corrosion ☐	Crack ☐	Soot ☐	
INSPECTION DOOR	Missing ☐	Soot ☐	Sealed ☐	
BAROMETRIC DAMPER	Missing ☐	Unbalanced ☐	Sealed ☐	
OIL TANK/ PIPING	Basement ☐	Outside ☐	Buried ☐	
No Filter ☐	Unsecured ☐	Corrosion ☐	Kink/Leak ☐	
CENTRAL HUMIDIFIER	Not Checked ☐		Not Applicable	
Water Shut Off ☐	Damaged ☐		Clean/Repair/Replace ☐	
Mildew ☐	Unsecured ☐	Corrosion ☐	Leak ☐	
MOTOR/BLOWER	Direct Drive ☐	Noisy ☐	Other ☐	
FAN BELT	Loose/Worn ☐	Misalign ☐	Other ☐	
FILTER Electronic ☐	Disposable ☐	Permanent ☐	Missing ☐	
Inoperable ☐	Undersized ☐	Damaged ☐	Dirty ☐	
DUCT/JOINT/HOUSING	Unsecured ☐	Corrosion ☐	Kink/Leak ☐	
AC / HEAT PUMP	Not Checked ☐		Operational	
Evaporative ☐	Central ☑	Geo-Therm ☐	Air ☐	
Through Wall ☐	Damaged Fins ☐	Corrosion ☐	Noisy ☐	
Loose ☐	Unsecured ☐	Not Level ☐	Dirty ☐	
TEMP. DIFFERENTIAL	Supply Air 56		Return Air 69	
FUEL SOURCE	Unknown ☐	Electric ☑	Gas ☐	
CONDENSATION LINE	Improper Drain ☐	Corrosion ☐	Leak ☐	
REFRIGERANT LINE	Unsecured ☐	Not Insulated ☐	Leak ☐	
HRV/Air Exchanger	Not Checked ☐		Not Applicable	
Dirty Filter ☐	Unsecured ☐	Corrosion ☐	Noisy ☐	
ELECTRIC HEATING	Not Tested ☐		Not Applicable	
Forced Air ☐	Boiler ☐	Baseboard ☐	Radiant ☐	
Loose Connection ☐	Damaged Fins ☐	Corrosion ☐	Scorched ☐	

THERMOSTAT/HUMIDISTAT

Change batteries and test smoke detectors to promote safety.

HEATING SYSTEM

Recommend consult a qualified furnace / air conditioning contractor to evaluate the suspect filter application installed at the furnace unit and the missing cover / filter at the basement hall return to promote intended operation.

System showing signs relative to age however was operating in the heating mode as intended at the time of inspection. Based on age of unit recommend a home warranty to cover system operation and componants

AC/HEAT PUMP

Recommend preventative maintenance agreement with a qualified air conditioning contractor to promote intended operation.

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PLUMBING COMPONENTS

LIMITATION Finished Basement ☐ Private/Water Shut Off ☐ Private System ☐ *Other*

PUBLIC SUPPLY *Concealed* ☑ **Metered**
Lead ☐ Galvanized ☐ Plastic ☐ Copper ☐
SHUT-OFF VALVE Location
Not Tested ☑ *Corrosion* ☐ *Leak* ☐

PRIVATE SUPPLY *Concealed* ☐ **Not Applicable**
SHUT-OFF VALVE Location
Not Tested ☐ *Corrosion* ☐ *Leak* ☐
WELL PUMP Submersible ☐ Jet ☐ Other ☐
Short Cycle ☐ *Corrosion* ☐ *Leak* ☐
Advise Well Water Quality/Recovery Test ☐
STORAGE TANK *No Air Valve* ☐ *Corrosion* ☐ *Leak* ☐
WATER PRESSURE *Low* ☐ Typical ☐ High ☐
WATER QUALITY *Discoloration* ☐ Debris ☐ Odor ☐
Test Declined ☐ Advise Water Quality Test ☐

HOSE BIBB Not Checked ☐ **Operational**
Frost Free ☐ Anti-Siphon ☐ Shut Off Valve ☐
Recaulk ☐ *Unsecured* ☐ *Corrosion* ☐ *Leak* ☐

DISTRIBUTION PIPING Concealed ☑ **No Visible Damage Noted**
Lead ☐ Galvanized ☐ Plastic ☐ Copper ☐
Dissimilar Metal ☐ *Unsecured* ☐ *Corrosion* ☐ *Leak* ☐
CROSS CONNECTION Kitchen ☐ *Laundry* ☐ Hose Bibb ☐

WASTE DRAINAGE Concealed ☑ **No Visible Damage Noted**
Galvanized/Steel ☐ Cast Iron ☑ Plastic ☐ Copper ☐
Odor ☐ *Unsecured* ☐ *Corrosion* ☐ *Leak* ☐
Advise Septic Tank Checked/Pumped ☐
FLOOR DRAIN Mechanical/Faucet Primer ☐
None ☐ *Backed-Up* ☐ *No Water* ☐ *No Trap* ☐

SEWAGE PUMP Not Checked ☐ **Not Applicable**

VENT STACK/PIPING *Concealed* ☐ **No Visible Damage Noted**
Galvanized/Steel ☐ Cast Iron ☑ Plastic ☑ Copper ☐
Undersized ☐ *Unsecured* ☐ *Corrosion* ☐ *Leak* ☐
MAIN CLEANOUT Concealed ☑ **Not Applicable**
Improper Plug ☐ Location

HOT WATER TANK Hybrid Heating ☐ **Operational**
Power-Vented ☐ Own ☐ Rent ☐ Est. Capacity 40 IG
Gas ☑ Oil ☐ Wood/Coal ☐ Electric ☐
Dirty/Rusty/Odor ☐ *Unsecured* ☐ *Corrosion* ☐ *Leak* ☐
LIFE EXPECTANCY Typical ☐ Middle/End ☑ *Exceeded* ☐
FUEL SHUT-OFF Concealed ☐ Location
RELIEF VALVE *No Test Lever* ☐ *Corrosion* ☐ Other ☐
DISCHARGE TUBE *Undersized* ☐ *Discharge* ☐ *Missing* ☐

VENTING Flue ☑ Sidewall ☐ **No Visible Damage Noted**
Improper Rise ☐ *Unsecured* ☐ *Corrosion* ☐ *Soot* ☐
BURN CHAMBER Not Checked ☑ *Needs Adjustment* ☐

SUMP PUMP Not Checked ☐ **Not Applicable**
Submersible ☐ Standpipe ☐ To Exterior Grade ☐
Float Checked ☐ No/Improper Cover ☐ Permanent Connection ☐
Corrosion ☐ To Septic/Sewer ☐ *Suspect Installation* ☐

PUBLIC SUPPLY

The shut off valves at this residence (including all sinks, toilets, mains and water heaters etc.) were not tested for operation. Shut off valves are rarely operated by homeowners and as a result can become stiff, frozen and leak when operated. Consult a qualified plumber as needed for further evaluation.

DISTRIBUTION PIPING

Recommend secure one small section of loose plumbing supply lines near the garage overhead door to promote intended use and prevent leakage.

HOT WATER TANK

Showing signs relative to wear and age.

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LAUNDRY

FLOOR	*Worn* ☑	*No Drain* ☐	**No Visible Damage Noted**	
	Concrete ☐	Vinyl ☑	Wood/Lam ☐	Ceramic ☐
WALL	*Patched* ☐	*Unfinished* ☐	**No Visible Damage Noted**	
	Drywall ☑	Brk/Blk/Stone ☐	Wood/WP. ☐	Ceramic ☐
CEILING	*Patched* ☐	*Unfinished* ☐	**No Visible Damage Noted**	
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐
WINDOW	Binds ☑	Not Tested ☐		**Operational**
	Single/Dbl. Hung ☐	Cas./Awning ☐	Sliding ☑	Bay/Bow ☐
	Ther/Fix/Sng ☐	Aluminum ☑	Vinyl/V.Cl ☐	Wd./Vnyl/Fxd ☐
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**
	Bi-Fold ☑	Hinged ☐	Wood ☐	Composite ☑
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**
RECEPTACLE		Damaged/No Cover ☐		**Operational**
	Install GFCI ☐	*Reverse Polarity* ☐	*No Ground* ☐	*Open Ground* ☐
TUB / FAUCET		*Unsecured* ☐		**Not Applicable**
Plastic ☐	Other ☐	*Slow Drain* ☐	*Corrosion* ☐	*Leak* ☐
TRAP / DRAIN		*Unsecured* ☐		**Not Applicable**
	Improper Trap ☐	*Slow Drain* ☐	*Corrosion* ☐	*Leak* ☐
WASHER	Make			**Not Applicable**
DRYER	Make			**Not Applicable**
DRYER VENT		*Unsecured* ☐		**No Visible Damage Noted**
	With Other Exhaust ☐	*To Crawlspace* ☐	*To Attic* ☐	*Plastic Duct* ☐
HEAT SOURCE		*None* ☑	Thermostat ☐	Electric ☐
	Air Register ☐		Convector/Radiator ☐	Radiant ☐

FIREPLACE

TYPE	Built-In ☑	Free Standing ☐	Gas Insert ☑	Wood Insert ☐	Metal Liner ☐	Firebrick ☐	External Air Supply ☐

FIREPLACE FRONT		Soot/Stain ☐	**No Visible Damage Noted**	
	Brick ☐	Ceramic ☐	Marble ☐	Stone ☑
HEARTH	Raised ☑	*None* ☐	**No Visible Damage Noted**	
DOOR/ SCREEN		*None* ☑		**Not Applicable**
	Binds ☐	Glass ☐	Metal ☐	Mesh ☐
	Poor Fit ☐	*Unsecured* ☐	*Corrosion* ☐	*Crack* ☐
FIREBOX	Fan ☐	Not Checked ☐		**No Visible Damage Noted**
DAMPER		*None* ☐		**Not Operational**
	Sticks ☐	*Unsecured* ☐	*Corrosion* ☐	*Creosote* ☐
GAS INSERT	Fan ☐	Not Tested ☐		**Not Operational**
WOOD/PELLET STOVE		Not Tested ☐		**Not Applicable**
Soot ☐		*Suspect Installation* ☐	*Certification Not Apparent* ☐	
CHIMNEY FLUE		Not Checked ☑		**Not Applicable**
Soot ☐		Unsecure/Improper ☐	Advise Inspection/Sweeping ☑	

DAMPER

Replace/repair damper to intended draft control.

GAS INSERT

The pilot light was not on to the gas logs preventing evaluation. Recommend consult your local gas company to evaluate fireplace logs and perform a basic safety check to all gas supply lines. There is usually no charge for this service and it will promote safety to your home.

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Basement Bathroom

BATHROOM

LOCATION	Basement ☑	1st Floor ☐	2nd Floor ☐	3rd Floor ☐	Other
WATER FLOW	Normal ☑	*Suspect* ☐	*Low* ☐		
FLOOR	Worn ☑	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☑	Wood/Lam. ☐	Ceramic ☐	
WALL	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stone ☐	Wood/WP. ☐	Ceramic ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall/Plaster ☐	Acoustic ☑	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Not Applicable**	
	Single/Dbl. Hung ☐	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl/V.Cl ☐	Wd./Vnyl/Fx ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket ☐	Hinged ☑	Wood ☑	Composite ☐	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
	Install GFCI ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐	
EXHAUST FAN	*Advise Installation* ☐			**Operational**	
SINK	*Worn* ☐	Chip/Scratch ☐	**No Visible Damage Noted**		
FAUCET	*No Shut-Off* ☐			**Operational**	
	Sticks ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
TRAP/DRAIN	*Unsecured* ☐			**No Visible Damage Noted**	
	Improper Trap ☐	*Slow Drain* ☐	*Corrosion* ☐	*Leak* ☐	
VANITY	*Worn* ☑	Unsecured ☐	**No Visible Damage Noted**		
	Laminate ☐	Plywood ☐	Wood ☑	Metal ☐	
	Scratch ☐	Mildew/Stain ☐	Missing/Loose Hardware ☐		
COUNTER	*Unsecured* ☐			**No Visible Damage Noted**	
	Solid Surface ☑	Mrbl./Granite ☐	Laminate ☐	Ceramic ☐	
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☐	
TOILET	*No Shut-Off* ☐			**Operational**	
	Tank Loose ☐	*Unsecured* ☐	*Crack* ☐	*Leak* ☐	
TUB / ENCLOSURE	*Unsecured* ☐			**Not Applicable**	
	Ceramic ☐	Cult./Marble ☐	Fiberglass ☐	Plastic ☐	
	Regrout/Recaulk ☐	MIldew/Stain ☐	*Crack* ☐	*Worn* ☐	
JETTED TUB	*Not Tested* ☐			**Not Applicable**	
	GFCI Protected ☐	Motor Access ☐	*Corrosion* ☐	*Leak* ☐	
FAUCET/SHOWER HEAD	*Not Tested* ☐			**Not Applicable**	
	Sticks/Clogged ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
SHOWER ENCLOSURE	*Unsecured* ☐			**No Visible Damage Noted**	
	Ceramic ☐	Cult./Marble ☐	Fiberglass ☑	Plastic ☐	
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☑	
FAUCET/SHOWER HEAD	*Not Tested* ☐			**Operational**	
	Sticks/Clogged ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
HEAT SOURCE	None ☐	Thermostat ☐	Electric ☐		
	Air Register ☑	Convector/Radiator ☐	Radiant ☐		

RECEPTACLE

No ground at the vanity electrical outlet is typical for an older home. Consider correcting and installing a GFCI outlet to promote safety.

FAUCET

Recommend secure the loose plumbing supply lines under the sink to promote intended operation.

TRAP DRAIN

The trap drain system under the sink is very loose and should be corrected to prevent leaks.

Correct the inoperable sink drain stop to hold water as intended.

SHOWER ENCLOSURE

Recommend correct the small cracks / chips at the shower to prevent leakage.

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Guest Bathroom

BATHROOM

LOCATION	Basement ☐	1st Floor ☑	2nd Floor ☐	3rd Floor ☐	Other
WATER FLOW	Normal ☑	*Suspect* ☐	*Low* ☐		
FLOOR	Worn ☑	Crack ☑	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam. ☐	Ceramic ☑	
WALL	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stone ☐	Wood/WP. ☐	Ceramic ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/WP. ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fx ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket ☐	Hinged ☑	Wood ☐	Composite ☑	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
RECEPTACLE		Damaged/No Cover ☐		**Operational**	
	Install GFCI ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐	
EXHAUST FAN		*Advise Installation* ☐		**Operational**	
SINK	*Worn* ☐	Chip/Scratch ☐		**No Visible Damage Noted**	
FAUCET		*No Shut-Off* ☐		**Operational**	
	Sticks ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
TRAP/DRAIN		*Unsecured* ☐		**No Visible Damage Noted**	
	Improper Trap ☐	*Slow Drain* ☐	*Corrosion* ☐	*Leak* ☑	
VANITY	*Worn* ☐	Unsecured ☐		**No Visible Damage Noted**	
	Laminate ☐	Plywood ☐	Wood ☑	Metal ☐	
	Scratch ☐	Mildew/Stain ☐	Missing/Loose Hardware ☐		
COUNTER		*Unsecured* ☐		**No Visible Damage Noted**	
	Solid Surface ☑	Mrbl./Granite ☐	Laminate ☐	Ceramic ☐	
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☐	
TOILET		*No Shut-Off* ☐		**Operational**	
	Tank Loose ☐	*Unsecured* ☐	*Crack* ☐	*Leak* ☐	
TUB / ENCLOSURE		*Unsecured* ☐		**No Visible Damage Noted**	
	Ceramic ☑	Cult./Marble ☐	Fiberglass ☐	Plastic ☐	
	Regrout ☑	MIldew/Stain ☐	*Crack* ☐	*Worn* ☑	
JETTED TUB		*Not Tested* ☐		**Not Applicable**	
	GFCI Protected ☐	Motor Access ☐	*Corrosion* ☐	*Leak* ☐	
FAUCET/SHOWER HEAD		*Not Tested* ☐		**Operational**	
	Sticks ☑	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☑	
SHOWER ENCLOSURE		*Unsecured* ☐		**Not Applicable**	
	Ceramic ☐	Cult./Marble ☐	Fiberglass ☐	Plastic ☐	
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☐	
FAUCET/SHOWER HEAD		*Not Tested* ☐		**Not Applicable**	
	Sticks/Clogged ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
HEAT SOURCE		None ☐	Thermostat ☐	Electric ☐	
	Air Register ☑	Convector/Radiator ☐		Radiant ☐	

TRAP DRAIN

Correct the small leak under the sink when filled and drained to promote intended use. Unable to determine source of leak.

TUB/ENCLOSURE

Tub drains slowly and loud indicating possible blockage. Consult a qualified plumber for further evaluation and correction.

FAUCET/SHOWER HEAD

Tub / shower faucet handles are older and leaking. Correct or replace to promote intended use. Condition typical for an older home.

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Master Bathroom

BATHROOM

LOCATION	Basement ☐	1st Floor ☑	2nd Floor ☐	3rd Floor ☐	Other
WATER FLOW	Normal ☑	*Suspect* ☐	*Low* ☐		
FLOOR	Worn ☑	Crack ☑	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam. ☐	Ceramic ☑	
WALL	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stone ☐	Wood/WP. ☐	Ceramic ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/WP. ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fx ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket ☐	Hinged ☑	Wood ☐	Composite ☑	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
RECEPTACLE		Damaged/No Cover ☐		**Operational**	
Install GFCI ☐		*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐	
EXHAUST FAN		*Advise Installation* ☐		**Operational**	
SINK	*Worn* ☐	Chip/Scratch ☐		**No Visible Damage Noted**	
FAUCET		*No Shut-Off* ☐		**Operational**	
	Sticks ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
TRAP/DRAIN		*Unsecured* ☐		**No Visible Damage Noted**	
	Improper Trap ☐	*Slow Drain* ☐	*Corrosion* ☐	*Leak* ☐	
VANITY	*Worn* ☐	Unsecured ☐		**No Visible Damage Noted**	
	Laminate ☑	Plywood ☐	Wood ☐	Metal ☐	
	Scratch ☐	Mildew/Stain ☐	Missing/Loose Hardware ☐		
COUNTER		*Unsecured* ☐		**No Visible Damage Noted**	
	Solid Surface ☑	Mrbl./Granite ☐	Laminate ☐	Ceramic ☐	
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☐	
TOILET		*No Shut-Off* ☐		**Operational**	
	Tank Loose ☐	*Unsecured* ☐	*Crack* ☐	*Leak* ☐	
TUB / ENCLOSURE		*Unsecured* ☐		**Not Applicable**	
	Ceramic ☐	Cult./Marble ☐	Fiberglass ☐	Plastic ☐	
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Crack* ☐	*Worn* ☐	
JETTED TUB		*Not Tested* ☐		**Not Applicable**	
	GFCI Protected ☐	Motor Access ☐	*Corrosion* ☐	*Leak* ☐	
FAUCET/SHOWER HEAD		*Not Tested* ☐		**Not Applicable**	
	Sticks/Clogged ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
SHOWER ENCLOSURE		*Unsecured* ☐		**No Visible Damage Noted**	
	Ceramic ☑	Cult./Marble ☐	Fiberglass ☐	Plastic ☐	
	Regrout ☑	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☑	
FAUCET/SHOWER HEAD		*Not Tested* ☐		**Operational**	
	Sticks/Clogged ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐	
HEAT SOURCE		None ☐	Thermostat ☐	Electric ☐	
	Air Register ☑	Convector/Radiator ☐		Radiant ☐	

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FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**	
	Carpet ☐	Vinyl ☐	Wood/Lam. ☑	Ceramic ☐
WALL	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**	
	Drywall ☑	Brk/Blk/Stone ☐	Wallpaper ☐	Ceramic ☐
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**	
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐
WINDOW	*Binds* ☐	Not Tested ☐		**Operational**
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fx ☐
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☐	Composite ☑
PATIO DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**
CEILING FAN	*None* ☐	*Unsecured* ☐		**Operational**
RECEPTACLE		Damaged/No Cover ☐		**Operational**
	Install GFCI ☐	*Reverse Polarity* ☐	*No Ground* ☐	*Open Ground* ☐
SINK	*Worn* ☐	Scratch ☑	**No Visible Damage Noted**	
	Single ☐	Double ☑	Stainless ☐	Enamel ☑
FAUCET		*No Shut-Off Valve* ☐		**Operational**
	Sticks ☐	*Unsecured* ☐	*Corrosion* ☐	*Leak* ☐
TRAP/DRAIN		*Unsecured* ☐	**No Visible Damage Noted**	
	Improper Trap ☐	*Slow Drain* ☐	*Corrosion* ☐	*Leak* ☐
COUNTER		*Unsecured* ☐	**No Visible Damage Noted**	
	Ceramic ☐	Marble/Granite ☐	Laminate ☑	Solid Surf. ☐
	Regrout/Recaulk ☐	Mildew/Stain ☐	*Scratch* ☐	*Worn* ☑
CABINET	*Worn* ☑	*Unsecured* ☐	**No Visible Damage Noted**	
	Laminate ☐	Plywood ☐	Wood ☑	Metal ☐
	Miss/Loose Hdwr ☐	Mildew/Stain ☐	*Scratch* ☐	*Other* ☐
RANGE HOOD		Cooktop Exhaust ☐		**Operational**
	Corrosion ☐	*No Exhaust* ☐	*No Light* ☐	*Noisy* ☐
EXHAUST VENT		*Unsecured* ☐	Ductless ☐	Concealed ☐
	With Other Exhaust ☐	*To Attic* ☑	*Improper* ☐	To Exterior ☐
FILTER	*None* ☐	*Unsecured* ☐	*Damaged* ☐	*Greasy* ☐

MAJOR APPLIANCES (Built In)

DISHWASHER	**Operational**
GARBAGE DISPOSAL	**Not Applicable**
STOVE/OVEN/RANGE	**Operational**
REFRIGERATOR	**Operational**
MICROWAVE	**Operational**

Tested On/Off ☑ Did Not Check All Functions/Full Cycle ☑

HEAT SOURCE	None ☐	Thermost ☐	Electric ☐
Air Register ☑	Convector/Radiator ☐		Radiant ☐

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FOYER / HALLWAY / STAIRWAY

FLOOR Worn ☐ Crack/Stain ☐ **Visible Damage Noted**
Carpet ☐ Vinyl ☑ Wood/Lam ☑ Ceramic ☐

WALL *Patched* ☐ Crack/Stain ☐ **No Visible Damage Noted**
Drywall ☑ Brk/Blk/Stone ☐ Wood ☐ Wallpaper ☐

CEILING *Patched* ☐ Crack/Stain ☐ **No Visible Damage Noted**
Drywall ☑ Stip/Acous/W ☐ Wood ☐ Tile ☐

WINDOW Binds ☐ Not Tested ☐ **Not Applicable**
Single/Dbl. Hung ☐ Cas./Awning ☐ Sliding/Fxd ☐ Bay/Bow ☐
Ther/Fix/Sng ☐ Alum./Metal ☐ Vinyl/V.Cld ☐ Wd./Vnyl/Fxd ☐
Damaged ☐ Mildew/Mold ☐ Stain/Rot ☐ *Repaint* ☐

LIGHTING *None* ☐ *Unsecured* ☐ **Operational**
CEILING FAN *None* ☐ *Unsecured* ☐ **Not Applicable**
RECEPTACLE Damaged/No Cover ☐ **Operational**
Switched ☐ *Reverse Polarity* ☐ *No Ground* ☑ *Open Ground* ☐

CLOSET/DOOR *Binds* ☐ *Damaged* ☐ **Operational**
Light ☐ Pocket/Bi-Fold ☐ Hinged ☑ Sliding ☐

STAIRWAY *Unsecured* ☐ **No Visible Damage Noted**
Carpet ☑ Vinyl ☐ Wood ☐ Worn ☐ Trip Hazard ☐
RAILING *Unsecured* ☐ **No Visible Damage Noted**
Metal ☐ Wood ☑ Incomplete ☐ None ☐

FRONT DOOR *Damaged* **Operational**
Binds ☐ Metal Clad ☑ Wood ☐ Dead Bolt ☑
Replace Sill/Trim ☐ Weather Seal ☐ Split/Dent ☐ *Worn* ☐

SIDELIGHT *Loose* ☐ Crack/Stain ☐ **Not Applicable**

FLOOR
Correct torn vinyl flooring as needed.

FAMILY / RECREATION ROOM

FLOOR Worn ☐ Crack/Stain ☐ **No Visible Damage Noted**
Carpet ☐ Vinyl ☐ Wood/Lam ☑ Ceramic ☐

WALL *Patched* ☐ Crack/Stain ☐ **No Visible Damage Noted**
Drywall ☑ Brk/Blk/Stone ☐ Wood ☐ Wallpaper ☐

CEILING *Patched* ☐ Crack/Stain ☐ **No Visible Damage Noted**
Drywall ☑ Stip/Acous/ ☐ Wood ☐ Tile ☐

WINDOW *Binds* ☐ Not Tested ☐ **Not Applicable**
Single/Dbl. Hung ☐ Cas./Awning ☐ Sliding/Fxd ☐ Bay/Bow ☐
Ther/Fix/Sng ☐ Alum./Metal ☐ Vinyl/V.Cld ☐ Wd./Vnyl/Fxd ☐
Damaged ☐ Mildew/Mold ☐ Stain/Rot ☐ *Repaint* ☐

DOOR *Binds* ☐ *Damaged* ☐ **Not Applicable**
Pocket/Bi-Fold ☐ Hinged ☐ Wood ☐ French ☐

PATIO DOOR *Binds* ☐ *Damaged* ☐ **Operational**
Sliding ☑ Hinged ☐ Wood ☑ Metal ☐

LIGHTING *None* ☐ *Unsecured* ☐ **Operational**
CEILING FAN *None* ☐ *Unsecured* ☐ **Operational**
RECEPTACLE Damaged/No Cover ☐ **Operational**
Switched ☐ *Reverse Polarity* ☐ *No Ground* ☐ *Open Ground* ☐

HEAT SOURCE None ☐ Thermostat ☐ Electric ☐
Air Register ☑ Convector/Radiator ☐ Radiant ☐

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LIVING ROOM

FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam. ☑	Ceramic ☐	
WALL	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stone ☐	Wood ☐	Wallpaper ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☑		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Fixed ☑	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☑	French ☐	
PATIO DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
LIGHTING	*None* ☐	*Unsecured* ☐		**Not Applicable**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Not Applicable**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
Switched ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐		
HEAT SOURCE	None ☐	Thermostat ☐	Electric ☐		
Air Register ☑	Convector/Radiator ☐	Radiant ☐			

DOOR

Install knobs at double doors as needed.

DINING ROOM

FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam. ☑	Ceramic ☐	
WALL	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stone ☐	Wood ☐	Wallpaper ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☑	French ☐	
PATIO DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
LIGHTING	*None* ☐	*Unsecured* ☐		**Not Applicable**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Not Applicable**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
Switched ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐		
HEAT SOURCE	*None* ☐	Thermostat ☐	Electric ☐		
Air Register ☑	Convector/Radiator ☐	Radiant ☐			

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Master Bedroom

BEDROOM

Pillar To Post 6/3/2008 11:32:33 AM **416 Leyswood Drive, Greenville, SC**

FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam ☑	Ceramic ☐	
WALL	*Uneven* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stn/ ☐	Wood/WP. ☐	Composite ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	Binds ☐	Not Tested ☐		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☐	Composite ☑	
PATIO/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
CLOSET/DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Light ☐	Hinged ☐	Bi-Fold ☐	Sliding ☑	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Operational**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
	Switched ☐	*Reverse Polarity* ☐	*No Ground* ☐	*Open Ground* ☐	
HEAT SOURCE	None ☐		Thermostat ☐	Electric ☐	
	Air Register ☑		Convector/Radiator ☐	Radiant ☐	

Guest Front Center

BEDROOM

Pillar To Post

FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam ☑	Ceramic ☐	
WALL	*Uneven* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stn/ ☐	Wood/WP. ☐	Composite ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☐	Composite ☑	
PATIO/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
CLOSET/DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Light ☐	Hinged ☐	Bi-Fold ☐	Sliding ☑	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Operational**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
	Switched ☐	*Reverse Polarity* ☐	*No Ground* ☐	*Open Ground* ☐	
HEAT SOURCE	None ☐		Thermostat ☐	Electric ☐	
	Air Register ☑		Convector/Radiator ☐	Radiant ☐	

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Guest Bedroom Front End — BEDROOM

Pillar To Post 6/3/2008 11:32:53 AM 416 Leyswood Drive, Greenville, SC

FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam ☑	Ceramic ☐	
WALL	*Uneven* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stn/ ☐	Wood/WP. ☐	Composite ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	Binds ☐	Not Tested ☑		**Operational**	
	Double Hung ☑	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl ☑	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☐	Composite ☑	
PATIO/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
CLOSET/DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Light ☐	Hinged ☐	Bi-Fold ☐	Sliding ☑	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Operational**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
	Switched ☐	*Reverse Polarity* ☐	*No Ground* ☐	*Open Ground* ☐	
HEAT SOURCE	None ☐		Thermostat ☐	Electric ☐	
	Air Register ☑		Convector/Radiator ☐	Radiant ☐	

Rear Basement Den — BEDROOM

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FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam ☑	Ceramic ☐	
WALL	*Uneven* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stn/ ☐	Wood/WP. ☐	Composite ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Operational**	
	Single/Dbl. Hung ☐	Cas./Awning ☐	Sliding ☑	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Aluminum ☑	Vinyl/V.Cld ☐	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☐	Composite ☑	
PATIO/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
CLOSET/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Light ☐	Hinged ☐	Bi-Fold ☐	Sliding ☐	
LIGHTING	*None* ☐	*Unsecured* ☐		**Operational**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Not Applicable**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
	Switched ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐	
HEAT SOURCE	None ☐		Thermostat ☐	Electric ☐	
	Air Register ☑		Convector/Radiator ☐	Radiant ☐	

WINDOW

The sliding window will not lock securely. Recommend correct to promote intended use.

