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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Opinion No. 2025-UP-375 (S.C. Ct. App. filed November 12, 2025)

Kathleen M. Rankin,

Petitioner,

v.

Hilton Head Exterminators, Inc.,

Respondent.

APPENDIX

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No.: 2023-000117

Kathleen M. Rankin, Appellant,

v.

Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

RECORD ON APPEAL

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ELECTRONICALLY FILED - 2021 May 17 11:27 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, Plaintiff, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants.	C.A. No. 2020-CP-07-00776 **CONSENT ORDER GRANTING LEAVE TO FILE SECOND AMENDED SUMMONS AND COMPLAINT**

TO: ALL COUNSEL OF RECORD

Pursuant to Rules 15(a) and 19 of the South Carolina Rules of Civil Procedure and consent of counsel for all parties who have appeared, Plaintiff is hereby granted leave to file Second Amended Summons and Complaint adding an additional party.

IT IS SO ORDERED!

JUDGE SIGNATURE PAGE FOLLOWS
The Honorable Bentley Price
Chief Administrative Judge
Fourteenth Judicial Circuit

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WE SO MOVE

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Beaufort Common Pleas

Case Caption: Kathleen M Rankin VS Palatial Homes Inc , defendant, et al

Case Number: 2020CP0700776

Type: Order/Consent Order

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
	)	
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANT HILTON HEAD EXTERMINATORS, INC.'S MOTION FOR SUMMARY JUDGMENT**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

THIS MATTER was heard by the undersigned on the Motion for Summary Judgment filed by Defendant Hilton Head Exterminators, Inc. ("HHE"). The hearing took place on August 15, 2022. The Court, having considered HHE's motion, the briefs submitted, and oral arguments of counsel, grants HHE's Motion for Summary Judgment for the reasons set forth below.

I. FACTUAL FINDINGS

This case involves moisture and termite damage discovered by Plaintiff following her "as is" purchase of the residence located at 11 Harrogate Drive, Hilton Head, South Carolina (the "Residence"). Palatial Homes, Inc. constructed the Residence, and Defendant HHE applied the termite pre-treatment to the soil in March 2003, prior to construction. On March 3, 2005, the Town of Hilton Head issued a building permit, and the Certificate of Occupancy for the Residence was issued on January 30, 2006.

HHE provided a termite warranty for prior owners of the Residence from June 1, 2005, to April 27, 2012. The warranty was cancelled on April 27, 2012, when the prior owners elected not to renew the termite warranty. HHE did not provide any further termite services at the Residence after April 27, 2012. The Residence then apparently went uninspected and untreated

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for termites for approximately six years and eight months before Plaintiff purchased it.

On or about December 6, 2018, Plaintiff entered into a Contract of Sale (the "Contract") to purchase the Residence from seller Michael Grondahl for the purchase price of $1,240,000.00. The Contract expressly states that the Residence was being sold "as-is," "where-is," with "no repairs" and "no concessions." Plaintiff did not obtain a home inspection. Instead, she relied on a previous home inspection report produced by the seller's real estate agent. Plaintiff testified that she did not even see the previous home inspection report, and she does not know if her real estate agent reviewed it. Plaintiff stated that the seller's real estate agent represented to Plaintiff's real estate agent that there were no significant issues with the Residence, even though it "had been vacant at different times," and Plaintiff's real estate agent did not believe another inspection was necessary.

Furthermore, the section of the seller's Residential Property Condition Disclosure Statement regarding wood-destroying insects, which includes termites, was completely blank and did not address whether the Residence had any past or present termite infestations, damage, or termite treatment or coverage. Plaintiff testified this did not raise any red flags for her because she was not aware of the amount of damage termites can do to a house, and she was not surprised the termite section of the disclosure was also blank because the seller "listed no representation on all of the other boxes." She did not know if the prior owner had a termite warranty for the Residence. Plaintiff obtained an Official South Carolina Wood Infestation Report, or CL-100, prior to closing, and the visual CL-100 inspection did not identify any visible termite activity or damage.

Plaintiff closed on the purchase of the Residence on December 18, 2018. She testified that she moved into the Residence in early January 2019, and shortly thereafter, she claims she observed a substance that she later learned was "termite excrement" at the top of one of the

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columns on the first-floor porch on the rear of the residence. She testified that months later, in late spring or early summer 2019, a painter discovered termites in the breakfast nook on the rear of the residence while painting sheetrock. While he was painting, some of the sheetrock crumbled and exposed the termites. During the same timeframe, a repair contractor hired by Plaintiff discovered numerous construction defects at the Residence, including structural stability issues with the second-floor balcony on the rear of the Residence and flashing and waterproofing issues.

On January 15, 2020, more than a year after she purchased the Residence, Plaintiff contacted the Department of Pesticide Regulation ("DPR"), Clemson University, to perform an investigation regarding the CL-100 inspection performed at the Residence by another party and the discovery of termite damage. DPR performed an inspection on January 22, 2020, and DPR Pesticide Investigator Kristin Lenox-Rustin subsequently issued a report dated June 18, 2020, which was amended on June 24, 2020. The June 24th report indicates that during demolition and repairs, certain hidden conditions were revealed, including a form board in the block and rear patio slab. After discussing conditions at the Residence, DPR addressed former and current pest control companies that provided services at the Residence. With respect to HHE, which had not provided any termite services since April 2012, DPR concluded that HHE's March 23, 2003 pre-treatment did not address Exterior Insulation and Finish System, or EIFS, stucco in contact with the ground. DPR did not require HHE to correct this issue and simply issued an informational letter to HHE on January 15, 2021. DPR instead issued a warning letter to Terminix, the current pest control company at the Residence, for not addressing EIFS-to-ground contact, as well as a termiticide use violation.

Plaintiff filed her original Complaint on March 26, 2020. Plaintiff filed an Amended Complaint on October 19, 2020, naming additional defendants. In her Amended Complaint,

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Plaintiff asserts claims for Negligence/Gross Negligence and Breach of Implied Warranty of Workmanship against HHE.

II. SUMMARY JUDGMENT STANDARD

South Carolina Rule of Civil Procedure 56(c) states that summary judgment is appropriate when "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."

> "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." [*Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)] (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). However, "[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch,* 354 S.C. 648, 582 S.E.2d 432 [(Ct. App. 2003)]." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). "The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. [*Rife v. Hitachi Cont. Machinery Co., Ltd*, 363 S.C. 209, 214, 609 S.E.2d 565, 568. (Ct. App. 2005)]." *Id.*, 377 S.C. at 198, 659 S.E.2d at 203.

III. CONCLUSIONS OF LAW

A. No Evidence Exists Regarding the Conditions at the Residence, Whether Conditions were Waived, or Any Alleged Deficiencies in HHE's Pretreatment and Inspections at the Residence.

Page three of the June 24, 2020 DPR report states that DPR Regulation § 27-1085(G)(2)(b)—addressing EIFS-to-ground contact—was "neither met nor wa[i]ved during

[HHE's] March 23, 2003 pretreatment." Plaintiff relies on this statement from Investigator Lenox-Rustin as her only evidence of a deficiency in HHE's pretreatment and warranty services which may have allowed termites to enter the Residence. However, aside from the March 23, 2003 HHE invoice for a termite pretreatment of the soil that occurred prior to construction, it is undisputed that no other documents regarding HHE's termite services at the Residence exist. Accordingly, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, Mr. Kevin DeLorenzo, readily admits in his affidavit that DPR does not know whether the alleged EIFS-to-ground contact was waived, or what conditions existed at the Residence up until 2012. DPR has no way of making such a determination because according to Mr. DeLorenzo, DPR can only report what its investigator observes at the time of its inspection. In this case, the inspection occurred on January 22, 2020, approximately seven years and nine months after HHE's involvement at the Residence ended.

HHE clearly satisfied the DPR regulation regarding the retention and destruction of records by waiting five years before destroying the records in 2017. Mr. DeLorenzo, who is an expert in the field of termite treatments, inspections and regulation, agrees that HHE's destruction of records for the Residence was proper following cancellation of termite services in April 2012.

Neither Plaintiff nor DPR has any evidence showing that the termite pretreatment performed on March 23, 2003, was in any way incorrect or deficient in the amount of termiticide applied. In fact, due to the passage of time, it is impossible to test the soil to determine whether the pretreatment was deficient. Mr. DeLorenzo testified that DPR is only able to test the soil within six months following application of termiticide. Mr. DeLorenzo's affidavit reflects that DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when

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performing future inspections and treatments at other properties. As such, the informational letter issued to HHE is not tracked against HHE's enforcement history. Mr. DeLorenzo states that he would have also agreed not to issue an informational letter in this case due to the lack of available records.

B. Plaintiff's Claim for Negligence/Gross Negligence Fails as HHE Did Not Owe Plaintiff a Duty of Care, and Plaintiff's Damages were Caused by the Intervening Negligence of Prior Owners.

In her Amended Complaint, Plaintiff claims that HHE had a duty and standard of care to properly perform its work on the Residence "in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards." Plaintiff claims that HHE breached its alleged duty and standard of care in a reckless manner that caused damage to Plaintiff.

A plaintiff must prove the following elements to recover on a claim for negligence: "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (2013) (citing *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011)). "'If any of these elements is absent a negligence claim is not stated.'" *Chakrabarti*, 403 S.C. at 314, 743 S.E.2d at 112 (quoting *Summers v. Harrison Constr.*, 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989)). "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989) (internal citation omitted). "Gross negligence involves a conscious failure to exercise due care." *Jackson*, 301 S.C. at 126-27, 390 S.E.2d at 468 (internal citation omitted).

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There is no genuine issue of material fact as to Plaintiff's negligence/gross negligence claim because no evidence exists regarding HHE's termite pretreatment and subsequent warranty inspections except for the March 23, 2003 pretreatment invoice for work performed by HHE, *before a structure was even built*. The affidavit of DPR's Structural Program Manager, Mr. DeLorenzo, reflects that there is no way to determine whether the EIFS-to-ground condition was waived by a prior owner, or the conditions at the Residence, when HHE's termite warranty was in effect because no records exist, and DPR did not inspect the Residence years earlier during HHE's involvement at the property. Thus, there is no way to determine whether HHE breached any standard of care to a prior owner of the Residence.

HHE retained the services of termite expert Dr. Maxcy Nolan, III, and after a review of relevant case documents and a site inspection at the Residence, Dr. Nolan concurs with Mr. DeLorenzo's testimony. Dr. Nolan has extensive education and experience in the areas of termite treatments, inspection and regulation, and he has served as an expert in numerous termite damage cases in South Carolina.

Both Mr. DeLorenzo and Dr. Nolan also agree that HHE does not owe Plaintiff a standard of care because HHE cancelled its termite warranty on the Residence six years and eight months prior to Plaintiff's purchase of the Residence. Prior to her purchase, HHE never had any contact or relationship with Plaintiff regarding termite services at the Residence. Terminix, not HHE, has the current termite warranty on the Residence and received a warning letter from DPR. HHE destroyed records properly pursuant to DPR regulations. Dr. Nolan has provided testimony that no evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operators. Since there is no evidence that HHE breached a duty of care to a prior owner, and never owed a duty of care to Plaintiff, Plaintiff's negligence claim must fail. Furthermore, there is absolutely

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no evidence demonstrating that HHE consciously failed to exercise due care, as is required in a claim for gross negligence.

