

REPLY BRIEF OF APPELLANT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals [In The Supreme Court]

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas G.D. Morgan, Circuit Court Judge

Trial Court Case No. 2021-CP-23-04620

Appeal Case No. 23024-002011

Gunter Heating & Air and Teddy Gunter Respondent,

Other Counsel of Record
Charles O. Williams
Gallivan, White & Boyd P.A.
Post Office Box 10589
Greenville, South Carolina 29603
(864) 271-5347
Attorney for Respondent

v.

Steven Maness, Appellant.

REPLY BRIEF OF APPELLANT

Steven Maness, Pro Se

305 Kilgore Farms Circle

Simpsonville, South Carolina 29681

TABLE OF CONTENTS

1. **INTRODUCTION**
2. **MISTAKES IN THE STATE FARM FILE**
3. **DISCOVERY AND TIMELINE**
4. **STATUTE OF REPOSE**
5. **15-3-670 WHEN THE STATUE OF REPOSE IS NOT ALLOWED AS A DEFENSE**
6. **CONCLUSION**
7. **Table of Authorities**

I INTRODUCTION

Appellant has chosen to supply a reply to the Respondent's brief. In doing this, Appellant in no way waives arguments presented in the initial brief, but not specifically raised again directly or expounded on in this reply. Appellant also absolutely does not concede anything in Respondent's brief not directly addressed here.

Upon reviewing Respondent's brief, in fact with a reply-draft already well underway, the same issue noticed at Summary Judgment hearing, then raised directly in Motion for Reconsideration became front and center in Appellant's thinking; the water/wetness around the duct & floor connections shown in the photos Respondent presented at that hearing absolutely cannot be water from the dishwasher leak as presented to Judge Morgan.

From the Motion to Reconsider: "it's virtually impossible for this to be wetness from the dishwasher leak."

Appellant knows for sure and can demonstrate beyond any doubt, the wetness/water around the duct openings shown in 2008 pictures 506, 507 & 508 (State Farm Insurance file) now a part of this case and presented to The Court, were falsely identified. The water around the duct/floor connections was absolutely not from the dishwasher, but the failure of the duct insulation & vapor barrier in what was then a **2 year old HVAC unit, in a 2 year old home**. The photos from under what was believed to be the kitchen, wasn't the kitchen at all, but the guest bathroom, totally removed from the kitchen and the dishwasher leak. The State Farm Insurance claim file actually does not have pictures showing under the kitchen/dishwasher cabinet at all (from within the crawl space), but from under the guest bathroom many feet away separated from the dishwasher by the width of the kitchen, a pantry, cabinets, 3 walls and a hallway.

The State Farm representative that went into the crawlspace to take those pictures in 2008 found wetness **under the bathroom cabinet**, pulled down the insulation, took pictures 506-508, **documenting in the claim file as being taken underneath the kitchen floor/cabinet where the dishwasher leaked**. Appellant can show and prove this with photos from the record, however it's important to take into account updated images, showing the same things from a wider angle.

II MISTAKES IN THE STATE FARM FILE

In 2008, State Farm documented repairs to the hardwood floor under the dishwasher & cabinet as part of the insurance **claim # 40-D179-759**. Going by the date-stamps on the pictures and other documents, pictures **506-511** were taken on August 8, 2008 between 9:23 and 10:31 AM (picture numbers/date stamps are in reverse numerical order). This picture set begins in the front of the home, **511 @ 9:23 AM**; into the kitchen showing hardwood flooring boards beside the dishwasher, **510 @ 9:27**; then under the dishwasher where the main pump had leaked, **509 @ 10:17**. The next 3 pictures **506-508** were taken a few minutes after 509, between 10:29 and 10:31. They were taken within the crawlspace apparently, to show what was happening under the kitchen floor, dishwasher & cabinet – under the kitchen floor. **However, somehow the representative investigating and taking pictures actually completely bypassed the kitchen (underneath the home, in the crawlspace) ending up under the bathroom, apparently finding water there, pulling insulation down and taking photos of wet subflooring all around the duct/floor connection. Never reporting or possibly not even realizing at that moment they had completely missed the leaking dishwasher by more than 20 feet, having gone right by it. Regardless, these pictures, specifically #507 were presented to Judge Morgan in attempt to illustrate damage done to the ductwork by the dishwasher leak water, in stark contrast it very clearly shows duct condensation and floor damage under the bathroom cabinet when the home and HVAC was 2 years old.**

Appellant has only realized this during preparation for the reply brief, when looking at pictures in the EDT file, **Figure 25/Gunter00280/EDT Report; pg17** which shows the duct/floor shown in #507 from a wider angle. What can be seen from Figure 25, is the electric wires routed towards the breaker box which is located in a shared wall with the guest bathroom & laundry room. **This is DEFINITELY NOT under the kitchen and the wet pattern shown in #507 as presented to the Court cannot possibly be/is not from the dishwasher. Furthermore, this fact absolutely proves everything Appellant has been arguing all along.**

See #507 State Farm file, Figure 25 EDT Report p 17/Gunter00280, Appellant A1B and A2B These all show under the guest bathroom/guest bathroom cabinet.