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Basement Bedroom front — BEDROOM

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FLOOR	Worn ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Carpet ☐	Vinyl ☐	Wood/Lam ☑	Ceramic ☐	
WALL	*Uneven* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Brk/Blk/Stn/ ☐	Wood/WP. ☐	Composite ☐	
CEILING	*Patched* ☐	Crack/Stain ☐	**No Visible Damage Noted**		
	Drywall ☑	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	Binds ☐	Not Tested ☐		**Operational**	
	Single/Dbl. Hung ☐	Cas./Awning ☐	Fixed ☑	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Aluminum ☑	Vinyl/V.Cl ☐	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Pocket/Bi-Fold ☐	Hinged ☑	Wood ☐	Composite ☑	
PATIO/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
CLOSET/DOOR	*Binds* ☐	*Damaged* ☐		**Operational**	
	Light ☐	Hinged ☑	Bi-Fold ☐	Sliding ☐	
LIGHTING	*None* ☐	*Unsecured* ☐		**Not Applicable**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Not Applicable**	
RECEPTACLE	Damaged/No Cover ☐			**Operational**	
	Switched ☐	*Reverse Polarity* ☐	*No Ground* ☑	*Open Ground* ☐	
HEAT SOURCE	None ☐		Thermostat ☐	Electric ☐	
	Air Register ☑		Convector/Radiator ☐	Radiant ☐	

CLOSET DOOR

Adjust door to reduce binding.

BEDROOM

Pillar To Post

FLOOR	Worn ☐	Crack/Stain ☐		**Not Applicable**	
	Carpet ☐	Vinyl ☐	Wood/Lam ☐	Ceramic ☐	
WALL	*Uneven* ☐	Crack/Stain ☐		**Not Applicable**	
	Drywall/Plaster ☐	Brk/Blk/Stn/ ☐	Wood/WP. ☐	Composite ☐	
CEILING	*Patched* ☐	Crack/Stain ☐		**Not Applicable**	
	Drywall/Plaster ☐	Stip/Acous/W ☐	Wood ☐	Tile ☐	
WINDOW	*Binds* ☐	Not Tested ☐		**Not Applicable**	
	Single/Dbl. Hung ☐	Cas./Awning ☐	Sliding/Fxd ☐	Bay/Bow ☐	
	Ther/Fix/Sng ☐	Alum./Metal ☐	Vinyl/V.Cld ☐	Wd./Vnyl/Fxd ☐	
	Damaged ☐	Mildew/Mold ☐	Stain/Rot ☐	*Repaint* ☐	
DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Pocket/Bi-Fold ☐	Hinged ☐	Wood ☐	Composite ☐	
PATIO/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Sliding ☐	Hinged ☐	Wood ☐	Metal/Vinyl ☐	
CLOSET/DOOR	*Binds* ☐	*Damaged* ☐		**Not Applicable**	
	Light ☐	Hinged ☐	Bi-Fold ☐	Sliding ☐	
LIGHTING	*None* ☐	*Unsecured* ☐		**Not Applicable**	
CEILING FAN	*None* ☐	*Unsecured* ☐		**Not Applicable**	
RECEPTACLE	Damaged/No Cover ☐			**Not Applicable**	
	Switched ☐	*Reverse Polarity* ☐	*No Ground* ☐	*Open Ground* ☐	
HEAT SOURCE	None ☐		Thermostat ☐	Electric ☐	
	Air Register ☐		Convector/Radiator ☐	Radiant ☐	

LIMITATIONS

The folowing limitations pertain to your report as marked.

☐ **Snow Cover/Obstruction** – Areas in report noted as "not visible" have not been inspected because of snow cover or other obstruction impeding a visual inspection.

☑ **Occupied Home** – The home is occupied by seller/tenant with their personal belongings and furniture which may limit some areas to inspect.

☐ **Skylight** – Skylights are an excellent source of light to dwellings, but frequently have condensation problems and are always a risk for potential future water leaks because flashings require regular ongoing maintenance by an experienced roofer.

☐ **Solarium** – Solariums in most cases are installed as an addition to the main structure to necessitate additional living space. They are high maintenance and most often have condensation problems which can be controlled but never eliminated. Expect a need for frequent re-glazing of panes and/or replacement of thermal units as this structure ages and deteriorates. Also, with dramatic seasonal changes in temperature, it is difficult to control the interior climate of this part of the dwelling.

☐ **Built Up Roofs** – This roof is constructed of a built-up membrane that is essentially hidden from view. As such, it is difficult to inspect fully without destructive testing which is beyond the scope of the inspection. This inspection is limited to reviewing and describing the roof system and does not guarantee or warranty now or in the future that the roof will not leak.

☑ **Finished Basements** – The finishing of the basement prevents visual inspection of foundation walls, floors, mechanical and structural components. ☑ Normal ☐ High moisture readings were found at time of inspection. Despite these tests results, a dry basement at this time or at any time in the future is not guaranteed.

☐ **Circuit Sizing** – The Inspector is required to address the compatibility of conductors and overcurrent devices. In some instances, general trade procedures include over-sizing overcurrent devices to guard against nuisance (e.g. air conditioning units, dryers). The Inspector is not required to evaluate such general trade procedures, but to inform you of incompatibility.

☑ **Standard and Mid - Efficiency Furnace -** Only a limited section of the heat exchanger could be viewed with a light and mirror. Dismantling the furnace to thoroughly inspect the heat exchanger is beyond the scope of this inspection. You are advised to obtain the services of a qualified gas fitter/technician to perform a complete inspection of your furnace prior to the start of the heating season.

☐ **High-Efficiency Furnace** – No part of the exchanger or the burner area could be viewed. Dismantling the furnace to thoroughly inspect the heat exchanger is beyond the scope of this inspection. You are advised to obtain the services of a qualified gas fitter/technician to perform a complete inspection of your furnace prior to the start of the heating season.

☑ **Chimney** – The interior of chimneys and their flue liners are not visible on our visual inspection. You are advised to obtain the services of a qualified chimneysweeper or other qualified personnel to perform a complete inspection and tune up of your fireplace/stove prior to using the appliance.

☐ **Heat Pumps** – Heat pumps are complex systems that require frequent maintenance and repair costs once they reach the age of five to ten years or more. Only qualified technicians can properly inspect all the cycles of these units because it is technically exhaustive and beyond the scope of this visual inspection. At this time the ☐ heating ☐ cooling cycle could not be checked due to seasonal temperature limitations. Heat pumps are not a practical source of heating when temperatures fall below 32° F

☑ **Septic System and/or Well** – Have not been inspected. Both the septic system and the quality/quantity of the well water supply are beyond the scope of this inspection. Obtain the services of a qualified technician to perform a complete evaluation of your septic tank and leaching field and/or well water quality and recharge rate.

☐ **Common Areas** – In general, the Inspector is not required to review or assess common areas in multi-unit developments. Attached common areas may include roads, paths, landscaping, integral roofs and wall systems. As a matter of courtesy, the Inspector will provide a general overview of what you should consider with respect to these areas. This may include evaluation of roof and external building attachments that may affect you via future additional service fees.

☐ **Vintage Homes** – (homes built prior to 1950) – Character homes have inherent defects because they were built without the benefit of the standardized Building Codes. You must keep in mind that the defects noted throughout this report are typical of such dwellings because of normal wear and tear throughout the years. Often, maintenance repairs are ongoing and done based on your budget. If you tried to repair or improve all at once, costs could become high to the point where it is not practical or affordable to you at this time. Repairs or improvements which you would like to repair in the immediate future or have been advised to do, should be quoted prior to purchase by qualified contractors for costs and methods of repair.

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Pillar To Post Professional Home Inspection

Report Commentary

This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the entire report.

Property:	416 Leyswood Drive Greenville, SC
Client:	Mr. John Hine
Address:	
Zip / Postal Code:	
Real Estate Company:	Remax Foothills
Real Estate Agent:	David George
Inspector:	Mark Elliott
Scheduled Inspection Time:	6/3/2008 8:30:00 AM

1) EXTERIOR

1.1 LIGHTING

Not Operational

Recommend determine cause for inoperable exterior lights at rear deck, north side entry and security light over garage to promote intended operation.

2) ATTIC

LIMITATION

LOOKED IN, PULL DOWN, INSULATED

2.1 EXHAUST DUCT

Recommend extend the guest bath vent fan exhaust to the exterior through an approved vent to prevent moisture accumulation in attic.

2.2 ELECTRICAL

Visible Damage Noted

Recommend consult a qualified electrician to evaluate the open electrical splices in the attic and correct for intended use.

3) ELECTRICAL SERVICE / PANEL

3.1 WIRE

Double tapping observed at the main breaker and one 20 amp breaker, missing blank plates at open breaker slots, suspect electrical wiring too the rear exterior lights (off living room), open splice at the garage ceiling fan will require a complete evaluation and correction as needed by a qualified electrician of the entire electrical system to promote the safe intended use of the system.

3.2 FUSE

Multiple double taps at the sub panel behind the furnace will require a complete evaluation and correction as needed by a qualified electrician to promote intended operation. Double tapping is not an uncommon occurrence. An electrician must determine whether the breaker is capable of supporting the double tap.

4) BASEMENT / STRUCTURE - Partially Finished

LIMITATION

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LIMITATION

FINISHED, CLUTTER OBSTRUCTION, DRY WEATHER, DRY GROUND

4.1 FLOOR JOIST

Visible Damage Noted

Recommend consult a qualified foundation contractor to evaluate and correct pest damage at joists located near center to rear area of garage / basement area to promote intended use.

5) HEATING/COOLING/VENTILATION

5.1 HEATING SYSTEM

Recommend consult a qualified furnace / air conditioning contractor to evaluate the suspect filter application installed at the furnace unit and the missing cover / filter at the basement hall return to promote intended operation.

6) PLUMBING COMPONENTS

6.1 DISTRIBUTION PIPING

Recommend secure one small section of loose plumbing supply lines near the garage overhead door to promote intended use and prevent leakage.

7) BATHROOM - Basement Bathroom

LOCATION

Basement

7.1 FAUCET

Recommend secure the loose plumbing supply lines under the sink to promote intended operation.

7.2 TRAP DRAIN

The trap drain system under the sink is very loose and should be corrected to prevent leaks.
Correct the inoperable sink drain stop to hold water as intended.

8) BATHROOM - Guest Bathroom

LOCATION

1st FLOOR

8.1 TRAP DRAIN

Correct the small leak under the sink when filled and drained to promote intended use. Unable to determine source of leak.

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8.2 TUB/ENCLOSURE

Tub drains slowly and loud indicating possible blockage. Consult a qualified plumber for further evaluation and correction.

8.3 FAUCET/SHOWER HEAD

Tub / shower faucet handles are older and leaking. Correct or replace to promote intended use. Condition typical for an older home.

9) FIREPLACE

9.1 DAMPER

Not Operational

Replace/repair damper to intended draft control.

9.2 GAS INSERT

Not Operational

The pilot light was not on to the gas logs preventing evaluation. Recommend consult your local gas company to evaluate fireplace logs and perform a basic safety check to all gas supply lines. There is usually no charge for this service and it will promote safety to your home.

10) BEDROOM - Rear Basement Den

10.1 WINDOW

The sliding window will not lock securely. Recommend correct to promote intended use.

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Professional Home Inspection
Pillar To Post

Inspection No. 33833 - 557

Visual Home Inspection

416 Leyswood Drive
Greenville, SC

Prepared for :

Mr. John Hine



Inspected by :

Mark Elliott
JenMar Inspections, LLC
101 E. Knoxtowne Rd.
Easley, South Carolina. 29640
Phone: (864) 855-5320 Fax: (864) 855-5319. Email: Jenifer.Elliott@pillartopost.com

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Garage - Garage



Example of stored items in garage.



Example of stored items in garage.

Roof Structure



Recommend seal cracks at top of chimney.

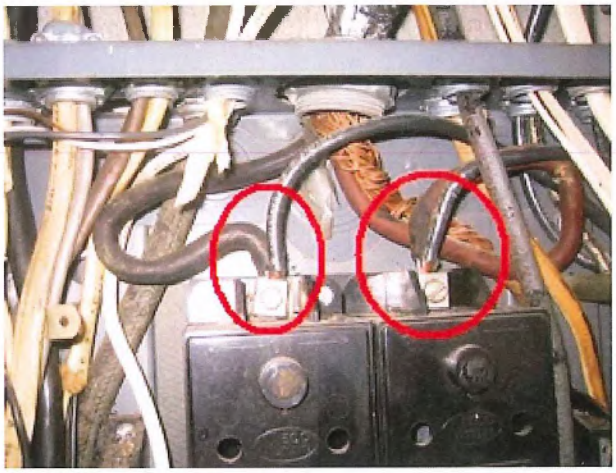
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Attic

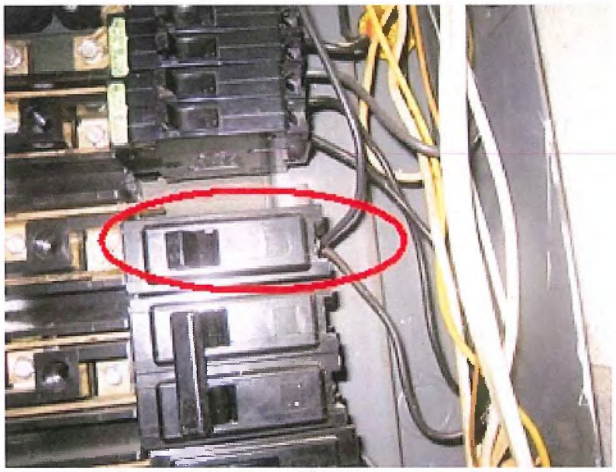


Bath fan venting into attic.

Electrical Service/Panel



Double taps at mains.



Example of double tap at breaker.



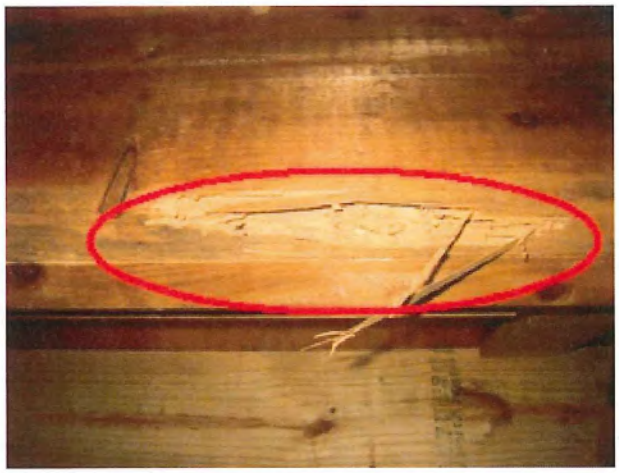
Exterior lighting wiring should be evaluated at rear porch.



Attic electrical splices require evaluation and correction.

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Basement/Structure - Partially Finished Basement



Example of damage at joists.

Heating/Cooling/Ventilation



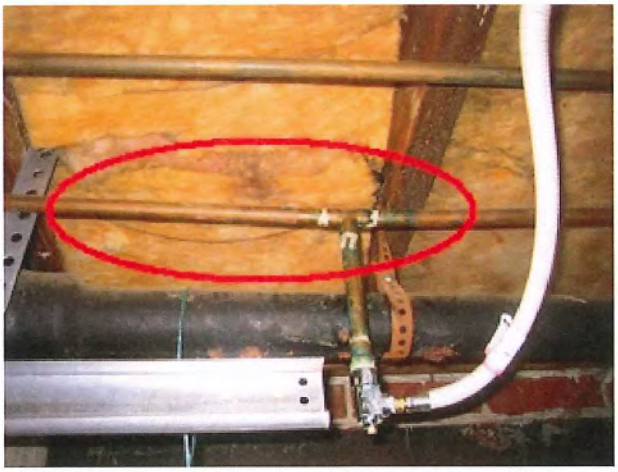
Filter application should be evaluated.



Missing cover or filter at hall basement return.

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Plumbing Components



Loose plumbing supply line in garage area.

Fireplace



Fireplace damper has been removed.

Bathroom - Basement Bathroom



Loose trap drain system and unsecured plumbing supply lines under sink.

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Professional Home Inspection
Pillar To post

Invoice 33833-557

JenMar Inspections, LLC
101 E. Knoxtowne Rd.
Easley, South Carolina
29640
(864) 855-5320
Jenifer.Elliott@pillartopost.com

DATE
03-Jun-2008

Sold To: Mr. John Hine

Property: 416 Leyswood Drive
Greenville, SC

Visual Inspection		$325.00
Other		$135.00
Sub Total		$460.00
Tax @	0.00%	$0.00
TOTAL		$460.00

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SARGENT PEST SOLUTIONS, INC.

Subterranean Termite Control

RESIDENTIAL TREATMENT CONTRACT

Customer Name: JOHN HINE

Covered Premises Address ("Covered Premises"):
Street 416 Leyswood Dr
City Greenville State SC Zip 29615
Telephone ( ) 864 4057
Fax ( )

Billing Address (if different):
Street SAME
City State Zip
Telephone ( )
Fax ( )

This Agreement covers only the Covered Premises specified above as shown on the attached graph sheet.

Effective Date: 3 / 28 / 13 ("Effective Date").

Sargent Pest Solutions, Inc.
PO Box 718
Mauldin, SC 29662
(864) 915-5555

TYPE OF TREATMENT: Please note attached graph and specification sheet.

_____Preventive

_____Presumptive
(Affected wood but no live termites)

✓ Existing
(Affected wood and live termites)

COVERAGE: For a period of one year beginning on the Effective Date, Sargent Pest Solutions, Inc. ("Sargent") agrees to provide to the Customer such treatment of the Covered Premises as is reasonably necessary for the control of subterranean termites therein for the sum of $ 1,325 payable in cash or check upon completion of initial treatment. Subject to the Further Conditions set forth on the reverse side of this Agreement (the "Further Conditions"), without additional charge (other than renewal charges), SARGENT will perform any further retreatment it deems reasonably necessary during the initial and each renewal term of this Agreement. It is understood and agreed that this Agreement covers subterranean termites only.

RENEWAL: This agreement is renewable from year to year, upon re-inspection of the Covered Premises deemed acceptable to SARGENT and upon payment of annual renewal fees set forth below, for one year periods beginning on the following dates, as follows:

Month/Year 3 / 14 Amount $ 150 Month/Year 3 / 15 Amount $ 150 Month/Year 3 / 16 Amount $ 150

This agreement may be terminated by either party, with or without cause, at the end of any one-year term, and may be terminated by SARGENT at any time Customer fails to comply with its obligations under the Further Conditions. This Agreement automatically terminates if not renewed. SARGENT reserves the right to revise the annual renewal fee after the third year, upon notice to the Customer.

NO RIGHT TO CANCEL: It is understood and agreed that this Agreement is not the result of in-home solicitation and that therefore there is no right to cancel.

CHEMICAL SENSITIVITY: At Customer's request, SARGENT will provide information about the chemicals to be used in treating the Covered Premises. If you or any member of your company or your customers are or may be sensitive to chemicals or chemical odors, you should consult with a physician or other specialist before chemicals are applied in, on, or under the Covered Premises.

ARBITRATION: The Customer and SARGENT agree that any controversy or claim between them arising out of or relating to the interpretation, performance or breach of any provision of this Agreement shall be settled exclusively by arbitration pursuant to the S.C. Uniform Arbitration Act, and judgement on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. In no event shall either party be liable to the other for indirect, special or consequential damages of loss of anticipated profits.

The printed form of this Agreement contains all of the terms and conditions of the Agreement. No alterations of or additions to this Agreement (other than information required to fill in blanks) are effective or enforceable unless the alteration or addition is signed by a Corporate Officer of SARGENT and the corporate seal is placed thereon.

Inspection/Treatment Notice Location: 416 Leyswood

By: _____
Authorized SARGENT Representative

READ BOTH SIDES IN FULL BEFORE SIGNING.

_____
Customer Signature

EXHIBIT F

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FURTHER CONDITIONS

1. **LIMITATION OF LIABILITY**. Sargent's liability for repairs under this agreement shall be limited to structural damage only and for costs of necessary repairs (labor and materials) not to exceed a total of fifty thousand dollars ($50,000).

2. **SARGENT'S LIABILITY.** This Contract provides for re-treatment of a structure and the repair of new damage caused by wood destroying organisms. "New damage" is defined as damage done by *subterranean termites* which arose six months after the date of this Contract. If new damage occurs during the term of this Agreement, Sargent will, upon notification and inspection, arrange for the necessary repairs or replacement by a contract chosen by Sargent and pay the entire cost of labor and materials.

3. **RETREATMENT; REPORTING.** Due to the habits of subterranean termites, it is understood that more than one treatment may be required to attain complete control. However, SARGENT will be responsible for retreatment only when live termites are found and such infestation is reported during the term of this Agreement or any renewal hereof. If retreatment is required under this Agreement, Customer will provide SARGENT access to the area to be retreated, and otherwise will provide SARGENT with reasonable access to the Covered Premises for any purpose contemplated hereby.

4. **INACCESSIBLE AREAS.** Customer understands that subterranean termite damage may exist in unexposed or hidden areas of the Covered Premises and that SARGENT cannot assure that any damage discovered by a visual inspection of the Covered Premises is all the damage which exists at the time of inspection. Without limiting SARGENT's general non-responsibility for damages hereunder, it is understood that SARGENT will not be responsible for the completeness of any physical inspection, and that physical inspection shall not imply any warranty of non-infestation, whether such infestation occurs in any hidden, obstructed or inaccessible area or any other area physically inspected.

5. **MOISTURE AND LEAKAGE.** It is understood that water leakage or excessive moisture in treated areas, in interior areas or through the roof or exterior walls of the Covered Premises may destroy the effectiveness of SARGENT's treatment and is conducive to new infestation. Customer is responsible for making timely repairs as are necessary to stop water leakage or eliminate excessive moisture. If SARGENT notifies Customer of any condition, which prevents proper treatment or inspection or is conducive to subterranean termite infestation, Customer shall promptly cure the condition at Customer's expense. If the condition is not cured within thirty days of notification by SARGENT, then SARGENT, at its option, may terminate this Agreement and have no further liability hereunder.

6. **STRUCTURAL CONDITIONS.** SARGENT reserves the right, as a condition to retreatment, to require Customer to correct structural conditions conducive to reinfestation, such as but not limited to (a) contact between the ground and wood, such as wood siding, support posts, wooden decks and porches; (b) conditions such as structural flaws, foundation cracks or soil erosion allowing termites access to the Covered Premises; and (c) moisture sources or conditions allowing termites to survive without returning to the ground, such as (without limitation) defects in roofing, shower pans, water pipes, or stucco or siding. SARGENT further reserves the right to assess a reasonable retreatment charge, and to revise its annual renewal charge, in the event of substantial alterations or additions to the Covered Premises.

7. **ASSIGNABILITY.** Customer's rights under this Agreement may not be transferred without the prior written consent of SARGENT. As conditions to granting its consent, SARGENT may require reinspection of the Covered Premises, execution of an Agreement in the form then in use by SARGENT, and the payment of a renewal fee (as applicable) and a transfer fee in an amount to be determined by SARGENT. In no event shall the term of a transferred Agreement exceed ten years from the Effective Date.

8. **DRYWOOD AND FORMOSAN TERMITES.** Due to special and unique circumstances and characteristics of Formosan termites (Coptotermes formosanus) and of drywood termites (Kalotermes sp., Incisitermes sp., Crypotermes sp.) and all other wood destroying organisms except subterranean termites (Reticulitermes sp., Heterotermes sp.), notwithstanding the other terms of this Agreement, SARGENT shall not be responsible for infestation by any organism other than the subterranean termites names above.

9. **ACTS OF GOD.** SARGENT shall have no liability under this Agreement for retreatment necessitated by natural disasters such as but not limited to storms, floods, tornadoes, hurricanes, fire, sinkholes or earthquakes, nor for any failure of SARGENT to perform under this Agreement due to events beyond the control of SARGENT.

10. **CHANGE IN LAW.** SARGENT performs its services in accordance with the requirements of federal, state and local law. In the event of a change in existing law as it pertains to the services described herein, SARGENT reserves the right to revise the annual renewal charge or terminate this Agreement.

11. **NOT-PAYMENT, DEFAULT.** In case of non-payment or default by the Customer, SARGENT shall have the right to terminate this Agreement and reasonable attorney's fees and costs of collection shall be paid by Customer whether suit is filed or not. In addition, interest at the highest legal rate will be assessed for the period of delinquency.

SARGENT INITIALS _____ CUSTOMER INTIIALS _____

Owner/Agent: Hine Phone: _____ Work Phone: _____

Property Address: 416 Leyswood Dr City: _____ State: _____ Zip Code: 29615

Inspected by: SWJ Inspection date: 3/13/13 Job date: _____

Minimum 18" clearance throughout crawl space for inspection: ☐ yes ☐ no N/A Fresh water drinking well within 25' of structure: ☐ yes ☐ no

CONSTRUCTION TYPES:

- ☐ Crawl Space
- ☐ Floating Slab
- ☐ Supported Slab
- ☐ Monolithic Slab
- ☑ Basement
- ☐ Plenum* (not treatable for termites)

FOUNDATION TYPES:

- ☐ Single Brick
- ☐ Hollow Block
- ☐ Open Foundation
- ☐ Other _____

SIDING:

☑ BRICK

Lin. Ft. ±175
Sq. Ft. _____
Sub. Sq. Ft. _____

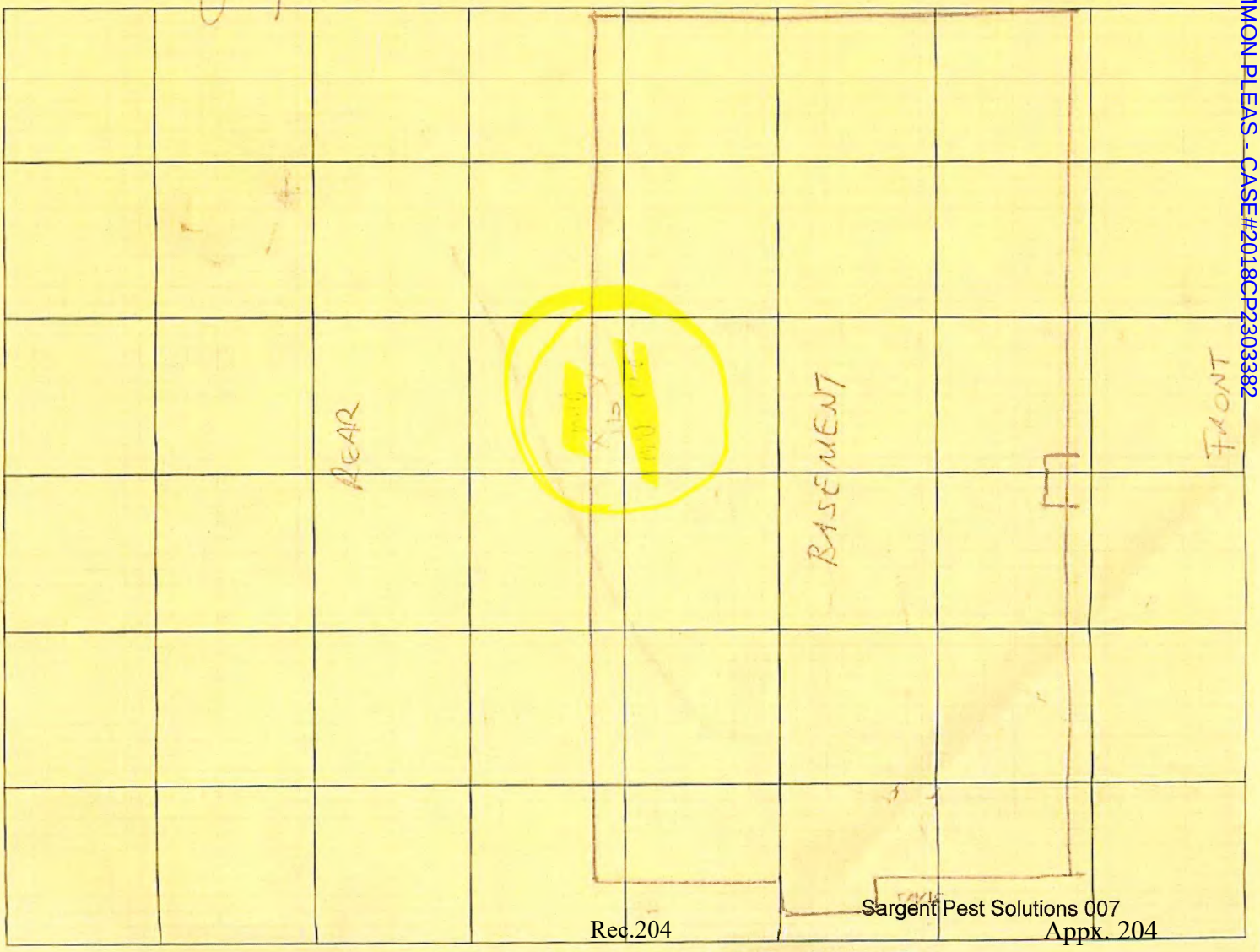
Special instructions or comments _____

Electricity available	☐ Yes	☐ No
Water available	☐ Yes	☐ No
Plumbing accessible	☐ Yes	☐ No
Formboards present	☐ Yes	☐ No
Earth/Wood contact	☐ Yes	☐ No
Wood debris	☐ Yes	☐ No
Porches accessible	☐ Yes	☐ No

INFESTED AREAS	YES	NO	COMMENTS	KEY SYMBOLS
Exterior				X – Evidence of Damage
Joists/Girders				ST – Subterranean Termites
Sills/Headers				PPB – Powder Post Beetles
Subfloor/Finished Floor				WB – Wood Borers
Interior Trim				PHD – Possible Hidden Damage
Door/Window Frames				E/W – Earth/Wood Contact
Attic				WP – Wood Partition
				SCALE ☐ 1ft. ☐ 2ft. ☐ 3ft.

Inspections are of visible, accessible areas only. This is not a guarantee of the absence of hidden, unexposed, or inaccessible damage.

Technician Signature: _____ **Customer Signature:** _____



ELECTRONICALLY FILED - 2019 Apr 17 3:19 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

ELECTRONICALLY FILED - 2019 Apr 17 3:19 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE and MARIA W. HINE,

Plaintiffs,

vs. C/A NO. 2018-CP-23-03382

TIMOTHY M. McCRORY, individually and as agent, MICHAEL P. McCRORY, SEABROOK L. MARCHANT, and THE MARCHANT COMPANY,

Defendants.