Plaintiff's negligence claim also fails because the six year and eight month period prior to Plaintiff's purchase of the Residence, in which apparently no termite inspection or treatment services were provided, is an intervening or superseding cause of Plaintiff's termite damage attributable to the prior owners of the residence. "'For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated." *Dawkins v. Sell*, 434 S.C. 572, 581, 865 S.E.2d 1, 6 (Ct. App. 2021) (*Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 205, 781 S.E.2d 534, 536 (2015) (quoting *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997)). Certainly, HHE could not have reasonably foreseen or anticipated that individuals who owned the Residence prior to Plaintiff's purchase would fail to have the property inspected and treated for termites, thus causing damage to Plaintiff. Based on the testimony of Mr. DeLorenzo and Dr. Nolan, it is widely known that Hilton Head Island is an area with significant Formosan termite pressure, and termite treatments and inspections are considered necessities by termite experts. These experts also recommend termite re-treatments, or boosters, to protect against termite infestation. If prior owners failed to re-treat or inspect the Residence for termites for a period of almost seven years before Plaintiff purchased it, Dr. Nolan opines that it is likely that the termite infestation began during this time period. HHE cannot reasonably have any duty to Plaintiff almost seven years later for termite damage caused during a period of time when HHE did not provide any termite services. That liability rests with the prior owners and Plaintiff's due diligence in the course of purchasing the Residence.

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C. Under South Carolina Law, Plaintiff's Claim for Breach of Implied Warranty of Workmanship Does Not Apply to Pest Control Companies or Chemical Treatments with Limited Lifespans.

Plaintiff's second cause of action against HHE is Breach of Implied Warranty of Workmanship. She identifies HHE as one of the "Original Construction Subcontractors" and alleges that HHE "impliedly warranted that its scope of work would be performed in a careful, diligent, and workmanlike manner, free of construction defects, and in conformance with the applicable building codes and industry standards." Plaintiff alleges that HHE breached this alleged warranty and suffered damages as a result.

"A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner." *Smith v. Breedlove*, 377 S.C. 415, 422, 661 S.E.2d 61, 71 (2008) (citing *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 344, 384 S.E.3d 730, 736 (1989)). "[T]o establish a claim for breach of the implied warranty of workmanlike services, the plaintiff must show that the builder failed to perform its work in a careful, diligent, and workmanlike manner." *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc*., 397 S.C. 348, 368-69, 725 S.E.2d 112, 123 (Ct. App. 2012) (citing *Smith*, 377 S.C. at 422, 661 S.E.2d at 71. The implied warranty of workmanship "*only applies to builders in the business of building new dwellings for sale*." *Smith*, 377 S.C. at 422, 661 S.E.2d at 71 (emphasis added); *Champy v. Beazer Homes Corp.*, No. 3:15CV04098MBS, 2016 WL 1110241, at *3 (D.S.C. Mar. 21, 2016) ("[L]iability for the implied warranty of workmanship is limited to the 'builder who contracts to construct a dwelling.'" (quoting *Kennedy*, 299 S.C. at 344, 384 S.E.2d at 736.)) The rationale behind this cause of action is "that the purchaser is forced to rely on the skill of the professional builder." *Smith*, 277 S.C. at 423, 661 S.E.2d at 72.

HHE is a pest control company, not a builder of new homes. HHE did not have any involvement whatsoever in the construction of the Residence purchased by Plaintiff. Thus, Plaintiff's claim for breach of the implied warranty of workmanship is inapplicable to HHE. Moreover, HHE only applied the initial termite pre-treatment at the Residence. Unlike large structures constructed by a builder, termite treatments have a much more limited lifespan. The affidavits of Mr. DeLorenzo and Dr. Nolan directly support this point. The termite warranty issued by HHE was cancelled in 2012 because the owner of the Residence at that time elected not to renew the warranty. There is no evidence indicating that any termite inspections or treatments occurred at the Residence for approximately six years and eight months prior to Plaintiff's purchase in December 2018. In addition, the affidavits of termite experts Mr. DeLorenzo and Dr. Nolan reflect that is impossible to determine whether HHE's prior work at the Residence was performed in accordance with industry standards due to the passage of a significant period of time and the proper destruction of service records years ago.

IV. CONCLUSION

For the foregoing reasons, HHE's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

_____
The Honorable Bentley Price

Charleston, South Carolina

August ___, 2022

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Beaufort Common Pleas

Case Caption: Kathleen M Rankin VS Palatial Homes Inc , defendant, et al

Case Number: 2020CP0700776

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
KATHLEEN M. RANKIN,	)	
	)	**AMENDED**
Plaintiff,	)	**ORDER GRANTING DEFENDANT**
	)	**HILTON HEAD EXTERMINATORS,**
v.	)	**INC.'S MOTION FOR SUMMARY**
	)	**JUDGMENT**
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

THIS MATTER was heard by the undersigned on the Motion for Summary Judgment filed by Defendant Hilton Head Exterminators, Inc. ("HHE"). The hearing took place on August 15, 2022. The Court, having considered HHE's motion, the briefs submitted, and oral arguments of counsel, grants HHE's Motion for Summary Judgment for the reasons set forth below.

I. PREAMBLE

This case involves moisture and termite damage discovered by Plaintiff following her "as is" purchase of the residence located at 11 Harrogate Drive, Hilton Head, South Carolina (the "Residence"). Palatial Homes, Inc. constructed the Residence, and Defendant HHE applied the termite pre-treatment to the soil in March 2003, prior to construction. On March 3, 2005, the Town of Hilton Head issued a building permit, and the Certificate of Occupancy for the Residence was issued on January 30, 2006.

HHE provided a termite warranty for prior owners of the Residence from June 1, 2005, to April 27, 2012. The warranty was cancelled on April 27, 2012, when the prior owners elected not to renew the termite warranty. HHE did not provide any further termite services at the Residence after April 27, 2012. The Residence then apparently went uninspected and untreated

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for termites for approximately six years and eight months before Plaintiff purchased it.

On or about December 6, 2018, Plaintiff entered into a Contract of Sale (the "Contract") to purchase the Residence from seller Michael Grondahl for the purchase price of $1,240,000.00. The Contract expressly states that the Residence was being sold "as-is," "where-is," with "no repairs" and "no concessions." Plaintiff did not obtain a home inspection. Instead, she relied on a previous home inspection report produced by the seller's real estate agent. Plaintiff testified that she did not even see the previous home inspection report, and she does not know if her real estate agent reviewed it. Plaintiff stated that the seller's real estate agent represented to Plaintiff's real estate agent that there were no significant issues with the Residence, even though it "had been vacant at different times," and Plaintiff's real estate agent did not believe another inspection was necessary.

Furthermore, the section of the seller's Residential Property Condition Disclosure Statement regarding wood-destroying insects, which includes termites, was completely blank and did not address whether the Residence had any past or present termite infestations, damage, or termite treatment or coverage. Plaintiff testified this did not raise any red flags for her because she was not aware of the amount of damage termites can do to a house, and she was not surprised the termite section of the disclosure was also blank because the seller "listed no representation on all of the other boxes." She did not know if the prior owner had a termite warranty for the Residence. Plaintiff obtained an Official South Carolina Wood Infestation Report, or CL-100, prior to closing, and the visual CL-100 inspection did not identify any visible termite activity or damage.

Plaintiff closed on the purchase of the Residence on December 18, 2018. She testified that she moved into the Residence in early January 2019, and shortly thereafter, she claims she observed a substance that she later learned was "termite excrement" at the top of one of the

columns on the first-floor porch on the rear of the residence. She testified that months later, in late spring or early summer 2019, a painter discovered termites in the breakfast nook on the rear of the residence while painting sheetrock. While he was painting, some of the sheetrock crumbled and exposed the termites. During the same timeframe, a repair contractor hired by Plaintiff discovered numerous construction defects at the Residence, including structural stability issues with the second-floor balcony on the rear of the Residence and flashing and waterproofing issues.

On January 15, 2020, more than a year after she purchased the Residence, Plaintiff contacted the Department of Pesticide Regulation ("DPR"), Clemson University, to perform an investigation regarding the CL-100 inspection performed at the Residence by another party and the discovery of termite damage. DPR performed an inspection on January 22, 2020, and DPR Pesticide Investigator Kristin Lenox-Rustin subsequently issued a report dated June 18, 2020, which was amended on June 24, 2020. The June 24th report indicates that during demolition and repairs, certain hidden conditions were revealed, including a form board in the block and rear patio slab. After discussing conditions at the Residence, DPR addressed former and current pest control companies that provided services at the Residence. With respect to HHE, which had not provided any termite services since April 2012, DPR concluded that HHE's March 23, 2003 pre- treatment did not address Exterior Insulation and Finish System, or EIFS, stucco in contact with the ground. DPR did not require HHE to correct this issue and simply issued an informational letter to HHE on January 15, 2021. DPR instead issued a warning letter to Terminix, the current pest control company at the Residence, for not addressing EIFS-to-ground contact, as well as a termiticide use violation.

Plaintiff filed her original Complaint on March 26, 2020. Plaintiff filed an Amended Complaint on October 19, 2020, naming additional defendants. In her Amended Complaint,

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Plaintiff asserts claims for Negligence/Gross Negligence and Breach of Implied Warranty of Workmanship against HHE.

II. SUMMARY JUDGMENT STANDARD

South Carolina Rule of Civil Procedure 56(c) states that summary judgment is appropriate when "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."

> "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." [*Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)] (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). However, "[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch,* 354 S.C. 648, 582 S.E.2d 432 [(Ct. App. 2003)]." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). "The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. [*Rife v. Hitachi Cont. Machinery Co., Ltd*, 363 S.C. 209, 214, 609 S.E.2d 565, 568. (Ct. App. 2005)]." *Id.*, 377 S.C. at 198, 659 S.E.2d at 203.

III. CONCLUSIONS OF LAW

A. No Evidence Exists Regarding the Conditions at the Residence, Whether Conditions were Waived, or Any Alleged Deficiencies in HHE's Pretreatment and Inspections at the Residence.

Page three of the June 24, 2020 DPR report states that DPR Regulation § 27-1085(G)(2)(b)—addressing EIFS-to-ground contact—was "neither met nor wa[i]ved during

[HHE's] March 23, 2003 pretreatment." Plaintiff relies on this statement from Investigator Lenox-Rustin as her only evidence of a deficiency in HHE's pretreatment and warranty services which may have allowed termites to enter the Residence. However, aside from the March 23, 2003 HHE invoice for a termite pretreatment of the soil that occurred prior to construction, it is undisputed that no other documents regarding HHE's termite services at the Residence exist. Accordingly, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, Mr. Kevin DeLorenzo, readily admits in his affidavit that DPR does not know whether the alleged EIFS-to-ground contact was waived, or what conditions existed at the Residence up until 2012. DPR has no way of making such a determination because according to Mr. DeLorenzo, DPR can only report what its investigator observes at the time of its inspection. In this case, the inspection occurred on January 22, 2020, approximately seven years and nine months after HHE's involvement at the Residence ended.

HHE clearly satisfied the DPR regulation regarding the retention and destruction of records by waiting five years before destroying the records in 2017. Mr. DeLorenzo, who is an expert in the field of termite treatments, inspections and regulation, agrees that HHE's destruction of records for the Residence was proper following cancellation of termite services in April 2012.