See Figure 26 EDT Report p 17/Gunter00280, Appellant A1K and A2K These show under the kitchen/under kitchen cabinet.

See Appellant Under MB Cabinet 9-25-18, Under MB Cabinet2 9-25-18 These show under master bathroom/under bathroom cabinet.

III DISCOVERY AND TIMELINE

In their brief, on page 21, Respondent states:

“New theory that 2008 dishwasher leak may have been *related* (emphasis added) to HVAC ductwork condensation—Appellant appears to argue, for the first time, that his 2008 claim with State Farm for a defective dishwasher may have also been related to issues with this ductwork. This is a novel theory that Appellant raised for the first time in his Appellant’s brief. For the reasons argued above, Respondents assert Appellant cannot raise these issues for the first time on appeal.” **Respondent Brief, pg 21.**

To say we now argue “for the first time” the dishwasher leak and duct condensation is related is to not pay any attention to what has been argued by Appellant since the beginning. Appellant has never stated in any way these issues are related or that one caused the other. Appellant finds Respondent’s statement frankly, convoluted but obviously an effort to disallow the argument made in the initial brief that pictures show both duct condensation and a leaking dishwasher. This point of contention has always been in direct response to Respondent’s false narrative of some connection between a dishwasher leak and the HVAC ductwork.

Respondent argued in the hearing the ductwork had been directly affected by the dishwasher leak, pointing to what we now know are incorrectly identified pictures and at the same time, manipulating what the photos show:

It's not sagging. It's not torn. It doesn't look like it looked in Mr. Jayco's report in limited spots, but that's clearly, Your Honor, moisture on the underside of the sub flooring. Who knows what it did to get into my client's work? And that's -- you know, those are pictures from ten years before this incident and eleven years before Mr. Jayco was able to inspect it. **MSJ P 34; 15-21**

Respondent’s intentional photo-manipulation is called out and explained in Appellant’s brief, Argument I. **However, Appellant did not know at the time of brief writing, pictures 506, 507 & 508 were actually taken under the bathroom**, but Respondent’s manipulation of what the photos show still applies, and is wrong to an even greater degree.

Respondent does this again, right on pg 19 of their brief:

“Further, this picture also shows Respondents’ work is neither sagging nor torn, as reported in Jaco’s Report.”

Additionally, in the Motion to Reconsider, having recognized the odd square pattern around the duct from under the floor (picture 507 together with pictures from inside the kitchen with the same square shape) Appellant directly called into question directly:

“Near the very end of the hearing, just after Plaintiff makes the argument that the discovery rule should apply, defense counsel walked up and presented a photo taken apparently by State Farm after the dishwasher leak that Plaintiff has never seen, stating in open court “if not for this...the discovery rule might apply...” **Plaintiff believes it’s virtually impossible for this to be wetness from the dishwasher leak** (emphasis added here for clarity) even if it is, it has no bearing whatsoever on the insulation issues throughout the entire duct system identified in both engineering reports and leading to its complete failure 10 years later. We need the expert analysis and testimony regarding this in true light of the property damage discovered in 2018 as with so much of this case evidence. Once again, Gunter Heating and Air had last hands and eyes on their work following the leak.” **MTR, P 13; 23 - P 14; 6**

Of course, Appellant has always steadfastly maintained the dishwasher leak in 2008 neither caused damage to the duct system, its insulation nor contributed in any way to structural damage found throughout his family’s home in 2018.

Appellant has made the argument in the initial brief (Argument I, section 2) with the only notable exception being we now know for sure where that wetness in pictures 506-508 came from – inadequately sealed and insulated ductwork under the guest bathroom. This includes the square wet area around the duct opening shown in all other interior pictures from 2008.