DEPOSITION OF: MARIA HINE

DATE: February 12, 2019

TIME: 9:57 a.m.

LOCATION: The Hine Law Firm
619 Halton Road
Suite 2B
Greenville, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: ERIC S. GLAZIER, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919
Asheville, NC (828) 785-5699

ELECTRONICALLY FILED - 2019 Apr 17 3:19 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFF
JOHN M. HINE and MARIA W. HINE:

THE MACCLENAHAN LAW FIRM
BY: ALEXANDRE N. MACCLENAHAN
223 W. Stone Avenue
Greenville, SC 29609
(864) 382-3340
alex@macclenahanlaw.com
and
THE HINE LAW FIRM
BY: JOHN M. HINE
619 Halton Road
Suite 2B
Greenville, SC 29607
(864) 331-0875
jhine@hinelawfirm.com

ATTORNEYS FOR DEFENDANTS
TIMOTHY M. McCRORY, SEABROOK L. MARCHANT, and THE MARCHANT COMPANY
RICHARDSON, PLOWDEN & ROBINSON, P.A.
BY: DAVID A. ANDERSON
1900 Barnwell Street
Columbia, SC 29201
(803) 771-4400
danderson@richardsonplowden.com

ALSO PRESENT:
TIMOTHY McCRORY,
MICHAEL McCRORY,
SEABROOK MARCHANT,
ANNE MARCHANT

(INDEX AT REAR OF TRANSCRIPT)

PROCEEDINGS

MARIA HINE,
being first duly sworn, testified as follows:

EXAMINATION

BY MR. ANDERSON:

Q. Ms. Hine, my name is David Anderson. I represent Tim McCrory and Seabrook Marchant and the Marchant Company in this case that has been brought.

Before we get started, our court requires that I go over a few things with you. This is a deposition. It's my only time to talk to you across the table and have a conversation with you. It's not a time to intimidate or get you upset, because that's certainly not my intention.

The court reporter, Eric, is taking down everything we say verbatim, and so we need to verbalize our responses to the questions. If we take a break -- and we've got a lot of photographs and things to kind of go through, and we'll probably take a break about every hour or so -- you're not to discuss at least the substance of the deposition, or if you have questions about a question regarding the deposition, you are to seek

those clarifications with me and not have those with your counsel, okay?

A. I understand.

Q. It's no secret here, what I'm going to do is go through and ask you about your personal background, about your occupation, about the home that you purchased, and about the -- what you found with the home and damages.

Once we get finished with that, then you will be finished, and then we'll take the deposition of your husband.

I'm from North Charleston, and I talk slow at times. Most people will anticipate the question I'm asking and try to go ahead and give that response. But when you read the deposition, it becomes very disjointed. So I would ask that you allow me to finish my question before you give your response. Is that okay?

A. Mm-hmm (affirmatively).

Q. And uh-huh or huh-huh will be difficult for the court reporter to take down, so I may ask you at times to verbalize a yes or a no, okay?

A. Yes.

Q. Do you have any questions before we get started?

A. No.

Q. Please state your full name for the record.

A. Maria Hine. Do you need a middle name?

Q. And when were you born?

A. In Sumter, South Carolina. I lived in Mayesville.

Q. And when was that?

A. March 10th, 1981.

Q. Okay. And where -- give me a little bit of background information about yourself. Where did you go to high school, did you go to college, things of that nature.

A. I went to Thomas Sumter Academy for elementary school, 1st through -- kindergarten through 12th grade, and to Erskine College.

Q. Okay. When did you graduate from Erskine?

A. 2003.

Q. And what did you graduate in?

A. Accounting. Business and accounting.

Q. And you are married now?

A. Yes.

Q. How long have you been married?

A. Since 20- -- how long have we been

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A. Yes.
Q. And so did they inspect the entire home at that time?
A. I don't know.
Q. Were you there when they did that?
A. Probably not.
Q. Were there any decisions at that point to be made?
MR. MACCLENAHAN: Object to the form.
A. John handled all the decisions in that regard, so...
Q. Okay. Do you know that a demand was made against The Marchant Company and the McCrorys as relates to what you found in that room?
A. Can you say that again?
Q. That a demand was made by your husband to the Marchants and the McCrorys?
A. For this suit or at that time?
Q. At that time.
A. I didn't know that.
Q. Okay.
(DFT. EXH. 1, 5/15/2012 LETTER AND ATTACHED INVOICES AND DISCLOSURES, was marked for identification.)

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BY MR. ANDERSON:
Q. I'm showing you what's been marked as Defendant's Exhibit 1. And I'll note that that is the same as Plaintiff's 00391 through 395, Bates label.
Do you recall ever seeing this letter?
A. I knew that it was written.
Q. All right. Do you know -- have you had a chance to read the letter? Do you know what the letter says?
A. No.
Q. All right. I'd like for you to read the letter, if you don't mind.
A. Okay.
Q. When did you and your husband first determine that you had termite damage at your home?
A. April 27th.
Q. Of which year?
A. 2012.
Q. And your husband wrote a letter to Seabrook Marchant of the Marchant Company to provide him notice of that, correct?
A. Yes.
Q. Now, there is some invoice from Galt Innovations that's attached to the letter.

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A. Yes.
Q. Are you familiar with them?
A. Yes.
Q. Tell me what you know about Galt Innovations.
A. I know they came into our house to help fix this issue.
Q. All right. And did they complete the work? Did they complete this work?
A. As far as I know, yes.
Q. All right. And do you know what all they did?
A. No.
Q. So is it fair to say that the structural work or the actual physical work that's within your home, that's something that your husband would do?
A. Yes.
Q. You don't do remodeling?
A. No.
Q. Okay. Do you assist your husband with the remodeling?
A. Not at all.
Q. All right. This is the -- as you face your home from the street, looking at the front of

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your home, this room would be on the right corner of your home?
A. Yes.
Q. And Galt came in and made some repairs to that right corner front bedroom?
A. Yes.
Q. Did they make repairs anywhere else in the home that you're aware of?
A. I don't know the extent of it.
Q. Okay. Do you know whether the termite company that you called -- you don't recall the name of that termite company?
A. No.
Q. Do you have your home under a termite bond presently?
A. We do.
Q. Do you know who that is with?
A. Sargent.
Q. Sargent?
A. (nods head up and down)
Q. Have they made inspections of your home?
A. Yes.
Q. Do you know how many inspections they've made?

ELECTRONICALLY FILED - 2019 May 16 3:57 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2018-CP-23-03382
John M. Hine and Maria W. Hine, Plaintiffs, vs. Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, Defendants.	)	**MOTION TO JOIN IN DEFENDANTS TIMOTHY M. MCCRORY AS AGENT, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY'S MOTION FOR SUMMARY JUDGMENT**

TO: PLAINTIFFS JOHN M. HINE, ESQUIRE, AND MARIA W. HINE AND COUNSEL ALEXANDRA MacCLENAHAN, ESQUIRE:

The undersigned hereby moves on behalf of Defendant Michael P. McCrory, to be allowed to join the Motion for Summary Judgment filed by Defendants Timothy M. McCrory as Agent, Seabrook L. Marchant and The Marchant Company.

No issues have been raised separate and distinct from the allegations against Defendants Timothy M. McCrory as Agent, Seabrook L. Marchant and The Marchant Company and Michael P. McCrory filed by Plaintiffs in this action.

The undersigned would hereby request that he be allowed to adopt the Motion for Summary Judgment filed by Defendants Timothy M. McCrory as Agent, Seabrook L. Marchant and The Marchant Company in the above-captioned action.

Respectfully submitted,

s/ H. Chase Harbin

H. Chase Harbin, S.C. Bar # 70074
Law Office of H. Chase Harbin, P.A.
419 Vardy Street
Greenville, SC 29601
(864) 288-6763
ATTORNEY FOR DEFENDANT
MICHAEL P. McCRORY

May 16, 2019
Greenville, SC

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,)	
)	
Plaintiffs,)	
vs.)	**MEMORANDUM IN OPPOSITION OF DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**
)	
Timothy M. McCrory, individually and as) agent, Michael P. McCrory, Seabrook L.) Marchant, and The Marchant Company,)	
)	
Defendants.)	

Plaintiffs John M. Hine and Maria W. Hine submit the following memorandum of law in opposition of Defendants' Motion for Summary Judgement. For the reasons set forth herein and based on oral arguments, this Court should deny Defendants' motion.

PROCEDURAL HISTORY

Plaintiffs purchased a home located at 416 Leyswood Drive, Greenville, SC 29615 (the "Subject Property") from Defendants Timothy M. McCrory and Michael P. McCrory (collectively "Sellers"). As part of the purchase process, Sellers provided Plaintiffs with a State of South Carolina Residential Property Condition Disclosure Statement form ("Disclosure"). On the Disclosure, the Sellers indicated that there was no damage to the Subject Property from past infestation of wood destroying insects or organisms which had not been repaired.

On or about February 3, 2018, Plaintiffs discovered significant termite damage to the Subject Property. Plaintiffs filed suit against Defendants on June 18, 2018. Plaintiffs allege that Sellers knew or should have known about the unrepaired termite damage present at the Subject Property.

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David A. Anderson, attorney for Defendants Timothy M. McCrory, Seabrook L. Marchant, and The Marchant Company, filed the Motion for Summary Judgement in this case on April 17, 2019 (the "Motion"). Chase Harbin, attorney for Defendant Michael P. McCrory, filed a motion to join in the Motion on May 16, 2019. Defendants' Motion argues that Plaintiffs' case should be dismissed as result of the statute of limitations. Defendants' claim that because Plaintiffs' became aware of limited termite damage in the Subject Property in April of 2012 that the they are somehow barred from filing this action related to separate termite damage that was not discovered until February of 2018. The present action was filed by Plaintiffs' on June 18, 2018, well within the three year statute of limitations. Plaintiffs are not attempting to recover any damages related to the termite damage that was discovered in April of 2012. Plaintiffs are simply attempting to recover damages related to the termite damage that was discovered in February of 2018.

ANALYSIS

A. Legal Standard.

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct.App.2014), cert denied. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when "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 a judgment as a matter of law." *Id*.

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(quoting Rule 56(c), SCRCP). "Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." *Id*. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id*. "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id*.

B. Argument

In Defendants' Motion, they argue that because the CL-100 wood infestation report (exhibit D to Defendants' Motion) as well as the property inspection (exhibit E of Defendants' Motion) indicate that there were signs of past infestation and treatment that "Plaintiffs were on notice by these reports of past termite damage and the potential of present termite damage." Defendants' fail to acknowledge that two additional letters were obtained stating that there was no need for any further repairs to the Subject Property. **See attached Exhibits A and B**.

The statute of limitations does not begin to run until the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith*, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987). If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury. *Santee Portland Cement Co. v. Daniel Int'l Corp*., 299 S.C. 269, 384 S.E.2d 693 (1989) *overruled on other grounds*. Where there is a latent defect, as is the present case, at the least, the application of the discovery rule is a question of fact for the jury. *Id*. See also *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520 where two different statutes of limitation were applied based on the lack of knowledge of the latent injury.

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Even the Defendants have agreed that the actions taken by Plaintiffs were reasonable. When Defendant Michael P. McCrory was asked if it was reasonable for Plaintiffs to rely on the disclosure statement he indicated that it was. **See Exhibit C,** Deposition of Michael P. McCrory, pg. 34, lines 1-4. When Defendant Michael P. McCrory was asked if it was reasonable for Plaintiffs to rely on the contractor's letter stating that no repairs were needed he indicated that it was, *Id.* at pg 46 lines 6-13. When Defendant Timothy M. McCrory was asked if it was reasonable for Plaintiffs to rely on the Disclosure he indicated that it was. **See Exhibit D**, Deposition of Timothy M. McCrory, pg. 82, lines 14-20. When Defendant Timothy M. McCrory was asked if it was reasonable for Plaintiffs to rely on the findings of the home inspector he indicated that it was. *Id* at pg. 83 lines 4-7. When Defendant Timothy M. McCrory was asked if it was reasonable for Plaintiffs to rely on the findings of the termite inspector he indicated that it was. *Id* at pg. 83 lines 12-15. When Defendant Timothy M. McCrory was asked if the only way for Plaintiffs to discover the termite damage at issue in this action was for them to remove the drywall he said "yes." *Id* at pg. 85 lines 19-25. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the Disclosure he indicated that it was. **See Exhibit E**, Deposition of Seabrook L. Marchant, pg. 91 lines 1-3. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the home inspector he indicated that it was. *Id*. at pg. 97 lines 16-18. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the termite inspector he indicated that it was. *Id*. at pg. 98 lines 2-6. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the contractors regarding the need for further repairs he indicated that it was. *Id*. at pg. 99 lines 10-13.

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At no point in time prior to February 2018 were Plaintiffs advised to conduct a destructive investigation of the property. Upon discovering the termite damage to the Subject Property in April of 2012 Plaintiffs immediately contacted a contractor and a pest control company. The termite damage was uncovered to a point where no more damage could be seen and it was repaired. No other termite damage was noted until February 2018.

Alternatively, the Defendants should not be allowed to rely on the statute of limitations as a matter of equity. "The South Carolina Supreme Court has held that the doctrine of equitable tolling may be applied where it is justified under the circumstances but 'should be used sparingly and only when the interests of justice compel its use.'" *Hooper v. Ebeneezer Senior Services*, 687 S.E.2d at 33 (S.C. 2009). Defendants either caused, or allowed, termite damage to be concealed in the Subject Property. As a result of this concealment, the Plaintiffs were prevented from becoming aware of the termite damage at issue until February of 2018. "The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." *Rushing v. McKinney,* 633 S.E.2d 917, at 924, citing *Hubbard v. Beverly,* 197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941). "Prejudice to the other party is an essential element of equitable estoppel." *Id.,* at 924 citing *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime,* 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992).

Lastly, Defendants speculated that the date on Plaintiffs' initial filed complaint indicated that Plaintiffs contemplated filing an action prior to June 18, 2018. Unfortunately, the date on said complaint was simply an error by John Hine that resulted from adapting an old complaint and failing to change said date.

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CONCLUSION

For the reasons set forth herein and at oral argument, the Court should deny Defendants' Motion for Summary Judgement.

This the 13th day of June, 2019

s/ John M. Hine
John M. Hine (S.C. Bar #76216)
The Hine Law Firm, LLC
PO Box 17095
Greenville, SC 29606
jhine@hinelawfirm.com
(864) 331-0875
(864) 762-4510 (fax)
Attorney for Plaintiffs
Alexandre MacClenahan (Co-Counsel)

EXHIBIT A

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP230382

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

REALTY SERVICE & REPAIR, LLC

5 Sizemore St., Greenville, SC 29609-4393 (864) 232-6825
Fax (864) 235-8349

9 June 2008

John and Maria Hine
416 Leyswood Dr.
Taylors, SC 29687

Re: Electrical Inspection, and substructure, evaluation, and recommendations.
Invoice amount is $125.00.

1. The double taps on the breakers in the main panel can be separated with additional breakers or half size breakers. The remaining blanks in the panel can be filled.
2. The open splices in the attic should placed in junction boxes with covers.
3. GFCI's should be added to the kitchen and lavatories, and other potentially wet locations where they perform a safety function.
4. The double taps on the panel behind the furnace do not seem to affect the power distribution.
5. The fixtured ceiling fan in the basement should be removed. Loose power wires should be secured to the joists for safety.
6. The wiring arrangement for the back lights at the deck appears adequate although they are not in conduit.
7. The repairs to the floor joists in the basement at the center and rear appear adequate, and no additional repairs to these appear necessary at this time.
8. The homeowner did not report any breaker problems or 'trip' occurrences, or other electrical problems, and stated that he has lived in the house for two years.

Thank You.
Sincerely,

Steve Baty
RBS Lic.#11110, RBE Lic.#389(electrical-unltd), SC Residential Bldrs. Comm., Expires 6/30/2009.

P00365

EXHIBIT B

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP230382

Ben Construction, Inc.
102 Trammell Road
Greenville, SC 29617
864-505-8651

Tim McCrory
416 Leyswood Drive
Greenville, SC 29615

Dear Mr. McCrory,

On June 6, 2008, I performed a builder's inspection on the above listed structure as requested by Hunter Pest Elimination, LLC. It was noted in the inspection letter done by Hunter Pest Elimination that there was damage to sills, joist and sub-floor at the right side of garage and to sill right rear of the garage. Repairs have been made to this area. There was also some discolored wood around HVAC duct boot rear of utility room. In my opinion this damage is not structural and does not require repair.

If you have any further questions or need any additional information please contact my office at 864-505-8651.

Thank you,

Benjamin F. Shivers III
SC Licensed Builder #18467

P00366

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

EXHIBIT C

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP230382

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. NO. 2018-CP-23-03382

JOHN M. HINE AND MARIA W. HINE,)
PLAINTIFFS,)
VERSUS)
TIMOTHY M. McCRORY, INDIVIDUALLY AND AS)
AGENT, MICHAEL P. McCRORY, SEABROOK L.)
MARCHANT, AND THE MARCHANT COMPANY,)
DEFENDANTS.)

****

DEPOSITION OF

MICHAEL P. McCRORY

****

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF MICHAEL P. McCRORY WAS TAKEN ON THE 12TH DAY OF APRIL, 2019, COMMENCING AT THE HOUR OF 2:00 P.M., IN THE OFFICES OF THE HINE LAW FIRM, LLC, 619 HALTON ROAD, SUITE 2B, GREENVILLE, SOUTH CAROLINA.

REPORTED BY: LISA M. NOWELL, CERTIFIED VERBATIM REPORTER

ELECTRONICALLY FILED - 2019 Jun 13 12:14 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

APPEARANCES:

ALEXANDRE MacCLENAHAN, ESQUIRE
THE MacCLENAHAN LAW FIRM, LLC
223 WEST STONE AVENUE
GREENVILLE, SOUTH CAROLINA 29609
ATTORNEY FOR PLAINTIFFS,

DAVID ANDERSON, ESQUIRE (VIA TELEPHONE)
RICHARDSON, PLOWDEN & ROBINSON, PA
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POST OFFICE DRAWER 7788
COLUMBIA, SOUTH CAROLINA 29201
ATTORNEY FOR DEFENDANTS,
TIMOTHY M. McCRORY AS AGENT,
SEABROOK MARCHANT, AND
THE MARCHANT COMPANY,

H. CHASE HARBIN, ESQUIRE
LAW OFFICE OF H. CHASE HARBIN
419 VARDRY STREET
GREENVILLE, SOUTH CAROLINA 29601
ATTORNEY FOR DEFENDANT,
MICHAEL P. McCRORY.

ALSO ATTENDING: JOHN HINE
SEABROOK MARCHANT
ANN MARCHANT

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EXHIBITS:
(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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Q. And you agree that it's reasonable for the homeowner to rely on the disclosure statement that was provided to them, correct?
A. Yes.
Q. And you, initially in signing this, intended for both John and Maria Hine to rely on that disclosure form when purchasing the Leyswood Drive house, correct?
A. Yes.
Q. I'm also meant to ask on McCrory 26, number 3, it says, "Water seepage, leakage, dampness, or standing water or water intrusion from any source in any area of the structure." Did I read that correctly?
A. Yes.
Q. And you guys marked "no", correct?
A. Yes.
Q. For all the repairs that you guys did that were listed on McCrory Bates number 13, did you hire a general contractor to oversee any of those repairs?
A. No.
Q. Who was in charge of, I guess, organizing the time of the repairs and overseeing the repairs?
A. It would have been Tim and myself, you know, as homeowners, but Tim managed, you know, getting the contractors and calling them and whatever.
Q. So Tim located the contractors, correct? You didn't

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Hunter Pest Elimination, right?
A. Yes.
Q. He says, "The repairs were made to this area." Do you see that?
A. Yeah.
Q. Then goes on to say, "There was some discolored wood around the HVAC duct boot rear of the utility room. In my opinion this damage is not structural and does not require repair," right?
A. Correct.
Q. Was it reasonable to rely on the findings of this letter?
A. Yes.
Q. Do you know someone named - I may pronounce it wrong - Rania or Renia? R-E-N-I-A.
A. Renia?
Q. And how is -- I don't know how to pronounce that. Do you know a Renia?
A. Yes, I do know a Renia.
Q. Who was that?
A. I went to high school with her. I think she's a real estate agent.
Q. Would she -- did she ever date your brother?
A. Not that I recall.
Q. I'll represent to you and I can show you the pictures,

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EXHIBIT D

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE AND MARIA W. HINE,

Plaintiffs,

vs. CASE NO. 2018-CP-23-03382

TIMOTHY M. MCCRORY, INDIVIDUALLY AND AS AGENT, MICHAEL P. MCCRORY, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY,

Defendants.

DEPOSITION OF: TIMOTHY MCCRORY

DATE: April 4, 2019

TIME: 2:22 p.m.

LOCATION: The Hine Law Firm
619 Halton Road, Suite 2B
Greenville, South Carolina

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Elaine L. Grove-DeFreitas,
Certified Court Reporter

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

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Hilton Head, SC (843) 785-3263
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Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
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ALSO PRESENT: Anne Marchant and Michael McCrory

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The deponent does not reading and signing of this deposition.

* * * * * * * * * * *

TIMOTHY M. MCCRORY,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MACCLENAHAN:

Q. Mr. McCrory, my name is Alex MacClenahan. We met previously. I'm one of the lawyers representing the plaintiffs. Can you please state your name for the record?

A. Timothy Mark McCrory.

Q. Okay. Now, you have sat through a few of these depositions, so you have some idea of how they go. Correct?

A. Yes, sir.

Q. Okay. Have you ever had your deposition taken before?

A. No, sir.

Q. Okay. The same rules apply here. Let's try not to talk over each other. Make sure you verbalize your answer "Yes" or "No." Okay?

A. Yes, sir.

Q. I know you may want to nod your head or things like that, but try to say "Yes" or "No." And

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termite damage that is behind a piece of drywall, the only way to observe that termite damage is to make some sort of hole or remove the drywall. Correct?

A. I would assume so, but I do not know. I'm not a termite inspector.

Q. I mean, you can't see through drywall, can you?

A. I cannot.

Q. Okay. Are you aware of any other way to see what's behind the drywall, then, to either put a hole in the drywall or remove the drywall?

A. Not that I'm familiar with, no.

Q. All right. The disclosure form that we have talked about, that you filled out and that you initialed and signed that is marked as Plaintiffs' Exhibit Number 4, was it reasonable for the plaintiffs to rely on the representations you made in that disclosure form?

A. Yes.

Q. Okay. And, in fact, that's the whole purpose of the disclosure form. Correct?

A. Correct.

Q. All right. And you're aware that when the plaintiffs purchased this house -- or prior to

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purchasing the house, that they had a home inspection done. Correct?

A. Yes.

Q. All right. Was it reasonable for them to rely on the findings of that home inspector and recommendations of that home inspector?

A. I would say yes.

Q. Okay. And you're also aware that they had a termite inspection done prior to purchasing the house. Correct?

A. Correct.

Q. All right. And was it reasonable for them to rely on the advice and recommendations of that termite inspector?

A. I would think so, yes.

Q. Okay. And the emails that were sent -- let's see. There was one sent that's Plaintiffs' Exhibit Number 5, from Mr. Marchant, dated June 6th, 2012, in which he summarizes your position concerning the damage at the house. Was it reasonable for the plaintiffs to rely on that information?

A. Yes.

Q. Okay. And then in Plaintiffs' Exhibit 7, the email you sent on June 7th, 2012 at

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Q. Prior to the sale of the house to the plaintiffs, at any point before you sold it to them, were you ever made aware of any termite damage, whether it was old or new, that existed in the house?

A. When I bought it, I was aware that there was a previous infestation that was repaired by Terminix, under bond. During my ownership, there was never active termites.

Q. Did you have a termite inspection done during your ownership?

A. I had it when I bought it. And then I don't know that I had one throughout the years because it wasn't under bond. And then he had one when he bought it and there were the same results.

Q. Okay. And it was reasonable for him to rely on those results. Correct?

A. I would say yes.

Q. Okay. And you would agree, then, that the only way for him to have discovered or his wife to have discovered termite damage that was in the basement stairwell was to have the drywall there -- either a hole bored into it or have it removed. Correct?

A. Yes.

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EXHIBIT E

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE AND MARIA W. HINE,

Plaintiffs,

vs. CASE NO. 2018-CP-23-03382

TIMOTHY M. MCCRORY, INDIVIDUALLY AND AS, AGENT, MICHAEL P. MCCRORY, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY,

Defendants.

30(b)(6)
DEPOSITION OF: THE MARCHANT COMPANY
BY SEABROOK L. MARCHANT

DATE: April 4, 2019

TIME: 9:00 a.m.

LOCATION: The Hine Law Firm
619 Halton Road, Suite 2B
Greenville, South Carolina

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Elaine L. Grove-DeFreitas,
Certified Court Reporter

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

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AWR

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ATTORNEYS FOR THE DEFENDANT
MICHAEL P. MCCRORY:

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ALSO PRESENT:

Anne Marchant, Timothy McCrory
and Michael McCrory

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(INDEX AT REAR OF TRANSCRIPT)

The deponent does not reading and signing of this deposition.

* * * * * * * * * * *

SEABROOK L. MARCHANT,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MACCLENAHAN:

Q. All right. My name is Alex MacClenahan. I'm one of the attorneys for the plaintiffs. And we have met before, but can you please state your full name for the record?

A. Seabrook Lucas Marchant.

Q. Okay, Mr. Marchant. Have you ever had your deposition taken before?

A. No.

Q. Okay. You were present, though, at the depositions for the plaintiffs. Correct?

A. Yes.

Q. So you have some idea of how this is going to work. Right?

A. Yes.

Q. All right. I'm still -- number one, I'm obligated to go over some of the rules. But even if I wasn't, I would go over them with you anyway just

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Q. Would you agree that it's reasonable for a buyer to rely on the seller disclosure statement?

A. Yes.

Q. And, in fact, that's why the seller disclosure statement is there, isn't it?

A. Yes.

Q. Okay. And so now, specifically, would you agree it was reasonable for the plaintiffs to rely on the seller disclosure statement that was provided?

A. Yes.

Q. Okay. Do you recall when you first learned of termite damage at the Leyswood property?

A. Yes.

Q. When was that?

A. I don't recall the exact date, but Mr. Hine sent me a letter. I think it was in 2008.

(Plaintiffs' Exhibit No. 3, 5-14-12 Letter, was marked)

BY MR. MACCLENAHAN:

Q. Mr. Marchant, I'm going to hand you what has been marked as Plaintiffs' Exhibit 3. And this is a letter from the Hine Law Firm addressed to you. And I ask you to take a chance to review it and let me know once you have had a chance to do so.

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do they have to be a specific size?

A. I do not know.

Q. Do they have to be able to open or close?

A. I do not know that either.

Q. Okay. As far as you know, the only requirement is it has to have a closet?

A. That's my understanding. Yes.

Q. Okay. Is there a minimum square footage, do you know?

A. No, I do not know.

Q. Okay. When a buyer purchases a home, there typically is a home inspection report. Correct?

A. Yes.

Q. Okay. Is it reasonable for the buyer to rely on the findings of the home inspection report?

A. Yes.

Q. Okay. And there was a home inspection done on this property when the Hines purchased it. Correct?

A. Yes, sir.

Q. All right. Would you agree with me that it was reasonable for them to rely on the findings of that home inspection report?

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A. Yes.

Q. Okay. During the course of buying a property, a potential buyer has a termite inspection report done, would it be reasonable for them to rely on the report of the termite inspector?

A. Yes, sir.

Q. All right. And you understand that when the Hines purchased this property, they had a termite inspection done. Correct?

A. Yes.

Q. And was it reasonable for them to rely on the findings of that termite inspector?

A. Yes.

Q. Sometimes when a buyer is purchasing a house, the inspection might reveal there needs to be some repairs made. Correct?

A. Yes.

Q. And in that instance, the buyers would have to -- or the sellers would have to locate a contractor to come and make those repairs. Correct?

A. Yes.

Q. Okay. And would you agree that it would be reasonable for the buyer to rely on that contractor as to what repairs needed to be done and how they needed to be done?

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A. Yes.

Q. Okay. You understand there was some repairs done to this property before the Hines purchased it. Correct?

A. Yes.

Q. And that they obtained -- there was a contractor who came in and performed those repairs. Correct?

A. Yes.

Q. And it was reasonable for the Hines to rely on the recommendations of that contractor as to what repairs needed to be done and how?

A. Yes.

Q. Would you agree that when a homeowner has a termite inspector come at any point and they perform an inspection and issue a report, that it's reasonable for that homeowner to rely on this licensed termite inspector and the advice given?

A. Yes.

Q. Okay. And you understand that after the purchase of the house, the Hines had another termite inspection done. Right?

A. Yes.

Q. And would you agree it was reasonable for them to rely on the advice and recommendations

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ELECTRONICALLY FILED - 2019 Aug 02 9:55 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA)) COUNTY OF GREENVILLE)	IN THE COURT OF COMMON PLEAS Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,)) Plaintiffs,) vs.)) Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,)) Defendants.))	**PLAINTIFFS JOHN M. HINE AND MARIA W. HINE MOTION TO ALTER OR AMEND**

TO: DEFENDANTS TIMOTHY M. MCCRORY, MICHAEL P. MCCRORY, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY'S AND COUNSEL DAVID A. ANDERSON, ESQUIRE AND H. CHASE HARBIN, ESQUIRE:

Please take notice that Plaintiffs John M. Hine and Maria W. Hine ("Plaintiffs"), by and through their undersigned counsel, will move before the Honorable Robin B. Stilwell, at such time and place as is convenient for the Court and counsel, for an Order altering, amending or granting relief from the Order Granting Motion for Summary Judgment against Plaintiffs dated July 22, 2019 and filed July 23, 2019 (hereinafter "Order") pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e).

I. Legal Standard

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct.App 2014), cert denied. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when "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 a judgment as a matter of law." *Id*. (quoting Rule 56(c), SCRCP). "Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." *Id*. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is

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dispute as to the conclusion to be drawn from those facts." *Id*. "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id*.