Neither Plaintiff nor DPR has any evidence showing that the termite pretreatment performed on March 23, 2003, was in any way incorrect or deficient in the amount of termiticide applied. In fact, due to the passage of time, it is impossible to test the soil to determine whether the pretreatment was deficient. Mr. DeLorenzo testified that DPR is only able to test the soil within six months following application of termiticide. Mr. DeLorenzo's affidavit reflects that DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when

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performing future inspections and treatments at other properties. As such, the informational letter issued to HHE is not tracked against HHE's enforcement history. Mr. DeLorenzo states that he would have also agreed not to issue an informational letter in this case due to the lack of available records.

B. Plaintiff's Claim for Negligence/Gross Negligence Fails as HHE Did Not Owe Plaintiff a Duty of Care, and Plaintiff's Damages were Caused by the Intervening Negligence of Prior Owners.

In her Amended Complaint, Plaintiff claims that HHE had a duty and standard of care to properly perform its work on the Residence "in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards." Plaintiff claims that HHE breached its alleged duty and standard of care in a reckless manner that caused damage to Plaintiff.

A plaintiff must prove the following elements to recover on a claim for negligence: "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (2013) (citing *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011)). "'If any of these elements is absent a negligence claim is not stated.'" *Chakrabarti*, 403 S.C. at 314, 743 S.E.2d at 112 (quoting *Summers v. Harrison Constr.*, 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989)). "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989) (internal citation omitted). "Gross negligence involves a conscious failure to exercise due care." *Jackson*, 301 S.C. at 126-27, 390 S.E.2d at 468 (internal citation omitted).

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There is no genuine issue of material fact as to Plaintiff's negligence/gross negligence claim because no evidence exists regarding HHE's termite pretreatment and subsequent warranty inspections except for the March 23, 2003 pretreatment invoice for work performed by HHE, *before a structure was even built*. The affidavit of DPR's Structural Program Manager, Mr. DeLorenzo, reflects that there is no way to determine whether the EIFS-to-ground condition was waived by a prior owner, or the conditions at the Residence, when HHE's termite warranty was in effect because no records exist, and DPR did not inspect the Residence years earlier during HHE's involvement at the property. Thus, there is no way to determine whether HHE breached any standard of care to a prior owner of the Residence.

HHE retained the services of termite expert Dr. Maxcy Nolan, III, and after a review of relevant case documents and a site inspection at the Residence, Dr. Nolan concurs with Mr. DeLorenzo's testimony. Dr. Nolan has extensive education and experience in the areas of termite treatments, inspection and regulation, and he has served as an expert in numerous termite damage cases in South Carolina.

Both Mr. DeLorenzo and Dr. Nolan also agree that HHE does not owe Plaintiff a standard of care because HHE cancelled its termite warranty on the Residence six years and eight months prior to Plaintiff's purchase of the Residence. Prior to her purchase, HHE never had any contact or relationship with Plaintiff regarding termite services at the Residence. Terminix, not HHE, has the current termite warranty on the Residence and received a warning letter from DPR. HHE destroyed records properly pursuant to DPR regulations. Dr. Nolan has provided testimony that no evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operators. Since there is no evidence that HHE breached a duty of care to a prior owner, and never owed a duty of care to Plaintiff, Plaintiff's negligence claim must fail. Furthermore, there is absolutely

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no evidence demonstrating that HHE consciously failed to exercise due care, as is required in a claim for gross negligence.

Plaintiff's negligence claim also fails because the six year and eight-month period prior to Plaintiff's purchase of the Residence, in which apparently no termite inspection or treatment services were provided, is an intervening or superseding cause of Plaintiff's termite damage attributable to the prior owners of the residence. "'For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated." *Dawkins v. Sell*, 434 S.C. 572, 581, 865 S.E.2d 1, 6 (Ct. App. 2021) (*Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 205, 781 S.E.2d 534, 536 (2015) (quoting *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997)). Certainly, HHE could not have reasonably foreseen or anticipated that individuals who owned the Residence prior to Plaintiff's purchase would fail to have the property inspected and treated for termites, thus causing damage to Plaintiff. Based on the testimony of Mr. DeLorenzo and Dr. Nolan, it is widely known that Hilton Head Island is an area with significant Formosan termite pressure, and termite treatments and inspections are considered necessities by termite experts. These experts also recommend termite re-treatments, or boosters, to protect against termite infestation. If prior owners failed to re-treat or inspect the Residence for termites for a period of almost seven years before Plaintiff purchased it, Dr. Nolan opines that it is likely that the termite infestation began during this time period. HHE cannot reasonably have any duty to Plaintiff almost seven years later for termite damage caused during a period of time when HHE did not provide any termite services. That liability rests with the prior owners and Plaintiff's due diligence in the course of purchasing the Residence.

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C. Plaintiff Failed to Submit Evidence in Support of Her Implied Warranty Claim against Hilton Head Exterminators.

Plaintiff brought a separate cause of action against HHE alleging that HHE breached an implied warranty of workmanship. HHE alleges that such a cause of action does not apply to pest control companies in South Carolina, and even if it did, that Plaintiff did not submit any evidence that HHE breached that alleged cause of action.

The Court agrees with HHE that Plaintiff failed to submit any evidence that would support her contention that HHE breached any implied warranty, if one exists. The Court does not need to address whether an implied warranty arose to decide this motion. HHE is hereby granted summary judgment on Plaintiff's implied warranty claim on the grounds that Plaintiff did not submit any evidence of breach of this alleged implied warranty.

IV. CONCLUSION

For the foregoing reasons, HHE's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

_____
The Honorable Bentley Price

Charleston, South Carolina

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Beaufort Common Pleas

Case Caption: Kathleen M Rankin VS Palatial Homes Inc , defendant, et al

Case Number: 2020CP0700776

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; and John Does 1–20; *Defendants*.	C.A. No. 2020-CP-07-_____ **SUMMONS** (Jury Trial Demanded)

TO: ALL DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, Capell Thomson, LLC, 321 E. Bay Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

SIGNATURES ON FOLLOWING PAGE

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CAPELL THOMSON, LLC

s/ Glynn L. Capell
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Attorneys for Plaintiff

March 26, 2020

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; and John Does 1–20; *Defendants*.	C.A. No. 2020-CP-07-_____ **COMPLAINT** (Jury Trial Demanded)

The Plaintiff, Kathleen M. Rankin ("Plaintiff"), complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an individual who owns real property located at 11 Harrogate Drive, Wexford Plantation, Hilton Head Island, Beaufort County, South Carolina ("Subject Property").

2. As to Defendant Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC:

a) Defendant Palatial Homes, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

b) Defendant Palatial Homes, LLC is, upon information and belief, a limited liability company organized and

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formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

c) Defendant Palatial Homes Design, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Upon information and belief, Palatial Homes, Inc.; Palatial Homes, LLC; and Palatial Homes Design, LLC are successors in interest to and/or amalgamated with one another in that they involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for the entities to assume the debts of one another;

b) the entities were or are consolidated;

c) the entities are a mere continuation of one another;

d) the transfer from one company to another was fraudulent in fact;

e) the legal distinction between the three entities is blurred;

f) the interests of the three entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to the others.

4. The term "Palatial Homes" used hereinafter refers to Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC.

5. Defendant Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited

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liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

6. Upon information and belief, Heritage Plastering & Stucco LLC is a successor in interest to and/or is amalgamated with Heritage Plastering, Inc. in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Heritage Plastering & Stucco LLC to assume the debts of Heritage Plastering, Inc.;

b) the two entities were or are consolidated;

c) Heritage Plastering & Stucco LLC is a mere continuation of Heritage Plastering, Inc.;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

7. Defendant CMC Steel Works, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

8. Defendant AMI Ironworks LLC a/k/a American Master Ironworks, LLC is, upon information and belief, two limited liability companies organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

9. Upon information and belief, AMI Ironworks LLC is a successor in interest to and/or is amalgamated with American Master Ironworks, LLC

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in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for AMI Ironworks LLC to assume the debts of American Master Ironworks, LLC;

b) the two entities were or are consolidated;

c) AMI Ironworks LLC is a mere continuation of American Master Ironworks, LLC;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

10. Defendant Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

11. Upon information and belief, Ankon Construction Services, LLC is a successor in interest to and/or is amalgamated with Advanced Roofing Services in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Ankon Construction Services, LLC to assume the debts of Advanced Roofing Services;

b) the two entities were or are consolidated;

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c) Ankon Construction Services, LLC is a mere continuation of Advanced Roofing Services;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

12. Defendant Kelca Counters, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

13. Each Defendant John Doe 1–20 is an individual, entity, or entities, domiciled and/or operating under the laws of one of the United States of America that participated in the construction of the Subject Property by providing labor and/or materials for the stucco, framing, roofing, railings, decks, waterproofing, flashings, tiling, painting, and caulking. Each Defendant John Doe 1–20 is a party "whose true name is unknown," named pursuant to Rule 10(a)(1), SCRCP, and Plaintiff will amend this pleading when any or all of their true names are discovered.

14. This Court has jurisdiction over the subject matter and the parties to this action.

FACTUAL ALLEGATIONS

15. The Town of Hilton Head Island issued a Building Permit for the Subject Property on March 3, 2005 and issued the corresponding Certificate of Occupancy on January 30, 2006.

16. The Building Permit did not contain any bold type notice to the owners of the property of their rights to contract for a guarantee of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement.

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17. Upon information and belief, Palatial Homes acted as general contractor for the Subject Property and was responsible for coordination and supervision of construction.

18. Upon information and belief, Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC installed the stucco, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

19. Upon information and belief, CMC Steel Works, Inc. installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

20. Upon information and belief, AMI Ironworks LLC a/k/a American Master Ironworks, LLC installed the railings, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

21. Upon information and belief, Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

22. Upon information and belief, Kelca Counters, Inc. installed the tiling, inclusive of tile floors and shower/bathroom tiling, and was responsible for the necessary subcomponents to the tiling and other related appurtenances at the Subject Property.

23. The term "Subcontractors" used hereinafter refers to the following Defendants collectively: Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; and John Does 1–20.

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24. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Defendants including, but not limited to, the following:

a) Failure to install the exterior stucco cladding and related flashings in accordance with the manufacturer's installation instructions, industry standards, and applicable building code;

b) Installing the exterior stucco cladding system as a "barrier wall" rather than a drainable system;

c) Failure to install appropriate flashings or weep assemblies in the stucco cladding;

d) Failure to appropriately install through-wall flashing assemblies in the stucco cladding;

e) Failure to install appropriate engineered sealant joints at the intersection of dissimilar materials, most notably at the intersection between the stucco and the window jambs;

f) Improper installation of exterior trim board;

g) Improper installation of doors and windows;

h) Improper installation of building wrap;

i) Improper installation/waterproofing of steel support columns;

j) Improper installation and/or use of defective products on the exterior railings;

k) Improper installation of tiling, inclusive of components beneath the tiling;

l) Improper deck installation;

m) Improper deck waterproofing installation and use of improper materials for deck waterproofing;

n) Improper sloping of decks;

o) Use of improper fasteners in the stucco system;

p) Use of improper fasteners in the framing system supporting floors that began to sag;

q) Improper cutting of framing support members;

r) Improper framing and/or foundation unable to handle structural loads;

s) Improper shingle-roof and roof framing installation;

t) Installing wood columns in contact with grade;

u) Installing stucco and stucco trim in contact with grade;

v) Improper painting and caulking;

w) Lack of or improper flashing and waterproofing at junction of roofs, decks, walls, concrete and windows;

x) Failure to notice defective work of other trades prior to performing subsequent work;

y) Improper design and failure to install drainage systems;

z) Improper accounting for routine thermal expansion and contraction of construction components;

aa) Failure to construct the Subject Property so as to make the exterior building envelope watertight thereby violating the building code in effect in Beaufort County at the time the work was performed;

bb) Failure to investigate the subcontractors to determine if they were competent and capable of performing their work in accordance with good construction practices;

cc) Failure to adequately supervise the work of subcontractors and/or employees;

dd) Failure to discover defects in the work performed by subcontractors and/or employees;

ee) Failure to properly investigate and correct defective work and resulting damages;

ff) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

gg) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

hh) Such other failures as will be shown through the discovery and trial of this matter.

