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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County Common Pleas Court
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2023-001132
Trial Court Case No. 2018-CP-26-00307

Wedgewood Condominium Association, Respondent,

v.

Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC; Crescent Engineering, Inc., Defendants,

Of which Centex Homes, a Nevada General Partnership; Balfour Beatty Construction, LLC as Successor by Merger to Centex Construction Company, Inc., and Centex Construction, LLC, are the Appellants.

and

Centex Homes, a Nevada General Partnership, Third Party Plaintiff,

v.

Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; Frank Harris d/b/a Frank Harris Construction a/k/a F. Harris Construction a/k/a Harris Drywall; Builders First Source- South East Group, LLC; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc. f/k/a Carolina Builders Corporation; Michael D. Brownlee d/b/a Carolina Drywall & Interiors; Carolina Drywall & Interior, Inc., a/k/a Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc.; Roof Doctor of the Carolinas, Inc.; John D. Frazier d/b/a and/or a/k/a Roof Doctor and/or Roof Doctor of the Carolinas and/or Roof Doctor of the Carolinas, Inc.; Steven Bosch d/b/a The Roofer Man; Tri- City Insulation and Building Products of Myrtle Beach, Inc.; Martin Mata d/b/a Martin Masonry, Inc.; Martin Masonry, Inc.; BR Brick & Masonry, Inc.; BR Brick & Masonry, LP f/k/a BR Brick & Masonry, Inc.; Unicon Concrete, LLC; Seno's Cleaning Services; Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. Successor By Merger to Rice Planter Carpets, Inc.; Carpets by Kendall, Inc.; Reliable Floor Systems, Inc.; TNT Painting; Paint with Pride a/k/a Painting with Pride; William Evans d/b/a Top Notch Painters; Morningstar Consultants, Inc.; MI Windows and Doors, LLC; Michael Dawson d/b/a Michael Dawson Construction, and Inc.; Vereen Concrete Co. Inc.; AK Construction Inc. a/k/a AK Framing and Siding Co.; and AK United, Inc. f/k/a AK Construction Inc., Third-Party Defendants.

APPELLANTS' PETITION FOR REHEARING

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INTRODUCTION

Appellants Centex Homes, Balfour Beatty Construction, LLC, and Centex Construction, LLC petition this Court for reconsideration of its September 24, 2025 opinion affirming judgment for the Wedgewood Condominium Association (“Wedgewood”). The opinion misapprehends several key legal principles. First, it alters the elements of a claim for gross negligence by holding that evidence of building code violations necessarily creates a jury question, even though a claim for gross negligence is defeated by evidence of “at least slight care,” and Centex’s un rebutted evidence met that standard here. Next, the opinion errs by upholding the trial court’s refusal to charge the statute providing that the use of unlicensed subcontractors is permissible—which indisputably qualifies as the current and correct law of South Carolina as to that issue—on the grounds that witnesses testified about whether they believed licensed subcontractors were required, and that the controlling statute was too relevant to the facts of the case to be charged. Finally, the opinion overlooks on-point caselaw holding that the statute of limitations begins to run when a plaintiff is on inquiry notice that it may have a claim against the defendant, not when the plaintiff has actual notice of the extent of its eventual claim.

Each of these errors warrants rehearing under Rule 221(a), SCACR, and reversal of the judgment in Wedgewood’s favor. If uncorrected, each error has the potential to sow confusion in South Carolina courts for years to come, expand liability for builders, and effectively negate the legislature’s statutes of limitations and repose. The Court should therefore grant rehearing, apply the correct legal standards, and remand this case to the trial court with instructions to dismiss all claims with prejudice because the action is barred by the statute of limitations or statute of repose, or, in the alternative, remand for a new trial based on jury instruction errors.

LEGAL STANDARD

A petition for rehearing should be granted when the petitioner shows that the Court has “overlooked” or “misapprehended” a point of fact or law. Rule 221(a), SCACR; *see also* S.C. *Coastal Conservation League v. Dominion Energy S.C., Inc.*, 432 S.C. 217, 219, 851 S.E.2d 699, 700 (2020) (granting petition for rehearing).