II. Argument

Because the evidence must be viewed in the light most favorable to the Plaintiffs for purposes of Defendants' Motion for Summary Judgment, the Court must conclude that Defendants had knowledge of termite damage in the stairwell of the home and that they intentionally concealed the damage in the stairwell to hide it from Plaintiffs so that Plaintiffs would not be aware of said damage. Furthermore, there is also evidence that indicates the termite damage discovered in 2012 is separate and distinct from the termite damage at issue in this matter. The termite damage discovered in 2012 was located on the front corner bedroom of the house and was not contiguous to any of the termite damage discovered in 2018. Furthermore, there were mud trails from termites leading up from a crack in the basement floor to the beams around the stairwell indicating the termites entered the home from a different location. As a result of this evidence, the Court must conclude that the damage in the stairwell was separate and distinct from the termite damage discovered in 2012 and therefore would have a separate statute of limitations based on the discovery rule.

The statute of limitations does not begin to run until the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith*, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987). If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury. *Santee Portland Cement Co. v. Daniel Int'l Corp*., 299 S.C. 269, 384 S.E.2d 693 (1989) *overruled on other grounds*. Where there is a latent defect, as is the present case, at the least, the application of the discovery rule is a question of fact for the jury. *Id*. See also *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520 where two different statutes of limitation were applied based on the lack of knowledge of the latent injury.

Even the Defendants have agreed that the actions taken by Plaintiffs were reasonable. When Defendant Michael P. McCrory was asked if it was reasonable for Plaintiffs to rely on the disclosure statement he indicated that it was. **See Exhibit A**, Deposition of Michael P. McCrory, pg. 34, lines 1-4. When Defendant Michael P. McCrory was asked if it was reasonable for Plaintiffs to rely on the

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contractor's letter stating that no repairs were needed he indicated that it was, *Id.* at pg 46 lines 6-13. When Defendant Timothy M. McCrory was asked if it was reasonable for Plaintiffs to rely on the Disclosure he indicated that it was. **See Exhibit B**, Deposition of Timothy M. McCrory, pg. 82, lines 14-20. When Defendant Timothy M. McCrory was asked if it was reasonable for Plaintiffs to rely on the findings of the home inspector he indicated that it was. *Id.* at pg. 83 lines 4-7. When Defendant Timothy M. McCrory was asked if it was reasonable for Plaintiffs to rely on the findings of the termite inspector he indicated that it was. *Id.* at pg. 83 lines 12-15. When Defendant Timothy M. McCrory was asked if the only way for Plaintiffs to discover the termite damage at issue in this action was for them to remove the drywall he said "yes." Id at pg. 85 lines 19-25. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the Disclosure he indicated that it was. **See Exhibit C**, Deposition of Seabrook L. Marchant, pg. 91 lines 1-3. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the home inspector he indicated that it was. *Id.* at pg. 97 lines 16-18. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the termite inspector he indicated that it was. *Id.* at pg. 98 lines 2-6. When Defendant Seabrook L. Marchant was asked if it was reasonable for Plaintiffs to rely on the contractors regarding the need for further repairs he indicated that it was. *Id.* at pg. 99 lines 10-13.

At no point in time prior to February 2018 were Plaintiffs advised to conduct a destructive investigation of the property. Upon discovering the termite damage in the front corner bedroom of the home in April of 2012 Plaintiffs immediately contacted a contractor and a pest control company. The termite damage was uncovered to a point where no more damage could be seen and it was repaired. No other termite damage was noted until February 2018.

Alternatively, the Defendants should not be allowed to rely on the statute of limitations as a matter of equity. "The South Carolina Supreme Court has held that the doctrine of equitable tolling may be applied where it is justified under the circumstances but 'should be used sparingly and only when the interests of justice compel its use.'" *Hooper v. Ebeneezer Senior Services*, 687 S.E.2d at 33 (S.C. 2009). Viewing the evidence in the light most favorable to the Plaintiffs, the Defendants intentionally concealed the termite damage in the stairwell to be concealed. Defendants further concealed this fact by making false statements on the South Carolina Seller's Disclosure form and in communications with Plaintiffs

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and Plaintiffs' real estate agent. As a result of this pattern of fraudulent behavior, the Plaintiffs were prevented from becoming aware of the termite damage in the stairwell until February of 2018.

Lastly, the Defendants should be estopped from arguing that the statute of limitations should apply. "The doctrine of estoppel applies if a person, by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." *Rushing v. McKinney*, 633 S.E.2d 917, at 924, citing *Hubbard v. Beverly*, 197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941). "Prejudice to the other party is an essential element of equitable estoppel." *Id.*, at 924 citing *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime,* 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). It is clear from the facts that Defendants concealed material facts and that concealment caused Plaintiffs to be prejudiced and injured. By granting Defendants Motion for Summary Judgement this court is rewarding the fraudulent behavior of Defendants. Much was made about the fact that Plaintiffs asserted that the Defendants knew about termites damage in the front bedroom of the home back in 2012. The fact remains that even if Plaintiffs had filed an action in 2012, the damages in such an action would have been approximately $4,000. Based on the Courts ruling, Plaintiffs would still be barred from recovering any additional damages even if Plaintiffs had filed an action in 2012 against Defendants[1].

Based on the Courts ruling, a home buyer who sees a small water stain on the ceiling of their home from a leak in the roof, would not be able to file an action against the seller for water intrusion in the basement that isn't discovered until 3 years later because the homeowner was previously aware of undisclosed water intrusion into the house. This result is not the spirit of the statute of limitations. Had Plaintiffs discovered termite damage and failed to take steps to remedy the discovered damage for six years that would be a different story. However, in a situation where Plaintiffs did everything that they could reasonably be expected to do, the statute of limitations should not be able to be used as a weapon against them especially considering that the Plaintiffs were unaware of the damage as a direct result of the fraudulent actions, conduct, communications and silence of Defendants.

[1] Defendants speculated that the date on Plaintiffs' initial filed complaint indicated that Plaintiffs contemplated filing an action prior to June 18, 2018. Unfortunately, the date on said complaint was simply an error by John Hine that resulted from adapting an old complaint and failing to change said date.

III. Conclusion

For the foregoing reasons, the Plaintiffs respectfully ask that the Court alter or amend its Order dated July 22, 2019 and filed on July 23, 2019.

Respectfully submitted this 2nd of August, 2019.

s/ John M. Hine
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Attorney for Plaintiffs
Alexandre MacClenahan (Co-Counsel)

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EXHIBIT A

ELECTRONICALLY FILED - 2019 Aug 02 9:55 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. NO. 2018-CP-23-03382

JOHN M. HINE AND MARIA W. HINE,)
PLAINTIFFS,)
VERSUS)
TIMOTHY M. McCRORY, INDIVIDUALLY AND AS)
AGENT, MICHAEL P. McCRORY, SEABROOK L.)
MARCHANT, AND THE MARCHANT COMPANY,)
DEFENDANTS.)

****

DEPOSITION OF

MICHAEL P. McCRORY

****

PURSUANT TO NOTICE OF DEPOSITION AND/OR AGREEMENT IN THE ABOVE-ENTITLED CASE, THE DEPOSITION OF MICHAEL P. McCRORY WAS TAKEN ON THE 12TH DAY OF APRIL, 2019, COMMENCING AT THE HOUR OF 2:00 P.M., IN THE OFFICES OF THE HINE LAW FIRM, LLC, 619 HALTON ROAD, SUITE 2B, GREENVILLE, SOUTH CAROLINA.

REPORTED BY: LISA M. NOWELL, CERTIFIED VERBATIM REPORTER

APPEARANCES:

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ATTORNEY FOR PLAINTIFFS,

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RICHARDSON, PLOWDEN & ROBINSON, PA
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POST OFFICE DRAWER 7788
COLUMBIA, SOUTH CAROLINA 29201
ATTORNEY FOR DEFENDANTS,
TIMOTHY M. McCRORY AS AGENT,
SEABROOK MARCHANT, AND
THE MARCHANT COMPANY,

H. CHASE HARBIN, ESQUIRE
LAW OFFICE OF H. CHASE HARBIN
419 VARDRY STREET
GREENVILLE, SOUTH CAROLINA 29601
ATTORNEY FOR DEFENDANT,
MICHAEL P. McCRORY.

ALSO ATTENDING: JOHN HINE
SEABROOK MARCHANT
ANN MARCHANT

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EXHIBITS:
(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

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Q. And you agree that it's reasonable for the homeowner to rely on the disclosure statement that was provided to them, correct?
A. Yes.
Q. And you, initially in signing this, intended for both John and Maria Hine to rely on that disclosure form when purchasing the Leyswood Drive house, correct?
A. Yes.
Q. I'm also meant to ask on McCrory 26, number 3, it says, "Water seepage, leakage, dampness, or standing water or water intrusion from any source in any area of the structure." Did I read that correctly?
A. Yes.
Q. And you guys marked "no", correct?
A. Yes.
Q. For all the repairs that you guys did that were listed on McCrory Bates number 13, did you hire a general contractor to oversee any of those repairs?
A. No.
Q. Who was in charge of, I guess, organizing the time of the repairs and overseeing the repairs?
A. It would have been Tim and myself, you know, as homeowners, but Tim managed, you know, getting the contractors and calling them and whatever.
Q. So Tim located the contractors, correct? You didn't

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Hunter Pest Elimination, right?
A. Yes.
Q. He says, "The repairs were made to this area." Do you see that?
A. Yeah.
Q. Then goes on to say, "There was some discolored wood around the HVAC duct boot rear of the utility room. In my opinion this damage is not structural and does not require repair," right?
A. Correct.
Q. Was it reasonable to rely on the findings of this letter?
A. Yes.
Q. Do you know someone named - I may pronounce it wrong - Rania or Renia? R-E-N-I-A.
A. Renia?
Q. And how is -- I don't know how to pronounce that. Do you know a Renia?
A. Yes, I do know a Renia.
Q. Who was that?
A. I went to high school with her. I think she's a real estate agent.
Q. Would she -- did she ever date your brother?
A. Not that I recall.
Q. I'll represent to you and I can show you the pictures,

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EXHIBIT B

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE AND MARIA W. HINE,

Plaintiffs,

vs. CASE NO. 2018-CP-23-03382

TIMOTHY M. MCCRORY, INDIVIDUALLY AND AS AGENT, MICHAEL P. MCCRORY, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY,

Defendants.

DEPOSITION OF: TIMOTHY MCCRORY

DATE: April 4, 2019

TIME: 2:22 p.m.

LOCATION: The Hine Law Firm
619 Halton Road, Suite 2B
Greenville, South Carolina

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Elaine L. Grove-DeFreitas,
Certified Court Reporter

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

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
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AWR

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864-288-6763
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ALSO PRESENT: Anne Marchant and Michael McCrory

(INDEX AT REAR OF TRANSCRIPT)

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The deponent does not reading and signing of this deposition.

* * * * * * * * * * *

TIMOTHY M. MCCRORY,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MACCLENAHAN:

Q. Mr. McCrory, my name is Alex MacClenahan. We met previously. I'm one of the lawyers representing the plaintiffs. Can you please state your name for the record?

A. Timothy Mark McCrory.

Q. Okay. Now, you have sat through a few of these depositions, so you have some idea of how they go. Correct?

A. Yes, sir.

Q. Okay. Have you ever had your deposition taken before?

A. No, sir.

Q. Okay. The same rules apply here. Let's try not to talk over each other. Make sure you verbalize your answer "Yes" or "No." Okay?

A. Yes, sir.

Q. I know you may want to nod your head or things like that, but try to say "Yes" or "No." And

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termite damage that is behind a piece of drywall, the only way to observe that termite damage is to make some sort of hole or remove the drywall. Correct?

A. I would assume so, but I do not know. I'm not a termite inspector.

Q. I mean, you can't see through drywall, can you?

A. I cannot.

Q. Okay. Are you aware of any other way to see what's behind the drywall, then, to either put a hole in the drywall or remove the drywall?

A. Not that I'm familiar with, no.

Q. All right. The disclosure form that we have talked about, that you filled out and that you initialed and signed that is marked as Plaintiffs' Exhibit Number 4, was it reasonable for the plaintiffs to rely on the representations you made in that disclosure form?

A. Yes.

Q. Okay. And, in fact, that's the whole purpose of the disclosure form. Correct?

A. Correct.

Q. All right. And you're aware that when the plaintiffs purchased this house -- or prior to

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purchasing the house, that they had a home inspection done. Correct?

A. Yes.

Q. All right. Was it reasonable for them to rely on the findings of that home inspector and recommendations of that home inspector?

A. I would say yes.

Q. Okay. And you're also aware that they had a termite inspection done prior to purchasing the house. Correct?

A. Correct.

Q. All right. And was it reasonable for them to rely on the advice and recommendations of that termite inspector?

A. I would think so, yes.

Q. Okay. And the emails that were sent -- let's see. There was one sent that's Plaintiffs' Exhibit Number 5, from Mr. Marchant, dated June 6th, 2012, in which he summarizes your position concerning the damage at the house. Was it reasonable for the plaintiffs to rely on that information?

A. Yes.

Q. Okay. And then in Plaintiffs' Exhibit 7, the email you sent on June 7th, 2012 at

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Q. Prior to the sale of the house to the plaintiffs, at any point before you sold it to them, were you ever made aware of any termite damage, whether it was old or new, that existed in the house?

A. When I bought it, I was aware that there was a previous infestation that was repaired by Terminix, under bond. During my ownership, there was never active termites.

Q. Did you have a termite inspection done during your ownership?

A. I had it when I bought it. And then I don't know that I had one throughout the years because it wasn't under bond. And then he had one when he bought it and there were the same results.

Q. Okay. And it was reasonable for him to rely on those results. Correct?

A. I would say yes.

Q. Okay. And you would agree, then, that the only way for him to have discovered or his wife to have discovered termite damage that was in the basement stairwell was to have the drywall there -- either a hole bored into it or have it removed. Correct?

A. Yes.

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EXHIBIT C

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE AND MARIA W. HINE,

Plaintiffs,

vs. CASE NO. 2018-CP-23-03382

TIMOTHY M. MCCRORY, INDIVIDUALLY AND AS, AGENT, MICHAEL P. MCCRORY, SEABROOK L. MARCHANT, AND THE MARCHANT COMPANY,

Defendants.

30(b)(6)
DEPOSITION OF: THE MARCHANT COMPANY
BY SEABROOK L. MARCHANT

DATE: April 4, 2019

TIME: 9:00 a.m.

LOCATION: The Hine Law Firm
619 Halton Road, Suite 2B
Greenville, South Carolina

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Elaine L. Grove-DeFreitas,
Certified Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
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AWR

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ALSO PRESENT:

Anne Marchant, Timothy McCrory
and Michael McCrory

(INDEX AT REAR OF TRANSCRIPT)

The deponent does not reading and signing of this deposition.

* * * * * * * * * * *

SEABROOK L. MARCHANT,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. MACCLENAHAN:

Q. All right. My name is Alex MacClenahan. I'm one of the attorneys for the plaintiffs. And we have met before, but can you please state your full name for the record?

A. Seabrook Lucas Marchant.

Q. Okay, Mr. Marchant. Have you ever had your deposition taken before?

A. No.

Q. Okay. You were present, though, at the depositions for the plaintiffs. Correct?

A. Yes.

Q. So you have some idea of how this is going to work. Right?

A. Yes.

Q. All right. I'm still -- number one, I'm obligated to go over some of the rules. But even if I wasn't, I would go over them with you anyway just

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Q. Would you agree that it's reasonable for a buyer to rely on the seller disclosure statement?

A. Yes.

Q. And, in fact, that's why the seller disclosure statement is there, isn't it?

A. Yes.

Q. Okay. And so now, specifically, would you agree it was reasonable for the plaintiffs to rely on the seller disclosure statement that was provided?

A. Yes.

Q. Okay. Do you recall when you first learned of termite damage at the Leyswood property?

A. Yes.

Q. When was that?

A. I don't recall the exact date, but Mr. Hine sent me a letter. I think it was in 2008.

(Plaintiffs' Exhibit No. 3, 5-14-12 Letter, was marked)

BY MR. MACCLENAHAN:

Q. Mr. Marchant, I'm going to hand you what has been marked as Plaintiffs' Exhibit 3. And this is a letter from the Hine Law Firm addressed to you. And I ask you to take a chance to review it and let me know once you have had a chance to do so.

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do they have to be a specific size?

A. I do not know.

Q. Do they have to be able to open or close?

A. I do not know that either.

Q. Okay. As far as you know, the only requirement is it has to have a closet?

A. That's my understanding. Yes.

Q. Okay. Is there a minimum square footage, do you know?

A. No, I do not know.

Q. Okay. When a buyer purchases a home, there typically is a home inspection report. Correct?

A. Yes.

Q. Okay. Is it reasonable for the buyer to rely on the findings of the home inspection report?

A. Yes.

Q. Okay. And there was a home inspection done on this property when the Hines purchased it. Correct?

A. Yes, sir.

Q. All right. Would you agree with me that it was reasonable for them to rely on the findings of that home inspection report?

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A. Yes.

Q. Okay. During the course of buying a property, a potential buyer has a termite inspection report done, would it be reasonable for them to rely on the report of the termite inspector?

A. Yes, sir.

Q. All right. And you understand that when the Hines purchased this property, they had a termite inspection done. Correct?

A. Yes.

Q. And was it reasonable for them to rely on the findings of that termite inspector?

A. Yes.

Q. Sometimes when a buyer is purchasing a house, the inspection might reveal there needs to be some repairs made. Correct?

A. Yes.

Q. And in that instance, the buyers would have to -- or the sellers would have to locate a contractor to come and make those repairs. Correct?

A. Yes.

Q. Okay. And would you agree that it would be reasonable for the buyer to rely on that contractor as to what repairs needed to be done and how they needed to be done?

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A. Yes.

Q. Okay. You understand there was some repairs done to this property before the Hines purchased it. Correct?

A. Yes.

Q. And that they obtained -- there was a contractor who came in and performed those repairs. Correct?

A. Yes.

Q. And it was reasonable for the Hines to rely on the recommendations of that contractor as to what repairs needed to be done and how?

A. Yes.

Q. Would you agree that when a homeowner has a termite inspector come at any point and they perform an inspection and issue a report, that it's reasonable for that homeowner to rely on this licensed termite inspector and the advice given?

A. Yes.

Q. Okay. And you understand that after the purchase of the house, the Hines had another termite inspection done. Right?

A. Yes.

Q. And would you agree it was reasonable for them to rely on the advice and recommendations

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ELECTRONICALLY FILED - 2019 Aug 14 10:25 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-03382

John M. Hine and Maria W. Hine,

Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,

Respondents.

NOTICE OF APPEAL

John M. Hine and Maria W. Hine appeal the orders of the Honorable Robin B. Stilwell dated July 22, 2019 and August 8, 2019. Appellant received written notice of entry of these orders on July 23, 2019 and August 8, 2019, respectively.

August 13, 2019.

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(864) 762-4510 (fax)
ATTORNEY FOR APPELANTS

ELECTRONICALLY FILED - 2019 Aug 14 10:25 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

Other Counsel of Record:

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ATTORNEY FOR RESPONDENT MICHAEL P. McCRORY

ELECTRONICALLY FILED - 2019 Aug 14 10:25 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

CERTIFICATE OF SERVICE

The undersigned does hereby certify that I served the foregoing **NOTICE OF APPEAL** on August 13, 2019 by United States Mail, Postage Prepaid, First Class, addressed as follows:

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August 13, 2019

ELECTRONICALLY FILED - 2019 Aug 23 2:16 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2303382

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2018-CP-23-03382
John M. Hine and Maria W. Hine,	)	
	)	
Plaintiffs,	)	
vs.	)	**ORDER**
	)	
Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,	)	
	)	
Defendants.	)	

This matter is before the Court upon Defendants' Motion for Summary Judgment based upon the fact that Plaintiffs are time barred from bringing the present action. The Court heard oral arguments on June 18, 2019 and reviewed respective submissions, case law and statutory provisions. For the reasons set forth below, Defendants' motions are GRANTED.

I. Facts

This case arises from the sale of a single family home located in Greenville, South Carolina, that occurred on or about July 1, 2008. Agent served as the listing agent for the single family home at issue. Agent was employed by Broker and Company while serving as the listing agent for the single family home at issue. Agent, Timothy McCrory and his brother Michael P. McCrory owned the home. Plaintiffs allege that Agent knew or should have known that the single family home at issue had termite damage that had not been repaired and that the sellers of the property had misrepresented this on the property disclosure form. On April 27, 2012 Plaintiff, John M. Hine who is also a licensed attorney in South Carolina was removing shoe molding around the baseboard in the front bedroom of their home. Once that was removed he discovered extensive damage to the wood studs behind the drywall. It was discovered once a contractor was called that the rim

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joists were also damaged. He wrote a letter to Defendant Seabrook Marchant of The Marchant Company seeking damages and alleging that the termite damage should have been noted by their former agent, Tim McCrory when he and his brother performed work in the basement as noted on the disclosure statement. *See Exhibit A.* The defendants denied knowledge of any undisclosed termite damage. On July 9, 2012, Attorney Hine sent a demand letter seeking damages of $4,000., *Exhibit B.* There was some discussion back and forth and Attorney Hine ultimately decided not to pursue it. *Exhibit C, John Hine deposition, pg. 28 lines 12-14.* Plaintiff Hine apparently failed to follow-up with this claim within the appropriate statute of limitations and admitted so during his deposition. When asked ". . . why aren't you seeking recovery for that work?" he responded "I don't know that I have the evidence to prove that, and I don't know that I'm still entitled to it under the statute of limitations." *Id, pg. 24 lines 14-18.*

Plaintiff continued with renovations to his home, he remodeled a hallway bathroom without incident and then on or about February 3, 2018, while remodeling the master bathroom, he discovered additional termite damage to the subject property and he brought the present litigation on June 18, 2018. During this discovery he claims to have uncovered sheetrock in the stairwell where two 2X4's were sistered between a wood member. The 2X4's had a bar code stamp with a date of September 7, 2005 which was the date that the McCrory brothers purchased the home. Plaintiffs' now claim that this should have been disclosed to them and therefore is the basis for their present litigation. The McCrory brothers were aware of a sheetrock contractor investigating the stairwell to see if the height could be raised but deny noticing any unrepaired termite damage nor were they present when the investigation into the stairway ceiling occurred. The Defendants are not aware of when the 2x4's with the date stamp was placed at the home nor if it was placed there during their ownership.

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Plaintiffs' Amended Complaint alleges the following causes of action against the McCrory brothers, Broker and Company: (1) fraud and misrepresentation; (2) conversion; (3) violation of the South Carolina Residential Property Condition Disclosure Act; (4) violation of S.C. Code Ann. § 40-57-137; (5) negligence; (6) negligent hiring, training, supervision and retention; (7) unjust enrichment; (8) unfair trade practices; and (9) breach of the covenant of good faith and fair dealing.

II. Legal Standard

"Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct.App.2014), *cert denied*. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when "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 a judgment as a matter of law." *Id.* (quoting Rule 56(c), SCRCP). "Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id.*

III. Reasoning

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The Defendants specific grounds for their Motion are that Plaintiffs failed to commence this lawsuit within the applicable statute of limitations. There are no genuine issues of material fact relating to the time of the first discovery of the unrepaired termite damage by Plaintiffs in April of 2012.

The undisputed evidence shows that Plaintiffs either knew or should have known about the unrepaired termite damage on or about April 27, 2012 when Plaintiff John Hine wrote a letter to the Broker and Company, dated May 14, 2012, informing them of his discovery of unrepaired termite damage throughout the property. This letter also notes that the property disclosure form completed by the sellers was not accurate with regards to the unrepaired termite damage.[1] Plaintiffs also hired a contractor to inspect the property who found additional unrepaired termite damage.

Accordingly, as early as April 27, 2012, Plaintiffs knew or should have known that there was unrepaired termite damage that was not disclosed to them during the process of purchasing the property. The statute of limitations for Plaintiffs' causes of action is three years[2] and expired on April 27, 2015. Plaintiffs did not file this lawsuit until June 18, 2018, almost three years after the statute of limitations expired.

The undisputed facts show that Plaintiffs failed to commence this action within the applicable statute of limitations; accordingly, their claims must be dismissed. The Plaintiff is now attempting to make the argument that the first attempt to recover for termite damages was abandoned but now he has uncovered subsequent information to further his claim against the defendants. The statute of limitations does not purport to destroy or extinguish a cause of action,

---

[1] This letter is attached to this Order as Exhibit "A" and Plaintiff has admitted that he wrote this letter.

[2] S.C. Code Ann. § 15-3-530 provides a three year statute of limitations for Plaintiffs' claims. *See Cline v. J.E. FaulknerHomes, Inc.*, 359 S.C. 367, 370, 597 S.E.2d 27, 29 (Ct. App. 2004) (three-year statute of limitations for negligence claims); *ABN Amro Mortg. Grp., Inc. v. SAJJ, LLC*, Civil Action No. 7:05–1720–RBH, 2007 WL 840342, at *5 (D.S.C. March 15, 2007) (three-year statute of limitations for negligent misrepresentation claims); and *Moore v. Benson*, 390 S.C. 153, 160, 700 S.E.2d 273, 277 (Ct. App. 2010) (fraud action "is governed by a three-year statute of limitations period").

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but simply to close the doors of the Courts to a suitor who undertakes to bring his suit upon such cause of action after the lapse of the prescribed period. *Jackson v. Plyler (S.C.1893) 38 S.C. 496, 17 S.E. 255, 37 Am. St. Rep. 782.* The fundamental test in determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it. *Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.* Plaintiffs could have filed their suit in 2012.

Plaintiffs having missed the statute of limitations is now claiming that he has found additional evidence in a different location that allows him to start the clock over again. This novel argument is not supported by case law. A cause of action accrues at the moment when the Plaintiff has a legal right to sue on it, *Id.* Plaintiffs are claiming that the property disclosure statement was misrepresented. This was true when they wrote the demand letter in July of 2012 and it is the same with the current suit filed in 2018.

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for the claims asserted in this action. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987).* Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Austin v. Conway Hosp., Inc.* 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987). One policy behind the statute of limitations is the protection of a defendant from claims where it might be difficult to disprove if not brought until after relevant evidence has been lost and witnesses have become unavailable. Plaintiffs knew a claim existed when it discovered termite damage in an area that was alleged to have been renovated by Defendants, therefore the statute began to run in 2012.

IV. Conclusion

IT IS, THEREFORE, ORDERED THAT, Plaintiffs are barred from pursuing their claims against Defendants' based upon the running of the Statute of Limitations. Defendants' Motions for Summary Judgment are granted.

IT IS SO ORDERED.

_____
ROBIN B. STILWELL
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

July ____, 2019

Greenville, SC

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Greenville Common Pleas

Case Caption:	John M Hine , plaintiff, et al vs. Timothy M McCrory , defendant, et al
Case Number:	2018CP2303382
Type:	Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 · Columbia, SC 29202
1900 Barnwell Street, Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 · Myrtle Beach, SC 29578
2103 Farlow Street, Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

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235 Magrath Darby Boulevard, Suite 100, Mount Pleasant, SC 29464 P 843.805.6550 F 843.805.6595

www.RichardsonPlowden.com

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Reply to: Columbia
DAnderson@RichardsonPlowden.com
Direct: 803-576-3702

July 24, 2019

Honorable Paul B. Wickensimer
Greenville County Clerk of Court's Office
305 E. North Street
Greenville, SC 29601

Re: John M. Hine and Maria W. Hine v. Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company
Case No.: 2018-CP-23-03382
File No.: 101.02875

Dear Mr. Wickensimer:

I represent the Defendants Timothy M. McCrory, Seabrook Marchant and The Marchant Company in the above referenced matter. Judge Robin B. Stilwell filed an Order on July 23, 2019 at 2:47PM granting Summary Judgment. The Order references three attachments but they were not filed with the ECF submission. Judge Stillwell indicated that he was unable to attach the exhibits and asked that I coordinate with your office to have the three exhibits attached as referenced in the Courts order. I am attaching those exhibits A, B, and C electronically. Should you need any further information regarding this request please let me know.

By copy of this correspondence I am notifying Plaintiffs' counsel of record pertaining to this request.

With kind regards, I am

Sincerely yours,

David A. Anderson

DAA/cml
Enclosures
Cc: John Hine, Esquire (via email)
Alexandre N. MacClenahan, Esquire (via email)
Chase Harbin, Esquire (via email)

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The Hine Law Firm, LLC

John M. Hine
LL. M. in Taxation

Post Office Box 17095
Greenville, SC 29606
www.hinelawfirm.com
jhine@hinelawfirm.com

870 Cleveland St., Unit 1B
Greenville, SC 29601
Telephone (864) 331-0875
Fax (864) 331-8646

May 14, 2012

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

Re: Property located at 416 Leyswood Drive

Dear Mr. Marchant:

I purchased 416 Leyswood Drive, Greenville, SC 29615 (the "Property") on July 1, 2008 from Michael and Timothy McCrory (collectively "Sellers"). Timothy was also the Sellers' Agent for the transaction and was employed by The Marchant Company (the "Company") at the time. Sellers signed a State of South Carolina Residential Property Condition Disclosure Statement on May 14, 2008 (the "Disclosure"). Paragraph 10 of the Disclosure indicated that there was no present infestation or damage which had not been repaired from past infestation of wood destroying insects or organisms. The comments to Paragraph 13 stated that "[t]he 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock."

On April 27, 2012 I removed the shoe molding around the baseboard in the bedroom on the front corner of the house in order to paint the baseboards. As I was removing the shoe molding, I noticed that a large gap formed as the molding got closer to the exterior corner of the house. Upon further inspection it was discovered that some sort of caulk or silicone had been injected into the gap and painted to make it less noticeable. Once the shoe molding had been removed I discovered extensive damage to the wood studs behind the dry wall. A contractor was called in to further inspect the damage and it was discovered that the rim joists were damaged too.

EXHIBIT
tabbies
A
00010

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Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

As a result of the damage discovered in the upstairs bedroom, the finished ceiling in the room of the basement located directly below the bedroom had to be removed, along with the soffit and ductwork located in that portion of the basement. As the repairs were being completed further damage was uncovered along a double joist that ran above a cinder block wall as well as damage to the headers of both windows in the upper bedroom.

This letter is being sent to you as a result of Timothy's status as the Seller's Agent and his employment by you. When the work was done in the basement as noted in Paragraph 13 of the Disclosure, the damage would have been discovered and subsequently was required to be disclosed. As a result of the failure to disclose the damage I have incurred extensive costs. Timothy owed a duty as the listing agent to disclose the damage which was not repaired. Pursuant to § 27-50-70 of the South Carolina Code the listing agent is liable for the misrepresentation.