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25. The negligence/gross negligence of each Defendant herein caused property damage that was not discoverable in the exercise of reasonable diligence, as a result of exposure to harmful particles over a period of time, as opposed to resulting from a sudden and fortuitous trauma.

26. The negligence/gross negligence of each Defendant herein includes violations of the relevant building codes.

27. Due to the design and construction deficiencies, continuous and repeated exposure to harmful conditions, including water intrusion and termite infestation, has occurred, resulting in physical consequential damages. These events have occurred every year since construction and constitute "occurrences" and compensable damages. Further, the negligence/gross negligence of each Defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to Plaintiff's residence and property and Plaintiff's use and enjoyment of her residence.

28. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest, and postjudgment interest.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence — As to Palatial Homes)

29. Each and every allegation set forth above is incorporated here.

30. Palatial Homes owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

31. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Palatial Homes, as general contractor, in one or more of the following particulars:

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a) In failing to properly construct the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In failing to inform the architect and/or owner of defects in the plans and specifications;

f) In constructing the Subject Property in violation of applicable building codes; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

32. Palatial Homes failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

33. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss

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of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SECOND CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Palatial Homes)

34. Each and every allegation set forth above is incorporated here.

35. Palatial Homes held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

36. Palatial Homes provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

37. Certain implied warranties arose from the work performed by Palatial Homes, including, but not limited to, a warranty of workmanlike construction and habitability.

38. Palatial Homes further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

39. As set forth above, Palatial Homes breached its implied and express warranties.

40. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

THIRD CAUSE OF ACTION

(Negligence/Gross Negligence — As to Subcontractors)

41. Each and every allegation set forth above is incorporated here.

42. Each of the Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and

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workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

43. Each of the Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

44. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion and defects in the framing, siding, decking, waterproofing/flashing, flooring, painting, and other components of the residence, inclusive of work of other trades.

45. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanship — As to Subcontractors)

46. Each and every allegation set forth above is incorporated here.

47. Each of the Subcontractors impliedly warranted that its scope of work would be performed in a careful, diligent, and workmanlike manner, free of construction defects, and in conformance with the applicable building codes and industry standards.

48. As set forth more fully above, each of the Subcontractors breached the implied warranty of workmanship.

49. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

Wherefore, Plaintiff prays for judgment against the Defendants and is entitled to recover the cost to repair the defects including actual

damages, consequential damages, including loss of use and loss of value, plus punitive damages where applicable, costs, prejudgment interest, and postjudgment interest.

Jury Trial Demanded.

CAPELL THOMSON, LLC

s/ Glynn L. Capell
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Attorneys for Plaintiff

March 26, 2020

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **AMENDED SUMMONS** (Jury Trial Demanded)

TO: ALL DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Amended Complaint on the subscriber at his office, Capell Thomson, LLC, 321 E. Bay Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and

defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
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October 19, 2020

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **AMENDED COMPLAINT** (Jury Trial Demanded)

The Plaintiff, Kathleen M. Rankin ("Plaintiff"), complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an individual who owns real property located at 11 Harrogate Drive, Wexford Plantation, Hilton Head Island, Beaufort County, South Carolina ("Subject Property").

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2. As to Defendant Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC:

a) Defendant Palatial Homes, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

b) Defendant Palatial Homes, LLC is, upon information and belief, a limited liability company organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

c) Defendant Palatial Homes Design, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Upon information and belief, Palatial Homes, Inc.; Palatial Homes, LLC; and Palatial Homes Design, LLC are successors in interest to and/or amalgamated with one another in that they involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for the entities to assume the debts of one another;

b) the entities were or are consolidated;

c) the entities are a mere continuation of one another;

d) the transfer from one company to another was fraudulent in fact;

e) the legal distinction between the three entities is blurred;

f) the interests of the three entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

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g) there would exist a great injustice if the actions of one did not apply to the others.

4. The term "Palatial Homes" used hereinafter refers to Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC.

5. Defendant Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

6. Upon information and belief, Heritage Plastering & Stucco LLC is a successor in interest to and/or is amalgamated with Heritage Plastering, Inc. in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Heritage Plastering & Stucco LLC to assume the debts of Heritage Plastering, Inc.;

b) the two entities were or are consolidated;

c) Heritage Plastering & Stucco LLC is a mere continuation of Heritage Plastering, Inc.;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

7. Defendant CMC Steel Works, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

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8. Defendant AMI Ironworks LLC a/k/a American Master Ironworks, LLC is, upon information and belief, two limited liability companies organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

9. Upon information and belief, AMI Ironworks LLC is a successor in interest to and/or is amalgamated with American Master Ironworks, LLC in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for AMI Ironworks LLC to assume the debts of American Master Ironworks, LLC;

b) the two entities were or are consolidated;

c) AMI Ironworks LLC is a mere continuation of American Master Ironworks, LLC;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

10. Defendant Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

11. Upon information and belief, Ankon Construction Services, LLC is a successor in interest to and/or is amalgamated with Advanced Roofing

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Services in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Ankon Construction Services, LLC to assume the debts of Advanced Roofing Services;

b) the two entities were or are consolidated;

c) Ankon Construction Services, LLC is a mere continuation of Advanced Roofing Services;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

12. Defendant Kelca Counters, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

13. Each Defendant John Doe 1–20 is an individual, entity, or entities, domiciled and/or operating under the laws of one of the United States of America that participated in the construction of the Subject Property by providing labor and/or materials for the stucco, framing, roofing, railings, decks, waterproofing, flashings, tiling, painting, and caulking. Each Defendant John Doe 1–20 is a party "whose true name is unknown," named pursuant to Rule 10(a)(1), SCRCP, and Plaintiff will amend this pleading when any or all of their true names are discovered.

14. Defendant Cambridge Building, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

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15. Defendant Two Brothers Plastering, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

16. Defendant William T. Ruarks d/b/a Ruacon Quality Construction is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

17. Defendant Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

18. Defendant Ionut D. Istrate d/b/a Island Plasters LLC is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

19. Defendant Michael Grondahl is, upon information and belief, an individual domiciled in New Hampshire and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

20. Defendant Hilton Exterminators, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

21. Defendant Imperial Pest Controllers, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws

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of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

22. This Court has jurisdiction over the subject matter and the parties to this action.

FACTUAL ALLEGATIONS

23. The Town of Hilton Head Island issued a Building Permit for the original construction of the Subject Property on March 3, 2005 and issued the corresponding Certificate of Occupancy on January 30, 2006.

24. The Building Permit did not contain any bold type notice to the owners of the property of their rights to contract for a guarantee of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement.

25. Upon information and belief, Palatial Homes acted as general contractor for the Subject Property and was responsible for coordination and supervision of construction.

26. Upon information and belief, Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC installed the stucco, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

27. Upon information and belief, CMC Steel Works, Inc. installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

28. Upon information and belief, AMI Ironworks LLC a/k/a American Master Ironworks, LLC installed the railings, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

29. Upon information and belief, Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

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30. Upon information and belief, Kelca Counters, Inc. installed the tiling, inclusive of tile floors and shower/bathroom tiling, and was responsible for the necessary subcomponents to the tiling and other related appurtenances at the Subject Property.

31. Upon information and belief, Hilton Exterminators, Inc. performed the pretreatment application to the footings and piers during the original construction of the Subject Property and also provided a Wood Infestation Report once original construction was substantially complete.

32. The term "Original Construction Subcontractors" used hereinafter refers to the following Defendants collectively: Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; Hilton Exterminators, Inc.; and John Does 1–20.

33. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Palatial Homes and Original Construction Subcontractors including, but not limited to, the following:

a) Failure to install the exterior stucco cladding and related flashings in accordance with the manufacturer's installation instructions, industry standards, and applicable building code;

b) Installing the exterior stucco cladding system as a "barrier wall" rather than a drainable system;

c) Failure to install appropriate flashings or weep assemblies in the stucco cladding;

d) Failure to appropriately install through-wall flashing assemblies in the stucco cladding;

e) Failure to install appropriate engineered sealant joints at the intersection of dissimilar materials, most notably at the intersection between the stucco and the window jambs;

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f) Improper installation of exterior trim board;

g) Improper installation of doors and windows;

h) Improper installation of building wrap;

i) Improper installation/waterproofing of steel support columns;

j) Improper installation and/or use of defective products on the exterior railings;

k) Improper installation of tiling, inclusive of components beneath the tiling;

l) Improper deck installation;

m) Improper deck waterproofing installation and use of improper materials for deck waterproofing;

n) Improper sloping of decks;

o) Use of improper fasteners in the stucco system;

p) Use of improper fasteners in the framing system supporting floors that began to sag;

q) Improper cutting of framing support members;

r) Improper framing and/or foundation unable to handle structural loads;

s) Improper shingle-roof and roof framing installation;

t) Installing wood columns in contact with grade;

u) Installing stucco and stucco trim in contact with grade;

v) Failure to apply the appropriate amount of pretreat pesticide beneath the residence;

w) Failure by multiple trades, inclusive of the pest control trade, to note the stucco- and wood-to-grade condition;

x) Violations of the South Carolina Pesticide Control Act;

y) Improper painting and caulking;

z) Lack of or improper flashing and waterproofing at junction of roofs, decks, walls, concrete and windows;

aa) Failure to notice defective work of other trades prior to performing subsequent work;

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bb) Improper design and failure to install drainage systems;

cc) Improper accounting for routine thermal expansion and contraction of construction components;

dd) Failure to construct the Subject Property so as to make the exterior building envelope watertight thereby violating the building code in effect in Beaufort County at the time the work was performed;

ee) Failure to investigate the subcontractors to determine if they were competent and capable of performing their work in accordance with good construction practices;

ff) Failure to adequately supervise the work of subcontractors and/or employees;

gg) Failure to discover defects in the work performed by subcontractors and/or employees;

hh) Failure to properly investigate and correct defective work and resulting damages;

ii) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

jj) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

kk) Such other failures as will be shown through the discovery and trial of this matter.

34. The negligence/gross negligence of Palatial Homes and each of the Original Construction Subcontractors caused property damage that was not discoverable in the exercise of reasonable diligence, as a result of exposure to harmful particles over a period of time, as opposed to resulting from a sudden and fortuitous trauma.

35. The negligence/gross negligence of Palatial Homes and each of the Original Construction Subcontractors includes violations of the relevant building codes.

36. Upon information and belief, Defendant Michael Grondahl owned the Subject Property from in or around August 2013 until in or around December 2018.