We can only see, recognize and then analyze what was happening in those 2008 photos (both inside the kitchen with cabinet removed, 459-473 and underneath the guest bathroom cabinet, 506-508) *because there was* a dishwasher leak. **This all is supported by extensive structural-floor damage found ten years later in exactly those areas and under the master bath cabinet. Additionally, the findings of PEs Jeff Jaco and Warren Maddox in those same areas reinforce it all.**

At the hearing in response to the Dishwasher leak narrative and photo #507, Appellant said:

“...we’re talking about areas that are removed by, you know, 30 feet, 40 feet, whatever it would be from where this dishwasher leak happened many years prior. And you can see the same thing in our bathroom cabinet. Two bathroom cabinets at each end of the house match the kitchen cabinet where it was, also, worse. Then around every single register surrounding the lower level all had the hallmarks of this leaky, you know, cold air coming down onto the metal, poorly insulated metal, and then it got worse year over year over year. And finally, after 13 years, it got bad enough to actually present itself.” **Maness MSJ P 27; 1-11**

Right in the midst of resolving the dishwasher leak, we see right in the kitchen (with cabinet and hardwood removed) duct condensation around the duct opening – pictures of the exposed subfloor show it clearly. **State Farm file pp 459, 460, & 464.** It's the same matching square shaped wet patch visible under – what we now know to be the bathroom floor pictured in **State Farm file pp 506, 507 & 508.**

Appellant has explained this in the initial brief, but knowing what we know now, it makes even more sense, so just a bit more and it all fits together exactly.

To restate for clarity; the wet areas seen in **#459, 460, 462, 464, 473, 506, 507 & 508** are two (2) separate, distinctly different and completely unrelated events happening at the same time (Actually 3 if we include the spilled water bowl at the wall, so please find a way to visually disregard this).

- (1) Wetness from dishwasher leak in an uneven flowing pattern moving away from the cabinet footprint and toward the wall/door area.
- (2) Duct/floor condensation in 2 areas in a square pattern (Specifically, we see subflooring which is the structural part of the floor.) caused by inadequately sealed and inadequately insulated HVAC ductwork. Per findings of the EDT and Maddox Reports

Pictures 459, 460, 473 & 476 show dishwasher leak, where water ran away from the duct opening and toward the outside door and wall; and wet subfloor (in a square pattern) around the duct opening. Note: This square pattern is clearly caused by the constraints of the floor framing around the duct/floor connection on the underside. What we see on top (in the kitchen photos with cabinets removed) has just soaked through the wood – from the bottom/underside of the subfloor.

Picture 462 shows where the dishwasher leak water had run down, away from the duct opening collecting at the wall/doorway.

Pictures 506 – 508 show condensation around the guest bathroom duct connection from 3 views; looking from inside the crawlspace, bottom side or under the subfloor with flooring insulation pulled away. And, this is all under the bathroom cabinet, matching exactly (the square pattern) what we can see in all the other photos from the living area in the kitchen.

Damaging condensation was absolutely happening, we see it in multiple photos, since the HVAC system was installed by Respondent, from the very beginning of AC operation in the summer of 2006 and right under seasonal maintenance/care of Respondent's company Gunter Heating and Air.

Respondent has used the 2008 dishwasher leak as well as the Hogan Builders issue to such an extent, Appellant could respond to almost every paragraph of their brief with direct evidence in opposition based on this alone, and just the fact or absolute lack thereof, but would extend this reply brief well beyond intended length and available time.

What the photos truly show, seamlessly supports every single argument Appellant has made since the beginning of the case, including Summary Judgment filings/hearing, Motion to Reconsider and the Initial Brief, regarding root cause of the failure, damage pattern/timeline, discovery and discoverability of damage, and Statute of Repose implications. In sharp contrast and by even greater measure, rightfully turning the dishwasher leak/Hogan suit narrative on its head, coupled with the undeniable photographic proof of condensation forming right there in the **2nd year of AC operation** fully undercuts virtually every single one of Respondent's arguments.

The photographs from the dishwasher leak have been misidentified, as a result highly prejudicial to Appellant's claim. This issue alone warrants the case be remanded for trial.

Appellant is, has been absolutely unwavering and has sworn to this as true; there was never any reason whatsoever to believe any of the damage discovered on September 25, 2018, was present or taking place, before, during or after any of the "causation or notice triggering" events claimed by Respondent in all of their arguments, including the Hogan punch list items like scratched glass and wood debris left in floor registers.

Granting Respondent Summary Judgment by Judge Morgan was a reversible error.

If anything at all, what the photos point to is the very hidden nature of this gradually worsening duct sweating. The fact that during the dishwasher leak some of this damage, (HVAC inadequate insulation & sealing) was revealed but at the same time masked by that dishwasher leak absolutely supports Appellant's arguments that it was not reasonably discoverable at that time.

