



contribution, and breach of warranty claims. This Motion followed.

### LEGAL STANDARD

Under Rule 56 of the South Carolina Rules of Civil Procedure, the judgment sought by the moving party “shall be rendered forthwith 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 a judgment as a matter of law.” Rule 56(c), SCRPC. The rule further provides that “[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRPC.

“In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.” Gilmer v. Martin, 323 S.C. 154, 156, 473 S.E.2d 812, 813 (Ct. App. 1996). It is not sufficient, however, that a non-moving party creates an inference that is not reasonable or raises an issue of fact that is not genuine. Evans v. Stewart, 370 S.C. 522, 636 S.E.2d 632, 635 (Ct. App. 2006). “To justify departure from the course of the trial of an issue of fact and the award of summary judgment, the court must be convinced that the issue is not genuine but feigned and that there is in truth nothing to be tried. . . . The fact that there is a factual dispute is not enough to preclude a summary judgment.” Saluda Motor Lines, Inc. v. Crouch, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct. App. 1989) (quoting 73 Am. Jur. 2d Summary Judgment § 27). “The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” Etheredge v. Richland School Dist. I, 330 S.C. 447, 453, 499 S.E.2d 238 (Ct. App. 1998).

### ANALYSIS

Defendant contends that he is entitled to summary judgment as Defendant's claims are primarily barred by the three-year statute of limitations applicable to this case. S.C. Code Ann. § 15-3-520 et. seq. The Court agrees. Plaintiff initially brought negligence, equitable indemnity, and contribution claims against the Defendant on October 24, 2019. At that point, Defendant was identified as the framer for the residence in a case primarily defined by alleged framing deficiencies. Defendant appeared and defended this case for over three years before the Smiths settled their claims with Plaintiff on November 18, 2022. At that time, all damage claims arising from defective construction against the Defendant had expired under the three-year statute of limitations, and Plaintiff concedes that any claims asserted by any other party would have expired. Aff. of David A. Brown, p. 4. Additionally, Defendant purchased the home as part of its settlement with the Smiths with notice of the alleged defects it had been defending since 2019. Thus, when Plaintiff amended its pleadings on August 21, 2023, any claims that could have been assigned or arisen from Defendant's alleged construction work were extinguished.

With regard to Plaintiff's contractual indemnity claim, no contract has been produced in opposition to Defendant's Motion establishing an indemnity agreement between the parties. Additionally, Plaintiff's contribution claim is improper as the settlement agreement it reached with the Smiths specifically did not extinguish Defendant's liability, which, as discussed previously, had already expired under the statute of limitations. Def. Mot. for Summary Judgment – Exhibit A. Finally, Plaintiff concedes its role in constructing the subject residence and responsibility as a joint tortfeasor in its representative affidavit provided to the Court. Aff. of David A. Brown, pp. 1-4. Such explicitly bars any claim for equitable indemnity, which would require Plaintiff to be fault-free with regard to the Smiths' claims against it. Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 24, 301 S.E.2d 552, 553 (1983).

For the above-stated reasons, Defendant's liability for defective construction arising from work performed at the Smith residence expired prior to Plaintiff's settlement with the Smiths on November 22, 2022. As such, the Court **GRANTS** Defendant's Motion for Summary Judgment as to Plaintiff's negligence and breach of warranty claims. As Plaintiff has produced no contract in opposition to Defendant's Motion, the Court **GRANTS** such Motion as to Plaintiff's breach of contract and contractual indemnity claims. Finally, the Court finds that Plaintiff is not fault-free by admission in its representative affidavit, and the Court **GRANTS** Defendant's Motion as to Plaintiff's equitable indemnity claim.

As all other claims between the parties to this action have otherwise been dismissed or settled, this case is therefore ended.

**IT IS SO ORDERED!**

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The Honorable William H. Seals, Jr.  
Chief Administrative Judge  
Fifteenth Judicial Circuit

Conway, South Carolina  
March \_\_, 2024



Horry Common Pleas

**Case Caption:** Waterfall Investment And Construction Group LLC , plaintiff, et al VS  
James Daniel Smith Sr , defendant, et al  
**Case Number:** 2019CP2603604  
**Type:** Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157