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37. Upon information and belief, Michael Grondahl contracted with Defendant Cambridge Building, Inc. to perform certain repairs and renovations to the Subject Property. This work included repairs to fire damage around the chimney shaft, other work around the rear porch, and fallen tree damage to the roof and other areas inside the house.

38. The Town of Hilton Head Island issued a Building Permit for repairs and renovations to the Subject Property on May 9, 2016. As to this project, upon information and belief:

a) The scope of work was to repair fire damage to the chimney shaft and other work around the rear porch.

b) Cambridge Building, Inc. was the general contractor and was responsible for coordination and supervision of construction.

c) Two Brothers Plastering, Inc. and Ionut D. Istrate d/b/a Island Plasters LLC installed the stucco, flashings, and other related appurtenances, and otherwise designed and oversaw construction of same.

d) William T. Ruarks d/b/a Ruacon Quality Construction installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances.

e) Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances, and otherwise designed and oversaw construction of same.

39. Michael Grondahl and Cambridge Building, Inc.'s repairs to fallen tree damage around the roof and other areas inside the house constituted a separate project. For this second project, the Town of Hilton Head Island issued an Emergency Building Permit on October 27, 2016.

40. Upon information and belief, the scope of this second project included roofing work, framing work, and stucco work.

41. Upon information and belief, neither Michael Grondahl nor Cambridge Building, Inc. obtained a final inspection of this second project from the Town of Hilton Head Island.

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42. The term "Cambridge Subcontractors" used hereinafter refers to the following Defendants collectively: Two Brothers Plastering, Inc.; Ionut D. Istrate d/b/a Island Plasters LLC; William T. Ruarks d/b/a Ruacon Quality Construction; and Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services.

43. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Cambridge Building, Inc. and Cambridge Subcontractors, including, but not limited to, the following:

a) Improper cutting of framing support members;

b) Improper framing and/or foundation unable to handle structural loads;

c) Improper shingle-roof installation;

d) Installing stucco and stucco trim in contact with grade;

e) Failure by multiple trades to note the stucco- and wood-to-grade condition;

f) Painting over/concealing existing termite tubes;

g) Leaving tree debris behind in attic;

h) Failure to notice defective work of other trades prior to performing subsequent work;

i) Failure to discover defects in the work performed by subcontractors and/or employees;

j) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

k) Failure to obtain final inspection as required from the Town of Hilton Head Island;

l) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

m) Such other failures as will be shown through the discovery and trial of this matter.

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44. Upon information and belief, Michael Grondahl entered into a contract to sell the Subject Property to Plaintiffs in or around December 2018.

45. Per the written contract between Michael Grondahl and Plaintiff (the "Contract"), Grondahl was responsible for providing CL-100 reporting to Plaintiff.

46. Upon information and belief, Michael Grondahl was in possession of a CL-100 report generated on behalf of a previous potential purchaser. Despite that this report noted wood-destroying organisms, Grondahl did not provide it to Plaintiff.

47. The Contract provided that the structure of the Subject Property shall be reasonably sound.

48. The Contract provided that the property shall be habitable, and that Michael Grondahl must repair deficiencies which render the property uninhabitable.

49. The Contract provided that Plaintiff had reviewed a South Carolina Property Condition Disclosure Statement.

50. Michael Grondahl should have been aware of the defective construction conditions at the Subject Property but did not disclose those conditions to Plaintiff.

51. Michael Grondahl discovered damage subsequent to executing the South Carolina Property Condition Disclosure Statement. This may be inferred from the first CL-100 report produced by Imperial Pest Controllers, Inc.

52. Michael Grondahl did not disclose the first CL-100 report or its contents to Plaintiff, nor did he update the South Carolina Property Condition Disclosure Statement.

53. Subsequent to the purchase of the Subject Property, Plaintiff discovered evidence that windows had been sealed with silicone caulking that appeared to have been installed during Grondahl's ownership, which shows that Grondahl was aware of and deal with water intrusion issues around the windows.

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54. Also subsequent to the purchase of the Subject Property, Plaintiff discovered evidence that contractors quoted necessary repair work to Michael Grondahl, coupled with discovering that this necessary repair work had not been performed. These unrepaired conditions included some light stucco work. Michael Grondahl did not disclose these conditions to Plaintiff prior to Plaintiff's purchase of the Subject Property.

55. Also subsequent to the purchase of the Subject Property, Plaintiff discovered evidence of termite tubes that had been painted over, which appears to have been performed during Grondahl's ownership. Michael Grondahl did not disclose the existence of termite activity to Plaintiff prior to Plaintiff's purchase of the Subject Property.

56. Some defects in the residence that Michael Grondahl failed to disclose were latent defects of which Plaintiff did not know and did not accept.

57. Plaintiff reasonably relied on Michael Grondahl's representations that there were no construction defects existing at the Subject Property. Michael Grondahl failed to deliver the Subject Property in the condition as promised in the Contract.

58. Upon information and belief, Imperial Pest Controllers, Inc. provided two separate CL-100 letters throughout Michael Grondahl's sale of the Subject Property. They were dated October 17, 2018 and December 11, 2018, respectively.

59. Upon information and belief, Imperial Pest Controllers, Inc.'s CL-100 services were deficient in the following manners:

a) Failure to disclose whether wood destroying fungi was active or non-active in the first CL-100;

b) Failure to disclose the existence of wood destroying fungi whatsoever in the second CL-100;

c) Failure to report the existence termite tubes;

d) Failure to report the existence of stucco- and wood-to grade conditions;

e) Violations of the South Carolina Pesticide Control Act; and

f) Such other failures as will be shown through the discovery and trial of this matter.

60. Due to the deficiencies noted throughout, continuous and repeated exposure to harmful conditions, including water intrusion and termite infestation, has occurred, resulting in physical consequential damages. These events have occurred every year since construction and constitute "occurrences" and compensable damages. Further, the negligence/gross negligence of each Defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to Plaintiff's residence and property and Plaintiff's use and enjoyment of her residence.

61. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages and attorney's fees where applicable, plus costs, prejudgment interest, and postjudgment interest.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence — As to Palatial Homes)

62. Each and every allegation set forth above is incorporated here.

63. Palatial Homes owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

64. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Palatial Homes, as general contractor, in one or more of the following particulars:

a) In failing to properly construct the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction

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conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In failing to inform the architect and/or owner of defects in the plans and specifications;

f) In constructing the Subject Property in violation of applicable building codes; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

65. Palatial Homes failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

66. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

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SECOND CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Palatial Homes)

67. Each and every allegation set forth above is incorporated here.

68. Palatial Homes held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

69. Palatial Homes provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

70. Certain implied warranties arose from the work performed by Palatial Homes, including, but not limited to, a warranty of workmanlike construction and habitability.

71. Palatial Homes further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

72. As set forth above, Palatial Homes breached its implied and express warranties.

73. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

THIRD CAUSE OF ACTION

(Negligence/Gross Negligence — As to Original Construction Subcontractors)

74. Each and every allegation set forth above is incorporated here.

75. Each of the Original Construction Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

76. Each of the Original Construction Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that

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a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

77. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion and defects in the framing, siding, decking, waterproofing/flashing, flooring, painting, and other components of the residence, inclusive of work of other trades.

78. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanship — As to Original Construction Subcontractors)

79. Each and every allegation set forth above is incorporated here.

80. Each of the Original Construction Subcontractors impliedly warranted that its scope of work would be performed in a careful, diligent, and workmanlike manner, free of construction defects, and in conformance with the applicable building codes and industry standards.

81. As set forth more fully above, each of the Original Construction Subcontractors breached the implied warranty of workmanship.

82. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

FIFTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Cambridge Building, Inc.)

83. Each and every allegation set forth above is incorporated here.

84. Cambridge Building, Inc. owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design

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defects and in conformity with customary and ordinary standards of the building and construction industry.

85. The deficiencies and defects which exist to Cambridge Building, Inc.'s work at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Cambridge Building, Inc., as general contractor, in one or more of the following particulars:

a) In failing to properly construct its work at the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In constructing its work at the Subject Property in violation of applicable building codes;

f) In failing to obtain all necessary inspections, including final inspection, from the Town of Hilton Head Island; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

86. Cambridge Building, Inc. failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary

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reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

87. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SIXTH CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Cambridge Building, Inc.)

88. Each and every allegation set forth above is incorporated here.

89. Cambridge Building, Inc. held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

90. Cambridge Building, Inc. provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

91. Certain implied warranties arose from the work performed by Cambridge Building, Inc., including, but not limited to, a warranty of workmanlike construction and habitability.

92. Cambridge Building, Inc. further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

93. As set forth above, Cambridge Building, Inc. breached its implied and express warranties.

94. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential

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damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

SEVENTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Cambridge Subcontractors)

95. Each and every allegation set forth above is incorporated here.

96. Each of the Cambridge Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

97. Each of the Cambridge Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

98. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion, termite infestation, and defects to the framing, siding, decking, flooring, painting, and other components of the residence, inclusive of work of other trades.

99. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and postjudgment interest.

EIGHTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Michael Grondahl)

100. Each and every allegation set forth above is incorporated here.

101. Michael Grondahl, as owner of the Subject Property, owed duties to Plaintiffs to reasonably hire and supervise contractors, review the construction and repairs, to obtain all required inspections from the Town of Hilton Head Island in connection with repairs projects, to discover and report construction defects throughout the entire time he owned the residence (2013–2018), and to otherwise either deliver the Subject

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Property free of construction and design defects or to disclose such defects, as would a reasonable owner of property under such circumstances.

102. Michael Grondahl failed to use slight care and breached his duties in a reckless manner such that an owner of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

103. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

NINTH CAUSE OF ACTION
(Violation of South Carolina Residential Property Condition Disclosure Act — As to Michael Grondahl)

104. Prior to the sale of the Subject Property from Michael Grondahl to Plaintiff, Michael Grondahl executed and provided Plaintiff with a Residential Property Condition Disclosure Statement ("Disclosure Statement").

105. On the Disclosure Statement, Michael Grondahl failed to represent that he had no knowledge of any problems with the following:

a) Roof system;

b) Floors, windows, doors, interior walls, exterior walls, patio, deck, walkways, and other structural components including modifications;

c) Dry Rot or Fungus;

d) Violations or variances of building codes or permits; and

e) Problems caused by water to the property.

106. Michael Grondahl should have known that there were problems with all of the items referenced in the previous paragraph.

107. Michael Grondahl had a duty to update the Disclosure Statement if he were to discover any defective conditions subsequent to signing it.

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Despite learning of such defective conditions, Michael Grondahl failed to update the Disclosure Statement or otherwise inform Plaintiff of such conditions.

108. Michael Grondahl knew the Disclosure Statement to be false, incomplete, or misleading.

109. Accordingly, Michael Grondahl violated the South Carolina Residential Property Condition Disclosure Act, S.C. Code § 27-50-10, *et seq*.

110. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, attorney's fees, plus costs, prejudgment interest and postjudgment interest.

TENTH CAUSE OF ACTION

(Negligent Misrepresentation — As to Michael Grondahl)

111. Each and every allegation set forth above is incorporated here.

112. Michael Grondahl, through disclosure statements, advertisements, sales brochures and other marketing literature, website advertisements, and by statements and actions of their agents, made numerous misrepresentations to Plaintiff, including, but not limited to, the quality and luxury of the Subject Property.

113. The representations made by Michael Grondahl and their agents to Plaintiff were untrue and were misrepresentations of material facts.