ARGUMENT

I. The opinion misapplies the law in concluding that a jury may find gross negligence sufficient to defeat the statute of repose based solely on evidence of building code violations despite uncontroverted evidence of at least slight care.

The statute of repose barred Wedgewood’s claim unless Wedgewood proved Centex was liable for gross negligence. As the Court acknowledged, Centex introduced extensive evidence about the care it took in developing the complex. Under South Carolina law, Centex’s unrebutted evidence that it exercised at least slight care meant that no reasonable jury could find Centex liable for gross negligence. But the opinion failed to engage with the caselaw that Centex raised on this point. Because the opinion overlooked or misapprehended key points of law and fact in concluding that the statute of repose did not bar this action, the Court should grant rehearing.

A. Gross negligence, a narrow exception to the statute of repose, is inapplicable here because the evidence established that Centex exercised at least slight care.

South Carolina’s statute of repose, S.C. Code Ann. § 15-3-640, bars this negligent construction action unless, as relevant here, Wedgewood proved Centex committed gross negligence, S.C. Code Ann. § 15-3-670(A). In concluding that gross negligence was properly submitted to the jury, the Court overlooked or misapprehended the governing law.

Gross negligence differs from negligence not just in degree, but in kind. *See Clyburn v. Sumter Cnty. Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) (“Negligence is the failure to exercise *due* care, while gross negligence is the failure to exercise *slight* care.”) (emphasis

added)). “The presence of a mistake alone,” “is not sufficient evidence to conclude [a defendant] failed to exercise slight care.” *Richland Cnty. v. Carolina Chloride, Inc.*, 382 S.C. 634, 653, 677 S.E.2d 892, 902 (Ct. App. 2009), *rev’d in part on other grounds*, 394 S.C. 154, 714 S.E.2d 869 (2011). Likewise, a plaintiff’s showing that “more might have been done” by a defendant cannot negate unrebutted evidence that the defendant “exercised at least slight care” such that gross negligence is inapplicable. *Pack v. Associated Marine Institutes, Inc.*, 362 S.C. 239, 246, 608 S.E.2d 134, 138 (Ct. App. 2004).

The record establishes that Centex exercised “at least ‘slight care’” in developing the condominium complex. Centex presented unrebutted evidence of weekly toolbox talks, biweekly tailgate meetings, monthly technical trainings, and quality inspections in every room of every home in the complex, every day, along with unannounced inspections and audits. (R. 1229–43). This Court recognized as much, observing that Centex “presented considerable evidence regarding Centex’s inspection, review, and quality protocols.” *Wedgewood Condo. Ass’n v. Centex Homes*, No. 2023-001132, 2025 WL 2713866, at *9 (S.C. Ct. App. Sept. 24, 2025).

Unable to contradict Centex’s evidence of at least slight care, Wedgewood argued that evidence of building code violations creates an “escape valve in the Statute of Repose.” (R. 1209, line 21–R. 1210, line 1; R. 1660, line 23–R. 1661, line 2). But, as Centex argued, evidence of building code violations is insufficient to submit the question of gross negligence to the jury where, as here, the record contains unrefuted evidence of at least slight care. *See* Appellant’s Brief (“App. Br.”) at 21–27; *accord Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 312, 534 S.E.2d 275, 277 (2000) (reversing and remanding for summary judgment on gross negligence claim because, even if proffered affidavit provided evidence of the school district’s deficiencies, “the fact that [it]

might have done more does not negate the fact that it exercised ‘slight care.’”).¹

The statute cited in the opinion, S.C. Code Ann. § 15-3-670(B), permits admission of building code violations *as evidence* of fraud, negligence, gross negligence, or recklessness, but it does not purport to redefine the substantive elements of those causes of action. The South Carolina legislature made this explicit, providing that “the violation of a building code ... **does not constitute per se** ... fraud, gross negligence, or recklessness.” S.C. Code Ann. § 15-3-670(B) (emphasis added). That is, the statute codifies the rule that an alleged building code violation “was not recklessness, willfulness, or wantonness *per se* and could only be considered in connection with all of the other facts.” *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 93, 344 S.E.2d 869, 872 (Ct. App. 1986); *see also* App. Br. 26. Courts across the country have reached that same conclusion. *See id.* at 23–24. The Court’s misapprehension of the statute warrants rehearing.

