

Exhibit A

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EXHIBIT
A

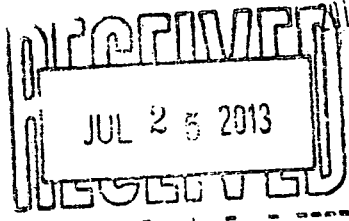
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
JUL 22 2013
PAUL B. WICKENSIMMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP2306376

Kevin McCarthy

Courtney R. McGarity 3:47



Cliffs Communities LLC Cliffs At Keowee Falls South
Keowee Falls Investment Group LLC Cliffs Real Estate Inc
Cliffs Golf And Country Club Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC: Rule 41(a), SCRPC (Vol. Nonsuit):
 Rule 43(k), SCRPC (Settled): Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC: Bankruptcy:
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

7/22/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Thomas Elihue Dudley III Kenison, Dudley & Crawford, LLC 704 East McBee Avenue Greenville, SC 29601

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.

STATE OF SOUTH CAROLINA
CLERK OF COURT
GREENVILLE CO. S.C.
COUNTY OF GREENVILLE
PAUL B. WIGRENSING

IN THE COURT OF COMMON PLEAS

Kevin McCarthy and Courtney E. McCarthy,
Plaintiffs,

vs.

Keowee Falls Investment Group, LLC, The
Cliffs Communities, LLC d/b/a The Cliff at
Keowee Falls South, Cliffs Real Estate, Inc.,
The Cliffs Golf and Country Club, Inc., and
S&ME, Inc.,
Defendants.

**ORDER DENYING MOTION TO
AMEND AS TO DEFENDANT S&ME,
INC.**

C.A. No.: 2011-CP-23-6376

This matter came before the Court on Plaintiffs' Motion to Amend their Complaint to: (1) amend the Statement of Facts (Am. Compl. ¶¶ 10, 16-17, 20-36); (2) amend Plaintiffs' claim for professional negligence against Defendant S&ME, Inc. (Am. Compl. ¶¶ 71-76); and (3) amend their Complaint to add a cause of action for negligent misrepresentation against Defendant S&ME, Inc. (Am. Compl. ¶¶ 81-93). A hearing was held on May 3, 2013. Representing the parties were Thomas E. Dudley, III attorney for Plaintiffs; Elizabeth M. McMillan attorney for Defendants Keowee Falls Investment Group, LLC, The Cliffs Communities, LLC, Cliffs Real Estate, Inc., and The Cliffs Golf and Country Club, Inc.; and Stephanie H. Burton attorney for Defendant S&ME, Inc.

FACTUAL BACKGROUND

This action arises out of Plaintiffs' 2005 purchase of Lot 32 at the Cliffs at Keowee Falls South. Plaintiffs allege that a deep-seated slope failure is occurring at the lot and that Defendant S&ME, Inc. ("S&ME") was negligent for failing to discover the alleged slope failure.

Copy to Judge Newman

On June 20, 2005, Plaintiffs executed a contract to purchase Lot 32 from Keowee Falls Investment Group, LLC (“KFIG”), owner of Lot 32. (K. McCarthy Dep. p. 35, Ex. 3; C. McCarthy Dep. Ex. 1). Thereafter, The Cliffs Communities, Inc. hired S&ME to perform certain geotechnical investigation services at adjacent Lot 31. (Birdsong Aff. ¶2).

On July 18, 2005, S&ME issued a report concerning its geotechnical investigation of Lot 31 to The Cliffs Communities. (Birdsong Aff. ¶ 2, Ex. A). On August 5, 2005, the sale between Plaintiffs and KFIG closed and title to Lot 32 was transferred from KFIG to Plaintiffs. (K. McCarthy Dep. p. 51, Ex. 9; C. McCarthy Dep. Ex. 2).

Nearly six years later after they purchased lot 32, in April, 2011, Jack Harrell, the current owner of Lot 31 called Plaintiff Kevin McCarthy and told him: “Well, I’m your neighbor down there, and we got a problem. The lots are falling into the lake.” (K. McCarthy Dep. p. 75). Sometime thereafter, Mr. Harrell or his counsel provided Plaintiffs or their counsel with a copy of a portion of the July 18, 2005 S&ME report. (K. McCarthy Dep. p. 89).