With everything we can see, understanding what the photos prove, Appellant respectfully refers the Court to the arguments and authorities presented in his initial brief regarding discovery matters and defers to the Court's very thorough understanding of those issues.

IV STATUTE OF REPOSE

Respondent says the Statute of Repose is an available defense that warrants dismissal, writing extensively about this. Appellant most definitely contends it should not apply, based on everything Appellant has documented so far and all that follows here.

Respondent states in their brief, “Second, in Appellant’s Brief, he also appeared to **argue for the first time** (emphasis added) that an HVAC system did not constitute an improvement to real property.”

That is to completely ignore Appellant’s:

- Sworn testimony in affidavit submitted 11 days before Summary Judgment hearing by Appellant, **Pg 2-4**
- Summary Judgment transcript, **Pg 15-16** and
- Motion To Reconsider, **Pg 6-10**

This unit/system is an appliance. It is a dynamic system, typically using electricity, coolant for AC function, and propane, natural gas or fuel oil to heat, not a permanent part of the home structure

Respondent stated in their brief:

“Appellant now contends the HVAC system does not constitute an improvement to real property because it is not permanent and is removable.¹ As Respondents noted in oral arguments, the HVAC units themselves are embedded in a concrete pad outside the house in question. Those HVAC units are connected to ductwork that runs underneath the house and behind walls within the house. The idea that someone who is selling a home could simply pull an HVAC unit out of a concrete bed in which it sits, tear out the connected ductwork that is bolted to subflooring, tear away drywall and remove ductwork, in the same way that one could move a refrigerator out of a house is the height of absurdity. In his brief, Appellant refers to *Ervin v. Continental Conveyor & Equipment Co.*, 674 F. Supp. 2d 709 (D.S.C. 2009) for the proposition that an HVAC system is not a permanent improvement to real property.” **Respondent brief P 9-10**

(Then there’s a footnote at the bottom of page 9): 1) “Appellant did not appear to make this argument during oral arguments before Judge Morgan, nor did Appellant refer to any case law in support of this argument.”

All of this is completely inaccurate. First, in the hearing, Respondent Counsel *actually* said “there's a concrete pad behind his house where his HVAC units are bolted down.” **Williams, MSJ Transcript, P 33**. This was in response to Appellant’s argument that the system is not permanent. See MSJ Transcript P 15-16. Furthermore, it is not “bolted down” outside, or to the subfloor, and no amount of drywall would be disturbed to remove the all-metal duct supply lines, or the furnace-blower and AC compressor units where they sit *freely* on blocks in the crawlspace and on a pre-fab composite/plastic pad outside, respectively.

Respondent claims that Appellant has never cited *Ervin v. Continental Conveyor & Equipment Co.* before submitting this in his brief, however – **see Appellant’s Motion to Reconsider, P 6-8** where this is a substantial part of Appellant’s argument regarding permanence.

Additionally, the statute of repose under S.C. Code Ann. § 15-3-640 does not apply to the specific damage claimed by Appellant. This is not a typical claim that the HVAC system itself malfunctioned, failed to function, or was deficient in its ability to heat or cool. The system continued performing its intended function of climate control. However, due to all the grossly negligent and/or reckless misapplication of the necessary insulation, vapor barrier material, and sealant at connections, per **2003 IRC M1601.2.1(3)/(3.2), M1601.3.4 and 2003 IECC (Energy Conservation Code) 503.3.3.3 (See Maddox and EDT Reports)** the system began to serve an unintended, damaging secondary function: acting as a conduit for moisture collection and transfer.

Over time, rather than simply delivering conditioned air, the duct system—particularly where it is routed up into cabinet bases acted as a moisture pump. It collected warm, more humid air from the crawl space, condensed it against the cold duct surface, and the failed insulation basically wicked water up into the wood substructure, from underneath, starting under the cabinets. This altered and destructive damaging result of improper installation should not be protected by § 15-3-640, which was not intended to shield contractors from consequences of physical damage caused by latent flaws in mechanical utility components.

In effect, the HVAC system took on a new and damaging functional role, unknown to Appellant or any professionals, including Respondent, for years. It basically became a moisture delivery system, degrading the structural integrity of the home. Not to mention, mold growth. The statute of repose protects against liability for claims involving normal wear, failure, or design disputes—not against improper installation that actively damages property in hidden and evolving ways.