B. The opinion misapprehends or overlooks Centex’s argument that evidence of code violations does not satisfy the gross negligence standard.

In affirming the denial of Centex’s motions for directed verdict or JNOV, the opinion did not address Centex’s argument that no reasonable jury could find Centex grossly negligent because Centex presented un rebutted evidence that it exercised at least slight care. Reasoning that “code violations are admissible *as evidence* of gross negligence,” the opinion concludes it was necessarily the jury’s task “to determine whether gross negligence was established based on the evidence presented and the law that was charged.” *Wedgewood*, 2025 WL 2713866, at *9. But that analysis is not responsive to Centex’s argument that *notwithstanding* evidence of code violations, Centex’s un rebutted evidence of at least slight care defeats Wedgewood’s claim for gross

¹ While an unpublished opinion may not hold precedential value, the reasoning applied by the Court of Appeals in *Napier v. Mundy’s Constr., Inc.*, No. 2020-001103, 2024 WL 1434409 (S.C. Ct. App. Apr. 3, 2024) provides clear and directly applicable guidance in the present matter. Rule 268(d)(2), SCACR. In *Napier*, the Court stated expressly that “[f]ailing to comply with a building code alone is not gross negligence.” 2024 WL 1434409, at *3.

negligence as a matter of law.

First, the opinion overlooks or misapprehends Centex's argument that un rebutted evidence of at least slight care precludes a finding of gross negligence by failing to distinguish, or even acknowledge, the caselaw on which Centex relied in support of its argument. *See* Rule 221(a), SCACR. In its opening brief, Centex relied primarily on two cases—*Richland Cnty. v. Carolina Chloride, Inc.*, 382 S.C. 634, 652, 677 S.E.2d 892, 901 (Ct. App. 2009), *aff'd in part, rev'd in part*, 394 S.C. 154, 714 S.E.2d 869 (2011), and *Pack v. Associated Marine Institute*, 362 S.C. 239, 608 S.E.2d 134 (Ct. App. 2004)—affirming judgment for defendants as a matter of law where the evidence demonstrated that their actions constituted at least slight care. App. Br. 22. The opinion, however, does not even mention those authorities. Rehearing should be granted so that the Court may address the import of *Richland County* and *Pack* on Centex's argument that it may not be held liable for gross negligence, given that un rebutted evidence established Centex exercised at least slight care in developing the condominium complex.

Additionally, in concluding that gross negligence was necessarily an issue for the jury, the opinion overlooks that gross negligence may qualify as a question of law for the courts to resolve. “[W]hile gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court.” *Etheredge*, 341 S.C. at 310 (citing *Clyburn v. Sumter Cnty. Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994)). Not only did *Richland County* and *Pack* both affirm summary judgment on gross negligence, Centex also cited *Etheredge* (which reinstated summary judgment) and *Clyburn* (which affirmed), for the same proposition. App. Br. 21. Yet the opinion does not discuss those cases, or their “one reasonable inference” language, instead simply concluding that where there is evidence of building code violations, gross negligence is automatically an issue for the

jury to decide. *See Wedgewood*, 2025 WL 2713866, at *9. In overlooking *Etheredge* and *Clyburn*, or misapprehending the import of those decisions, the Court committed an error of law, and rehearing is warranted on that basis.

C. The Court erred in finding there was evidence that Centex was aware of, and failed to correct, deviations from the building code at the time of construction.

The Court erred in affirming the trial court's denial of Centex's motion for JNOV on Wedgewood's gross negligence cause of action on the grounds that "Wedgewood presented evidence and testimony that Centex violated building codes and industry standards and that Centex was apprised of at least some of these deviations at the time of construction." *Wedgewood*, 2025 WL 2713866, at *10. The Court's erroneous conclusion is not supported by argument or record citation found in Wedgewood's brief, and it is not a proper inference to be drawn from the record.

As discussed above, the determinative question is not whether Centex constructed the complex without any deviations from the applicable building codes, but whether the evidence shows that Centex exercised *slight* care in constructing the property. Because it did, the trial court should have granted directed verdict on Wedgewood's gross negligence claim. *See Pack*, 362 S.C. at 246 (holding no genuine issues of material fact existed for a gross negligence claim where there was evidence the defendant at the very least exercised slight care).