114. Michael Grondahl had a pecuniary interest in making such false representations to Plaintiff in that the representations were made for the purpose of selling the residence for a substantial amount of money.

115. Michael Grondahl owed a duty to Plaintiff and to the other potential purchasers of the residence to use due care in ensuring that its representations concerning the Subject Property were accurate and truthful.

116. Plaintiff reasonably and justifiably relied upon the representations of Michael Grondahl.

117. In the exercise of reasonable care, Michael Grondahl knew or should have known his representations were false and that Plaintiff would rely on the representations.

118. Michael Grondahl failed to exercise reasonable care in making the representations.

119. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and prejudgment and post judgment interest.

ELEVENTH CAUSE OF ACTION

(Breach of Contract — As to Michael Grondahl)

120. Each and every allegation set forth above is incorporated here.

121. Michael Grondahl contracted to transfer the Subject Property to Plaintiff and to make certain repairs to ensure they conveyed the Subject Property free of construction defects.

122. As set forth more fully above, Michael Grondahl breached his obligation to transfer the Subject Property in the condition as promised to Plaintiff in accordance with the contract and repair addendum.

123. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and expenses, prejudgment and post judgment interest.

TWELFTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Imperial Pest Controllers, Inc.)

124. Each and every allegation set forth above is incorporated here.

125. Imperial Pest Controllers, Inc. had duties and standards of care to properly perform its services at the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes, industry standards, and industry regulations.

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126. Imperial Pest Controllers, Inc. failed to use slight care and breached its duties and standards in a reckless manner such that a pest control service company of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

127. This breach of duty included faulty workmanship and services resulting in physical, consequential damages including termite infestation and defects to the framing, siding, decking, flooring, painting, and other components of the residence.

128. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and postjudgment interest.

THIRTEENTH CAUSE OF ACTION

(Breach of Contract — As to Imperial Pest Controllers, Inc.)

129. Each and every allegation set forth above is incorporated here.

130. Imperial Pest Controllers, Inc. contracted to perform CL-100 services at the Subject Property for Plaintiff in accordance in accordance with established industry standards and all applicable laws and regulations.

131. Imperial Pest Controllers, Inc. breached its obligation to perform CL-100 services at the Subject Property for Plaintiff in accordance in accordance with established industry standards and all applicable laws and regulations.

132. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs and expenses, prejudgment and post judgment interest.

Wherefore, Plaintiff prays for judgment against the Defendants and is entitled to recover the cost to repair the defects including actual

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damages, consequential damages, including loss of use and loss of value, plus punitive damages and attorney's fees where applicable, costs, prejudgment interest, and postjudgment interest.

Jury Trial Demanded.

CAPELL THOMSON, LLC

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October 19, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
	)	
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**DEFENDANT HILTON HEAD EXTERMINATORS, INC.'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC,; CESAR CASTRO D/B/A HERITAGE PLASTERING, INC. N/K/A HERITAGE PLASTERING & STUCCO LLC; CMC STEEL WORKS, INC.; AMI IRONWORKS LLC A/K/A AMERICAN MASTER IRONWORKS, LLC; ENALDO URRIOLA D/B/A ADVANCED ROOFING SERVICES N/K/A ANKON CONSTRUCTION SERVICES, LLC; KELCA COUNTERS INC.; JOHN DOES 1-20; CAMBRIDGE BUILDING, INC; TWO BROTHERS PLASTERING, INC.; WILLIAM T. RUARKS D/B/A RUACON QUALITY CONSTRUCTION; JIMMY M. METCALF, JR. D/B/A QUALITY ROOF SERVICES; IONUT D. ISTRATE D/B/A ISLAND PLASTERS LLC; MICHAEL GRONDAHL; HILTON HEAD EXTERMINATORS, INC. INC., AND IMPERIAL PEST CONTROLLERS, INC.,	)	
	)	
Defendants.	)	
_____	)	

Defendant Hilton Head Exterminators, Inc. ("Defendant" or "HHE") responds to Plaintiff's Amended Complaint as follows:

1. Every allegation of the Amended Complaint not specifically admitted below is denied.

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FOR A FIRST DEFENSE TO PARTIES AND JURISDICTION

2. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 1 through 19 and therefore denies those allegations.

3. In response to the allegations of Paragraph 20, it admits only that it is a corporation organized and existing pursuant to the laws of the State of Georgia, which operates as Beaufort County Exterminators, LLC d/b/a Hilton Head Exterminators, Inc. HHE lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 and therefore denies those allegations.

4. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 21 and therefore denies those allegations.

5. The allegations of Paragraph 22 constitute conclusions of law which require no response.

FOR A FIRST DEFENSE TO FACTUAL ALLEGATIONS

6. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 23 through 32 and therefore denies those allegations.

7. It denies the allegations of Paragraphs 33 through 35.

8. It lacks knowledge or information sufficient to form a belief as to the allegations or Paragraphs 36 through 59 and therefore denies those allegations.

9. It denies the allegations of Paragraphs 60 and 61.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Negligence/Gross Negligence – As to Palatial Homes)

10. In response to Paragraph 62, it repeats its responses above.

11. The allegations of Paragraphs 63 through 66 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

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FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Breach of Express & Implied Warranties – As to Palatial Homes)

12. In response to Paragraph 67, it repeats its responses above.

13. The allegations of Paragraphs 68 through 73 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Negligence/Gross Negligence – As to Original Construction Subcontractors)

14. In response to Paragraph 74, it repeats its responses above.

15. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 75 and therefore denies those allegations.

16. It denies the allegations of Paragraphs 76 through 78.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanship – As to Original Construction Subcontractors)

17. In response to Paragraph 79, it repeats its responses above.

18. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 80 and therefore denies those allegations.

19. It denies the allegations of Paragraphs 81 and 82.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Negligence/Gross Negligence – As to Cambridge Building, Inc.)

20. In response to Paragraph 83, it repeats its responses above.

21. The allegations of Paragraphs 84 through 87 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

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FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION
(Breach of Express & Implied Warranties – As to Cambridge Building, Inc.)

22. In response to Paragraph 88, it repeats its responses above.

23. The allegations of Paragraphs 89 through 94 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION
(Negligence/Gross Negligence – As to Cambridge Subcontractors)

24. In response to Paragraph 95, it repeats its responses above.

25. The allegations of Paragraphs 96 through 99 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION
(Neligence/Gross Negligence – As to Michael Grondahl)

26. In response to Paragraph 100, it repeats its responses above.

27. The allegations of Paragraphs 101 through 103 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION
(Violation of South Carolina Residential Property Condition Disclosure Act – As to Michael Grondahl)

28. In response to Paragraph 104, it repeats its responses above.

29. The allegations of Paragraphs 105 through 110 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

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FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION
(Negligent Misrepresentation – As to Michael Grondahl)

30. In response to Paragraph 111, it repeats its responses above.

31. The allegations of Paragraphs 112 through 119 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE ELEVENTH CAUSE OF ACTION
(Breach of Contract – As to Michael Grondahl)

32. In response to Paragraph 120, it repeats its responses above.

33. The allegations of Paragraphs 121 through 123 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE TWELFTH CAUSE OF ACTION
(Negligence/Gross Negligence – As to Imperial Pest Controllers, Inc.)

34. In response to Paragraph 124, it repeats its responses above.

35. The allegations of Paragraphs 125 through 128 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE THIRTEENTH CAUSE OF ACTION
(Breach of Contract – As to Imperial Pest Controllers, Inc.)

36. In response to Paragraph 129, it repeats its responses above.

37. The allegations of Paragraphs 130 through 132 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

38. It denies that Plaintiff is entitled to the relief claimed under the "WHEREFORE" paragraph.

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FOR A SECOND DEFENSE

39. Upon information and belief, Plaintiff's damages were caused by the acts or omissions of third parties over whom Defendant had no control.

FOR A THIRD DEFENSE

40. Upon information and belief, Plaintiff's recovery is barred or limited by the doctrines of comparative negligence and assumption of the risk.

FOR A FOURTH DEFENSE

41. Upon information and belief, Plaintiff's recovery is barred by the applicable statute of limitations or repose.

FOR A FIFTH DEFENSE

42. Upon information and belief, Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant.

FOR A SIXTH DEFENSE

43. Upon information and belief, Plaintiff has failed to mitigate damages.

FOR A SEVENTH DEFENSE

44. Upon information and belief, Plaintiff's claims were due to and caused by Plaintiff's own negligence, gross negligence, recklessness, wilfulness and wantonness.

FOR AN EIGHTH DEFENSE

45. Certain of Plaintiff's claims may be barred by the application of the Economic Loss Rule.

FOR A NINTH DEFENSE

46. Plaintiff's claim for punitive damages against Defendant cannot be sustained because any award of punitive damages under South Carolina law without bifurcating the trial of all punitive damages issues would violate Defendant's due process rights guaranteed by the Fourteenth

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Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR A TENTH DEFENSE

47. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that a jury may impose, would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR AN ELEVENTH DEFENSE

48. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial review on the basis of objective standards would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment and by the South Carolina

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Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy.

FOR A TWELFTH DEFENSE

49. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR A THIRTEENTH DEFENSE

50. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law without proof of every element beyond a reasonable doubt would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR A FOURTEENTH DEFENSE

51. Plaintiff's claim for punitive damages cannot be sustained because an award of punitive damages under state law without the same protections that are accorded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy and self-incrimination and the rights to confront adverse witnesses, a speedy trial and the effective assistance of counsel, would violate Defendant's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel

and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination.

FOR A FIFTEENTH DEFENSE

52. Any award of punitive damages based on anything other than Defendant's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy because any other judgment for punitive damages in this case cannot protect Defendant against impermissible multiple punishment for the same wrong.

FOR A SIXTEENTH DEFENSE

53. Defendant would show that, upon information and belief, Plaintiff had constructive knowledge and/or actual knowledge of those conditions referred to in the Complaint; such circumstances constituting a complete bar to Plaintiff's claims.

FOR A SEVENTEENTH DEFENSE

54. To the extent that repairs have been made to the subject structure, Defendant has not been afforded an opportunity to inspect and examine the alleged damages, and therefore pleads the Spoilation of Evidence Doctrine as a complete defense to the Complaint.

FOR AN EIGHTEENTH DEFENSE

55. If applicable, the claims against Defendant are barred by the terms and conditions contained within the contract documents between Defendant and Plaintiff.

FOR A NINETEENTH DEFENSE

56. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

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FOR A TWENTIETH DEFENSE

57. Defendant pleads the defenses and statutory caps set forth in S.C. Code Ann. §15-32-510 et seq., including, but not limited to, the statutory caps set forth in S.C. Code Ann. §15-32-530. Defendant further requests bifurcation in accordance with S.C. Code Ann. §15-32-520.

FOR AN ADDITIONAL DEFENSE

58. Defendant specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Amended Complaint, Defendant prays that it be dismissed, with costs, and for such other relief as the Court may grant.

KERNODLE COLEMAN

By: s/ Stephen M. Kozick
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ATTORNEYS FOR HILTON HEAD EXTERMINATORS, INC.

