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
Court of Appeals 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.

PETITION FOR WRIT OF CERTIORARI

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Columbia, South Carolina
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CERTIFICATION OF COUNSEL

Counsel for Mr. and Mrs. Hine certifies that they timely filed a petition for rehearing before the South Carolina Court of Appeals on June 29, 2023. (Appx. 375.) The Court of Appeals denied that petition on August 16, 2023. (Appx. 373.)

QUESTIONS PRESENTED FOR REVIEW

In 2018, Mr. and Mrs. Hine sued the defendants for fraudulently concealing approximately $100,000 of termite damage in the foundation of their house, and they filed suit just four months after discovering that massive amount of damage. At summary judgment, the trial court held the statute of limitations barred their claims because, in 2012, the Hines found a much smaller and unrelated amount of termite damage in a different part of the house. The Court of Appeals affirmed, but it acknowledged that the earlier damage was "in another area of the home" and was not the basis of this case. (Appx. 370.)

Respectfully, the Court of Appeals's decision is directly at odds with long-settled South Carolina law, including at least six prior on-point appellate decisions. It raises two issues for this Court's consideration:

1. Statute of Limitations is for the Jury. Was it error not to let a jury decide whether Mr. and Mrs. Hine should have reasonably known, or through reasonable diligence should have discovered, the existence of the property damage on which this suit is based?

2. Equitable Tolling Based on All Evidence. Was it error to hold that the statute of limitations was not equitably tolled when the facts on which the lawsuit is based were fraudulently concealed from the Hines Family, and to make such a ruling without the benefit of a trial and a full presentation of the facts?

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. (Appx. 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. (Appx. 96–99; Residential Property Condition Disclosure Statement.)

Timothy McCrory is also a realtor, and he was the listing agent for this home. (Appx. 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 and Petitioners 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. (Appx. 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. (Appx. 70; First Am. Compl. ¶ 17.) The sales price was $175,000. (Appx. 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. (Appx. 155; Letter from Mr. Hine (May 14, 2012); Appx. 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. (Appx. 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. (Appx. 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.) In other words, no one else could have possibly concealed the damage; the wood used to sister the termite-destroyed studs together had not existed until the McCrory brothers purchased the house in order to flip it.

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.

Within four months of discovering this fraud, 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. (Appx. 12.) 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. (Appx. 68.)

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. (Appx. 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. (Appx. 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. (Appx. 6; Order at 4.) This is wrong as a matter of well-established South Carolina law.

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. (Appx. 240; Mot. to Alter or Amend; Appx. 10; Order Denying Plaintiffs' Motion to Alter or Amend.)

V. The Court of Appeals conceded that the damage on which this case is based was in a different part of the house from the previously-discovered termite damage, yet it broke with South Carolina law on this point and affirmed summary judgment.

The Hine Family noticed this appeal on August 13, 2019. (Appx. 266.) The Court of Appeals held oral argument on September 12, 2022, and it affirmed summary judgment on June

14, 2023. (Appx. 364.) In that opinion, the Court of Appeals held that the statute of limitations began running in 2012 even though the damage discovered then was "relatively minor" and was "in another area of the home." (Appx. 370.)

This is not the law in South Carolina. In this state, when damage is discovered in two different places on the same property, a jury is required to decide whether the plaintiff acted reasonably when not suing within the limitations period of the initial discovery, and the Hine Family cited numerous cases to this effect in their briefing. The Court of Appeals set aside that entire body of case law in a footnote, stating that all of those cases are "distinguishable." (Appx. 370–71 n.6.) Notably, it did not provide any explanation as to how those cases are "distinguishable"; indeed, they are not, as discussed below.

The Hine Family filed a petition for rehearing on June 29, 2023. (Appx. 375.) The Court of Appeals denied that petition on August 16, 2023. (Appx. 373.) This Petition follows.

ARGUMENT

I. The Court of Appeals's decision is squarely inconsistent with an unbroken line of decisions from this Court and the Court of Appeals regarding the jury's role in evaluating a limitations period.

Rule 242(b), SCACR, indicates this Court considers whether "the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court" when evaluating a certiorari request. This case falls immediately within this guideline and is a prototypical case for review by this Court.

Undisputed Facts. 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. (Appx. 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*

Appx. 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 Court of Appeals 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 obviously different from a massive amount of damage in the center of the basement. The fact that the location of the first damage is different from the location of the damage on which the suit is based has always been dispositive—until this case.

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, South Carolina law repeatedly confirmed that the reasonableness of a plaintiff's response to discovering the first damage was for the jury to decide if, as here, the damage on which the suit is based was in a different location.