The record contains undisputed evidence that in addition to performing its own quality inspections of subcontractors' work, Centex retained Morningstar Consultants, Inc. to perform additional quality inspections during construction. (R. 1244–45, 1248–54). Morningstar inspected the project during construction, took pictures, made notes, and debriefed Centex and the subcontractors on the issues it identified. (*See id.*). After Morningstar inspected the project and identified areas in need of correction, follow-up inspections were performed to ensure those issues were corrected. (R. 1252–53). Wedgewood did not dispute that Centex hired Mr. Morningstar, but

Wedgewood's expert implied at trial that Morningstar "didn't do his job." (R. 1257–58).

The Court affirmed the trial court's denial of Centex's motion for JNOV based on an incorrect assumption—not argued by Wedgewood in the trial court or on appeal—that the type of issues later identified by Wedgewood's expert were the same as those identified by Morningstar, and somehow that could support a jury finding of gross negligence. Even if it were true that Centex's expert "didn't do his job," as Wedgewood's expert implied, or even if Centex failed to fully remediate every issue identified by Morningstar, that would not mean that *Centex* did not exercise slight care. To the contrary, Centex's conferral with Morningstar shows Centex exercised at least slight care. *See Richland Cnty.*, 382 S.C. at 653 (holding that conferral with legal department showed "at least slight care"). Because there is undisputed evidence that Centex exercised slight care, the Court should grant this Petition for Rehearing and reverse the trial court's denial of Centex's motion for JNOV on Wedgewood's gross negligence cause of action.

II. The opinion errs by affirming the trial court's refusal to instruct the jury as to the use of unlicensed subcontractors.

Given that Wedgewood made Centex's use of unlicensed contractors a key theme at trial, Centex requested that the trial court charge the governing statute, which provides that the use of unlicensed subcontractors is permissible. The trial court's refusal to do so was error, and because the error prejudiced Centex, this Court should have reversed on that basis. But the opinion instead affirms the trial court's refusal to instruct the jury on the current and correct law of South Carolina. In doing so, it appears to have endorsed the two incorrect rationales that the trial court offered for its refusal—that (1) witness testimony was a permissible substitute for the trial court's duty to instruct the jury in the law, and (2) the statute was so relevant to the facts of the case that it should not have been charged to the jury. Because each rationale is incorrect and legal error, the Court should grant rehearing.

A. The trial court’s refusal to charge the controlling law governing the use of unlicensed contractors was reversible error.

A trial court “is required to charge the current and correct law.” *Koutsogiannis v. BB & T*, 365 S.C. 145, 149, 616 S.E.2d 425, 427 (2005); *see also McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 306, 457 S.E.2d 603, 606 (1995). Moreover, a court “must charge the jury on the law framed by the issues as made by the pleadings and the facts developed by the evidence in support of those issues.” *Strange v. S.C. Dep’t of Highways & Pub. Transp.*, 307 S.C. 161, 165, 414 S.E.2d 138, 140 (1992). When a request to charge the jury “is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error.” *Koutsogiannis*, 365 S.C. at 149. “To warrant reversal, the party seeking the requested jury charge must demonstrate error and prejudice.” *Fairchild v. S.C. Dep’t of Transp.*, 683 S.E.2d 818, 822, 683 S.E.2d 818, 822 (Ct. App. 2009), *aff’d*, 398 S.C. 90, 727 S.E.2d 407 (2012).

The trial court abused its discretion by refusing to instruct the jury on the current and correct law of South Carolina that, by statute, “[l]icensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee’s license group and license classification or subclassification.” S.C. Code Ann. § 40-11-270(E); *see also Teseniar v. Pro. Plastering & Stucco, Inc.*, 407 S.C. 83, 97, 754 S.E.2d 267, 274 (Ct. App. 2014) (licensee “was permitted to utilize [subcontractor’s] services even though [subcontractor] was unlicensed.”). There is no dispute that § 40-11-270(E) is the “current and correct law” of South Carolina. *Koutsogiannis*, 365 S.C. at 149. Even the trial court stated that “we all know [unlicensed contractors] is not a violation of any law or requirement.” (R. 1259, line 16–R. 1260, line 2). But the trial court nevertheless refused to charge the statute. (R. 1602, lines 10–16). The refusal to charge the statute was error. *Fairchild*, 385 S.C. at 352.