December 8, 2020
Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **SECOND AMENDED SUMMONS** (Jury Trial Demanded)

TO: ALL DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Second Amended Complaint on the subscriber at his office, Capell Thomson, LLC, 321 E. Bay Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to

appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellThomson.com
Charles W. Thomson (101471)
CThomson@CapellThomson.com
The Blake-Grimké House
321 East Bay St.
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(843) 501-0423
Attorneys for Plaintiff

May 18, 2021

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **SECOND AMENDED COMPLAINT** (Jury Trial Demanded)

The Plaintiff, Kathleen M. Rankin ("Plaintiff"), complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an individual who owns real property located at 11 Harrogate Drive, Wexford Plantation, Hilton Head Island, Beaufort County, South Carolina ("Subject Property").

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2. As to Defendant Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC:

a) Defendant Palatial Homes, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

b) Defendant Palatial Homes, LLC is, upon information and belief, a limited liability company organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

c) Defendant Palatial Homes Design, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Upon information and belief, Palatial Homes, Inc.; Palatial Homes, LLC; and Palatial Homes Design, LLC are successors in interest to and/or amalgamated with one another in that they involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for the entities to assume the debts of one another;

b) the entities were or are consolidated;

c) the entities are a mere continuation of one another;

d) the transfer from one company to another was fraudulent in fact;

e) the legal distinction between the three entities is blurred;

f) the interests of the three entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

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g) there would exist a great injustice if the actions of one did not apply to the others.

4. The term "Palatial Homes" used hereinafter refers to Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC.

5. Defendant Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

6. Upon information and belief, Heritage Plastering & Stucco LLC is a successor in interest to and/or is amalgamated with Heritage Plastering, Inc. in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Heritage Plastering & Stucco LLC to assume the debts of Heritage Plastering, Inc.;

b) the two entities were or are consolidated;

c) Heritage Plastering & Stucco LLC is a mere continuation of Heritage Plastering, Inc.;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

7. Defendant CMC Steel Works, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

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8. Defendant AMI Ironworks LLC a/k/a American Master Ironworks, LLC is, upon information and belief, two limited liability companies organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

9. Upon information and belief, AMI Ironworks LLC is a successor in interest to and/or is amalgamated with American Master Ironworks, LLC in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for AMI Ironworks LLC to assume the debts of American Master Ironworks, LLC;

b) the two entities were or are consolidated;

c) AMI Ironworks LLC is a mere continuation of American Master Ironworks, LLC;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

10. Defendant Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

11. Upon information and belief, Ankon Construction Services, LLC is a successor in interest to and/or is amalgamated with Advanced Roofing

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Services in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Ankon Construction Services, LLC to assume the debts of Advanced Roofing Services;

b) the two entities were or are consolidated;

c) Ankon Construction Services, LLC is a mere continuation of Advanced Roofing Services;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

12. Defendant Kelca Counters, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

13. Each Defendant John Doe 1–20 is an individual, entity, or entities, domiciled and/or operating under the laws of one of the United States of America that participated in the construction of the Subject Property by providing labor and/or materials for the stucco, framing, roofing, railings, decks, waterproofing, flashings, tiling, painting, and caulking. Each Defendant John Doe 1–20 is a party "whose true name is unknown," named pursuant to Rule 10(a)(1), SCRCP, and Plaintiff will amend this pleading when any or all of their true names are discovered.

14. Defendant Cambridge Building, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

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15. Defendant Two Brothers Plastering, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

16. Defendant William T. Ruarks d/b/a Ruacon Quality Construction is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

17. Defendant Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

18. Defendant Ionut D. Istrate d/b/a Island Plasters LLC is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

19. Defendant 11 Harrogate Drive Realty Trust is, upon information and belief, a revocable trust established by Michael Grondahl, whose sole purpose was to own the Subject Property, and who did own the Subject Property at all times relevant hereto.

20. Defendant Michael Grondahl is, upon information and belief, an individual domiciled in New Hampshire and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

21. Upon information and belief, Michael Grondahl is or was the sole trustee of the 11 Harrogate Drive Realty Trust.

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22. Defendants 11 Harrogate Drive Realty Trust and Michael Grondahl are hereinafter referred to collectively as "Grondahl Defendants."

23. Upon information and belief, Grondahl Defendants are successors in interest to one another, amalgamated with one another, a single-business enterprise, and/or alter-egos, in that they are characterized by one or more of the following:

a) the legal distinction between them being blurred;

b) there being an agreement for them to assume the debts of one another;

c) being consolidated;

d) being mere continuations of one another;

e) the transfers from one to the other being fraudulent in fact;

f) being under-capitalized;

g) failing to observe corporate formalities;

h) failing to pay dividends;

i) insolvency;

j) lacking proper records;

k) siphoning of funds by its members;

l) being used as a mere façade for the operation of the dominant shareholder, member, and associate;

m) their interests being so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

n) there being a broad element of injustice and fundamental un-fairness if the acts of Grondahl Defendants were not regarded as the acts of one another.

24. Defendant Hilton Exterminators, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

25. Defendant Imperial Pest Controllers, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws

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of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

26. This Court has jurisdiction over the subject matter and the parties to this action.

FACTUAL ALLEGATIONS

27. The Town of Hilton Head Island issued a Building Permit for the original construction of the Subject Property on March 3, 2005 and issued the corresponding Certificate of Occupancy on January 30, 2006.

28. The Building Permit did not contain any bold type notice to the owners of the property of their rights to contract for a guarantee of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement.

29. Upon information and belief, Palatial Homes acted as general contractor for the Subject Property and was responsible for coordination and supervision of construction.

30. Upon information and belief, Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC installed the stucco, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

31. Upon information and belief, CMC Steel Works, Inc. installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

32. Upon information and belief, AMI Ironworks LLC a/k/a American Master Ironworks, LLC installed the railings, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

33. Upon information and belief, Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

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34. Upon information and belief, Kelca Counters, Inc. installed the tiling, inclusive of tile floors and shower/bathroom tiling, and was responsible for the necessary subcomponents to the tiling and other related appurtenances at the Subject Property.

35. Upon information and belief, Hilton Exterminators, Inc. performed the pretreatment application to the footings and piers during the original construction of the Subject Property and also provided a Wood Infestation Report once original construction was substantially complete.

36. The term "Original Construction Subcontractors" used hereinafter refers to the following Defendants collectively: Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; Hilton Exterminators, Inc.; and John Does 1–20.

37. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Palatial Homes and Original Construction Subcontractors including, but not limited to, the following:

a) Failure to install the exterior stucco cladding and related flashings in accordance with the manufacturer's installation instructions, industry standards, and applicable building code;

b) Installing the exterior stucco cladding system as a "barrier wall" rather than a drainable system;

c) Failure to install appropriate flashings or weep assemblies in the stucco cladding;

d) Failure to appropriately install through-wall flashing assemblies in the stucco cladding;

e) Failure to install appropriate engineered sealant joints at the intersection of dissimilar materials, most notably at the intersection between the stucco and the window jambs;

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f) Improper installation of exterior trim board;

g) Improper installation of doors and windows;

h) Improper installation of building wrap;

i) Improper installation/waterproofing of steel support columns;

j) Improper installation and/or use of defective products on the exterior railings;

k) Improper installation of tiling, inclusive of components beneath the tiling;

l) Improper deck installation;

m) Improper deck waterproofing installation and use of improper materials for deck waterproofing;

n) Improper sloping of decks;

o) Use of improper fasteners in the stucco system;

p) Use of improper fasteners in the framing system supporting floors that began to sag;

q) Improper cutting of framing support members;

r) Improper framing and/or foundation unable to handle structural loads;

s) Improper shingle-roof and roof framing installation;

t) Installing wood columns in contact with grade;

u) Installing stucco and stucco trim in contact with grade;

v) Failure to apply the appropriate amount of pretreat pesticide beneath the residence;

w) Failure by multiple trades, inclusive of the pest control trade, to note the stucco- and wood-to-grade condition;

x) Violations of the South Carolina Pesticide Control Act;

y) Improper painting and caulking;

z) Lack of or improper flashing and waterproofing at junction of roofs, decks, walls, concrete and windows;

aa) Failure to notice defective work of other trades prior to performing subsequent work;

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bb) Improper design and failure to install drainage systems;

cc) Improper accounting for routine thermal expansion and contraction of construction components;

dd) Failure to construct the Subject Property so as to make the exterior building envelope watertight thereby violating the building code in effect in Beaufort County at the time the work was performed;

ee) Failure to investigate the subcontractors to determine if they were competent and capable of performing their work in accordance with good construction practices;

ff) Failure to adequately supervise the work of subcontractors and/or employees;

gg) Failure to discover defects in the work performed by subcontractors and/or employees;

hh) Failure to properly investigate and correct defective work and resulting damages;

ii) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

jj) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

kk) Such other failures as will be shown through the discovery and trial of this matter.

38. The negligence/gross negligence of Palatial Homes and each of the Original Construction Subcontractors caused property damage that was not discoverable in the exercise of reasonable diligence, as a result of exposure to harmful particles over a period of time, as opposed to resulting from a sudden and fortuitous trauma.

39. The negligence/gross negligence of Palatial Homes and each of the Original Construction Subcontractors includes violations of the relevant building codes.

40. Upon information and belief, Grondahl Defendants owned the Subject Property from in or around August 2013 until in or around December 2018.

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41. Upon information and belief, Grondahl Defendants contracted with Defendant Cambridge Building, Inc. to perform certain repairs and renovations to the Subject Property. This work included repairs to fire damage around the chimney shaft, other work around the rear porch, and fallen tree damage to the roof and other areas inside the house.

42. The Town of Hilton Head Island issued a Building Permit for repairs and renovations to the Subject Property on May 9, 2016. As to this project, upon information and belief:

a) The scope of work was to repair fire damage to the chimney shaft and other work around the rear porch.

b) Cambridge Building, Inc. was the general contractor and was responsible for coordination and supervision of construction.

c) Two Brothers Plastering, Inc. and Ionut D. Istrate d/b/a Island Plasters LLC installed the stucco, flashings, and other related appurtenances, and otherwise designed and oversaw construction of same.

d) William T. Ruarks d/b/a Ruacon Quality Construction installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances.

e) Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances, and otherwise designed and oversaw construction of same.

43. Grondahl Defendants' and Cambridge Building, Inc.'s repairs to fallen tree damage around the roof and other areas inside the house constituted a separate project. For this second project, the Town of Hilton Head Island issued an Emergency Building Permit on October 27, 2016.

44. Upon information and belief, the scope of this second project included roofing work, framing work, and stucco work.

45. Upon information and belief, neither Grondahl Defendants nor Cambridge Building, Inc. obtained a final inspection of this second project from the Town of Hilton Head Island.

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46. The term "Cambridge Subcontractors" used hereinafter refers to the following Defendants collectively: Two Brothers Plastering, Inc.; Ionut D. Istrate d/b/a Island Plasters LLC; William T. Ruarks d/b/a Ruacon Quality Construction; and Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services.

47. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Cambridge Building, Inc. and Cambridge Subcontractors, including, but not limited to, the following:

a) Improper cutting of framing support members;

b) Improper framing and/or foundation unable to handle structural loads;

c) Improper shingle-roof installation;

d) Installing stucco and stucco trim in contact with grade;

e) Failure by multiple trades to note the stucco- and wood-to-grade condition;

f) Painting over/concealing existing termite tubes;

g) Leaving tree debris behind in attic;

h) Failure to notice defective work of other trades prior to performing subsequent work;

i) Failure to discover defects in the work performed by subcontractors and/or employees;

j) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

k) Failure to obtain final inspection as required from the Town of Hilton Head Island;

l) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

m) Such other failures as will be shown through the discovery and trial of this matter.