I have attached the invoices from the contractor who has performed the repairs to the house. Please note that there are additional miscellaneous expenses for painting, baseboard, and crown molding which have not yet been calculated.

Please call my office at your earliest convenience to discuss this matter.

Sincerely yours,

John M. Hine, Esq.

Enclosures

CC: Timothy McCrory (w/ encl.)

00010

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GALT INNOVATIONS

PROPOSAL

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
www.galtinnovations.com
eli@galtinnovations.com or mike@galtinnovations.com

	NAME			
BUYER/ OWNER	**John Hine**			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	jhine@hinelawfirm.com			

Date: 5/1/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Option 1: 730.00
Demolition of sheetrock from corner of wall out approximately 7' right and 4'6" left to the ceiling. Remove rotten framing. Furnish and installation of new 2x4 framing with sheathing where possible. New R-13 insulation in walls. Plastic sheeting to be supplied to cover bed and to tape and zipper seal bedroom door.

Option 2: 250.00
Above work, plus- hang and finish new sheetrock where existing to be removed- includes hanging, tape, mud, and sand to be ready for paint, add:

Option 3: 750.00
Furnish and install 10 - 2x8-16 floor joists in basement to firm up existing floor system. Includes thru bolting to the existing joists for strength. Includes disconnecting and reconnecting wiring where necessary. Where it is not possible to get full 2x8 in place, contactor to give owner credit or attempt to install 2x6 in lieu of 2x8.

Option 4: 1,750.00
Demolition of downstairs ceiling, rotten bands, rotten floor joists. New framing to include double bands at rot, new floor system sistered on to existing floor joists (spanned wall to wall). Rework HVAC pipe and soffit as necessary. Furnish and installation of new sheetrock on ceiling, mud, tape, and sand to be ready for painting. Includes removal and haul of all debris. Owner to provide painting.

Qualifications (Original bid not to include):
1 Unforeseen/hidden conditions.
2 Additions or reductions in scope following signed contract will be handled by Change Order.
3 Owner to supply power and water as necessary.
4 No permitting included. Owner to supply plat if Greenville city permit required.
5 Owner to install salvaged casing at windows, base, and shoemold.

Proposed Schedule: Job is expected to require 5 working days. This is an approximation only given for convenience. Working days are defined as Monday - Friday (8am - 4pm).

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

Galt Innovations carries full general liability and worker's compensation insurance.
Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
All our subcontractors carry their respective insurances as required.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

X

GALT INNOVATIONS

Formerly PALMETTO BUILDING AND RENOVATION

INVOICE# 1224

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
www.galtinnovations.com
eli@galtinnovations.com or mike@galtinnovations.com

	NAME			
BUYER/ OWNER	**John Hine**			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	jhine@hinelawfirm.com			

Date: 5/25/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Final bill per contract log.	3,780.00
Total:	**$ 3,780.00**

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

Galt Innovations carries full general liability and worker's compensation insurance.
Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
All our subcontractors carry their respective insurances as required.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

X

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GALT INNOVATIONS

PROPOSAL

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
www.galtinnovations.com
eli@galtinnovations.com or mike@galtinnovations.com

	NAME			
BUYER/ OWNER	John Hine			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	jhine@hinelawfirm.com			

Date: 5/1/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Option 1: 730.00
Demolition of sheetrock from corner of wall out approximately 7' right and 4'6" left to the ceiling. Remove rotten framing. Furnish and installation of new 2x4 framing with sheathing where possible. New R-13 insulation in walls. Plastic sheeting to be supplied to cover bed and to tape and zipper seal bedroom door.

Option 2: 250.00
Above work, plus- hang and finish new sheetrock where existing to be removed- includes hanging, tape, mud, and sand to be ready for paint, add:

Option 3: 750.00
Furnish and install 10 - 2x8-16 floor joists in basement to firm up existing floor system. Includes thru bolting to the existing joists for strength. Includes disconnecting and reconnecting wiring where necessary. Where it is not possible to get full 2x8 in place, contactor to give owner credit or attempt to install 2x6 in lieu of 2x8.

Qualifications (Original bid not to include):
1 Unforeseen/hidden conditions.
2 Additions or reductions in scope following signed contract will be handled by Change Order.
3 Owner to supply power and water as necessary.
4 No permitting included. Owner to supply plat if Greenville city permit required.
5 Owner to install salvaged casing at windows, base, and shoemold.

Proposed Schedule: Job is expected to require 5 working days. This is an approximation only given for convenience. Working days are defined as Monday - Friday (8am - 4pm).

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

Galt Innovations carries full general liability and worker's compensation insurance.
Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
All our subcontractors carry their respective insurances as required.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

X

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GALT INNOVATIONS

Formerly PALMETTO BUILDING AND RENOVATION

Change Order # 1

License # RBB 48607
310 Mills Avenue, Suite 203
Greenville, SC 29605
(864) 616-5326 or (864) 979-1134
eli@galtinnovations.com or mike@galtinnovations.com

	NAME			
BUYER/ OWNER	**John Hine**			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	jhine@hinelawfirm.com			

We propose to furnish the following work:

All labor and materials to repair and shore up triple beam rot; includes electrical and HVAC work. 800.00

Total: **$ 800.00**

Material Allowances:
n/a

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

CONTRACTOR SIGNATURE: OWNER/BUYER SIGNATURE: DATE:

_____ X _____ _____

Owner Initials_____
Contractor Initials_____
Date_____

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Property Address 1158864 - 416 Keyswood Drive

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.

2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.

   a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

   b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.

   c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.

   d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.

3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.

4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: ____ Seller 5/14/08 Date ____ Buyer 5/25/08 Date
Rev. 1/03 ____ 5/14/08 ____ 5/25/08

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure ~~13~~ 43yrs	☐	☒	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering 5yrs.	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace X heat pump ___ baseboard ___ b. Cooling source: central X wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas X propane ___ oil ___ d. Approximate age of heating unit ?/cooling unit ? 10yrs. maybe	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county X community system ___ private well ___ b. water pipes are: copper X galvanized ___ PVC/CPVC ___ polybutelene ___	☐	☒	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system X city/county system available ___ b. Does the system require a pump? Yes ___ No ___ ? Don't think so c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☒	☐
10. Present infestation, or damage **WHICH HAS NOT BEEN REPAIRED** from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan X disconnected exhaust fan ___ ceiling fan X sump pump ___ irrigation system ___ cable tv wiring or satellite dish X security system ___ or other systems ___	☐	☒	☐

Initials: ___ Seller 5/25/08 Date ___ Buyer 5/25/08 Date

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REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes*	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☐	☒	☐
a. Is the property affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws).	☐	☒	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☒	☐

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

13) The 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock. Ask Seller for all work done.

Initials: [illegible] Seller 5/17/08 Date [illegible] Buyer 5/25/08 Date

Rev. 1/03

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"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 416 Leyswood Drive

The property is currently: owner-occupied X leased ____ in an estate ____ in foreclosure ____
vacant ____ (If vacant, how long?) ____

Owner's Name(s): Tim McCrory and Mike McCrory

Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: [signature] Date: 5/24/08

Owner Signature: [signature] Date: 5/24/08

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

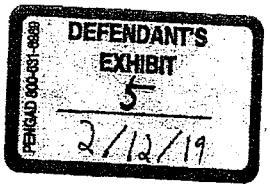
Purchaser Signature: [signature] Date: 5/25/08

Purchaser Signature: Maria W. Shine Date: 5/25/08

(This form is approved by the South Carolina Real Estate Commission.)

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The Hine Law Firm, LLC

John M. Hine
LL. M. in Taxation

Post Office Box 17095
Greenville, SC 29606
www.hinelawfirm.com
jhine@hinelawfirm.com

870 Cleveland St., Unit 1B
Greenville, SC 29601
Telephone (864) 331-0875
Fax (864) 331-8646

July 9, 2012

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

Sent via email only to seabrook@marchantco.com

Re: Demand Letter

Dear Mr. Marchant:

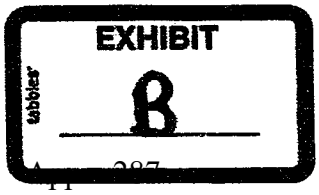
Pursuant to my previous email I am requesting that you send payment directly to me in the amount of $4,000.00 to reimburse me for the cost of the repairs to my house. Please be advised that I have taken considerable steps to keep the cost of the repairs to my home as low as possible. I have completed a significant amount of work myself and am not currently seeking any reimbursement for my time. Please send a check to the following address within 15 days.

PO Box 17095
Greenville, SC 29606

Sincerely yours,

John M. Hine, Esq.

cc: Timothy McCrory (via email)



STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF GREENVILLE

JOHN M. HINE and MARIA W. HINE,

Plaintiffs,

vs. C/A NO. 2018-CP-23-03382

TIMOTHY M. McCRORY, individually and as agent, MICHAEL P. McCRORY, SEABROOK L. MARCHANT, and THE MARCHANT COMPANY,

Defendants.

DEPOSITION OF: JOHN M. HINE

DATE: February 12, 2019

TIME: 1:02 p.m.

LOCATION: The Hine Law Firm
619 Halton Road
Suite 2B
Greenville, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: ERIC S. GLAZIER, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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ALSO PRESENT:
ANDREW SMITH, Legal Videographer
TIMOTHY McCRORY,
MICHAEL McCRORY,
SEABROOK MARCHANT,
ANNE MARCHANT

(INDEX AT REAR OF TRANSCRIPT)

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PROCEEDINGS

VIDEOGRAPHER: We are now on the record. Today's date is February 12, 2019. The time on the monitor is 1:02 p.m. This is the video deposition of John Hine, taken by counsel for the defendant. The location is 619 Halton Road, Suite 2B, Greenville, South Carolina, 29606.

My name is Andrew Smith, legal videographer, representing A. William Roberts, Jr., and Associates. This deposition is being taken in the matter of John and Maria Hine versus Timothy McCrory, et al, Case Number 2018-CP-23-03382.

Counsel, please introduce yourselves for the record.

MR. ANDERSON: David Anderson, counsel for Tim McCrory, individually and as agent, Seabrook L. Marchant, and the Marchant Company.

MR. MACCLENAHAN: I am Alex MacClenahan, and I represent John and Maria Hine, the plaintiffs. And I guess, David, maybe put on the record again, Chase Harbin has notified that he is representing -- I always forget which McCrory; I'm sorry -- Michael, right, and he was notified that these depositions were scheduled and consented

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to us proceeding with them without his presence, as he had a conflict for today.

THE WITNESS: And my name is John Hine. I'm also counsel for Maria Hine.

VIDEOGRAPHER: May the court reporter swear the witness.

JOHN HINE,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. ANDERSON:

Q. John, I guess you are familiar with the civil -- rules of civil procedure as far as depositions are taken, since you're a licensed attorney in the state of South Carolina.

A. Yes, sir.

Q. And you sat through your wife's deposition. This is my opportunity today to ask some questions about the suit that you've brought, and we'll get started with that.

Can you tell me a little bit about yourself, as far as when and where you were born and your education?

A. I was born in Sumter, South Carolina, at Shaw Air Force base on February 24th, 1982. I went to Sumter High School, attended Thomas Sumter

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for one year in high school. I went to Clemson for undergrad. Then I attended the University of South Carolina and got my JD from the University of South Carolina, graduating in December of 2003 from USC.

After that I went to the University of Florida, Levin College of Law, where I received my Master of Laws in taxation. And that was in July of 2008, is when I graduated, I believe.

Then I moved up to Greenville, where I worked at a small tax boutique here in town for a little less than a year, and then I started my own practice. And I've been practicing on my own since then. So that was about 2009, I opened up my own practice here in Greenville.

Q. All right. When did you receive your tax degree?

A. That was in 2008.

Q. And your law degree was received when?

A. Did I say '03? I did college in 2003, law school in 2006, December of 2006.

Q. And the tax firm that you worked with here was named what?

A. It was formerly Thomas and Fisher. Now it's Thomas, Fisher, Sinclair, and Edwards.

Q. And your practice is primarily composed

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house; please note that there are additional miscellaneous expenses for painting baseboard and crown molding which have yet to be calculated.

I'm not sure if I actually included the disclosure statement, but I think I did. I think it was attached to it as well.

Q. The Galt Innovations proposal that's attached to it, was this work actually performed?

A. I'm not sure if -- there's several options listed on the first page. I'm not sure if option three was actually performed or not, but they did come in and repair the termite damage.

There was -- I had some questions about the previous repairs that had been done, and asked them to -- what it would cost to shore up those floor joists and replace them with a full span, and they didn't actually do that work.

Q. They did not?

A. No.

Q. Was that work ever done?

A. Yes.

Q. Who did that work?

A. I did that work.

Q. So the second page of this shows a $3,780 repair?

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A. Yes.

Q. Was that done?

A. Yes. It indicates that it's the final bill for the contract log.

Q. And the third page has three different options again. Do you know whether that work was done?

A. Again, I think option three may have been that additional work that was unrelated to the termite damage that I discovered. It was more related to the previous repairs that had been made.

Q. Okay. And there's a change order number one that's there, $800, it says to shore up a triple beam rod.

A. I think that was additional termite damage that they found as they were going through the repair process in addition to just the corner of the house.

Q. All right. So as we sit here today, is any of this work being asked to be done? Let me rephrase that.

The areas that Galt Innovations worked on, do you consider those areas satisfactory?

A. Yes.

Q. Are you recovering or attempting to

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recover damages for this work?

A. No.

Q. And why not?

A. Because I don't -- this came and went, and this isn't part of the current litigation.

Q. The current litigation is about termite infestations that were withheld, correct, or misrepresented?

A. Correct.

Q. And this letter was about termite infestation that was misrepresented, correct?

A. In the corner of the house, in the front corner of the bedroom.

Q. And so why aren't you seeking recovery for that work?

A. I don't know that I have the evidence to prove that, and I don't know that I'm still entitled to it under the statute of limitations.

Q. All right. So you're making a separate determination that between this work and the work that's as a result of the suit that was filed in 2018?

MR. MACCLENAHAN: Object to the form.

A. Can you repeat that question?

Q. You're making a separate determination

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or a separate claim as it relates to this termite damage than the termite damage that's referenced in your suit filed in 2018?

MR. MACCLENAHAN: Object to the form.

A. I am saying that I have found two separate instances of termite damage that were not contiguous. So just because I discovered one didn't mean that I knew about the other one.

Q. All right. But you first discovered termite damage in your home in April of 2015?

A. I discovered --

MR. MACCLENAHAN: Objection to --

A. I discovered about $5,000 worth of this termite damage in my home in 2012.

MR. MACCLENAHAN: You said 2015. That was my objection.

Q. All right. That was April of 2012?

A. Correct.

Q. Now, did you ask Galt to check around your home for any other potential damage?

A. No, I did not ask them to do any kind of exploratory inspection to see what else was there. I just asked them to fix the termite damage that was uncovered, and as they tore down drywall, you know, in the ceiling of the basement room under

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Ansley's bedroom, and as they took down the wall in the bedroom upstairs, whatever we discovered, they repaired, and then when they stopped, you know, uncovering termite damage, they stopped tearing down the walls.

Q. Would it have been reasonable to ask them to look at other areas of the home?

MR. MACCLENAHAN: Object to the form.

A. I think that would have been beyond what was necessary at that point.

Q. When Century Termite came out, you asked them to review or to look around your home to see whether there was any other damage?

MR. MACCLENAHAN: Excuse me. I think you mean Sargent.

A. You mean Sargent Pest?

Q. Sargent. Excuse me.

A. I asked him to look around. I think he conducted a search to see if he saw any termite damage, but he did not see any signs of termite or termite damage other than what was uncovered by removing the drywall in the bedroom.

Q. Was there any response to your letter that was Exhibit Number 1?

A. Yes.

Q. What was that response?

A. There was some back-and-forth about whether or not the McCrorys knew about the termite damage. They indicated that they had no knowledge of any termite damage. And I believe I was informed that Nathan Galbreath was going to be -- or represented Seabrook Marchant at that point, and I asked him if he would accept service for his client, and I was told that I believe Tim McCrory was also going to have a lawyer at that point.

But I decided not to move forward after those -- we had tried to plan a meeting to sit down and talk about everything, and I believe Tim was the one that said, I don't think it's -- we're not going to agree; it's not necessary to have that meeting. And that's just kind of where it ended.

Q. Did you have a complaint drafted at that time?

A. No, I did not.

Q. Exhibit Number 5 is a letter that you wrote in July of 2019?

(DFT. EXH. 5, 7/9/2012 DEMAND LETTER, was previously marked for identification.)

BY MR. ANDERSON:

Q. Do you recall that letter?

A. I don't recall specifically, but it's my signature, on my letterhead.

Q. All right. You were demanding 4,000 at that point?

A. Yes. According to the letter, yes.

Q. And where did you get that figure from?

A. I believe it's from what I paid the contractor, and probably what I paid in materials. I painted the room myself and put the trim work up myself and that kind of thing to try to save some money. As my wife mentioned, I'm stingy.

Q. So you did not pursue that further after that letter was written?

A. I don't believe so.

Q. What -- when was the next time that you saw issues with the home?

MR. MACCLENAHAN: Object to the form.

A. The next time that I saw issues with the home was when I was doing the demolition for my master bathroom. I removed the subfloor in the master bathroom and there was a -- two floor joists that were sistered together, and there was damage in the middle of those two floor joists. So that was the next time that I saw termite damage.

Q. Who do you think sistered those two

floor joists together?

A. I believe when the home was originally constructed, I think it was just a double beam that was put in.

Q. Now, was that the next renovation or the next work you did on your home or...

A. No.

Q. What was the first -- correction. Let me rephrase that.

After your daughter's room was renovated and Galt did their work, you determined to do some additional renovation work with your home; is that correct?

A. Yes. I renovated the hall bathroom.

Q. And during that renovation process did you note any termite issues?

A. No, I did not.

Q. All right. And so when did you complete that work?

A. That work was completed prior to the demolition of the master bathroom, but I don't recall the exact date that that was completed.

Q. All right. And then it was during the time frame that you were renovating the master bath, is when you discovered some additional

ELECTRONICALLY FILED 2019-08-09 10:35 AM GREENVILLE COMMON PLEAS CASE#2018CP2303382

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE John M. Hine and Maria W. Hine, Plaintiffs, vs. Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, Defendants.	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT **ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND** C. A. No.: 2018-CP-23-03382

This matter comes before the Court pursuant to the Plaintiffs' Motion to Alter or Amend the Court's Order filed July 23, 2019, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The undersigned is sympathetic to Plaintiff's claim and would like to see this matter resolved on its merits. However, the law is clear and this Court must recognize the Statute of Limitations and the public policy served thereby. After having had the opportunity to carefully review the Motion, this Court must respectfully deny the same.

AND IT IS SO ORDERED.

ROBIN B. STILWELL

August _____, 2019
Greenville, South Carolina



Greenville Common Pleas

Case Caption: John M Hine , plaintiff, et al vs. Timothy M McCrory , defendant, et al

Case Number: 2018CP2303382

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell
Circuit Court Judge

Appellate Case No. 2019-001375
Circuit Court Case No. 2018-CP-23-3382

John W. Hine and Maria W. Hine..... Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Respectfully submitted,

WOMBLE BOND DICKINSON ~~(US)~~ LLP

By:_____

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March 16, 2020

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Appellants, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

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March 16, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell
Circuit Court Judge

Appellate Case No. 2019-001375
Circuit Court Case No. 2018-CP-23-3382

John W. Hine and Maria W. Hine..... Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, ... Respondents.

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Rule 56(c), SCRCP 5

STATEMENT OF ISSUE ON APPEAL

John and Maria Hine purchased their house in 2008. In 2012, they discovered an isolated amount of termite damage that had not been disclosed in the statutorily-required Residential Property Condition Disclosure Statement, which they repaired for less than $4,000. In 2018, however, the family discovered a massive amount of additional undisclosed termite damage in a different, load-bearing section of the house that the defendants had actively masked with bits of 2x4 studs and then hid behind sheetrock. This additional termite damage required repairs in excess of $100,000. The Hine Family brought suit to recover for this extensive newly-discovered, previously-concealed damage.

The trial court granted summary judgment against the Hine Family based on a three-year statute of limitations and held that the family's discovery of an isolated, minor amount of undisclosed termite damage on one corner of the house in 2012 should have put them on notice of extensive damage on the opposite side of the house that the defendants had actively concealed.

Should a jury have been allowed to determine whether the Hine Family should have known about damage in other parts of their house that the defendants deliberately concealed when the family discovered an isolated, minor amount of termite damage elsewhere in the house in 2012?

STATEMENT OF THE CASE

This case arises out of the defendants' fraudulent conduct when flipping a residential property in Greenville, South Carolina. The facts regarding the defendants' liability are generally undisputed.

I. The McCrory brothers flipped a house, which the Hine Family purchased in 2008.

The defendants include a pair of brothers, Timothy and Michael McCrory, who purchased the house at 416 Leyswood Drive in Greenville on September 7, 2005. (R. p. 69; First Am. Compl. ¶ 8.) It is a single-story ranch house with a partially-finished basement, with the stairwell to the basement located in the middle of the home.

After renovating a portion of the house, the McCrory brothers put it up for sale in 2008. In their disclosure, they noted that they framed out and sheetrocked two rooms in the basement, but they—falsely—disclaimed knowledge of any unrepaired termite damage. (R. pp. 96–99; Residential Property Condition Disclosure Statement.)

Timothy McCrory is also a realtor, and he was the listing agent for this home. (R. p. 69; First Am. Compl. ¶ 11.) At the time, he worked as an agent for The Marchant Company, of whom Seabrook Marchant is the broker-in-charge. Both Mr. Marchant and The Marchant Company are defendants to this case as well, given the liability that attaches to brokerages with respect to residential-disclosure obligations imposed by the South Carolina Code.

John and Maria Hine, a husband and wife, are the plaintiffs in this case. Mr. Hine is an attorney, and he finished his legal education with an LLM in taxation from the University of Florida in July 2008. (R. p. 167; Mr. Hine Dep. 5:5–8.) Almost concurrent with his graduation, the Hine Family purchased this home from the McCrory brothers on July 1, 2008. (R. p. 70; First Am. Compl. ¶ 17.) The sales price was $175,000. (R. p. 69; *id.* ¶ 16.)

II. The Hine Family discovered a discrete amount of undisclosed termite damage in a corner of the main level of the house in 2012, which it repaired for $4,000.

In 2012, anticipating the arrival of their second child, the Hine Family began preparing a corner bedroom on the main level of the house to be a nursery. As part of those preparations, Mr. Hine removed the room's shoe moldings in order to paint them. Upon removing the shoe molding, however, he discovered some isolated termite damage behind the baseboards, which required approximately $4,000 to repair. (R. p. 155; Letter from Mr. Hine (May 14, 2012); R. p. 165; Letter from Mr. Hine (July 9, 2012).)

Mr. Hine reached out to the McCrory brothers, Mr. Marchant, and The Marchant Company regarding reimbursement for repairing that termite damage. They refused to compensate the Hine Family, who ultimately dropped the issue given the isolated nature of the damage and low dollar amount at stake. (R. p. 169; Mr. Hine Dep. 27:1–16.)

III. The Hine Family later discovered over $100,000 of undisclosed, unrepaired termite damage in a different part of their house, which had been proactively concealed by the McCrory brothers.

In February 2018, the Hine Family began renovating their master bathroom, which is located on main level, but on the opposite side of the house as the room that had been converted to a nursery in 2012. (R. p. 70; First Am. Compl. ¶ 18.) During that renovation, the Hine Family removed subflooring in the master bathroom, which revealed termite damage that extended beyond the bathroom. (*Id.* ¶ 19.) Like a magician endlessly pulling scarves out of a coat pocket, the Hine Family continued demolishing more and more of their house to determine where the newly-revealed damage would finally end.

After removing additional drywall, paneling, and insulation chasing the trail of damage, the Hine Family discovered that the entire framing of the staircase to the basement—the center of the home, which supported all of the main level flooring—had been eaten away with termites. (*Id.*

¶ 20.) Incredibly, some of this termite-destroyed framing had been patched together with short sections of 2x4 wood studs and then covered up with drywall so that the extensive damage would be invisible absent a full demolition of all framing in the core of the house. (*Id.* ¶¶ 21–24.) And there is no doubt that the McCrory brothers were responsible for this, as one of the wood pieces used to mask the damage has a "date of manufacturing" stamp on it of September 7, 2005—the very same day that the McCrory brothers bought the house before flipping it. (*Id.* ¶¶ 25–26.)

IV. The Hine Family filed suit seeking damages associated with this fraudulent conduct, but the circuit court granted summary judgment against the Hine Family based on the statute of limitations.

The Hine Family commenced this case on June 18, 2018, and asserted claims for fraud, conversion, negligence, and a variety of statutory violations against the McCrory brothers, Mr. Marchant, and The Marchant Company for their respective roles in the fraud detailed above. (R. p. 12; Compl. *passim.*) On August 15, 2018, the Hine Family amended the complaint to add claims of negligent hiring, training, supervision, and retention; unjust enrichment; breach of the covenant of good faith and fair dealing; and a violation of the South Carolina Unfair Trade Practices Act. (R. p. 68; First Am. Compl. *passim.*)

After discovery, the defendants moved for summary judgment. They did not argue that they were entitled to win the case on its merits—indeed, they will not when a jury hears the evidence—but instead argued that all of the claims asserted were time-barred because the Hine Family uncovered an isolated amount of termite damage in a different part of the house in 2012. (R. p. 152; Defs.' Mot. for Summ. J. at 7 ("The undisputed evidence shows that Plaintiffs either knew or should have known about the alleged unrepaired termite damage [in the staircase framing that supported the entire main level of the house] on or about April 27, 2012.").

In response, the Hine Family argued that it would be objectively unreasonable to believe that they should have known about over $100,000 of termite damage in the framing of the staircase that the McCrory brothers hid behind sheetrock simply because the family previously discovered a relatively minor amount of termite damage on the complete opposite side of the house. (R. p. 213; Hine Family Mem. in Opp'n to Summ. J. at 5.)

Despite this factual dispute, the circuit court granted summary judgment in the defendants' favor and held, apparently as a matter of law, that discovering one undisclosed issue with a house triggers the limitations period for all other fraudulent activity associated with that same house. In the circuit court's view, because the Hine Family discovered a minor amount of termite damage in one portion of the house in 2012, "Plaintiffs knew or should have known that there was unrepaired termite damage that was not disclosed to them during the process of purchasing the property," and were thus time-barred from pursuing any other claim, even though the family's claims in this case are unrelated to the previously-discovered damage. (R. p. 6; Order at 4.)

The Hine Family timely filed and served a motion to alter or amend the summary judgment ruling, which the circuit court denied by order dated August 8, 2019. (R. p. 240; Mot. to Alter or Amend; R. p. 10; Order Denying Plaintiffs' Motion to Alter or Amend.) This appeal followed.

STANDARD OF REVIEW

Summary judgment is proper when there is no disputed material fact, and the moving party is entitled to judgment as a matter of law based on those undisputed facts. Rule 56(c), SCRCP. It is not proper, though, when even a scintilla of evidence suggests a disputed material fact is present. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Additionally, when evaluating summary judgment, all disputed facts and inferences drawn therefrom must be resolved in favor of the non-movant. *Id.* at 229–30, 673 S.E.2d at 802.

ARGUMENT

The circuit court has wrongly deprived the Hine Family of its day in court. As a matter of law, the Hine Family is entitled to present this case to a jury and let a jury of Greenville residents decide whether Mr. and Mrs. Hine acted reasonably in not destroying the entirety of their home in 2012 to figure out if it contained any termite damage that the McCrory brothers had actively hidden. Likewise, any statute of limitations should be equitably tolled here because of the McCrory brothers' fraudulent conduct. This Court should reverse the circuit court's summary judgment order and remand this matter for a trial accordingly.

I. It is hornbook law in South Carolina that it is for the jury to decide when a plaintiff knows or should have known that he or she had a cause of action.

In South Carolina, a statute of limitations begins running when "the underlying cause of action reasonably ought to have been discovered." *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co.*, 425 S.C. 268, 271, 821 S.E.2d 504, 506 (Ct. App. 2018) (quoting *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011)). This analysis is objective, rather than subjective, and asks whether the circumstances presented "would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party may exist." *Id.* (quoting *Holly Wood Ass'n*, 392 S.C. at 183–84, 708 S.E.2d at 793.)

Critically, where evidence conflicts as to whether a plaintiff knew or should have known that a claim had accrued, it is a question for the jury, not the court, to resolve. *See, e.g., id.* at 275–76, 821 S.E.2d at 508 ("The facts in this case created a jury question as to whether it was reasonable for the homeowners to know, or by reasonable diligence discover, there were issues with their construction.").

Here, the defendants argued, and the circuit court held as a matter of law, that the Hine Family was on notice of over $100,000 of structural damage that the McCrory brothers patched with bits of 2x4 and then concealed with sheetrock in the center of the house based on the fact that the family identified an isolated, minimal amount of termite damage along the perimeter of the house in 2012.

This holding assumes that finding an isolated issue with a property necessarily puts a plaintiff on notice of every single other conceivable issue related to that same property. South Carolina courts, however, have repeatedly rejected such an assumption as a matter of law.

For instance, in *McAlhany v. Carter*, 415 S.C. 54, 58, 781 S.E.2d 105, 107–08 (Ct. App. 2015), *aff'd* Op. No. 2017-MO-007, 2017 S.C. Unpub. LEXIS 16 (May 3, 2017), a homebuyer sued a seller and an inspection company for undisclosed mold in the house. Relying on the statute of limitations, the circuit court granted summary judgment in favor of the seller and the inspection company. *Id.* at 61, 781 S.E.2d at 109. The circuit court explained that the homebuyer was generally on notice that the inspection company had "not done its job properly" because it had issued a report in mid-October 2007 stating that there were no termites in the house, but the homebuyer had visually seen termites in the house later that same month. *Id.* at 65–66, 781 S.E.2d at 112. In the circuit court's view, because the homebuyer was aware of one incorrect issue by the inspection company and seller, the statute of limitations began to run for all issues that arose out of that same general situation.

