

STATE OF SOUTH CAROLINA)
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COUNTY OF GREENVILLE)
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Steven Maness)
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Plaintiff,)
)
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vs.)
)
Gunter Heating & Air/Teddy L. Gunter,)
State Farm Fire and Casualty Co.,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2021-CP-23-04620

**ORDER GRANTING DEFENDANTS
GUNTER HEATING & AIR AND TEDDY
L. GUNTER'S MOTION FOR
SUMMARY JUDGMENT**

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SC Court of Appeals

This matter came before the court for hearing on September 6, 2024 on Defendants, Gunter Heating & Air, LLC and Teddy L. Gunter, ("Defendants") Motion for Summary Judgment on Plaintiff's claims for negligence.

After considering the pleadings, memoranda of law and exhibits, as well as the arguments of the parties presented at the hearing, this Court finds Summary Judgment is proper, as Plaintiff's Complaint is barred by the applicable eight-year statute of repose, *S.C. Code Ann.* §15-3-640 and also barred by Statute of Limitations, *S.C. Code Ann.* § 15-3-530.

FINDINGS OF FACT

This case arose from the construction of Plaintiff's residence located at 305 Kilgore Farms Circle, Simpsonville, South Carolina. Plaintiff filed suit against Defendants on September 24, 2021. Per Plaintiff's Complaint, this was a new construction project completed on or about December 2005 with the residential builder/general contractor Hogan Builders serving as general contractor. Defendants were a first-tier mechanical subcontractor to Hogan Builders and installed the HVAC system, including the related ductwork. The Court reviewed the records from Greenville County wherein the mechanical building inspection occurred and was approved on

December 7, 2005, and where the final building inspection for the home occurred and was approved on December 12, 2005. Plaintiff did not dispute these dates of completion.

Plaintiff's Complaint alleged that on September 25, 2018, nearly 13 years after the completion of construction, the "lower-level unit suddenly presented as completely engulfed in water including all duct work and at least seventeen points of connection with the house." The prayer of Plaintiff's Complaint contained a single cause of action for simple negligence against Defendants.

The Court also reviewed documents related to Plaintiff's prior lawsuit against Hogan Builders, C.A. No. 2008-CV-23-10801415 (appealed to the Greenville Court of Common Pleas, 2010-CP-23-173). Documents from that prior action included pleadings, portions of transcripts from the non-jury trial, exhibits from that trial, and the Order of Judgment from Magistrate Robert F. Simms. Those materials revealed that Plaintiff had filed a prior lawsuit against Hogan Builders citing numerous construction defects related to his residence. Those alleged defects included numerous items, including the HVAC ductwork.

Finally, the Court also reviewed documents from water-related claims made by the Plaintiff in 2008 and 2009. Documents and pictures from these claims indicated that Defendant's work was exposed and potentially modified as a result of those claims.

CONCLUSIONS OF LAW

Summary Judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *SCRCP*. 56(c) All evidence must be viewed in the light most favorable to the nonmoving party, and all reasonable inferences resolved in the same manner. *Standard Fire Ins. Co. v. Marine Contracting & Towing Co.*, 301

S.C. 418, 392 S.E.2d 460 (1990). For the reasons set forth below, summary judgment in favor of Defendants is appropriate.

A. Statute of Repose

The South Carolina Statute of Repose dictates that a Plaintiff may not bring actions to recover damages arising out of the defective or unsafe condition of an improvement to real property more than eight (8) years after substantial completion of the improvement. *See S.C. Code Ann.* § 15-3-640 (2005). Per the statute, a Certificate of Occupancy issued by a county or municipality, in the case of new construction...shall constitute proof of substantial completion of the improvement under the statute. An action based upon or arising out of the defective condition of an improvement to real property includes, inter alia:

- (2) an action to recover damages for the negligent construction or repair of an improvement to real property;
- (3) an action to recover damages for personal injury, death, or damage to property;
- (4) an action to recover damages for economic or monetary loss;
- (5) an action in contract or in tort or otherwise; [and]

- (9) an action...against any person...who performs or furnishes the design, plans, specifications, surveying, planning, supervision, testing, or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property. *Id.*