In affirming the trial court’s decision not to instruct the jury, this Court likewise erred —

and overlooked or misapprehended governing law. *See* Rule 221(a), SCACR. Like the parties and the trial court, the Court recognized that the statute controlled. *See Wedgewood*, 2025 WL 2713866, at *11–12. But after incorrectly concluding that declining to charge § 40-11-270(E) did not constitute error, *see infra* Part II(B), the Court did not analyze whether the trial court’s refusal to charge the statute was prejudicial. It was.

As Centex articulated in its opening brief, App. Br. 29, subcontractor licenses were a major theme of *Wedgewood*’s case at trial. (R. 1278, line 15–R. 1281, line 20; R. 1289, line 25–R. 1290, line 4; R. 1414, line 25–R. 1416, line 10; R. 1619, lines 13–21, R. 1661, lines 19–22). Centex was entitled to have the court set the record straight by instructing the jury that the use of unlicensed subcontractors is permissible under South Carolina law. This Court’s affirmance of the trial court’s refusal to instruct the jury on the applicable statute, which did not engage with Centex’s arguments and evidence as to prejudice, was erroneous and warrants further review.

B. The grounds on which the Court upheld the trial court’s refusal to charge the law governing the use of unlicensed contractors are not valid bases for refusing to charge the controlling law.

The opinion recognizes that the trial court would have been “within [its] discretion to charge the statute,” but concludes the court was also within its discretion to refuse to charge the statute governing the use of unlicensed subcontractors. *See Wedgewood*, 2025 WL 2713866, at *12. The reasons offered for this conclusion lack support in South Carolina law. If uncorrected, the opinion risks creating confusion in the legal landscape governing jury instructions.

First, the opinion affirms the trial court’s decision not to charge § 40-11-270(E) because two of Centex’s witnesses offered their opinions on whether they believed the use of licensed subcontractors was required. *See Wedgewood*, 2025 WL 2713866, at *11 (quoting, with emphasis, testimony of Centex’s expert that his personal decision not to use unlicensed subcontractors “doesn’t mean it is a requirement on the rest of the industry”); *id.* at *12 (quoting, with emphasis,

testimony of construction manager that he did not “believe” licensed subcontractors were “required”). The opinion reasons that no instruction was needed because both witnesses “indicated their understanding that using only licensed subcontractors was not a requirement.” *Id.* at *12. No authority is cited for the proposition that witness testimony can substitute for a court’s jury instructions, and it is incorrect under South Carolina law.

There is no substitute for the trial court’s obligation to clearly and accurately instruct the jury as to the law. For instance, the fact that counsel accurately states the law during closing arguments is not sufficient; “[c]learly, the judge’s instruction carries far more weight with the jury than defense counsel’s word in his closing argument.” *State v. Burkhart*, 350 S.C. 252, 264, 565 S.E.2d 298, 304 (2002). Even when the current and correct law is “implicit” within the trial judge’s instruction, that is also insufficient, because the “burden” on the trial judge to be “an instructor of the law” never shifts to anyone other than the trial judge. *State v. Mattison*, 388 S.C. 469, 483–84, 697 S.E.2d 578, 586 (2010). The opinion therefore misapprehends the law in concluding that the testimony of trial witnesses that they did not believe licensed subcontractors were required was a permissible substitute for the court instructing the jury that South Carolina law permits the use of unlicensed subcontractors. *See Wedgewood*, 2025 WL 2713866, at *11–12.

The opinion also erred by affirming the trial court’s decision not to charge § 40-11-270(E) for the other reason the trial court offered—that the statute governing the use of unlicensed contractors was “too close” to “the facts of the case.” (R. 1602, lines 10–12). Again, the opinion cites no authority for the proposition that this is a valid reason for declining to charge the current and correct law of South Carolina. And again, the opposite is true: “A court must charge the jury on the law framed by the issues as made by the pleadings and the facts developed by the evidence in support of those issues.” *Strange*, 307 S.C. at 165; *see also Tucker v. Reynolds*, 268 S.C. 330,

335, 233 S.E.2d 402, 404 (1977) (same). That is, “[i]n addition to correctly stating the law, the trial court has a distinct responsibility to tailor a jury instruction to the facts of the case and the evidence presented at trial.” *State v. Perry*, 440 S.C. 396, 406, 892 S.E.2d 273, 278 (2023). Here, the trial court’s reasoning for not charging the unlicensed-contractor statute shows that the court directedly contravened its responsibility to tailor jury instructions to the facts of the case and the evidence presented at trial.