However, this Court reversed and held that the issue of when a reasonable person would have been aware of mold in the house was one for the jury. *Id.* at 66, 781 S.E.2d at 112. It specifically noted that awareness of one issue arising from the inspection did not equate to notice of any other problems with the house or the inspection. *See id.* ("Nevertheless, a reasonable person

would not have been on notice of a potential negligence claim for ***mold damage***.") (emphasis supplied by the *McAlhany* court).

This is precisely the situation presented by the instant case. The defendants argued, and the circuit court held, that when the Hine Family discovered a ***minimal amount*** of termite damage on a ***perimeter*** wall of the ***main-level nursery*** in 2012, the family was necessarily on notice of ***over $100,000*** of damage on the ***interior, load-bearing framing of the basement staircase*** the McCrory brothers had ***hidden behind sheetrock***. The *McAlhany* court specifically rejected just such an argument and held that the reasonableness of a homebuyer's diligence in discovering his or her claim should be resolved by the jury. The Court should reverse and remand accordingly.

Nor is *McAlhany* an isolated case. Numerous other decisions follow exactly that same reasoning.

For instance, in *Holly Woods Association*, a homeowners' association sued a developer for a variety of "general irrigation and design problems throughout the development." 392 S.C. at 183, 708 S.E.2d 793. The developer argued that the association had been on notice of these water-based claims as early at 1991, when the association's annual meeting minutes revealed problems with "a pool leak, drainage around building five, and termite bonding." *Id.* at 184, 708 S.E.2d at 794. Because the association did not bring suit until 2005, the developer argued that the moisture-based claims were time-barred. *Id.*

This Court rejected that argument. It held that even though some of the issues on which the association based its claims were similar in nature to those uncovered in 1991, the association's claims were not barred by the statute of limitations because the damages associated with the claims were different from and unrelated to the issues discovered in 1991. *Id.* As the Court concluded:

> We find it is a jury question as to whether the damages the Association claimed in 2005 were different from those it experienced in the past. There

> is evidence from board members and Geiger that the problems, though similar in nature, were different. Therefore, we find the circuit court did not err in denying Appellants' directed verdict motion based on the statute of limitations.

Id. at 185, 708 S.E.2d at 794.

The Court recently reinforced that analysis in *Stoneledge at Lake Keowee Owners' Association*. There, various homeowners and a homeowners' association were generally aware of roof leaks and water intrusion in some properties as early as 2003, but did not file suit until 2010 regarding defective construction of columns, framing, and porch railings that allowed water intrusion. 425 S.C. at 275–76, 821 S.E.2d at 508.

The Court held that because these were ***latent*** defects that were not revealed until heavy rain in 2009, the claims were not time-barred despite a general awareness of water intrusion issues back in 2003. *Id.* Just as with the extensive damage hidden around the Hine Family's staircase, the Court specifically noted that the only way to have discovered the specific issues on which the claims were based would have been through "destructive testing." *Id.* at 275, 821 S.E.2d at 508. In the Court's view, it was a "jury question as to whether it was reasonable for the homeowners to know, or by reasonable diligence discover, there were issues with their construction." *Id.* at 275–76, 821 S.E.2d at 508.

Other examples of this issue being one for the jury's resolution abound. *See, e.g.*, *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 273–74, 384 S.E.2d 693, 695–96 (1989) (reversing holding that a construction defect claim was time-barred, holding that an awareness of construction defects in one area of a project did not put the plaintiff on notice of all claims that could relate to those defects, and concluding that the "reasonableness" of the plaintiff's investigation into the defects "was an issue to be decided by the jury"), *vacated in unrelated part by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C.

556, 559, 462 S.E.2d 858, 860 (1995); *Box v. Sparrow Group, LLC*, Op. No. 2018-UP-353, 2018 S.C. App. Unpub. LEXIS 355, at *4–6 (Ct. App. Aug. 15, 2018) (reversing a circuit court's grant of summary judgment based on the statute of limitations where a residential buyer sued a seller for fraudulent statements in a property disclosure, as the determination of whether the buyer acted reasonably in discovering her claims was one for the jury).

The reasoning of this line of case law holds particularly true here because the Hine Family's discovery of termite damage in 2012 would have, at most, put the family on notice that the defendants failed to disclose something about the house on the Residential Property Condition Disclosure Statement. It did not put the Hine Family on notice that it had been the victim of fraudulent behavior, nor did it put the family on notice that the McCrory brothers had intentionally concealed an extreme amount of termite damage in the heart of the house. But the first three causes of action in the Amended Complaint are for fraud, and the rest draw on that same conduct. These are claims that the Hine Family simply could not have asserted based on the information known or reasonably available in 2012, and it is reversible error to hold that the family is time-barred from presenting this issue to a jury for resolution.

II. The Court should set aside any limitations issues as a matter of equity.

Even if the Court finds that the Hine Family somehow should have known about the McCrory brothers' fraudulent conduct earlier than 2018, and that the family's failure to learn of that misconduct was objectively unreasonable,[1] it should still reverse the circuit court's summary judgment ruling by equitably tolling the statutes of limitations.

[1] Notably, every single defendant agreed that the Hine Family's conduct in this case was reasonable. (R. pp. 223–24; Dep. M. McCrory 34:1–4, 46:11–13; R. pp. 229–31; Dep. T. McCrory 82:14–23, 83:4–15, 85:16–25; R. pp. 236–39; Dep. Marchant 91:1–11, 97:12–99:13.)

Courts have the inherent power to equitably toll a statute of limitations "where justice demands it." *Hooper v. Ebenezer Senior Servs. & Rehabilitation Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Though it is to be used infrequently, a court should equitably toll a statute of limitations in order "to ensure fundamental practicality and fairness." *Id.* (quoting *Rodriguez v. Superior Court*, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)).

The Supreme Court has insisted that this power is not subject to rigid guidelines, but instead must remain flexible in order to apply whenever the circumstances render the passing of the limitations period unfair. Examples of such instances include those where a party has actively attempted to timely commence litigation but was precluded from doing so due to circumstances beyond its control, or where a plaintiff "by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim." *Id.* at 116, 687 S.E.2d at 33 (quoting *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999)).

This power is also triggered when, as here, a defendant has deliberately concealed the facts and circumstances that would give rise to a claim. *See Doe v. Bishop of Charleston*, 407 S.C. 128, 140, 754 S.E.2d 494, 500–01 (2014) ("Deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations.").

This case provides a prime instance where equitable tolling should be employed.[2] The extreme damage at the heart of this case was covered up and hidden by the McCrory brothers when flipping this house. They even conceded in depositions that the only way to discover their

[2] The Hine Family presented its equitable tolling argument both in opposition to the defendants' motion for summary judgment and again in a Rule 59 motion. (R. p. 213; Hine Family Mem. in Opp'n to Summ. J. at 5; R. pp. 242–43; Mot. to Alter or Amend at 3–4.) The circuit court failed to rule on it in either instance, but its presentation at every stage below preserves the issue for this Court's consideration.

fraudulent conduct would have been to destroy a part of the house that was not connected to or in any way related to the damage uncovered in 2012:

> Q: And you would agree, then, that the only way for him [*i.e.* Mr. Hine] or his wife to have discovered termite damage that was in the basement stairwell was to have the drywall there—either a hole bored into it or have it removed. Correct?
>
> A: Yes.

(R. p. 231; Dep. T. McCrory 85:19–25.)

In effect, the circuit court's reliance on the statutes of limitations to resolve this case without letting a jury hear it rewards the McCrory brothers for being excellent with their fraud, and allows the Marchant defendants to reap the benefits of that fraud right along with them. To be sure, the Hine Family did not discover the hidden damage in the core of their house until they began pulling up flooring, tearing down sheetrock, and ripping out insulation in parts of the house that they never had any reason to explore. Enforcing a statute of limitations in these circumstances incentivizes fraudsters to excel in the fraud so that it is not discovered until the time to bring a claim expires—exactly the opposite outcome that courts and the public should desire.

Nor does equitably tolling the statute of limitations work to prejudice the defendants here. There is nothing in the record to suggest that they altered their conduct in 2015 or at any point thereafter with the expectation that the statutes of limitations on their fraudulent behavior had expired. The only consequence of equitably tolling those limitations periods would be to allow the Hine Family's claims to be resolved on the merits, and for a jury to consider whether the defendants' misconduct is to be tolerated or excused. Because the defendants' misconduct is the only reason that the statutes of limitations are even at issue in this case, the Court should equitably toll those statutes and allow this case to proceed to trial.

CONCLUSION

The circuit court's decision to resolve this case through summary judgment was contrary to hornbook South Carolina law that holds that whether a plaintiff is on notice of a potential claim is a question for a jury to resolve when there is conflicting evidence on the issue. This is particularly true here, as the defendants' own fraudulent behavior is what delayed the Hine Family in discovering their misconduct and bringing this case.

Accordingly, the Hine Family respectfully requests that the Court reverse the circuit court's summary judgment ruling and remand this matter back for a trial on the merits.

Respectfully submitted,

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March 20, 2020

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CERTIFICATE OF COMPLIANCE

The undersigned certify that this Final Brief complies with Rule 211(b), SCACR.

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The Honorable Jenny Abbott Kitchings
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Re: John M. Hine and Maria W. Hine v. Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant and The Marchant Company
Appellate Case No. 2019-001375

Dear Ms. Kitchings:

Please find enclosed for filing the Brief of Appellants and Reply Brief of Appellants and 7 copies of each for the case cited above. Please return a clocked copy to our courier.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

cc: David A. Anderson
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
THE HONORABLE ROBIN B. STILWELL
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2019-001375
CIVIL ACTION NO. 2018-CP-23-3382

John H. Hine and Maria W. Hine,

APPELLANTS,

versus

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company,

RESPONDENTS.

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. The Trial Court properly granted summary judgment as a matter of law to the Defendants on the Plaintiffs' claims for the alleged nondisclosure of unrepaired termite damage because the three-year statute of limitations barred the claims where the undisputed evidence established the Plaintiffs were on notice of termite damage in 2012 but did not file suit until 2018.

II. The doctrine of equitable tolling does not apply because the Plaintiffs presented no evidence that they acted diligently in pursuing their claims or were prevented in some extraordinary way from filing suit.

COUNTERSTATEMENT OF THE CASE

This action arises out of the purchasers' claims that the sellers, listing agent, and broker of a residential home purportedly failed to disclose the existence of unrepaired termite damage. After purchasing the home, the plaintiffs discovered termite damage in 2012. Despite the purchasers' knowledge in 2012 that the home had termite damage which was allegedly not disclosed at the time of the sale, the purchasers waited until 2018 to file suit – a suit which the trial court correctly concluded was time barred under the applicable three-year statute of limitations. This case presents a straightforward application of the statute of limitations which requires parties to pursue their claims in a timely manner.

On June 18, 2018, the Plaintiffs, John M. and Maria W. Hine (collectively, the "Hines") filed a Complaint in the Court of Common Pleas for Greenville County against the Defendants, Timothy M. McCrory, individually and as agent; Michael P. McCrory; Seabrook L. Marchant; and The Marchant Company (collectively, the "Defendants"). The Hines alleged that the Defendants, as sellers and/or listing agent/broker of the residential home purchased by the Hines, failed to allegedly disclose the existence of unrepaired termite damage. The Hines asserted claims for fraud and misrepresentation, conversion, violation of South Carolina's Residential Property Condition Disclosure Act, S.C. CODE ANN. § 27-50-10 *et seq.*, violation of certain statutory duties imposed upon real estate brokers, and negligence. [R.pp. 12-35; Compl.]

The Defendants each filed answers, denying the material allegations of the Complaint and asserting among affirmative defenses the expiration of the statute of limitations. [R.pp. 36-67; Answers.]

The Hines thereafter filed a First Amended Complaint on August 15, 2018 which added claims of negligent hiring, training, supervision, and retention; unjust enrichment; violation of the Unfair Trade Practices Act; and breach of the covenant of good faith and fair dealing. [R.pp. 68-9; Am. Compl.] The Defendants again responded and continued to assert the expiration of the statute of limitations as a defense. [R.pp. 100-122; Answers.]

On April 17, 2019, the Defendants filed a Motion for Summary Judgment on the ground that the Hines failed to commence the lawsuit within the applicable three-year statute of limitations. [R.pp 146-207; 208; Mtn. for Summary Judgment with Exs.; M. McCrory Mtn. to Join.]

A hearing was held before the Honorable Robin B. Stilwell on June 18, 2019. [R.pp 123-144; Hearing Tr.] Following the hearing, the Trial Court issued an Order on July 23, 2019 granting the Defendants' Motion for Summary Judgment based upon the expiration of the applicable statute of limitations. [R.pp. 3-9; Order.] The Hines filed a Motion to Alter or Amend on August 2, 2019 which the Trial Court denied August 8, 2019. [R.pp. 240-244; 10-11; Mtn.; Order.]

The Hines filed and served their Notice of Appeal to this Court on or about August 13, 2019.

COUNTERSTATEMENT OF FACTS

Timothy McCrory and his brother, Michael McCrory, owned a single family home located at 416 Leyswood Drive, Greenville, South Carolina 29615 (the "Property"). [R.p. 69; Am. Compl., ¶ 8.] On or about May 14, 2008, the brothers listed the Property for sale with realtor/broker, Seabrook Marchant and The Marchant Company. Timothy

was also a real estate agent for Seabrook Marchant and The Marchant Company and served as the listing agent for the Property. [R.pp. 69; 101; 114; Id. at ¶¶ 9-11; Answers, ¶ 7.]

The Hines became interested in the Property. The McCrorys provided the Hines with a Residential Property Condition Disclosure Statement (the "Disclosure Statement"). [R.pp. 161-164; Disclosure Statement.] The Disclosure Statement indicated there was no present infestation or damage which had not been repaired from past infestation of wood destroying insects or organisms. [R.p. 162; Id. at p. 2.] The Disclosure Statement also noted that two rooms in the basement had been framed out and sheetrocked in 2005. The McCrorys also disclosed in Paragraph 13 that there used to be paneling for the walls that was ripped out to add wood studs (2x4) and sheetrock. [R.p. 163; Id. at p. 3.] The Hines acknowledged receipt of the Disclosure Statement on May 25, 2018. [R.p. 164; Id. at p. 4.]

On May 27, 2018, the Hines entered into a contract with the McCrorys for the purchase and sale of the Property for $175,000. [R.pp. 69; 101; 114; Am. Compl., ¶¶ 15-16; Answers, ¶ 11.] Prior to closing, a CL-100 Wood Infestation Report was issued. This Report, which was signed by the Hines, noted that there were signs of past termite infestations and treatment. While the Report noted some areas of the Property were obstructed from view or inaccessible, the Report indicated "previous infestation/scorn marks from termite shelter tubes with damage to sills, joist and sub-floor was noted right side of garage and to sill right rear of garage." The Report further mentioned "prior treatment/drill holes to exterior foundation wall [indicating] previous termite treatment," "fungi/wood destroying fungi present throughout the basement area," and "discolored

wood [noted] around HVAC duct boot rear of utility room." [R.pp. 170-171; CL-100 Report.]

The Report noted that repairs had been made in the garage area but that "some damage remains and should be evaluated by a licensed builder." Finally, the termite inspector preparing the Report checked the box under "Damaged Observed (If Any): Item C: "Will not be corrected by this company; recommend that structure be thoroughly and completely evaluated by a qualified building expert licensed or registered with the S.C. Department of Labor, Licensing, and Regulations, Residential Builder's Commission and that needed repairs be made." [R.pp. 170-171; Id.]

Prior to closing, the Hines also had a property inspection completed by Pillar to Post. [R.pp. 172-200; 201; Pillar and Post Report; Invoice to Hines.] This inspection report noted and recommended, among other things, to "consult a qualified foundation contractor to evaluate and correct pest damage at joists located near center to rear area of garage/basement area to promote intended use." [R.pp. 179; 194; Id. at pp. 8, 23.]

Before the Hines closed on the Property, they were well aware that the Property had multiple issues with prior termite infestations and damage. They were also aware that the Property was not under a termite bond during the time of the McCrorys' ownership. [R.p. 162; Disclosure Statement, p. 2 (not checked "Yes" for transferable termite bond).] The Hines closed on the purchase of the Property on July 1, 2008. [R.p. 70; Am. Compl., ¶ 17.]

On April 27, 2012, almost four years after the purchase of the Property, Mr. Hine was removing shoe molding around the baseboard in the front bedroom of the Property when he discovered "extensive" termite damage to the wood studs behind the drywall.

A contractor hired by Mr. Hine to further inspect the damage discovered that the rim joists were also damaged. Mr. Hine stated that as a result of the damage discovered in the upstairs bedroom, the finished ceiling in the room of the basement located below the bedroom had to be removed, along with the soffit and ductwork located in that portion of the basement. Mr. Hine further claimed that as the repairs were being completed, additional damage was uncovered along a double joist that ran above a cinder block wall as well as damage to the headers of both windows in the upper bedroom. [R.pp. 155-156; May 14, 2012 Ltr.]

Mr. Hine, who is a licensed attorney, wrote a letter on his law firm letterhead to Seabrook Marchant of The Marchant Company on May 14, 2012 alleging that when the McCrorys performed work in the basement as noted in Paragraph 13 of the Disclosure Statement, the termite damage should have been discovered and disclosed. Mr. Hine attached to the letter invoices from the contractor who made the repairs and sought these costs as damages from the Defendants. [R.pp. 155-164; May 14, 2012 Ltr. with attachments.]

On July 9, 2012, Mr. Hine sent an additional letter on his law firm letterhead to Seabrook Marchant demanding damages in the amount of $4,000 for the repairs made to the Property to correct the termite damage. [R.p. 165; July 9, 2012 Ltr.] There was some discussion back and forth between Mr. Hine and the Defendants about the alleged claim, and the Hines ultimately decided not to pursue their claim for the alleged undisclosed termite damage. [R.pp. 169; J. Hine Dep., pp. 26, l. 23 – 28, l. 14.] Mr. Hine would later admit that he did not include this damage in the current lawsuit filed in 2018 because "[he didn't] know that [he had] the evidence to prove that, and [he didn't]

know that [he was] still entitled to it under the statute of limitations." [R.p. 168; Id. at p. 24, ll. 10-18.] He also conceded that he did not ask the contractor who made the repairs to conduct any exploratory testing to determine whether the Property contained additional termite damage. [R.p. 168; Id. at 25, ll. 19-24.]

In 2013, Mr. Hine contacted Sargent Pest Solutions to inspect the Property and place the Property under an active termite bond contract. The Residential Treatment Contract shows the Property was inspected March 28, 2013 and further indicates that the Property was being treated for **existing live termites**. The Contract also noted "Possible Hidden Damage" existing in the rear portion and basement of the Property. [R.pp. 202-204; Residential Treatment Contract.]

The Hines continued with renovations to the Property. [R.p. 169; J. Hine Dep., p. 29, ll. 10-22.] On February 3, 2018, almost ten years after the purchase of the Property, the Hines were remodeling the master bathroom when they discovered additional termite damage. Notably, this damage was discovered after the Hines had experienced **live termites** in 2013. [R.p. 70; Am. Compl., ¶ 18.]

The Hines alleged that upon removal of more drywall, paneling, and insulation, more termite damage was discovered in the stairwell of the Property. The Hines further contended that the McCrorys had previously removed a portion of drywall and framing in the ceiling of the stairwell and then concealed purported termite damage by attaching sections of new 2x4 wood studs and drywall to the framing in the stairwell. One of the 2x4 studs had a bar code stamp with a date of September 7, 2005 which, coincidentally, was the date the McCrorys had purchased the Property. [R.p. 70; Id. at ¶¶ 18-26.]

The Hines then brought this action against the Defendants for the nondisclosure of unrepaired termite damage in June 2018, almost ten years after they purchased the Property and over six years after they first discovered termite damage to the Property. The Defendants denied noticing any unrepaired termite damage or concealing any such damage. [R.pp. 36-67; 100-122 Answers.]

The Trial Court granted the Defendants' Motion for Summary Judgment because the Hines did not file their suit within the applicable three-year statute of limitations after becoming aware of the alleged undisclosed termite damage on April 27, 2012. [R.pp. 3-9; Order.] The Hines now challenge on appeal the clear-cut application of the statute of limitations.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). Rule 56(c) provides a motion for summary judgment shall be granted 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." See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." Id. at 42, 747 S.E.2d at 181-82; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). The party seeking summary judgment under Rule 56(c) has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis, 358 S.C. at 518, 595 S.E.2d at 822. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 518-19, 595 S.E.2d at 822. "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Id. at 518, 595 S.E.2d at 822.

Furthermore, summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." McMaster v. Dewitt, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014); see Kreutner v. David, 320 S.C. 283, 286–87, 465 S.E.2d 88, 90 (1995) (affirming the circuit court's order granting summary judgment because the statute of limitations had run).

ARGUMENT

I. The Trial Court properly granted summary judgment as a matter of law to the Defendants on the Plaintiffs' claims for the alleged nondisclosure of unrepaired termite damage because the three-year statute of limitations barred the claims where the undisputed evidence established the Plaintiffs were on notice of termite damage in 2012 but did not file suit until 2018.

The Trial Court ruled the Defendants were entitled to summary judgment on the Hines' lawsuit for undisclosed termite damage because the applicable three-year statute of limitations provided under S.C. CODE ANN. § 15-3-530 had expired. The record is

undisputed that the Hines were aware of the alleged undisclosed termite damage by April 27, 2012 but did not file suit until over six years later on June 18, 2018. The facts of this case demonstrate a clear situation where a plaintiff sat on his or her rights and failed to timely file suit. Only when the Hines comprehended the full extent of the alleged unrepaired termite damage on the Property did the Hines file suit. A plaintiff's failure to fully appreciate the damage is not a justification for allowing a stale lawsuit to proceed. Therefore, this Court should affirm the Trial Court's grant of summary judgment to the Defendants.

Statutes of limitation "'are designed to promote justice by forcing parties to pursue a case in a timely manner.'" Gibson v. Bank of Am., N.A., 383 S.C. 399, 410, 680 S.E.2d 778, 784 (Ct. App. 2009) (quoting State ex rel. Condon v. City of Columbia, 339 S.C. 8, 19, 528 S.E.2d 408, 413 (2000)). As this Court has observed;

> Statutes of limitation . . . protect people from being forced to defend themselves against stale claims. The statutes recognize that with the passage of time, evidence becomes more difficult to obtain and is less reliable. Physical evidence is lost or destroyed, witnesses become impossible to locate, and memories fade. With passing time, a defendant faces an increasingly difficult task in formulating and mounting an effective defense. Additionally, statutes of limitation encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately.

Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 163-64, 511 S.E.2d 699, 706 (Ct. App. 1999).

Statutes of limitations aim to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. McKinney v. CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in

litigation. Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005).

The parties do not dispute that the three year statute of limitations set forth under S.C. CODE ANN. § 15-3-530 controls in this case. "[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person **knew or by the exercise of reasonable diligence should have known that he had a cause of action**." S.C. CODE ANN. § 15-3-535 (emphasis added). In other terms, "the clock starts running when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist." Gibson, 383 S.C. at 406, 680 S.E.2d at 782.

Under South Carolina law, in determining when a cause of action arises under § 15-3-530, courts apply the "discovery rule." Rumpf v. Mass. Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). According to this rule, the statute of limitations begins to run "when a cause of action reasonably ought to have been discovered," or, in other words, "when a plaintiff has notice that he might have a remedy for a harm." Id.

The standard as to when the statute of limitations begins to run is objective rather than subjective. Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994); Gibson, 383 S.C. at 406, 680 S.E.2d at 782. Therefore, the test is not whether the particular plaintiff actually knew a claim is existed. Rumpf, 357 S.C. at 395, 593 S.E.2d at 187. The test is when a person **could or should have known** through reasonable diligence that some cause of action exists against another person rather than when a

person obtains actual knowledge of a potential claim or of the facts giving rise thereto. Dorman v. Campbell, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998).

The key element of reasonable diligence is notice. Reasonable diligence requires that a party act with some promptness where facts and circumstances would put a person on notice that some right has been invaded or that some claim against another party might exist. Gibson, 383 S.C. at 406, 680 S.E.2d at 782; see also Dean v. Ruscon Corp., 321 S.C. 360, 363-64, 468 S.E.2d 645, 647 (1996). The statute begins to run at this point and not when:

- the advice of counsel is sought;
- a full-blown theory of recovery is developed; or
- the injured party comprehends the full extent of the damage.

Gibson, 383 S.C. at 406, 680 S.E.2d at 782; see also Dean, 321 S.C. at 363-64, 468 S.E.2d at 647; Wiggins, 314 S.C. at 128, 442 S.E.2d at 170; Dorman, 331 S.C. at 184-85, 500 S.E.2d at 789; Barr v. City of Rock Hill, 330 S.C. 640, 645, 500 S.E.2d 157, 160 (Ct. App. 1998).

Where there is no conflicting evidence or where only one reasonable inference can be drawn from the evidence, the trial court should determine as a matter of law when a party knew or should have known it had a claim. Gibson, 383 S.C. at 406-07, 680 S.E.2d at 782.

The undisputed evidence before the Trial Court established the Hines were aware of their claims for alleged undisclosed termite damage by April 27, 2012. Mr. Hine wrote a letter to Seabrook Marchant on May 14, 2012 advising Mr. Marchant of his April 27, 2012 discovery of "extensive" termite damage on the Property. [R.pp. 155-156; May 14, 2012 Ltr.] In this letter, Mr. Hine accused the McCrorys of failing to disclose the

termite damage on the Disclosure Statement and contended the listing agent should be liable for the misrepresentation. [R.pp. 156; Id.] Both Mr. and Mrs. Hine both acknowledged in their depositions that the termite damage was discovered on April 27, 2012. [R.pp. 168; 207; J. Hine Dep., p. 25, ll. 13-18; M. Hine Dep., p. 15, ll. 15-19 (conceding that the Hines first determined they had termite damage on the Property on April 27, 2012.).]

On April 27, 2012, the Hines not only could or should have known through reasonable diligence that they had a potential cause of action against the Defendants; the Hines in fact **did know** they had a potential cause of action as evidenced by their very letters on May 14, 2012 and July 9, 2012 demanding damages from the Defendants. [R.pp. 155-156; 165; Ltrs.] Despite being fully aware that they had a potential claim for nondisclosure of termite damage, the Hines did not file suit within three years after they knew they had a cause of action.

The statute of limitations on any claim by the Hines against the Defendants for undisclosed termite damage expired on April 27, 2015. The Hines did not file an action against the Defendants by this date.

Over three years after the statute of limitations expired, on February 3, 2018, the Hines discovered additional damage from termites on the Property, which they discovered after experiencing live termites on the Property in 2013. Four months after this discovery, on June 18, 2018, did the Hines file a lawsuit for the first time against the Defendants for the nondisclosure of alleged unrepaired termite damage. The lawsuit, being untimely, was correctly dismissed by the Trial Court.

The Hines challenge the Trial Court's dismissal of their claims based on the expiration of the statute of limitations, contending that because they discovered additional damage from termites in 2018, the clock restarts on their claims for undisclosed termite damage. The courts have time and again rejected the same argument by other plaintiffs desperate to extend long expired limitations periods.

In Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996), the appellant purchased real property in downtown Charleston in September 1984 after a contractor inspected it and determined it to be structurally sound. 321 S.C. at 362, 468 S.E.2d at 646. Two months later, the appellant observed a fine crack approximately three feet in length at the front right corner of the building and concluded it was attributable to a construction company's pile driving at a nearby construction site for Charleston Place. Id. The appellant immediately hired expert consultants to examine and repair the crack. Id. In August 1985, the appellant noticed the original crack had expanded and the facade of the building was beginning to bulge and buckle. Id. at 362, 468 S.E.2d at 646–47. The appellant additionally observed that a second crack had appeared at another location. Id. at 362, 468 S.E.2d at 647. After being informed the building was no longer structurally sound, the appellant brought suit against the construction company in 1991. Id. At trial, the circuit court directed a verdict against the appellant, finding as a matter of law that the applicable six-year statute of limitations had expired prior to the filing of her lawsuit. Id. at 363, 468 S.E.2d at 647.

The Court of Appeals reversed the circuit court, finding a question of fact existed as to whether the appellant was reasonably diligent in determining whether the construction company caused the damage to her building, thereby triggering the statute of

limitations in 1984. Id. On appeal to this State's Supreme Court, the appellant argued the 1984 crack and the 1985 bulging of the bricks presented two distinct harms and, thus, two different dates of accrual existed for statute of limitations purposes. Id. at 364, 468 S.E.2d at 647. The Supreme Court disagreed and rejected the argument that two distinct harms existed, holding the circuit court correctly directed a verdict for the construction company. Id. at 366, 468 S.E.2d at 648. Finding the statute of limitations began to run in November 1984—when the appellant initially discovered the first crack—the Supreme Court explained:

> Because [the appellant] **had notice** in November 1984 that she may have a cause of action against [the construction company], **there is no need to toll the statute of limitations beyond that date**. [The appellant's] subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved. Moreover, the fact that [the appellant] **may not have comprehended** in 1984 that the original crack would expand causing the building to ultimately buckle is **immaterial**.

Id. at 365–66, 468 S.E.2d at 648 (emphasis added).

In Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998), the appellants purchased a home from the Rock Hill Economic Development Corporation (RHEDC), which had purchased the house from the City of Rock Hill (the "City") in February 1985. Id. at 642, 500 S.E.2d at 158. From May 1987 through May 1990, four annual termite inspections revealed excessive moisture under the appellants' home. Id. Termite inspectors suggested several repairs. Id. In March 1992, the appellants contacted the City and requested an inspection and report, which found several problems in the home's crawl space. Id. at 640, 500 S.E.2d at 159. In August 1992, the appellants received a structural engineering report disclosing numerous defects in the house, several of which were unrelated to the moisture problem. Id. at 643, 500 S.E.2d at

159. The appellants filed suit in March 1994. Id. On appeal, this court affirmed the circuit court's grant of summary judgment in favor of the City and RHEDC based on the statute of limitations. Id. at 646, 500 S.E.2d at 160. Despite the fact that the appellants did not realize "**the magnitude of the problem**" until August 1992, this Court held the circuit court correctly ruled the termite inspection reports were sufficient notice to trigger the running of the statute of limitations. Id. at 645–46, 500 S.E.2d at 160 (emphasis added).