III 15-3-670 WHEN THE STATUE OF REPOSE IS NOT ALLOWED AS A DEFENSE

Respondent states in their brief:

- 1) "Appellant did not plead gross negligence in his Complaint, and never attempted to amend his Complaint to add a cause of action for gross negligence..."
- 2) "Appellant now asks the Court to amend his Complaint to add a new cause of action for gross negligence, that issue is raised for the first time on appeal and is not properly before the Court. Moreover, it is not the role of the Court to "fix" a defect in Appellant's pleading."

In fact, Appellant did present this issue to Judge Morgan at Summary Judgment:

".....another part is negligence, recklessness. If that is not -- in the scope of what they do, if this isn't recklessness or gross negligence, what would be? If...so, if I'd said gross in front of negligence, then.....So he seems to be saying that because I didn't say gross negligence, well, then that's -- then, you know, this is all done with. I respectfully disagree." **Maness MSJ Hearing P 27-28**

And at Motion to Reconsider:

"Additionally, and importantly the FACT (see both engineering reports) we have absolute proof of multiple instances of code violations, providing within the statute "may be admissible as evidence of fraud, negligence, gross negligence, or recklessness."" **MTR P 10**

This is consistent with the Court's interpretation in *Hampton Hall, LLC v. Chapman Coyle Chapman & Associates Architects AIA, Inc.*, 388 F. Supp. 3d 618 (D.S.C. 2019), where the U.S. District Court for South Carolina held that while the statute of repose bars most claims after 8 years, it does **not** bar claims for gross negligence or building code violations under § 15-3-670. The Court in *Hampton Hall* denied summary judgment on gross negligence where plaintiffs presented evidence of design and construction defects that violated code (just as Appellant has done here). The ruling confirms that code violations can constitute **evidence** of gross negligence sufficient to survive summary judgment and trigger the § 670 exception. See *Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc.*, 388 F. Supp. 3d 618, 627 (D.S.C. 2019).

With due respect, Appellant should not be required to amend his complaint for this exception to apply, and Appellant is not asking the Court to modify or amend a shortfall in pleadings if there were any. But what is the purpose of this section, if not for what Appellant has experienced at his family's home? Appellant truly believes this type situation is absolutely why the SC State Legislature put this into the Statute.

15-3-670:

(A) The limitations provided by Sections 15-3-640 through 15-3-660 are not available as a defense to a person guilty of fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action.

(B) For the purposes of subsection (A), the violation of a building code of a jurisdiction or political subdivision does not constitute per se fraud, gross negligence, or recklessness, but this type of violation may be admissible as evidence of fraud, negligence, gross negligence, or recklessness.

(C) The limitation provided by Section 15-3-640 may not be asserted as a defense to an action for personal injury, including a personal injury resulting in death, or property damage which is: (1) by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence; and (2) the result of ingestion of or exposure to some toxic or harmful or injury producing substance, element, or particle, including radiation, over a period of time as opposed to resulting from a sudden and fortuitous trauma.

Appellant asserts the undeniable latent nature of this defect, its slowly progressing damage and the extreme hidden conditions, makes the exception applicable here.

These areas of damage were for some time, both constrained by the floor framing and subfloor structure, hidden behind floor insulation in the crawl space and hidden beneath 3 cabinets in the living area as the photographic evidence and engineering reports prove. This moisture damage clearly progressed or traveled up from the bottom. **See picture 507** where the subfloor was saturated on the under-side, in the crawl space area and the resulting mold growth 10 years later (**See Appellant Under MB Cabinet 9-25-18, Under MB Cabinet2 9-25-18**) when it was bad enough to finally spread up and out into the rest of the floor system and present itself.

Supported by the fact that every single trained individual, including Respondent (this includes during the first years of seasonal maintenance and replacing a small section as previously outlined in initial brief) – completely missed it – makes the Statute of Repose inapplicable. The building code violations identified by two independent engineering reports, timely submitted to the Court prior to Summary Judgement hearing, have provided evidence of gross negligence such as to have prevailed at that hearing and that decision was in error.

VI CONCLUSION

Appellant asks the Court to consider this, along with his initial brief, with the initial brief. For the foregoing reasons, the trial court's grant of summary judgment should be reversed, and the matter remanded for trial.

Respectfully submitted,

/S/ Steven Maness

August 21, 2025

Steven Maness Pro Se
305 Kilgore Farms Circle Simpsonville, SC 29681
864-905-1314
smaness1996@gmail.com

VII Table of Authorities

Cases

- *Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc.*, 388 F. Supp. 3d 618, 627 (D.S.C. 2019)

Statutes

- S.C. Code Ann. § 15-3-640
- S.C. Code Ann. § 15-3-670
- S.C. Code Ann. § 15-3-670(A), (B), (C)