Although the Court did not reach the question of prejudice, Centex made the requisite showing. In closing, Wedgewood took advantage of the court’s denial of Centex’s requested instruction to further mislead the jury, arguing, contrary to law, that it was somehow improper for Centex to allow “unlicensed contractors on the job.” (R. 1661, lines 19–22). Given that Centex’s use of unlicensed subcontractors was a theme of Wedgewood’s case at trial, Centex was entitled to have the jury charged on the correct law and was prejudiced by the trial court’s refusal to do so. *See Strange*, 307 S.C. at 165–66 (trial court’s refusal to “charge the jury on the law framed by the issues as made by the pleadings and the facts developed by the evidence in support of those issues” was reversible error). Rehearing is therefore warranted to correct the Court’s error of law and prevent that error from sowing further confusion in South Carolina courts.

III. The opinion misapprehends the governing legal standards in affirming the denial of Centex’s motion for judgment as a matter of law on the statute of limitations.

Centex was entitled to judgment as a matter of law because the undisputed facts established that the three-year statute of limitations, S.C. Code Ann. § 15-3-530(3), barred Wedgewood’s claims. To reach the opposite conclusion, the opinion made two errors of law, each of which warrants rehearing. First, rather than recognizing and applying the principle that directed-verdict and JNOV motions must be granted when only one reasonable inference can be drawn from the evidence, the opinion asked whether it was “impossible” for the jury to return a verdict for

Centex—a test without support in South Carolina law. Second, the Court did not apply the *inquiry*-notice requirement to the limitations issue. Instead, the Court affirmed the denial of JNOV on the grounds that expert testimony purportedly “cut both ways” as to whether, in 2006, Wedgewood had *actual* notice of all the damage for which it ultimately brought claims against Centex.

The Court should grant rehearing, apply the correct legal standard, and reverse on the basis that Centex is entitled to judgment as a matter of law on Wedgewood’s claims.

A. The opinion applied an incorrect legal standard in adjudicating Centex’s appeal as to the statute-of-limitations issue.

In affirming the denial of Centex’s directed-verdict and JNOV motions on statute-of-limitations grounds, the opinion reasoned that those motions were properly denied because it was not “impossible” for the jury to reach a verdict for Wedgewood. *Wedgewood*, 2025 WL 2713866, at *9. That was error. In South Carolina, directed-verdict and JNOV motions “must be granted” when “only one reasonable inference can be drawn from the evidence.” *Brady Dev. Co., Inc. v. Town of Hilton Head Island*, 312 S.C. 73, 78, 439 S.E.2d 266, 269 (1993); *see also Pampu v. Wingo*, 446 S.C. 236, 248–49, 918 S.E.2d 717, 724 (Ct. App. 2025) (same). That is the rule because “speculative, theoretical, and hypothetical views” may not be submitted to the jury, and “verdicts may not be permitted to rest upon surmise, conjecture, or speculation.” *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997).

Here, the opinion did not recognize the bedrock principle that “when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court.” *Id.* The opinion’s alternative formulation of the JNOV inquiry—asking only whether it was “impossible” for the jury to find Centex liable—failed to recognize that “evidence must amount to more than speculation and conjecture to submit a case to the jury.” *McKnight v. S.C. Dep’t of Corr.*, 385 S.C. 380, 389, 684 S.E.2d 566, 570 (Ct. App. 2009). Rehearing should be granted to

enable the Court to reaffirm that when only one reasonable inference can be drawn from the evidence, motions for directed verdict and JNOV must be granted. *Brady Dev. Co.*, 312 S.C. at 78–79.

B. The opinion incorrectly conflates the inquiry-notice requirement applicable to the statute of limitations with actual notice.