Damage in Different Locations: Resolved by a Jury. If the two instances of damage were in different locations, whether the limitations period expired was an issue for the jury. *See, e.g.*, *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co.*, 435 S.C. 176, 177, 866 S.E.2d 577, 578 (2021) (holding that limitations is a jury question when damages caused by water

intrusion were in a different location on the property from previously discovered water intrusion); *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 274, 384 S.E.2d 693, 696 (1989) (holding that limitations is a jury question when a crack in a silo on which the case was based was in a different location than a previously discovered crack in a different silo, and concluding "[a]ll of the evidence introduced went to the reasonableness of Santee's actions, which 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); *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 damages the Association claimed in 2005 [regarding water problems on the property] were different from those it experienced in the past [in other locations on the property].").

Damage in Same Location: Resolved by the Court. On the other hand, if the two instances of damage were in the same location, the question could be resolved by a court at summary judgment or directed verdict. *See, e.g.*, *Dean v. Ruscon Corp.*, 321 S.C. 360, 364–65, 468 S.E.2d 645, 647 (1996) (holding that the limitations period was not for a jury to resolve because "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" and therefore had notice sufficient to file suit within the limitations period); *Allwin v. Russ Cooper Assocs.*, 426 S.C. 1, 20, 825 S.E.2d 707, 717 (Ct. App. 2019) (holding that the limitations period had expired as a matter of law because "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"); *Barr v. City of Rock Hill*, 330 S.C. 640, 645–46, 500 S.E.2d 157, 160 (Ct. App. 1998) (affirming expiration of limitations period because the plaintiffs

were suing for property damage that were specifically made known for several years through inspection reports).

This case breaks with this longstanding line of case law and stands alone in South Carolina jurisprudence. It is the only time that a judge has been allowed to take from the jury the question of whether a plaintiff acted reasonably in response to observing damage in one part of its property, but then later suing for damage elsewhere on the property:

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 (2021)	damage caused by water intrusion	Yes	Yes
Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269 (1989)	cracked silos	Yes	Yes
Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172 (Ct. App. 2011)	damage caused by water intrusion	Yes	Yes
Allwin v. Russ Cooper Assocs., 426 S.C. 1 (Ct. App. 2019)	water damage caused by defective roof and roof design	No	No
Dean v. Ruscon Corp., 321 S.C. 360 (1996)	crack in building façade	No	No
Barr v. City of Rock Hill, 330 S.C. 640 (Ct. App. 1998)	excessive moisture under house	No	No
This Case	***termite damage***	***Yes***	***No***

Nor is this a novel understanding of this line of authority. 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 Court of Appeals's decision here disregarded the controlling effect of these authorities. In so doing, it incorrectly equated this case with *Dean* and held that this Court "rejected a similar 'two distinct harms' argument in *Dean*" (Appx. 370), 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. This 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 Court of Appeals 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***." (Appx. 370 (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]

Dean is not an isolated case or an outlier on this issue. In fact, the Court of Appeals'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

[1] This outcome is especially so in light of the fact that the Hine Family is entitled to every reasonable inference that it was not on notice of the damages at issue in this case, as the Respondents were summary judgment movants below. *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.").

appeared in the cement of "Bin #12" in 1969 and again in 1975, which the plaintiff repaired, characterizing 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. This 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 Court of Appeals 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 grant this Petition, reverse the decisions below; 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 lower courts wrongly ignored this Court's standard for equitably tolling a statute of limitations in the face of deceptive behavior by a defendant.

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 Court of Appeals 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." (Appx. 372.) But this statement reflects several errors by the Court of Appeals that should be reviewed and vacated.

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 Court of Appeals faulted the Hine Family for not "exercis[ing] reasonable diligence" after discovering the (irrelevant) 2012 damage. (Appx. 372.) 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 Court of Appeals presented an incomplete statement as to when a court may equitably toll a statute of limitations. Its decision indicated that this equitable theory is only

available when a plaintiff is actively prevented from filing suit because of an "extraordinary event." (Appx. 372.) But the doctrine is not so limited.

This 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. (Appx. 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 Court of Appeals'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—"all the circumstances," as the *Hooper* Court put it. 386 S.C. at 117, 687 S.E.2d at 33. 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 Court of Appeals 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, breaking from this Court's precedent in doing so. Accordingly, the Hine Family respectfully requests that the Court review the Court of Appeals's ruling regarding equitable tolling and either hold that the doctrine is applicable here or, alternatively, remand the issue to the circuit court to resolve at trial after considering "all the circumstances," including the "[d]eliberate acts of deception" by the McCrory Brothers. *Hooper*, 386 S.C. at 117, 687 S.E.2d at 33; *Doe*, 407 S.C. at 140, 754 S.E.2d at 500–01.

CONCLUSION

The Court of Appeals's decision breaks with established South Carolina law and 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 Court of Appeals.

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." (Appx. 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.

The Court of Appeals's decision upends this established point of state law and 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, it rewards the McCrory Brothers for excelling in their deception—the exact opposite outcome contemplated by this Court's jurisprudence regarding equitable tolling of a limitations period.

Because it is inconsistent with every prior decision from both this Court and the Court of Appeals 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 issue a writ of certiorari, reverse the decision below, and remand this matter for a jury trial.

Respectfully submitted,

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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 emailing a copy of the same to the following address(es):

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