Relying upon Dean and Barr, this Court in Allwin v. Russ Cooper Assocs., Inc., 426 S.C. 1, 825 S.E.2d 707 (Ct. App. 2019), cert. denied, (Sept. 18, 2019), also held that a property owner's claims against an architectural firm and general contractor began when she first became aware of numerous defects in the house and not when she realized the full extent of the damage from the construction defects. The home had been completed in 1994, and in the late 1990s and early 2000s, a tenant notified the homeowner of numerous problems with the roof, chimneys, exterior walls, windows, doors, patio, and basement, as well as interior water damage to hardwood floors, drywall, wallpaper, and subfloor framing. The tenant also reported mold, mildew, peeling paint, and water stains. Id. at 4-5, 825 S.E.2d at 709. Over the next ten years, the homeowner engaged various contractors and inspectors to investigate and repair some of the construction issues. Id. at 5-10, 825 S.E.2d at 709-11.

The homeowner had a full forensic analysis of the home performed by an engineer in 2011, and due to his concern about unknown conditions, the engineer suggested a comprehensive scope of repair for the house, including the removal of the roof, a large concrete deck, and all exterior siding and interior drywall so that any

potential latent defects could be located and repaired. Id. at 9-10, 825 S.E.2d at 711. A letter was sent by counsel for the homeowner to the architectural firm in 2011 advising of the potential claim against it for design deficiencies and the resulting damages. Id. at 14, 825 S.E.2d at 714.

The homeowner filed a construction and design defect action for negligence, gross negligence, and breach of warranty against the general contractor in 2013 and added the architectural firm as a defendant in 2014. Id. at 10, 825 S.E.2d at 711. Both defendants moved for summary judgment based upon the expiration of the three-year statute of limitations, which the trial court granted. Id. at 11, 825 S.E.2d at 712.

On appeal, the homeowner argued that conflicting evidence existed as to whether the statute of limitations barred her construction defect claims. Id. at 11-12, 825 S.E.2d at 712. This Court rejected the homeowner's arguments, observing that like the appellant in Dean, the homeowner discovered issues with her home which led her to investigate the problems and perform multiple repairs between 1999 and 2011. However, despite actual knowledge of her potential claims for this damage, the homeowner failed to pursue her claims in a timely manner. This Court also noted that because the homeowner was put on notice of the home's design and construction defects, her failure to comprehend the magnitude of the water intrusion and other defective conditions was immaterial and did not extend the statute of limitations period. Id. at 17, 825 S.E.2d at 715.

The Hines' position that their claim for undisclosed termite damage is resurrected because they discovered additional termite damage in 2018 is unfounded. Their argument runs counter to the well-established case law in Dean, Barr, and Allwin that a cause of action accrues when the plaintiff is put on notice of a potential claim and not

when the plaintiff realizes the full extent of the damage. See also Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985), overruled on other grounds by, Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995) ("The fact, however, the [plaintiff] did not appreciate the full extent of the damage until later is immaterial.").

The case law upon which the Hines rely do not support a different result. In McAlhany v. Carter, 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015), a homeowner brought an action in 2011 against the prior owner for negligent misrepresentation and against a pest control company for negligence, alleging that company did not perform the wood infestation inspection in accordance with the South Carolina Pesticide Control Act and that the homeowner was injured when mold spores were released into the air while painting. The defendants moved for summary judgment based upon the expiration of the statute of limitations, which the trial court granted finding that the homeowner "knew or should have known by the exercise of reasonable diligence of the alleged termite and mold problems in October or November of 2007" when the home was inspected for termites. The trial court also found that based upon deposition testimony, the homeowner discovered in 2007 that the prior owner had not installed a proper moisture barrier and observed mold when he pulled back the existing hardwood floor. The homeowner contended he, however, did not discover mold in the home until 2009. Id. at 61-62, 781 S.E.2d at 109-110.

On appeal, this Court reversed the trial court's conclusion that the statute of limitations had expired on the homeowner's claims, finding that there was conflicting

evidence in the record as to when the homeowner actually discovered the presence of mold in the house. The trial court granted summary judgment based on the homeowner's deposition testimony that he discovered the mold within his residence in 2007. Id. at 59, 781 S.E.2d at 108. Later during the same deposition, however, the homeowner expressed confusion about when he discovered the mold and whether his discovery occurred as late as 2009. Id. at 61, 781 S.E.2d at 109. In the present case, it is undisputed that the Hines discovered termite damage on April 27, 2012. Therefore, McAlhany is unpersuasive because there is no conflicting evidence as to when the Hines first discovered termite damage on the Property.

In McAlhany, this Court further noted that the homeowner had sued the pest control company for negligence arising out of its inspection of the home and issuance of a CL–100 in October 2007. The October 2007 CL–100, which the homeowner reviewed at the time it was issued, found no "visible evidence of active ... subterranean termites" or "other wood destroying insects" within the home. Nonetheless, the homeowner's uncontradicted testimony was that he saw active termites in the home on the day he moved in, which would have been late October 2007, and he knew in October 2007 that the pest control company had not done its job properly. Because the homeowner was aware of termites in the home in late October 2007, and he knew the October 2007 CL–100 erroneously stated there were not active termites in the home, this Court found a reasonable person would have been on notice of a potential negligence claim against the pest control company for termite damage. However, because the homeowner was suing the pest control company not for termite damage but rather for mold, this Court

determined a reasonable person would **not** have been on notice of a potential negligence claim for mold damage. Id. at 65-66, 781 S.E.2d at 111-12.

The discovery of termite damage therefore did not put the homeowner in McAlhany on notice of mold damage to trigger the accrual of the statute of limitations because the two types of damage were separate and distinct. In the present case, the Hines brought an untimely suit for the exact type of damage – that caused by termites - for which they were aware of in 2012. That the Hines did not realize how far the damage extended is irrelevant as to when the statute of limitations began to run.

The Hines also rely upon Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 708 S.E.2d 787 (Ct. App. 2011), in which this Court affirmed the circuit court's denial of the developers' directed verdict motion based on the statute of limitations. Id. at 185, 708 S.E.2d at 794. In Holly Woods, the minutes from HOA board meetings indicated the HOA was aware of certain problems with the development including a pool leak, drainage problems, and termite issues in 1991; additional problems appeared between 1998 and 2000. But the damages the HOA claimed in the 2005 lawsuit involved a different location within the neighborhood, unrelated to the previous defects. Id. at 184-85, 708 S.E.2d at 794. By contrast, the record here establishes that the Hines sought in 2018 to sue for the same exact type of issue – termite damage - that they were aware of in 2012. Once more, that the Hines discovered additional termite damage in another area of the Property relates to the extent of termite damage sustained on the Property and does not constitute a separate event to trigger a new limitations period.

Similarly, the Hines' reliance upon Stoneledge at Lake Keowee Owner's Ass'n, Inc. v. IMK Dev. Co., 425 S.C. 268, 821 S.E.2d 504 (Ct. App. 2018), cert. granted (Aug.

6, 2019), does not compel reversal of the Trial Court's grant of summary judgment. In Stoneledge, this Court held that the issue of when homeowners in a townhome community discovered construction defects was a jury question in the homeowners' association's action filed in 2010 against the developer alleging negligence and breach of implied warranties. The record in Stoneledge reflected that while some homeowners in the townhome community experienced issues with water intrusion as early as 2003, other homeowners did not have such knowledge and only discovered issues with their construction after rains in 2008 and 2009. The Court found there was evidence in the record that latent defects in the latter group of homeowners' properties due to water intrusion could not have been discovered until 2009 until there was sufficient precipitation to put the homeowners on notice. Therefore, the conflicting evidence in the record created a jury question as to whether it was reasonable for the homeowners to know, or by reasonable diligence discover, there were issues with their construction. Id. at 275-76, 821 S.E.2d at 508.

Unlike Stoneledge, there is no conflicting evidence in the record as to when the Hines became aware of the termite damage on the Property. Both Mr. and Mrs. Hine conceded they became aware of termite damage on April 27, 2012. Once the Hines became aware of this damage, they were on notice of a potential claim against the Defendants. While the Hines claim that they could not have known of the damage they discovered in 2018 because it was latent, once the Hines became aware of hidden termite damage in 2012, they were on notice of a claim for undisclosed termite damage at that

time.[1] It was their duty to use reasonable diligence to determine the full extent of the termite damage in 2012 and not delay. The Hines' failure to do so does not extend the statute of limitations.

While the Hines contend they acted reasonably in not conducting testing to determine whether they had additional termite damage once they discovered damage on April 27, 2012[2], such does not negate the fact that the Hines were on notice of their potential claim for undisclosed termite damage on April 27, 2012 but failed to bring suit against the Defendants until 2018. The issue here is when the Hines discovered their potential claims, thus triggering the statute of limitations, not whether they acted reasonably in repairing the damage discovered in 2012 or discovering additional damage. See Allwin, 426 S.C. at 20-21 825 S.E.2d at 717 (rejecting homeowner's claims that because she "reasonably elected between conflicting professional recommendations as to

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[1] While the Hines contend that there was absolutely no way they could have known about the termite damage discovered in 2018, it is interesting that the reports prepared prior to closing and the 2013 Sargent Pest Solutions report each noted potential damage in the basement area of the home. [R.pp. 170-171; 179; 194; 202-204; CL-100 Report; Pillar to Post Report, pp. 8, 23; Residential Treatment Contract.] The damage discovered in 2012 also required repairs to the basement area. [R.pp. 155-160; May 14, 2012 Ltr.] The damage the Hines discovered in 2018 was, in part, damage to the framing of the staircase leading to the basement. [Appellant's Brief, p. 3.] The basement area was a central location of the termite damage and, certainly, the Hines possessed sufficient information in 2012 that the areas surrounding the basement needed to be inspected for termite damage.

[2] In footnote one of the Appellants' Brief, the Hines state that each Defendant agreed that the Hines' conduct was reasonable in not learning of further termite damage until 2018. This assertion misstates the Record. Rather, the Defendants testified as to the Hines' reliance upon certain statements and reports prior to closing on the purchase of the Property. [R.pp. 223, ll. 1-4; 224, ll. 11-13; 229, ll. 14-23; 230, ll. 4-15; 231, ll. 16-18; 236, ll. 1-11; 237, l. 12 – 239, l. 13; M. McCrory Dep., pp. 34, ll. 1-4 (reliance upon the Disclosure Statement); 46, ll. 11-13 (reliance upon the CL-100 report); T. McCrory Dep., p. 82, ll. 14-23 (reliance upon the Disclosure Statement); 83, ll. 4-15; 85, ll. 16-18 (reliance upon termite and home inspection prior to closing); Marchant Dep., pp. 91, ll. 1-11 (reliance upon the Disclosure Statement); 97, l. 12 – 99, l. 13 (reliance upon termite and home inspection prior to closing).] The Defendants did not concede in any way that the Hines were reasonable in not discovering the additional termite damage until 2018.

the scope of necessary repairs," the statute of limitations for her construction defect action should have been extended).

The remaining cases cited by the Hines are also factually distinct and do not mandate reversal of the Trial Court's conclusion that the statute of limitations precluded their lawsuit. See Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989) (holding earlier cracks in two separate pocket bins of a cement storage silo complex did not necessarily provide notice that a third and different pocket bin would later collapse and result in the death of two people; thus the issue of when the statute of limitations began to run was for the jury); Box v. Sparrow Group, LLC, Op. No. 2018-UP-353, 2018 WL 3913504 (S.C. Ct. App. Aug. 15, 2018) (holding buyer's cause of action against seller for nondisclosure of foundation issues did not begin to run upon the buyer's receipt of disclosure statement which indicated there had been past foundation issues which were repaired but rather from the date that buyer became aware that seller had in fact not repaired the previous foundation issues).

This Court should affirm the Trial Court's grant of summary judgment to the Defendants based upon the expiration of the three-year statute of limitations because the Hines were aware of a potential claim for undisclosed termite damage in 2012 but delayed filing suit until 2018. To find for the Hines would mean that plaintiffs would be allowed to litigate their claim in piecemeal fashion, contrary to the policy of repose behind the statute of limitations. Under the Hines' approach, a buyer discovering termites in part of the building can simply elect not to sue the seller at that time and allow the statute of limitations to expire. Years later, according to the Hines, the buyer can discover termites in another part of the building and have the statute of limitations restart.

Or, using the argument of the Hines, the buyer can maintain multiple lawsuits over a span of years for each separate instance of termite damage discovered.

Such an approach strains logic and the policy behind the limitations period. The sounder conclusion is that the initial discovery of infestation puts the buyer on inquiry notice such that he or she should have discovered other existing infestations and determined material facts sufficient for his or her claim to accrue. This more reasoned approach prevents the prejudice suffered by defendants in defending stale claims – lost physical evidence, witnesses who cannot be located, and witnesses with faded memories. The cause of action accrues, in its entirety, at the initial discovery of termite infestation and for that reason, the Trial Court properly ruled that the three-year statute of limitations barred the Hines' action against the Defendants.

II. The doctrine of equitable tolling does not apply because the Plaintiffs presented no evidence that they acted diligently in pursuing their claims or were prevented in some extraordinary way from filing suit.

The Hines further argue that if their claims against the Defendants are time barred by the three-year statute of limitations, this Court should nevertheless equitably toll the statute of limitations to allow their action to proceed. The Hines, however, have not established that they are entitled to the remedy of equitable tolling to allow their lawsuit, filed over six years too late, to proceed.

"Tolling refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting. . . . Tolling may either temporarily suspend the running of the limitations period or delay the start of the limitations period." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) (internal citations omitted).

The doctrine of equitable tolling is judicially created and may be applied in certain situations to suspend or extend a limitations period to serve principles of justice and fairness. Id. Nevertheless, "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." Id. at 117, 687 S.E.2d at 33. "The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use." Id. at 115, 687 S.E.2d at 32.

Equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his control, where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim, or where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his claim. The plaintiff may be entitled to equitable tolling if the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit. Id. at 116, 687 S.E.2d at 32-33.

The Hines have not shown the existence of any extraordinary circumstance preventing their filing of a lawsuit within three years after discovering undisclosed termite damage in 2012. Mr. Hine, himself a licensed attorney, knew he had a potential claim in 2012 when he sent two demand letters to Mr. Marchant. [R.pp. 155-156; 165; May 14, 2012 Ltr; July 9, 2012 Ltr.] The Hines, however, failed to follow through with filing a legal action against the Defendants. The Hines have not pointed to any conduct by the Defendants preventing their filing of a lawsuit after their 2012 discovery of the termite damage.

Instead, the Hines rely upon an unproven allegation that the McCrorys concealed termite damage to the framing of the staircase to the basement and that this alleged concealment triggers the doctrine of equitable tolling. This is an allegation central to the merits of the lawsuit which the Defendants strongly deny. The record contains evidence that the termite damage observed by the Hines may not have even occurred until after they purchased the Property. The Hines had owned the Property for almost four years when they first discovered termite damage in 2012. Live termites were present on the Property in 2013, as discovered by Sargent Pest Solutions. [R.pp. 202-204; Residential Treatment Contract.] These very termites discovered in 2013 could have caused the damage the Hines uncovered in 2018 which would of course mean the Defendants have no liability for such damage. To allow the Hines to benefit from unsubstantiated allegations that the McCrorys concealed termite damage to extend the limitations period would deny the Defendants the opportunity to contest these dubious allegations and force the Defendants to defend against these claims more than ten years after they were involved with the Property and over six years after the Hines discovered termite damage.

The Hines have devised a story that the McCrorys defrauded the Hines when they sold the Property but the record establishes otherwise. The Hines were well aware that the Property had multiple issues with termites before they even purchased the Property as indicated by the CL-100 wood infestation report and the Pillar to Post property inspection report which were both completed prior to closing and which indicated the presence of past termite damage as well as the potential for present termite issues. [R.pp. 170-171; 172-201; CL-100; Pillar to Post Report.]

After owning the Property for almost four years, the Hines discovered termite damage in 2012 and also became aware of existing live termites in 2013. The Hines owned and had complete control of the Property during this time period and nothing prevented the Hines from inspecting their own home for further termite damage which they decided not to do. [R.p. 168; J. Hine Dep., p. 25, ll. 19-24 (conceding they did not ask for any exploratory testing to determine whether the Property contained additional termite damage in 2012).] The decisions made by the Hines were of their own accord. The Defendants took no actions preventing the Hines from inspecting their own property or from proceeding with a timely lawsuit against the Defendants. Instead, the Hines sat on their claim and allowed it to expire. Resurrecting an expired claim against the Defendants more than ten years after the Property was sold and over six years after the Hines discovered termite damage would only severely prejudice the Defendants where evidence has been lost and memories have been dimmed by the passage of time. This Court should accordingly reject the Hines' attempt to invoke the doctrine of equitable tolling.

CONCLUSION

For the reasons set forth herein, the Defendants respectfully request this Court to affirm the Trial Court's grant of summary judgment based upon the expiration of the three-year statute of limitations under S.C. CODE ANN. § 15-3-530.

Respectfully submitted,

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March 24, 2020.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR.

Respectfully submitted,

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March 24, 2020.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell
Circuit Court Judge

Appellate Case No. 2019-001375
Circuit Court Case No. 2018-CP-23-3382

John W. Hine and Maria W. Hine..... Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, ... Respondents.

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INTRODUCTION

The crux of the Hine Family's argument is that the family's discovery in 2012 of $4,000 of termite damage along a perimeter wall in the nursery on the main-level of their house did not, as a matter of both law and fact, put them on notice of over $100,000 of structural damage in the basement, which is in the center of their house, and which the Respondents deceptively and shoddily patched and hid behind sheetrock. Once this extreme damage to the core of their house was discovered, the Hine Family promptly filed suit within four months, and any dispute about this case being brought within a limitations period should be resolved by a jury, not by the circuit court through a summary judgment motion.

In opposing the Hine Family's appeal, the Respondents have only reinforced exactly why the circuit court's summary judgment ruling should be reversed. The cases on which the Respondents rely make clear that when a party has notice of damage in one location, that awareness does ***not*** constitute notice of ***any other*** damage in a ***different location*** sufficient to trigger a statute of limitations regarding the later-discovered damage. Accordingly, the Court should follow the long-settled precedent cited by all parties to this appeal, reverse the summary judgment decision, and remand this matter with instructions to let a jury decide whether the Hine Family's case should proceed and succeed on its merits.

ARGUMENT

I. As a matter of law, discovery of damage in one location on property does not trigger the statute of limitations for all other unknown damage everywhere else on the same property.

In attempting to rehabilitate the circuit court's improper disposition of this case, the Respondents attempt the same sleight-of-hand that countless litigants have previously tried, and that South Carolina's appellate courts have previously rejected. Namely, they argue that an

awareness of a problem ***somewhere*** on the property renders a plaintiff aware of other problems ***everywhere*** on the same property. (*See, e.g.*, Respondents' Br. at 13, 21 (arguing that because the Hine Family discovered "termite damage" in April 2012, their 2018 lawsuit should be time-barred even though the 2012 damage is not the basis for their claims).) But this is not the law.

South Carolina cases are uniform that an awareness of an issue in one portion of property ***does not*** trigger a limitations period for claims that may arise for damages in another area of property, and that any dispute as to the scope of the plaintiff's supposed "notice" should be resolved by the jury. The Supreme Court has so held. *See, e.g.*, *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 273–74, 384 S.E.2d 693, 695–96 (1989) (reversing the trial court's conclusion that a construction defect claim was time-barred, and holding that an awareness of defects in one area of a project did not put the plaintiff on notice of all claims that could relate to those defects, and concluding that the "reasonableness" of the plaintiff's investigation into the defects "was an issue to be decided by the jury"), *vacated in unrelated part by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 559, 462 S.E.2d 858, 860 (1995).

And this Court has so held, time after time. *See, e.g.*, *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co.*, 425 S.C. 268, 275–76, 821 S.E.2d 504, 508 (Ct. App. 2018) (rejecting an argument that a homeowners' association's awareness of water intrusion in some portions of the property in 2003 barred subsequent claims for defective construction of columns, framing, and porch railings that allowed water intrusion, and concluding that it was a "jury question as to whether it was reasonable for the homeowners to know, or by reasonable diligence discover, there were issues with their construction"); *McAlhany v. Carter*, 415 S.C. 54, 66, 781 S.E.2d 105, 112 (Ct. App. 2015) (reversing summary judgment based on a statute of limitations and rejecting an

argument that a homeowner's awareness of one problem with an inspection report regarding termites in the house put the homeowner on notice of all potential claims against the inspector), *aff'd* Op. No. 2017-MO-007, 2017 S.C. Unpub. LEXIS 16 (May 3, 2017); *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 185, 708 S.E.2d 787, 794 (Ct. App. 2011) ("We find it is a jury question as to whether the [moisture-based] damages the Association claimed in 2005 were different from those it experienced in the past [which would have been time-barred].").

Moreover, the cases on which the Respondents ground their appellate argument stand for this exact same proposition. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 364–65, 468 S.E.2d 645, 647 (1996) (holding that suing for cracks and bulging bricks that rendered a building not structurally sound was time-barred because the owner had been aware of the crack from which the damage emanated for several years, and the damage was in "***the same location*** and of the same nature as the original harm") (emphasis added); *Allwin v. Russ Cooper Assocs.*, 426 S.C. 1, 19–20, 825 S.E.2d 707, 717 (Ct. App. 2019) ("But the damages the HOA claimed in the 2005 lawsuit [in *Holly Woods Association*] involved a ***different location*** within the neighborhood, unrelated to the previous defects. By contrast, the record here establishes Allwin failed to present any evidence that the defects she claims to have discovered in 2011 were unrelated to those she had notice of as early as February 1999.") (emphasis added); *Barr v. City of Rock Hill*, 330 S.C. 640, 644–45, 500 S.E.2d 157, 159–60 (Ct. App. 1998) (holding that a suit involving moisture damage under a house was time-barred because the plaintiffs were repeatedly alerted to the specific source of their claims in several annual inspections that long predated their complaint, and one of the plaintiffs even conceded to having an awareness of the issues but did not act on them until it was too late).[1]

[1] The Respondents discuss *Dean* on Pages 14 through 15 of their brief; *Barr* on Pages 15 through 16; and *Allwin* on Pages 16 through 17. These are the Respondents' primary authorities, but they support reversal here.

Here, the record contains uncontroverted evidence as to the isolated nature of the 2012 damage the family discovered in a part of their home that is separate and distinct from the crippling, hidden damage they uncovered in 2018 that forms the basis of this suit. Mr. Hine specifically testified to this point:

> Q: Are you recovering or attempting to recover damages for this work [done in 2012]?
>
> A: ***No.***
>
> Q: And why not?
>
> A: Because I don't—this came and went, and ***this isn't part of the current litigation***.
>
> *****
>
> Q: You're making a separate determination or a separate claim as it relates to this termite damage than the termite damage that's referenced in your suit filed in 2018?
>
> [objection of counsel]
>
> A: I am saying that I have found ***two separate instances of termite damage that were not contiguous***. So just because I discovered one didn't mean that I knew about the other one.

(R. p. 168; Mr. Hine Dep. 23:25–24:5, 24:25–25:8 (Feb. 12, 2019) (emphasis added).)

Mr. Hine further testified that the 2012 repairs only went as far as the damage that was present in the nursery: "[A]s they took down the wall in the bedroom upstairs [*i.e.* on the main level of the house], whatever we discovered, they repaired, and then when they stopped, you know, uncovering termite damage, they stopped tearing down the walls." (R. p. 169; *id.* 26:1–:5.)

Under circumstances such as this, it is the jury's job to determine whether the Hine Family acted reasonably in demolishing their home in 2012 only until they "stopped . . . uncovering termite damage" in the nursery, or whether the family should have continued stripping the whole house down to the studs to determine whether the Respondents had masked much more extensive damage in other, non-adjacent, parts of the house.

If the contrary were true and the Respondents' argument was correct, then the Respondents would have total immunity for their misdeeds and deceptive conduct with respect to this house. For instance, if the Hine Family had filed suit in 2012 (or in 2015 at the latest), as the Respondents argue should have happened, the family's only claim would have been for $4,000 worth of damage. That was the extent of all known damages based on the Hine Family's investigation and repairs at that time. There is simply no way that the Hine Family could have sued then for the severe structural damage that they have now uncovered without demolishing their house.

Of course, the law does not give homeowners only two choices: (1) to sue for known damages and waive all potential, even-unrelated claims that have not yet been discovered; or (2) to destroy their house, at their own expense, on an exploratory mission to uncover any other not-yet-known issues hiding within the structure. But this is the outcome urged by the Respondents and adopted by the circuit court, and it is incorrect as a matter of law.

Whether the Hine Family exercised "reasonable diligence," or should have undertaken additional destructive testing in 2012, is a question for the jury to resolve after hearing all of the evidence, not for the court to resolve on summary judgment. *Stoneledge at Lake Keowee Owners' Ass'n*, 425 S.C. at 275–76, 821 S.E.2d at 508. Nor does this case present any of the concerns addressed by statutes of limitations, as the evidence of the Respondents' misconduct has not gone stale—it was uncovered in 2018 after being hidden behind sheetrock, and the "date of manufacturing" stamp on the 2x4s that the Respondents used to mask the house's structural damage makes it inescapable that they are responsible for the deception (R. p. 70; First Am. Compl. ¶¶ 18–26)—and the witnesses are the parties themselves. Accordingly, the Court should reverse the circuit court's summary judgment ruling and allow a jury to decide whether the Hine Family's actions in uncovering the Respondents' misconduct were reasonable.

II. Equity does not reward deception and concealing facts that would have resulted in litigation commencing within a limitations period.

In its opening brief, the Hine Family argued that even if the Court finds that the three-year limitations period expired, that period should be tolled as a matter of equity because the Respondents actively hid the evidence of their misconduct behind a wall of sheetrock. In response, the Respondents concede, as they must, that a "plaintiff may be entitled to equitable tolling if the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit." (Respondents' Br. at 25.) But the Respondents then engage in a lengthy fact-based argument about whether or not they actively concealed the severe structural damage in the Hine Family's basement when flipping this house. (*Id.* at 25–27.)

The Respondents' posturing on this issue underscores why a trial is necessary. They pepper their return brief with rhetoric like "unproven allegation," "strongly deny," "may not have even," "could have," "unsubstantiated allegations," and "devised a story." (*Id.* at 26.) Meanwhile, the evidence is undisputed that the 2x4s holding the severely-damaged structure together bear a "date of manufacturing" stamp of September 7, 2005—the very same day that the Respondents bought the house in order to flip it. (R. p. 70; First Am. Compl. ¶¶ 25–26.) Despite their protestations, there is simply no way that someone other than the Respondents installed those 2x4s, and there is simply no way that someone other than the Respondents concealed this damage behind sheetrock.

Because the facts on this issue are disputed, the Hine Family is entitled to a trial to "prove" and "substantiate" its allegations that the Respondents concealed their bad acts within the walls of the house in such a manner as to prevent this lawsuit from being filed sooner. *See Gaymon v. Richland Mem'l Hosp.*, 327 S.C. 66, 68, 488 S.E.2d 332, 333 (1997) (reiterating that that "equitable estoppel interposed in a law case should be tried by the court as an equitable issue").

Accordingly, in the event the Court believes that the Hine Family's claims could potentially be time-barred, it should reverse the circuit court's reliance on a limitations period with instructions to conduct a trial at which the Hine Family will be entitled to put forth evidence regarding equitable tolling of the relevant limitations period.[2]

CONCLUSION

The Hine Family should be given an opportunity to fully present the evidence of this case at trial and let a jury decide whether the Respondents deceptively caused and concealed over $100,000 of structural damage to the family's home and whether the Hine Family acted reasonably with respect to discovering this damage. The Hine Family should also be given a chance to present evidence as to why any statute of limitations here should be equitably tolled due to the Respondents' misconduct. Because the circuit court incorrectly deprived the Hine Family of its day in court, the Court should reverse the lower court's summary judgment ruling and remand this matter for trial.

Signature Page Attached

[2] The parties do not dispute that the Hine Family's claims would be subject to a three-year limitations period. The Respondents' brief states that all claims are governed by South Carolina Code § 15-3-530. (Respondents' Br. at 11.) However, for the sake of clarity in the record, because the Hine Family is also prosecuting a claim under the Unfair Trade Practices Act, that claim would be governed by South Carolina Code § 39-5-150, which is also a three-year period.

Respectfully submitted,

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The undersigned certify that this Final Brief complies with Rule 211(b), SCACR.

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I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Appellants, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

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March 20, 2020

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Re: John M. Hine and Maria W. Hine v. Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant and The Marchant Company
Appellate Case No. 2019-001375

Dear Ms. Kitchings:

Please find enclosed for filing the Brief of Appellants and Reply Brief of Appellants and 7 copies of each for the case cited above. Please return a clocked copy to our courier.

With kind regards, I remain

Very truly yours,

M. Todd Carroll

cc: David A. Anderson
Carmen Ganjehsani
H. Chase Harbin

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February 8, 2023

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Appellate Case No. 2019-001375
Notice of Supplemental Authority

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, we write to provide the Court with notice of supplemental authority that supports the Appellants' argument as to whether a jury should have been allowed to determine whether the statute of limitations had expired on the Appellants' claims (Pages 6–10 of Appellants' opening brief, and Pages 1–5 of Appellants' Reply Brief):

- *Walbeck v. The I'On Co.*, Op. No. 28134 (S.C. Sup. Ct. Feb. 8, 2023) (Howard Adv.Sh. No. 6, at 30–34).

We appreciate the Court's consideration of this notice. With kind regards, I remain

Very truly yours,

/s/ M. Todd Carroll

cc: David A. Anderson
Carmen Ganjehsani
H. Chase Harbin

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

John M. Hine and Maria W. Hine, Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, Respondents.

Appellate Case No. 2019-001375

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Unpublished Opinion No. 2023-UP-241
Heard September 12, 2022 – Filed June 14, 2023

AFFIRMED

John Michael Hine, of The Hine Law Firm, LLC, of Greenville, Matthew Todd Carroll, of Womble Bond Dickinson (US), LLP, and Bryant Sparks Caldwell, both of Columbia, all for Appellants.

David Allen Anderson, Carmen Vaughn Ganjehsani, and James Belford Robey, III, of Richardson Plowden & Robinson, PA, of Columbia, for Respondents Timothy M. McCrory, Seabrook L. Marchant, and The Marchant Company. Hunter Chase Harbin, of Law Office of H.

Chase Harbin, PA, of Greenville, for Respondent Michael P. McCrory.

