STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2023-CP-23-01626
A.R. Foods, Inc. Plaintiff,	)	
v.	)	**ORDER GRANTING DEFENDANT CAROLINA SOUTH SHORE CONSTRUCTION, INC.'S MOTION FOR SUMMARY JUDGMENT**
Carolina South Shore Construction, Inc., Abri Design Studio, Inc., and Ray Group Consulting Engineers, Inc. Defendant.	)	

I. Introduction

This matter came before me for a hearing on August 6, 2024, on Defendant Carolina South Shore Construction, Inc.'s Motion for Summary as to Plaintiff's claims. The Plaintiff, A.R. Foods, Inc. ("Plaintiff" or "A.R. Foods"), was represented by attorney Kathryn Harden. Defendant Carolina South Shore Construction ("CSSC") was represented by attorney John Harjehausen.

I have carefully considered the pleadings, motion, memoranda, exhibits, the arguments of counsel, and other matters properly before the Court. Based on all of the foregoing, I make the following findings of fact and conclusions of law:

II. Procedural and Factual Background

This case arises out of the alleged improper design or installation of HVAC ducts during the upfit of a retail property located at 1818 Augusta Street in Greenville, South Carolina. A.R. Foods filed a complaint with the Greenville County Magistrate Court on December 27, 2021. A.R. Foods alleges that it contracted with Abri Design Studio, Inc. ("ADS") and Ray Group Consulting Engineers, Inc. (RGCE") to prepare and provide drawings regarding an HVAC system to be installed at the Property. It further alleges that it contracted with the defendant, CSSC, to install

the HVAC ductwork. A.R. Foods alleges that the HVAC system allegedly malfunctioned and it was subsequently discovered that the HVAC system was installed improperly. According to A.R. Foods, a two (2) ton unit was installed where a four (4) ton unit should have been installed and the ductwork was undersized for the four (4) ton unit which caused the system to freeze up. The plaintiff has also asserted claims against ADS and RGCE which prepared the Design and Drawings because CSSC contends the Design and Drawings were incorrect. A.R. Foods asserted claims against all of the defendants for (1) breach of contract; (2) negligence/gross negligence; and (3) breach of warranty. This case was removed to the Circuit Court on April 4, 2023, on the basis that A.R. Foods' damages exceed $7,500.

CSSC contends that it installed the ductwork pursuant to ADS and RGCE's design and, after it was discovered the design and drawings were flawed, a subsequent plan was prepared modifying and correcting the size of the ductwork going to the respective units. The repair work was completed by a different HVAC contractor.

CSSC seeks summary judgment on the basis there is no evidence that performed its work contrary to the original drawings prepared by ADS and RGCE. It claims there is no evidence of actionable negligence by CSSC, a breach of any contractual requirement, violation of any building or mechanical code, industry standard, or manufacturer's installation instruction. It further asserts that summary judgment is appropriate because there is no evidence A.R. Foods sustained any damages proximately caused by CSSC.

III. Analysis

Summary judgment is warranted "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),

SCRCP. "Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." NationsBank v. Scott Farm, 320 S.C. 299, 302-03, 465 S.E.2d 98, 100 (Ct. App. 1995). "When a party makes no factual showing in opposition to a motion for summary judgment, the trial 'court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as matter of law.'" S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 189, 322 S.E.2d 453, 457 (Ct. App. 1984). "[T]o resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." NationsBank, 320 S.C. at 303, 465 S.E.2d at 100; see also Rule 56(e), SCRCP ("When 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. If he does not so respond, summary judgment, if appropriate, shall be entered against him.").

"The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." S. Glass & Plastics Co. v. Kemper, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012).

To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). Negligence is not actionable unless it is a proximate cause of the injury. Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980). Proximate cause requires proof of both causation in fact and legal cause. Oliver v. S.C. Dep't of Highways and Public Transportation, 309 S.C. 313, 422 S.E.2d 128 (1992). Causation in fact is proved by establishing the injury would

not have occurred "but for" the defendant's negligence. Id. Legal cause is proved by establishing foreseeability. Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994).

A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner. Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989).

CSSC argues that expert testimony is required to support A.R. Foods' claims. More specifically, CSSC argues that A.R. Foods has alleged the Design and Drawings were defective and it has asserted claims against ADS and RGCE. RGCE is apparently an engineering company. See S.C. Code Ann § 15-36-100 (requiring an affidavit related to certain professional negligence claims). According to CSSC, expert testimony is necessary to support A.R. Foods claims that an installation defect exists and proximately caused A.R. Foods' claimed damages, as opposed to a drawing or design flaw, or some other cause such as a defective component from a manufacturer. The Court agrees. "The general rule in South Carolina is that where a subject is beyond the common knowledge of the jury, expert testimony is required." Babb v. Lee Cnty Landfill SC, LLC, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013).