The opinion also misapprehends or overlooks caselaw governing when the statute of limitations begins to run. As Centex demonstrated in its briefing before this Court, *see* App. Br. 12–13; Reply Br. 3–4; the statute of limitations begins to run when a party is on inquiry notice of a claim. That is, the statute “runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.” *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (S.C. 1996). The fact that the injured party “may not comprehend the full extent of the damage is immaterial.” *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 13, 825 S.E.2d 707, 713 (Ct. App. 2019) (quoting *Dean*, 321 S.C. at 364).

In both *Dean* and *Allwin*, South Carolina courts held that that the statute of limitations began to run when the plaintiffs first observed construction issues at their properties and therefore had inquiry notice that they may have had causes of action against the defendants. *See Dean*, 321 S.C. at 365–66 (directed verdict for defendant properly granted); *Allwin*, 426 S.C. at 15, 17, 21 (summary judgment for defendant properly granted). Likewise, in *Barr v. City of Rock Hill*, summary judgment was properly granted for the defendants on statute-of-limitations grounds where earlier reports had advised the plaintiffs of problems at their property, but the plaintiffs failed to “investigate further to determine the extent of the problems.” 330 S.C. 640, 645, 500 S.E.2d 157, 160 (Ct. App. 1998). Centex cited *Dean*, *Allwin*, and *Barr* to the Court and explained how judgment as a matter of law was appropriate under the rule established in those cases. *See*

App. Br. 12–18.

In contravention of these principles and cases, the opinion instead applied an *actual*-notice requirement and concluded that whether the statute of limitations barred Wedgewood’s claims was a question for the jury. *See Wedgewood*, 2025 WL 2713866, at *6, 8–9. Without applying the caselaw discussed above to the facts of this case, the Court reasoned that “testimony from the experts in the case cut both ways as to notice.” *Id.* at *9. But the Court could only reach that conclusion by misapprehending or overlooking the precedent holding that inquiry notice of a possible claim, not actual notice of the extent of a claim, starts the statute-of-limitations clock.

C. The undisputed facts establish Centex’s entitlement to judgment as a matter of law because the statute of limitations bars Wedgewood’s claims.

Applying the correct legal framework, the Court should hold that as a matter of law, the statute of limitations bars Wedgewood’s claims. Indeed, the facts show that “only one reasonable inference can be deduced from the evidence,” such that the statute of limitations was a legal question for the trial court to resolve. *Small*, 329 S.C. at 461. There is no dispute that in 2006, Wedgewood’s property manager told its Board of Directors that gaps in the windows may support a claim against Centex, and that a Board member did not recall that the Board took any action in response. (R. 904, lines 4–22). Likewise, the Wedgewood Board’s meeting minutes from 2006 establish that the property manager “recommended having an engineering expert” examine the windows “to try and *determine if this is a Centex problem.*” (R. 2752) (emphasis added). The Board depends on the property manager for its expertise. (R. 806, lines 6–15). Accordingly, the Board recommended notifying Centex that an expert would be looking at the property about a possible claim. (R. 2752). The Board did not act on the recommendations to hire an expert or to notify Centex of a possible claim. (R. 904, line 17–R. 905, line 2).

Because Wedgewood indisputably “had *notice* in [2006] that [it] may have a cause of

action against [Centex],” the three-year statute of limitations began to run, at the latest, in 2006, and therefore expired in 2009—nine years before Wedgewood finally sued. *Dean*, 321 S.C. at 365–66; *see also Barr*, 330 S.C. at 645–46. That Wedgewood did not “investigate further to determine the extent of the problems,” *Barr*, 330 S.C. at 645, confirms a lack of subsequent diligence, because the evidence showed unequivocally that Wedgewood “had sufficient information ... to put it on inquiry notice.” *Allwin*, 426 S.C. at 15 (quoting *Republic Contracting Corp. v. S.C. Dep’t of Highways & Pub. Transp.*, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998)); *see also Dean*, 321 S.C. at 363–64 (“exercise of reasonable diligence” means injured party “must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist”). The fact that Wedgewood may not have comprehended in 2006 every building code violation that it ultimately raised at trial is “immaterial” under binding caselaw. *Dean*, 321 S.C. at 366; *see also Barr*, 330 S.C. at 645. Thus, the trial court erred in determining that the statute of limitations was a dispute for the jury to resolve, rather than a question “of law for the court.” *Small*, 329 S.C. at 461. This Court likewise erred, and committed an error of law, by affirming the trial court’s ruling. Rehearing is warranted to correct the Court’s error. *See* Rule 221(a), SCACR.