PER CURIAM: John and Marie Hine (collectively, Appellants) appeal the circuit court's order granting summary judgment to Timothy "Tim" McCrory, Michael "Mike" McCrory, Seabrook Marchant, and The Marchant Company (collectively, Respondents), arguing the court erred in finding Appellants' 2012 discovery of a rather minor amount of undisclosed termite damage put them on notice as to more extensive damage discovered in another part of their home in 2018. We affirm.

Facts and Procedural History

On September 7, 2005, Tim McCrory and his brother, Mike, jointly purchased 416 Leyswood Drive in Greenville County (the Property), a single-story ranch house with a partially finished basement. After renovating a portion of the house, the McCrorys listed it for sale on May 14, 2008.[1] In their residential property condition disclosure statement (the Disclosure Statement), the McCrorys stated: "The two rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors were added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock. Ask seller for all work done." The Disclosure Statement did not indicate whether the Property was under a termite bond during the time of the McCrorys' ownership.

On May 27, 2008, Appellants contracted with the McCrorys for the purchase and sale of the Property for $175,000. Hunter Pest Elimination, LLC, issued a CL-100 Wood Infestation Report (the Report) on June 3, 2008, indicating there were signs of past termite infestation and treatment. Mr. Hine signed the Report at the July 1, 2008 closing. While the Report noted some areas of the Property were obstructed from view or inaccessible, it stated "previous infestation/scorn marks from termite shelter tubes with damage to sills, joist and subfloor was noted right side of garage and to sill right rear of garage." The Report further mentioned "prior treatment/drill holes to exterior foundation wall [indicating] previous termite treatment," "fungi/wood destroying fungi present throughout the basement area," and "discolored wood around HVAC duct boot rear of utility room." Although the Report noted repairs had been made, it stated "some damage remains and should be evaluated by a licensed builder." The Report specified the damage "[w]ill not be

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[1] Tim McCrory, a realtor, was The Marchant Company's listing agent for the Property. Seabrook Marchant was the broker-in-charge.

corrected by this company; recommend that structure be thoroughly and completely evaluated by a qualified building expert . . . and that needed repairs be made."[2] Likewise, Pillar to Post, Inc. issued a June 3, 2008 home inspection report recommending Appellants consult "a qualified foundation contractor to evaluate and correct pest damage at joists located near center to rear area of garage/basement area to promote intended use."[3]

Almost four years later, on April 27, 2012, Mr. Hine removed the shoe molding in a bedroom on the front corner of the Property to paint the baseboards and noticed a large gap formed as the molding got closer to the exterior of the house. Upon further inspection, he discovered caulk or silicone had been injected into this gap. After fully removing the shoe molding, Mr. Hine found extensive damage to the wood studs behind the drywall and called a contractor to further inspect the area. The contractor discovered damaged rim joists, damage to a double joist running above the cinderblock wall in the basement room below the main floor bedroom, and damage to the headers of both windows in an upper bedroom.

On May 14, 2012, Mr. Hine sent a demand letter to Marchant stating:

> This letter is being sent to you as a result of Timothy's status as the Seller's Agent and his employment by you. When the work was done in the basement, as noted in Paragraph 13 of the Disclosure, the damage would have been discovered and subsequently was required to be disclosed. As a result of the failure to disclose the damage I have incurred extensive costs. Timothy owed a duty as the listing Agent to disclose the damage which was not repaired. Pursuant to § 27-50-70 of the South Carolina Code the listing agent is liable for the misrepresentation.

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[2] On June 6, 2008, Benjamin Shivers of Ben Construction, Inc. performed a builder's inspection as recommended by Hunter Pest Elimination and concluded the damage listed in the Report "is not structural and does not require repair."

[3] On June 9, 2008, Steve Baty of Realty Service & Repair, LLC, performed an inspection as recommended by Pillar to Post and determined "[t]he repairs to the floor joists in the basement at the center and rear appear adequate, and no additional repairs to these appear necessary at this time."

Respondents denied any knowledge of the damage and declined to reimburse. Following the completion of these repairs, Mr. Hine sent an additional demand letter on July 9, 2012, requesting payment of $4000.[4]

In early 2013, Mr. Hine contacted Sargent Pest Solutions to inspect and place the Property under an active termite bond contract. Sargent Pest Solutions inspected the Property on March 28, 2013, and contracted with Hine for treatment of "Existing (Affected wood and live termites)." This contract also contained a notation of "PHD" (possible hidden damage). Although repeatedly asked at oral argument, Appellants were unable to answer affirmatively that Sargent Pest Solutions conducted a full termite inspection of the Property in 2013. Moreover, Mr. Hine conceded in his deposition that he did not ask the contractor who made the 2012-2013 repairs to conduct exploratory testing to locate possible additional termite damage that might exist in other areas of the home.

Appellants subsequently remodeled a hallway bathroom without incident. They also "pulled out everything in the basement" and noted no damage in that area of the house. However, during a bathroom renovation on February 3, 2018, Appellants discovered significant termite damage extending beyond the main bathroom to the basement stairwell and surrounding structural framing. Appellants also found that some of this framing had been patched together with short sections of two-by-four wood studs and then covered with drywall.[5]

On June 18, 2018, Appellants brought suit against the McCrorys, Marchant, and The Marchant Company, asserting claims for fraud, conversion, negligence, and a variety of statutory violations. Respondents denied knowledge or concealment of unrepaired termite damage.

Following discovery, Respondents moved for summary judgment, asserting Appellants' claims were barred by the statute of limitations. In opposition, Appellants argued it would be objectively unreasonable to believe they should have known about over $100,000 of termite damage running from the main

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[4] In his deposition, Mr. Hine testified he did not include this damage in the 2018 lawsuit because "[he did not] know that [he had] the evidence to prove that, and [he did not] know that [he was] still entitled to it under the statute of limitations."

[5] The two-by-four wood studs had a bar code stamp date of September 7, 2005, the time period when the McCrory brothers purchased the home.

bathroom to the framing of the staircase because they had previously discovered a relatively minor amount of termite activity on the opposite side of the house. The circuit court granted Respondents' motion for summary judgment, finding Appellants' claims were time barred. Appellants subsequently filed a Rule 59(e), SCRCP, motion to amend, which the circuit court denied.

Standard of Review

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). "Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014).

Law and Analysis

I. Summary Judgment

Appellants argue the circuit court erred in finding the statute of limitations barred their claims because the parties presented conflicting evidence regarding when Appellants could or should have known a cause of action might exist regarding the undisclosed termite damage. Appellants contend application of the discovery rule and the determination of the date the statute began to run present questions of fact for a jury. In the alternative, Appellants ask this court to set aside any statute of limitations issues as a matter of equity. We find the circuit court properly granted summary judgment.

The parties agree the three-year statute of limitations applies. S.C. Code Ann. § 15-3-530(5) (2005) (providing a three-year statute of limitations for an action for "any injury to the person or rights of another, not arising on contract and not enumerated by law). "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" *Barr v. City of Rock Hill*, 330 S.C. 640, 644, 500 S.E.2d 157, 159–60 (Ct. App. 1998) (quoting *Grooms v. Med. Soc'y of S.C.*, 298 S.C. 399, 402, 380 S.E.2d 855, 857 (Ct. App. 1989)); *see also Barr*, 330 S.C. at 645–46, 500 S.E.2d at 160 (holding although homeowner did not realize "the magnitude of the problem" until August 1992, the

circuit court correctly found prior termite inspection reports provided sufficient notice to trigger the running of the statute of limitations). "Under the discovery rule, . . . the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 525–26, 787 S.E.2d 485, 489–90 (2016) (internal citations and quotations omitted); *see also* S.C. Code Ann. § 15-3-535 (2005) ("[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.").

Our supreme court has "interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness" when on notice of a potential claim. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363–64, 468 S.E.2d 645, 647 (1996). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." *Id.* at 364, 468 S.E.2d at 647. Nevertheless, when the parties present conflicting evidence, application of the discovery rule and the determination of the date the statute began to run in a particular case are questions of fact for the jury. *See Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (when testimony conflicts regarding the time of discovery of a cause of action, it becomes an issue for the jury to decide).

In *McAlhany v. Carter*, which Appellants argue is controlling, the circuit court granted the defendants' motion for summary judgment based on the statute of limitations. 415 S.C. 54, 57, 781 S.E.2d 105, 107 (Ct. App. 2015). At issue was the plaintiff's deposition testimony regarding when he discovered mold and termites in his home. *Id.* at 60–61, 781 S.E.2d at 109. This court reversed the circuit court's grant of summary judgment, finding:

> McAlhany's uncontradicted testimony was that he saw active termites in the home on the day he moved in, which would have been late October 2007, and he knew in October 2007 that Carter had not done its job properly. Because McAlhany was aware of termites in the home in late October 2007, and he knew the October CL-100 erroneously stated there were not active termites in the home, a reasonable person would have been on notice of a potential negligence claim against Carter for *termite damage*. Nevertheless, a reasonable person would not

> have been on notice of a potential negligence claim for *mold damage*. As Kenneth testified, "Mold has nothing to do with infestation of termites." Rather, the three-year statute of limitations for McAlhany's property damage claim did not accrue until a reasonable person would have discovered mold within the home. Because McAlhany presented evidence that he did not discover mold within the home until June 2008 or August 2009, which would have made his lawsuit timely filed in April 2011, the trial court erred in granting summary judgment as to the property damage claim.

Id. at 66, 781 S.E.2d at 112 (internal citations omitted).

Unlike the situation in *McAlhany*, there is no conflicting evidence here as to when Appellants first discovered unrepaired termite damage at the Property. *McAlhany* also involved two distinct harms—termite damage and mold damage. Here, Appellants discovered a relatively minor amount of unrepaired termite damage in 2012, and six years later discovered more significant unrepaired termite damage in another area of the home.

Our supreme court rejected a similar "two distinct harms" argument in *Dean*, finding the circuit court correctly directed a verdict for a construction company whose pile driving damaged a nearby property. *Dean*, 321 S.C. at 366, 468 S.E.2d at 648. Although the court acknowledged Dean may not have comprehended that the original fine crack she discovered in 1984 would expand and cause the building's façade to buckle, Dean's "subsequent failure to act with reasonable diligence" did not justify tolling the statute of limitations. *Id.* at 365–66, 468 S.E.2d at 648. The court found the statute of limitations began to run when Dean initially discovered the first small crack—not when she found a larger crack at a different location and learned the building was no longer structurally sound.[6]

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[6] After oral argument, Appellants properly provided the supplemental citation of *Walbeck v. The I'On Co.*, Op. No. 28134 (S.C. Sup. Ct. filed Feb. 8, 2023) (Howard Adv. Sh. No. 6, at 23, 30–34), in support of their argument that the circuit court erred in finding the statute of limitations barred their claims. However, the facts of *Walbeck* differ markedly from those presented here. *Stoneledge at Lake Keowee Owners' Association, Inc. v. IMK Development Co., LLC*, 425 S.C. 268, 821 S.E.2d 504 (Ct. App. 2018), *aff'd in part and rev'd in part*, 435 S.C. 176, 866 S.E.2d 577 (2021), *Holly Woods Association of Residence Owners v. Hiller*, 392

The undisputed evidence in this record demonstrates that when Appellants learned there was unrepaired termite damage on the Property in 2012, they promptly notified Respondents of their claim in the May 14, 2012 letter. Although Appellants did not realize the magnitude of the problem until 2018, we agree with the circuit court that the 2012 discovery triggered the running of the statute of limitations. *See*, *e.g.*, *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 17, 825 S.E.2d 707, 715 (Ct. App. 2019) (finding despite property owner's "actual knowledge of her potential claims for this damage—and repeated repair recommendations—[she] failed to pursue her claims in a timely manner" and property owner's "failure to comprehend the magnitude of the water intrusion and other defective conditions is immaterial.").

While Appellants contend they acted reasonably in not conducting destructive testing in 2012 to determine whether the Property had additional unrepaired termite damage, such does not negate the fact that they were on notice that "some claim against another party might exist." *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009). The issue here is whether Appellants acted with promptness in pursuing their legal claims, not whether they acted reasonably in repairing the termite damage discovered in 2012, or in discovering additional concealed termite damage. The undisputed evidence in the record shows Appellants either knew or should have known about unrepaired termite damage at the Property on or about April 27, 2012. Appellants informed Respondents of potential claims against them by letter dated May 14, 2012. Nevertheless, Appellants did not file suit until June 18, 2018, almost three years after the statute of limitations expired.

II. Equitable Tolling

Appellants further urge this court to set aside the statute of limitations as a matter of equity. "[E]quitable tolling is a doctrine that should be used sparingly and only

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S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011), *Santee Portland Cement Co. v. Daniel International Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989), *overruled on other grounds by Atlas Food Systems & Services, Inc. v. Crane National Vendors Division of Unidynamics Corp.*, 319 S.C. 556, 462 S.E.2d 858 (1995), and *Box v. Sparrow Group, LLC*, Op. No. 2018-UP-353, 2018 WL 3913504 (S.C. Ct. App. Filed Aug. 15, 2018), discussed in Appellants' briefing, are likewise distinguishable.

when the interests of justice compel its use." *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). "The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use." *Id.* at 115, 687 S.E.2d at 32. "It has been observed that '[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.'" *Id.* at 116, 687 S.E.2d at 32 (quoting *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (2004)).

Other than the presence of caulking and the replacement wood found during the 2018 bathroom renovation, Appellants have not shown the existence of any extraordinary circumstance preventing them from filing a lawsuit within three years after discovering the caulking and termite damage in 2012. Mr. Hine knew he had a potential claim in 2012 when he sent not one but two demand letters to Marchant. However, in 2012, Appellants failed to follow through with their threat of legal action against Respondents and are unable to point to any conduct by Respondents preventing their filing after the 2012 discovery of unrepaired termite damage. Instead, Appellants focus on their argument that the McCrorys covered up more extreme termite damage when they flipped the Property and the only way Appellants could have discovered the fraudulent conduct would have been through destructive testing. While the McCrorys' actions were, at best, a band aid employed to fix the underlying termite problem, their arguably deceptive acts are not the type of "extraordinary event" that would justify equitable tolling—particularly as the exercise of reasonable diligence would have revealed the extent of the termite problem as early as 2012.

Conclusion

For the foregoing reasons, the circuit court's order granting Respondents' motion for summary judgment is

AFFIRMED.

GEATHERS and MCDONALD, JJ., and HILL, A.J., concur.

The South Carolina Court of Appeals

John M. Hine and Maria W. Hine, Appellants,

v.

Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company, Respondents.

Appellate Case No. 2019-001375

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John D. Dean J.

Stephanie P. McDonald J.

D. Garrison A.J.

Columbia, South Carolina

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FILED
Aug 16 2023

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The Honorable Robin B. Stilwell

RECEIVED
Jun 29 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell
Circuit Court Judge

Appellate Case No. 2019-001375
Circuit Court Case No. 2018-CP-23-3382

John W. Hine and Maria W. Hine..... Appellants,

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PETITION FOR REHEARING

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INTRODUCTION

The panel should reconsider its decision because it has improperly usurped the jury's role in assessing whether the Hine Family's response to finding a minor amount of termite damage in one portion of their home in 2012 should bar subsequent claims arising out of other termite damage found in a different location in their home. The panel's decision limited the Hine Family to only two options when they discovered isolated termite damage in one part of their house: either (1) immediately sue the Respondents, or (2) undertake destructive testing of their home to figure out if there was additional termite damage anywhere else. But these options were unrealistic under the facts of this case, and the ruling is directly contrary to the very case law cited by the panel.

Any suit against the Respondents in 2012 would have been a magistrate's court-level claim, as the entirety of termite damage at issue then was only $4,000. What's more, that minor damage was entirely separate from the termite damage the Hine Family discovered in a different part of their home several years later that cost over $100,000 to repair. That later-discovered damage alone forms the basis of this suit. On this, the record is clear: "[T]his [damage in 2012] came and went, and this isn't part of the current litigation. . . . I am saying that I have found two separate instances of termite damage that were not contiguous." (R. p. 168.) In other words, even if the Hine Family had filed suit in 2012, this case would still be necessary.

Nor did the law require the Hine Family to selectively destroy other parts of their home in 2012 to figure out if the isolated termite damage actually existed anywhere else on their property. Instead, South Carolina jurisprudence has always held that discovery of damage in one location on property does ***not*** preclude subsequent claims for the exact same type of damage in other locations on the same property. (*See* Table *infra* on Page 5 (collecting cases).) The panel's decision, however, upends this established point of state law.

The Hine Family is asking for a jury to hear the evidence and assess whether they acted reasonably. Instead, Mr. and Mrs. Hine have been put out of court on claims arising out of damage discovered in 2018 because they did not bring a magistrate's court claim for other, unrelated damage in 2012.

The panel's decision stands alone within the state's jurisprudence. This case marks a full departure from a previously unbroken line of South Carolina case law requiring a jury—not a court—to assess whether a limitations period has expired for claims arising from property damage.

Worse, the Respondents had actual knowledge of the massive amount of termite damage that they intentionally concealed from the Hine Family, which should toll any conceivable limitations period. Such intentional deception is the paradigm for when a court should equitably toll a limitations period. But the panel not only rejected this legal doctrine's application here, it did so without a trial judge having the opportunity to hear all the evidence, assess witness credibility, and decide in the first instance whether equitable tolling should apply (assuming *arguendo* a jury found that the limitations period started running in 2012).

Because it is inconsistent with every prior decision from both this Court and the Supreme Court involving subsequent claims for property damage when damage of a similar type was previously discovered elsewhere on the property, the Hine Family respectfully requests that the Court reconsider its decision, reverse the order below, and remand this matter for a jury trial.

STATEMENT OF POINTS OVERLOOKED OR MISAPPREHENDED

1. Similar Damage Elsewhere Does Not Trigger a Limitations Period. The Court held that because both the 2012 situation and the 2018 situation involved termite damage, discovery of the former necessarily started the limitations period for the latter, even though the subsequent damage was "in another area of the home." (Op. at 7.) This has never been the law in South

Carolina. Instead, the law of this state requires a jury to decide whether the plaintiff's response to similar damage in a different location is sufficient to trigger a limitations period.

2. Premature Ruling on Equitable Tolling. The Court held that the limitations period could not be equitably tolled, but there has never been an evidentiary presentation on the issue. The Hine Family simply seeks an opportunity to present all evidence on this issue at trial. By holding equitable tolling inapplicable despite not having heard the evidence on this issue, the Court has prematurely decided this issue instead of leaving it to the trial court's determination at the close of all proof.

ARGUMENTS AND AUTHORITIES

I. South Carolina law entitles the Hine Family to a jury trial on the question of whether the limitations period has expired.

There is no dispute that the termite damage the Hines discovered in an upstairs corner bedroom in 2012 was isolated and relatively minor—approximately $4,000 of damage to their home. (R. p. 165.) There is also no dispute the Hines fully investigated that damage and found its outer boundaries to ensure they could fully remediate that problem. (*See* R. p. 169 ("[A]s they took down the wall in the bedroom upstairs, whatever we discovered, they repaired, and then when they stopped, you know, uncovering termite damage, they stopped tearing down the walls.").) And there is no dispute the termite damage they discovered in 2018 was "in another area of the home"—the panel acknowledged as much on Page 7 of its order.

Despite the coincidence of being a similar type of damage, awareness of the first damage did not put the Hine Family on notice of the later damage. A modest amount of damage contained in an upstairs corner bedroom is different from a massive amount of damage in the center of the basement.

In South Carolina, if there is any doubt as to whether awareness of a prior problem is sufficient to put a plaintiff on notice of a subsequent problem, a jury must resolve the reasonableness of the plaintiff's actions after hearing a fully evidentiary presentation. In fact, South Carolina case law is replete with on-point examples that match this case's exact fact pattern: a plaintiff discovers a type of damage on one part of his or her property but does not sue within three years, but then subsequently discovers a similar type of damage on a different part of the property and brings suit. Before this case, this Court and the Supreme Court had always confirmed that the reasonableness of the plaintiff's response to discovering the first damage was for the jury to decide:

Table of South Carolina Cases Assessing When the Limitations Period Begins Running for Claims Involving Property Damage that is Similar to Previously-Discovered Damage on Following Page

Table: Cases Involving Claims for Property Damages Similar to Previously-Discovered Damage

Case	Type of Property Damage	New Damage in Different Location from Earlier Damage?	Limitations Period is a Jury Question?
Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., 435 S.C. 176, 866 S.E.2d 577 (2021)	damage caused by water intrusion	Yes	Yes
Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996)	crack in building façade	No	No
Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989), *vacated in unrelated part by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 559, 462 S.E.2d 858, 860 (1995)	cracked silos	Yes	Yes
Allwin v. Russ Cooper Assocs., 426 S.C. 1, 825 S.E.2d 707 (Ct. App. 2019)	water damage caused by defective roof and roof design	No	No
Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 708 S.E.2d 787 (Ct. App. 2011)	damage caused by water intrusion	Yes	Yes
Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998)	excessive moisture under house	No	No
This Case	termite damage	***Yes***	***No***

The fact that the damage occurred in a different location has always been the distinguishing, dispositive fact within this line of cases. *Dean*, *Allwin*, and *Barr* all highlighted this exact point when holding that a jury was not required to resolve questions involving the discovery rule. *See Dean*, 321 S.C. at 364–65, 468 S.E.2d at 647 (explaining that the claim was time-barred because the damage was in "the same location and of the same nature as the original harm"); *Allwin*, 426 S.C. at 19–20, 825 S.E.2d at 717 (holding that a claim was time-barred and distinguishing *Holly Woods Association* by explaining that the damages in that case "involved a different location within the neighborhood"); *Barr*, 330 S.C. at 642–45, 500 S.E.2d at 158–60 (explaining that a series of annual reports previously put the plaintiffs on notice of problems "under the house," so a subsequent suit filed for damage "under the house" was untimely).

Respectfully, the panel's decision here disregarded the controlling effect of these authorities. In so doing, it incorrectly equated this case with *Dean* and held that the Supreme Court "rejected a similar 'two distinct harms' argument in *Dean*" (Op. at 7), but the cases are fundamentally different ***according to the panel's own review of the facts***.

In *Dean*, the plaintiff noticed a crack in the façade of her building in 1984, but then sued in 1991 to recover for damages associated with that same harm. 321 S.C. at 362, 468 S.E.2d 646–47. Ms. Dean argued that the harm had worsened through the years, and the limitations period should have started in 1985 when the crack turned into bulges and the building began to buckle. The Supreme Court rejected that argument and held the claim untimely under the then-existing six-year limitations period.

The fact that the harms occurred in the exact same spot was controlling. As the *Dean* Court recited: "In August 1985, Dean noticed that the original crack had expanded and the façade of the building as bulging and buckling ***at the location of the original crack***." *Id.* (emphasis added). And

because the damages were traceable to the original damage, Ms. Dean had been on notice of the harm since 1984, rendering her claim untimely:

> Moreover, Dean acknowledged that the initial crack appeared in the right front corner of the building and that the subsequent enlargement of the crack and bulging of bricks ***appeared in the same location***. We find this case distinguishable from *Benton* [*v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537 (1994),] in that the resulting harm to Dean's building in 1985—enlarged crack and bulging bricks—by being ***in the same location***, and of the same nature as the original harm, evolved from Ruscon's 1984 pile driving activities. Therefore, because the subsequent harm was not separate and distinguishable, it was discoverable in 1984.

Id. at 364–65, 468 S.E.2d at 647 (emphasis added).

The facts in this case are obviously different, and the panel even said so: "Here, Appellants discovered a relatively minor amount of unrepaired termite damage in 2012, and six years later discovered more significant unrepaired termite damage ***in another area of the home***." (Op. at 7 (emphasis added).) There is no way to square the panel's recognition that the Hine Family is not suing for the same damage it discovered in 2012 with the panel's reliance on *Dean*. *Dean* unquestionably requires reversal and remand here.[1]

Nor is *Dean* an isolated case or an outlier on this issue. In fact, the panel's decision breaks with every other on-point South Carolina case identified in the chart on the preceding pages.

For instance, in *Santee Portland Cement*, the Supreme Court reversed a trial court's application of a limitations period to claims arising out of a collapsed silo. There, a crack appeared in the cement of "Bin #12" in 1969 and again in 1975, which the plaintiff repaired, characterizing

[1] This outcome is especially so in light of the fact that the Hine Family is entitled to every reasonable inference at this stage of litigation. *See, e.g.*, *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009) ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.").

the cracks as "relatively minor in nature." 299 S.C. at 270, 384 S.E.2d at 693–94. Later, in 1980, Bin #13 "ruptured causing extensive damage." *Id.*

When the plaintiff sued its contractor to recover *inter alia* "loss of capacity and the cost of construction to correct the remaining silos," the trial court held the claim was time-barred due to the plaintiff's awareness of cracks in Bin #12 in 1969 and 1975. *Id.* at 271, 384 S.E.2d at 694. The Supreme Court reversed, holding the repairs for Bin #12 "were characterized as relatively small" and the problems with Bin #13 were "not detectable" because the defective issues "were inside the concrete walls." *Id.* at 274, 384 S.E.2d at 696. Instead of rigidly applying the statute of limitations, the "reasonableness of [the plaintiff's] actions" in response to identifying the cracks in Bin #12 "was an issue to be decided by the jury." *Id.*

This is exactly the same fact-pattern as the Hine Family experienced: they discovered a relatively small amount of termite damage in one part of their house, while the bigger issues were in a totally separate part of their home and hidden behind sheetrock. There is no dispute that the harms that form the basis of this litigation are different from the termite damage discovered in 2012, and there is nothing that required the Hine Family to completely demolish the interior of their home in 2012 to see if there may be other termite damage anywhere else in the house. And if there is any doubt on the point, it becomes a "jury question as to whether it was reasonable for the homeowners to know, or by reasonable diligence discover, there were issues with their construction." *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co.*, 425 S.C. 268, 275–76, 821 S.E.2d 504, 508 (Ct. App. 2018), *aff'd* 435 S.C. 176, 866 S.E.2d 577 (2021); *see also id.* (explaining that whether the plaintiffs should have undertaken "destructive testing" was for the jury to decide).

Because the panel improperly assumed the jury's role in determining that the Hine Family should have done more in 2012 to discover termite damage in other places within the house, the Hine Family respectfully requests that the Court reconsider the panel's decision; reverse the summary judgment ruling; and remand this case for trial consistent with *Dean*, *Santee Portland Cement*, and the rest of South Carolina jurisprudence that requires a trial under these facts.

II. The Court should not make a determination regarding equitable tolling without a complete factual record developed at a trial.

The Hine Family presented an alternative argument that the statute of limitations should be equitably tolled due to the Respondents' active deception. In rejecting this argument, the panel decided for itself that the Hines "have not shown the existence of any extraordinary circumstance preventing them from filing a lawsuit within three years after discovering the caulking and termite damage in 2012." (Op. at 9.) But this statement reflects several errors by the panel that should be revisited and reconsidered.

First, as discussed at length above, the 2012 damage has nothing to do with this case. As a matter of law—as established by *Dean* in particular—the 2012 damage is irrelevant to the claims in this case. Accordingly, it cannot possibly serve as the basis for rejecting an equitable argument.

Second, the panel faults the Hine Family for not "exercis[ing] reasonable diligence" after discovering the (irrelevant) 2012 damage. (Op. at 9.) But the reasonableness of the Hines' conduct upon discovering the earlier damage (in a different part of their home) is a question for the jury upon a full factual record. *E.g.*, *Stoneledge at Lake Keowee Owners' Ass'n*, 425 S.C. at 275–76, 821 S.E.2d at 508.

Third, the panel presents an incomplete statement as to when a court may equitably toll a statute of limitations. The panel's decision indicates that this equitable theory is only available

when a plaintiff is actively prevented from filing suit because of an "extraordinary event." (Op. at 9.) But this doctrine is not so limited.

The Supreme Court has been clear: "Equitable tolling may be applied where it is justified under all the circumstances." *Hooper v. Ebenezer Senior Servs. & Rehabilitation Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). And it has identified exactly the situation presented here as a paradigm for equitable tolling: "Deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations." *Doe v. Bishop of Charleston*, 407 S.C. 128, 140, 754 S.E.2d 494, 500–01 (2014).

The facts here readily meet the *Doe* standard, as the McCrory brothers deceptively used fresh lumber to hold together a badly-damaged house frame and then hid their deception behind sheetrock. (R. p. 70.) Enforcing the statute of limitations against the Hine Family under these circumstances only rewards the skill of their deception; if the McCrory brothers had been sloppier in hiding their patchwork behind sheetrock, then perhaps the Hines could have spotted the problem much earlier. That is the precisely the reason why equitable tolling exists. *See Hooper*, 386 S.C. at 115, 687 S.E.2d at 32 ("Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it."). The panel's decision should be reversed on this basis alone.

But if the Court is disinclined to affirmatively invoke the doctrine at this point, it should defer to a trial judge to decide this equitable issue after hearing all evidence and assessing witness credibility—and that analysis only happens if a jury first decides the Hines triggered the discovery rule about termite damage downstairs in the center of their house when they earlier discovered termite damage upstairs in a corner of their house.

* * * * *

At bottom, the panel wrongly pegged the equitable tolling analysis to legally irrelevant information from 2012; it wrongly took from the jury the question of whether the Hine Family exercised "reasonable diligence" when it discovered termite damage in 2012 that is unrelated to the claims in this case; and it wrongly restricted the circumstances under which the equitable doctrine can be applied. Accordingly, the Hine Family respectfully requests that the Court reconsider this portion of its decision and either hold that the doctrine is applicable here or, alternatively, remand the issue to the circuit court to resolve at trial.

CONCLUSION

Just as termite damage in a leg of counsel's table in Courtroom I at the Court of Appeals would obviously be different from termite damage in the entire dais of Courtroom II, and just as a small crack in Santee's Bin #12 was different from a catastrophic defect in Bin #13, so too it is for the Hine Family. As a matter of established South Carolina law, the family's discovery of termite damage in a remote corner of one part of their house in 2012 did not trigger the statute of limitations on claims arising out of termite damage elsewhere in their house. And if there is any doubt on the point, it is for the jury to resolve at trial, not a judge in a summary judgment setting.

Because the panel's decision breaks with long-settled South Carolina law, the Hine Family respectfully moves for rehearing.

Signature Page Attached

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, Attorneys for Appellants, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by emailing a copy of the same to the following address(es):

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