A statute of repose represents “an absolute time limit beyond which liability no longer exists.” *Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 243 (1993) (quoting *First United Methodist Church v. United States Gypsum Co.*, 882 F.2d 862, 865-66 (4th Cir. 1989)). The

statute's purpose "is to provide a substantive right to developers to be free from liability after a certain time period." *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 182, 708 S.E.2d 787, 793 (Ct. App. 2011). "When causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission." *Langley* at 404. Further, "statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time-limit beyond which liability no longer exists." *Id.*

In the present case, Defendants submitted copies of final building inspections and approvals from Greenville County that were dated, at the latest, December 12, 2005. Plaintiff did not dispute this completion date. Therefore, the end date for the Statute of Repose for Plaintiff's residence was December 12, 2013. However, Plaintiff did not file suit against Defendant in the present case until September 24, 2021, nearly eight (8) years after this end date. In short, the Statute of Repose bars Plaintiff's claims for simple negligence.

B. Statute of Limitations

Plaintiff's Complaint also fails as a matter of law because Plaintiff brought this action outside the applicable Statute of Limitations. All issues raised by Plaintiff are subject to a three (3) year Statute of Limitations per *S.C. Code Ann.* § 15-3-530. "Generally, a cause of action accrues under South Carolina law the moment the defendant breaches a duty owed to the Plaintiff. This standard is subject to the Discovery Rule, which allows for the statute of limitations to run not when evidence of injury first appears, but rather, when a cause of action reasonably ought to have been discovered." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363 (1996).

Here, Plaintiff brought a prior action against his builder in 2008. According to those pleadings, a transcript from that non-jury trial, exhibits from that non-jury trial, as well as the findings of Magistrate Robert F. Simms, Plaintiff sued Hogan Builders and complained of numerous construction defects, including claimed defects with (1) the front door; (2) the rear patio door; (3) the garage door; (4) the driveway; (5) the deck railing and steps; (6) the front porch posts; (7) kitchen plumbing and fixtures; and (8) HVAC ductwork. Those materials also indicated that numerous inspections, as well as a cleaning, was performed on Plaintiff's HVAC ductwork. Additionally, around that same time period, in 2008 and 2009, Plaintiff made water-related claims involving damage to his home. The 2008 claim involved a dishwasher leak, and documents related to that claim showed that kitchen cabinets were removed where the dishwasher was located, revealing the HVAC ductwork. Further, those materials called for the removal and replacement of portions of the ductwork, including 20 linear feet of ductwork and a register boot.

Plaintiff has alleged Defendant's ductwork was installed incorrectly. Any issues with this installation could or should have been discovered in 2008 or 2009 during Plaintiff's lawsuit against Hogan Builders, or alternatively, when repairs to the HVAC ductwork were specified following a dishwasher leak that cause water damage in Plaintiff's home. Based on the Discovery Rule, as discussed in *Dean v. Ruscon Corp.*, 321 S.C. 360, 363 (1996), the statute of limitations begins to run not when evidence of injury first appears, but rather, when a cause of action reasonably ought to have been discovered. *Id* at 363. Accordingly, the Discovery Rule dictates that Plaintiff's three-year window for bringing suit against Defendants started at the latest in 2008 or 2009, when Plaintiff sued Hogan Builders, and/or when the dishwasher leak occurred. Plaintiff's window for bringing any claims against Defendants would have closed in 2011 or 2012. Therefore, Plaintiff's current action, having been filed in 2021, is clearly outside the applicable statute of limitations.

The Court finds there is no genuine issue as to any material fact as to Plaintiff's negligence claim against Defendants Gunter Heating & Air and Teddy Gunter, and that Defendants Gunter Heating & Air and Teddy Gunter are entitled to Judgment as a matter of law, pursuant to Rule 56(c) *SCRPC*.

THEREFORE, IT IS ORDERED that Defendants Gunter Heating & Air and Teddy Gunter's Motion for Summary Judgment is GRANTED.



Greenville Common Pleas

Case Caption: Steven Maness vs. Gunter Heating & Air LLC , defendant, et al

Case Number: 2021CP2304620

Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.