CSSC asserts that A.R. Foods has not presented any evidence that it was negligent or breached a contractual requirement or warranty. In support of its motion, CSSC presented deposition testimony from the SCRCP 30(b)(6) deposition of A.R. Foods. Witness Turner Hill was designated to testify on behalf of the company. Mr. Hill testified that he did not have any construction training, experience or background in the HVAC or mechanical engineering industries. Further, he held no construction licenses. Mr. Hill did not know if A.R. Foods had a contract with CSSC. Mr. Hill testified the building at issue was owned by Hotzfam Trust, which acts as the landlord. He did not know who called the repair company which fixed the HVAC system. Mr. Hill testified that A.R. Foods had no

knowledge of anyone who would testify that CSSC breached a standard of care related to its work. Furthermore, Mr. Hill testified that he did not know the damages being claimed by A.R. Foods. When asked explicitly as to what CSSC did wrong, Mr. Hill testified:

> Q. Mr. Hill, on behalf of A.R. Foods what did my client, Carolina South Shore Construction, do wrong.
>
> A. I don't know.

A.R. Foods argued at the hearing that invoices existed related to the work that was undertaken to repair the HVAC system. However, the Court find a lack of any evidence in the record that the repairs were necessitated or proximately caused by any breach of duty, contract, or warranty by CSSC. See Snow v. City of Columbia, 305 S.C. 544, n. 7, 409 S.E.2d 797, n. 7 (Ct.App.1991) (noting that South Carolina does not recognize the rule of res ipsa loquitur).

A.R. Foods moves the court to permit additional evidence to be obtained under South Carolina Rule of Civil Procedure 56(f). It asserts that it is in the process of obtaining an expert and plans to depose the defendants and, therefore, summary judgment is premature because it would be deprived of a full and fair opportunity to conduct discovery. In support of the motion A.R. Foods submitted the affidavit of attorney John Crawford. However, the record indicates that A.R. Foods had a fair opportunity to conduct discovery and to consult or identify an expert witness prior to the hearing on the motion for summary judgment. A.R. Foods' complaint was filed in Magistrate Court on December 27, 2021. Pursuant to a motion from A.R. Foods this case was transferred to the Circuit Court on April 4, 2023. Thereafter, the parties exchanged written discovery and CSSC completed the deposition of A.R. Foods on January 15, 2024. The Court notes that a dormant file notice was issued on February 12, 2024, and subsequently A.R. Foods indicated that the case was active and the parties were exchanging discovery and completing depositions. CSSC filed its motion for summary judgment on May 3, 2024, stating the basis for its motion. Thereafter, A.R. Foods had several months

to complete additional discovery if it deemed it necessary, or to retain and identify an expert. A.R. Foods' motion to permit additional evidence was not filed until August 5, 2024. Under the circumstances, the Court finds the affidavit submitted by A.R. Foods did not set forth reasons it could not present facts essential to justify its opposition to the motion for summary judgment at the time of the hearing. Accordingly, the Court concludes A.R. Foods had a full and fair opportunity to conduct discovery and summary judgment is not premature. Therefore, A.R. Foods' motion to permit additional evidence pursuant to SCRCP 56(f) is denied. See Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) (rejecting argument that summary judgment was premature and finding respondents had full and fair opportunity for discovery); Middleborough Horiz. Property Regime Council of Co–Owners v. Montedison S.p.A., 320 S.C. 470, 479–80, 465 S.E.2d 765, 771 (Ct.App.1995) (affirming summary judgment where appellants "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment").

IV. Conclusion

The Court find that A.R. Foods has failed to raise a material issue of fact that Carolina South Shore Construction breached a duty of care, contract, or warranty proximately causing A.R. Foods' claimed damages. Therefore, defendant Carolina South Shore Construction's Motion for Summary Judgment is hereby GRANTED. Further, the Court finds A.R. Foods had a full and fair opportunity to conduct discovery and, therefore, Plaintiff's Motion to Permit Additional Evidence to be Obtained Under Rule 56(f) is hereby DENIED.

IT IS SO ORDERED.

Greenville Common Pleas

Case Caption: Ar Foods Inc vs. Carolina South Shore Construction Inc

Case Number: 2023CP2301626

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.