On September 27, 2011, Plaintiffs filed their Summons and a Complaint alleging a single cause of action of professional negligence against S&ME. On June 29, 2012, a status conference was held by this Court at which time certain deadlines were established in this case. On July 9, 2012, this Court issued a scheduling order, which included the following deadlines:

3. Discovery shall be completed no later than **December 31, 2012**. Discovery shall be deemed completed within this time only if discovery is initiated at such time as to afford the responding party the full time provided under the applicable rule of Civil Procedure in which to respond prior to the completion date noted in this paragraph.

4. **All motions**, except (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery, shall be filed no later than **January 15, 2013**.

5. The parties will mediate the case on or before January 30, 2013. All parties are ordered pursuant to Rule 6 of the SCADR, to have a person with settlement authority available at the mediation.

On January 15, 2013, S&ME filed its Motion for Summary Judgment. On March 20, 2013, Plaintiffs filed their Motion to Amend.

LEGAL CONCLUSIONS

1. S&ME will be Prejudiced if Plaintiffs Are Granted Leave to Amend.

Pursuant to Rule 15, this Court must also consider whether S&ME would be prejudiced by the amendment. Prejudice occurs when an amendment adds a new claim or defense which would require the opposing party to introduce additional or different evidence. Ball v. Canadian Am. Express Co., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994).

Plaintiffs did not file their Motion to Amend until nearly three months after the close of discovery established in the Court's scheduling order. If the Motion to Amend were granted, S&ME would be required to defend the new claim without the benefit of conducting discovery or this Court would have to allow discovery to be reopened to address this new claim further delaying the ultimate resolution of this case. Accordingly, the Court denies Plaintiffs' Motion to Amend.

2. Plaintiffs Inexcusably Delayed in Filing Their Motion to Amend.

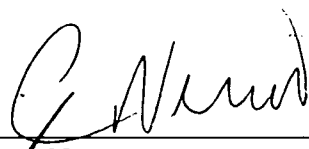
Plaintiffs' inexcusable delay in filing the Motion to Amend also justifies the refusal to grant leave to amend. Crowley v. Spivey, 285 S.C. 397, 414, 329 S.E.2d 774, 784 (Ct. App. 1985) (citing Braudie v. Richland County, 217 S.C. 57, 59 S.E.2d 548 (1950)). A party inexcusably delays when it seeks to amend a complaint well after it becomes aware of an asserted factual basis of a new claim. Id.

Nearly three months after the conclusion of discovery and over two months after S&ME filed its Motion for Summary Judgment and mediation was held, Plaintiffs filed their Motion to Amend alleging that there were new facts learned during discovery. Plaintiffs' proposed claim for negligent misrepresentation is premised on the July 18, 2005 report prepared by S&ME. By their own admission, Plaintiffs knew of the existence of this report in April 2011. In their original Complaint, Plaintiffs asserted that they received a copy of the report in the spring of 2011. (Compl. ¶¶ 15-16). Plaintiffs also attached a copy of a portion of the report to their original Complaint. (Compl. Ex. C). S&ME's employee witnesses involved in preparing the report were deposed in the Harrell matter long ago. Walker Birdsong and Howard Perry were deposed on November 26, 2012, and Michael Revis was deposed on November 28, 2012. The deposition of Don Nickell, the Cliffs' employee who asked S&ME to prepare the report, occurred on November 5, 2012.

Plaintiffs have been aware of the factual matter underlying their claim for negligent misrepresentation for some time. Their delay in seeking leave to amend the Complaint until after the discovery and motions deadlines passed is inexcusable in light of this knowledge. Accordingly, Plaintiffs' Motion to Amend is denied.

For the foregoing reasons, the Court DENIES Plaintiffs' Motion to Amend as to Defendant S&ME, Inc.

AND IT IS SO ORDERED.



Clifton Newman,
Presiding Judge

July 9, 2013

Columbia, South Carolina