CONCLUSION

The Court should grant rehearing and remand this case to the trial court with instructions to dismiss all claims with prejudice because the action is barred by the statute of limitations and statute of repose, or, in the alternative, remand for a new trial based on jury instruction errors.

Dated: October 24, 2025

Respectfully submitted,

s/Stephanie Douglas

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2023-001132
Case No. 2018-CP-26-00307

RECEIVED

Oct 24 2025

SC Court of Appeals

Wedgewood Condominium Association,

Respondent,

v.

Centex Homes, a Nevada General Partnership and Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC, Crescent Architects, LLC and CEMS Engineering, Inc., Defendants,

Of which Centex Homes, a Nevada General Partnership and Balfour Beatty Construction, LLC as successor by merger to Centex Construction Company, Inc. and Centex Construction, LLC are the Appellants.

And

Centex Homes, a Nevada General Partnership, Third Party Plaintiff

v.

Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.; Frank Harris d/b/a Frank Harris Construction a/k/a F. Harris Construction a/k/a Harris Drywall; Builders FirstSource – Southeast Group, LLC; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc. f/k/a Carolina Builders Corporation; Michael D. Brownlee d/b/a Carolina Drywall & Interiors; Carolina Drywall & Interior, Inc. a/k/a Carolina Drywall & Interiors, Inc. a/k/a Carolina Drywall Contractors, Inc.; Roof Doctor of the Carolinas, Inc.; John D. Frazier d/b/a and/or a/k/a Roof Doctor and/or Roof Doctor of the Carolinas and/or Roof Doctor of the Carolinas, Inc.; Steven Bosch d/b/a The Roofer Man; Tri-City Insulation and Building Products of Myrtle Beach, Inc.; Martin Mata d/b/a Martin Masonry; Martin Masonry, Inc.; BR Brick & Masonry, Inc.; BR Brick & Masonry, LP f/k/a BR Brick & Masonry, Inc.; Unicon Concrete, LLC; Seno's Cleaning Service; American Residential Services, Inc.; Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., Floors, Inc. successor by merger to Rice Planter Carpets, Inc.; Carpets By Kendall, Inc.; Reliable Floor Systems, Inc.; TNT Painting; Paint with Pride a/k/a Painting with Pride; William Evans d/b/a Top Notch Painters; Morningstar Consultants Inc.; MI Windows and Doors, LLC;

Michael Dawson d/b/a Michael Dawson Construction, and Inc.; Vereen Concrete Co. Inc.; AK Construction Inc. a/k/a AK Framing and Siding Co.; AK United, Inc. f/k/a AK Construction Inc., Third Party Defendants.

PROOF OF SERVICE

The undersigned hereby certifies that on October 24, 2025, a copy of **APPELLANTS' PETITION FOR REHEARING** was served on all counsel of record via emails containing the above-referenced document to counsels' individual AIS email addresses:

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October 24, 2025



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October 24, 2025

Via Hand-Delivery:

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RECEIVED
Oct 24 2025
SC Court of Appeals

Re: *Wedgewood Condominium Association vs. Centex Homes, et al.*
Appellate Case No.: 2023-001132
Trial Court Case No.: 2018-CP-26-00307

Dear Mrs. Kitchings:

Enclosed for filing in the *Wedgewood Condominium Association vs. Centex Homes, et al.*, Appellate Case No. 2023-001132, please find one copy of Appellants' Petition for Rehearing and Suggestion for Rehearing and Proof of Service. Copies of same are being provided to all counsel of record via e-mail.

Additionally, Check No. 525000 in the amount of \$50.00 which covers our filing fee, is being hand-delivered to your office.

Should you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

s/Katon E. Dawson, Jr.

Katon E. Dawson, Jr.

KED/aeb

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Stacy L. Stanley, via email only - sstanley@stanleylawfirm.com