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48. Upon information and belief, Grondahl Defendants entered into a contract to sell the Subject Property to Plaintiffs in or around December 2018.

49. Per the written contract between Grondahl Defendants and Plaintiff (the "Contract"), Grondahl Defendants were responsible for providing CL-100 reporting to Plaintiff.

50. Upon information and belief, Grondahl Defendants were in possession of a CL-100 report generated on behalf of a previous potential purchaser. Despite that this report noted wood-destroying organisms, Grondahl did not provide it to Plaintiff.

51. The Contract provided that the structure of the Subject Property shall be reasonably sound.

52. The Contract provided that the property shall be habitable, and that Grondahl Defendants must repair deficiencies which render the property uninhabitable.

53. The Contract provided that Plaintiff had reviewed a South Carolina Property Condition Disclosure Statement.

54. Grondahl Defendants should have been aware of the defective construction conditions at the Subject Property but did not disclose those conditions to Plaintiff.

55. Grondahl Defendants discovered damage subsequent to executing the South Carolina Property Condition Disclosure Statement. This may be inferred from the first CL-100 report produced by Imperial Pest Controllers, Inc.

56. Grondahl Defendants did not disclose the first CL-100 report or its contents to Plaintiff, nor did he update the South Carolina Property Condition Disclosure Statement.

57. Subsequent to the purchase of the Subject Property, Plaintiff discovered evidence that windows had been sealed with silicone caulking that appeared to have been installed during Grondahl Defendants' ownership, which shows that Grondahl Defendants were aware of and deal with water intrusion issues around the windows.

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58. Also subsequent to the purchase of the Subject Property, Plaintiff discovered evidence that contractors quoted necessary repair work to Grondahl Defendants, coupled with discovering that this necessary repair work had not been performed. These unrepaired conditions included some light stucco work. Grondahl Defendants did not disclose these conditions to Plaintiff prior to Plaintiff's purchase of the Subject Property.

59. Also subsequent to the purchase of the Subject Property, Plaintiff discovered evidence of termite tubes that had been painted over, which appears to have been performed during Grondahl Defendants' ownership. Grondahl Defendants did not disclose the existence of termite activity to Plaintiff prior to Plaintiff's purchase of the Subject Property.

60. Some defects in the residence that Grondahl Defendants failed to disclose were latent defects of which Plaintiff did not know and did not accept.

61. Plaintiff reasonably relied on Grondahl Defendants' representations that there were no construction defects existing at the Subject Property. Grondahl Defendants failed to deliver the Subject Property in the condition as promised in the Contract.

62. Upon information and belief, Imperial Pest Controllers, Inc. provided two separate CL-100 letters throughout Grondahl Defendants' sale of the Subject Property. They were dated October 17, 2018 and December 11, 2018, respectively.

63. Upon information and belief, Imperial Pest Controllers, Inc.'s CL-100 services were deficient in the following manners:

a) Failure to disclose whether wood destroying fungi was active or non-active in the first CL-100;

b) Failure to disclose the existence of wood destroying fungi whatsoever in the second CL-100;

c) Failure to report the existence termite tubes;

d) Failure to report the existence of stucco- and wood-to grade conditions;

e) Violations of the South Carolina Pesticide Control Act; and

f) Such other failures as will be shown through the discovery and trial of this matter.

64. Due to the deficiencies noted throughout, continuous and repeated exposure to harmful conditions, including water intrusion and termite infestation, has occurred, resulting in physical consequential damages. These events have occurred every year since construction and constitute "occurrences" and compensable damages. Further, the negligence/gross negligence of each Defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to Plaintiff's residence and property and Plaintiff's use and enjoyment of her residence.

65. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages and attorney's fees where applicable, plus costs, prejudgment interest, and postjudgment interest.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence — As to Palatial Homes)

66. Each and every allegation set forth above is incorporated here.

67. Palatial Homes owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

68. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Palatial Homes, as general contractor, in one or more of the following particulars:

a) In failing to properly construct the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction

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conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In failing to inform the architect and/or owner of defects in the plans and specifications;

f) In constructing the Subject Property in violation of applicable building codes; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

69. Palatial Homes failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

70. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

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SECOND CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Palatial Homes)

71. Each and every allegation set forth above is incorporated here.

72. Palatial Homes held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

73. Palatial Homes provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

74. Certain implied warranties arose from the work performed by Palatial Homes, including, but not limited to, a warranty of workmanlike construction and habitability.

75. Palatial Homes further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

76. As set forth above, Palatial Homes breached its implied and express warranties.

77. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

THIRD CAUSE OF ACTION

(Negligence/Gross Negligence — As to Original Construction Subcontractors)

78. Each and every allegation set forth above is incorporated here.

79. Each of the Original Construction Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

80. Each of the Original Construction Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that

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a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

81. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion and defects in the framing, siding, decking, waterproofing/flashing, flooring, painting, and other components of the residence, inclusive of work of other trades.

82. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanship — As to Original Construction Subcontractors)

83. Each and every allegation set forth above is incorporated here.

84. Each of the Original Construction Subcontractors impliedly warranted that its scope of work would be performed in a careful, diligent, and workmanlike manner, free of construction defects, and in conformance with the applicable building codes and industry standards.

85. As set forth more fully above, each of the Original Construction Subcontractors breached the implied warranty of workmanship.

86. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

FIFTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Cambridge Building, Inc.)

87. Each and every allegation set forth above is incorporated here.

88. Cambridge Building, Inc. owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design

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defects and in conformity with customary and ordinary standards of the building and construction industry.

89. The deficiencies and defects which exist to Cambridge Building, Inc.'s work at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Cambridge Building, Inc., as general contractor, in one or more of the following particulars:

a) In failing to properly construct its work at the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In constructing its work at the Subject Property in violation of applicable building codes;

f) In failing to obtain all necessary inspections, including final inspection, from the Town of Hilton Head Island; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

90. Cambridge Building, Inc. failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary

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reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

91. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SIXTH CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Cambridge Building, Inc.)

92. Each and every allegation set forth above is incorporated here.

93. Cambridge Building, Inc. held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

94. Cambridge Building, Inc. provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

95. Certain implied warranties arose from the work performed by Cambridge Building, Inc., including, but not limited to, a warranty of workmanlike construction and habitability.

96. Cambridge Building, Inc. further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

97. As set forth above, Cambridge Building, Inc. breached its implied and express warranties.

98. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential

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damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

SEVENTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Cambridge Subcontractors)

99. Each and every allegation set forth above is incorporated here.

100. Each of the Cambridge Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

101. Each of the Cambridge Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

102. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion, termite infestation, and defects to the framing, siding, decking, flooring, painting, and other components of the residence, inclusive of work of other trades.

103. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and postjudgment interest.

EIGHTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Grondahl Defendants)

104. Each and every allegation set forth above is incorporated here.

105. Grondahl Defendants, as owners of the Subject Property, owed duties to Plaintiffs to reasonably hire and supervise contractors, review the construction and repairs, to obtain all required inspections from the Town of Hilton Head Island in connection with repairs projects, to discover and report construction defects throughout the entire time he owned the residence (2013–2018), and to otherwise either deliver the Subject

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Property free of construction and design defects or to disclose such defects, as would a reasonable owner of property under such circumstances.

106. Grondahl Defendants failed to use slight care and breached his duties in a reckless manner such that an owner of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

107. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

NINTH CAUSE OF ACTION

(Violation of South Carolina Residential Property Condition Disclosure Act — As to Grondahl Defendants)

108. Prior to the sale of the Subject Property from Grondahl Defendants to Plaintiff, Grondahl Defendants executed and provided Plaintiff with a Residential Property Condition Disclosure Statement ("Disclosure Statement").

109. On the Disclosure Statement, Grondahl Defendants failed to represent that he had no knowledge of any problems with the following:

a) Roof system;

b) Floors, windows, doors, interior walls, exterior walls, patio, deck, walkways, and other structural components including modifications;

c) Dry Rot or Fungus;

d) Violations or variances of building codes or permits; and

e) Problems caused by water to the property.

110. Grondahl Defendants should have known that there were problems with all of the items referenced in the previous paragraph.

111. Grondahl Defendants had a duty to update the Disclosure Statement if he were to discover any defective conditions subsequent to

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signing it. Despite learning of such defective conditions, Grondahl Defendants failed to update the Disclosure Statement or otherwise inform Plaintiff of such conditions.

112. Grondahl Defendants knew the Disclosure Statement to be false, incomplete, or misleading.

113. Accordingly, Grondahl Defendants violated the South Carolina Residential Property Condition Disclosure Act, S.C. Code § 27-50-10, *et seq*.

114. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, attorney's fees, plus costs, prejudgment interest and postjudgment interest.

TENTH CAUSE OF ACTION

(Negligent Misrepresentation — As to Grondahl Defendants)

115. Each and every allegation set forth above is incorporated here.

116. Grondahl Defendants, through disclosure statements, advertisements, sales brochures and other marketing literature, website advertisements, and by statements and actions of their agents, made numerous misrepresentations to Plaintiff, including, but not limited to, the quality and luxury of the Subject Property.

117. The representations made by Grondahl Defendants and their agents to Plaintiff were untrue and were misrepresentations of material facts.

118. Grondahl Defendants had a pecuniary interest in making such false representations to Plaintiff in that the representations were made for the purpose of selling the residence for a substantial amount of money.

119. Grondahl Defendants owed a duty to Plaintiff and to the other potential purchasers of the residence to use due care in ensuring that its representations concerning the Subject Property were accurate and truthful.

120. Plaintiff reasonably and justifiably relied upon the representations of Grondahl.

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121. In the exercise of reasonable care, Grondahl Defendants knew or should have known his representations were false and that Plaintiff would rely on the representations.

122. Grondahl Defendants failed to exercise reasonable care in making the representations.

123. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and prejudgment and post judgment interest.

ELEVENTH CAUSE OF ACTION

(Breach of Contract — As to Grondahl Defendants)

124. Each and every allegation set forth above is incorporated here.

125. Grondahl Defendants contracted to transfer the Subject Property to Plaintiff and to make certain repairs to ensure they conveyed the Subject Property free of construction defects.

126. As set forth more fully above, Grondahl Defendants breached his obligation to transfer the Subject Property in the condition as promised to Plaintiff in accordance with the contract and repair addendum.

127. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and expenses, prejudgment and post judgment interest.

TWELFTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Imperial Pest Controllers, Inc.)

128. Each and every allegation set forth above is incorporated here.

129. Imperial Pest Controllers, Inc. had duties and standards of care to properly perform its services at the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes, industry standards, and industry regulations.

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130. Imperial Pest Controllers, Inc. failed to use slight care and breached its duties and standards in a reckless manner such that a pest control service company of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

131. This breach of duty included faulty workmanship and services resulting in physical, consequential damages including termite infestation and defects to the framing, siding, decking, flooring, painting, and other components of the residence.

132. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and postjudgment interest.

THIRTEENTH CAUSE OF ACTION

(Breach of Contract — As to Imperial Pest Controllers, Inc.)

133. Each and every allegation set forth above is incorporated here.

134. Imperial Pest Controllers, Inc. contracted to perform CL-100 services at the Subject Property for Plaintiff in accordance in accordance with established industry standards and all applicable laws and regulations.

135. Imperial Pest Controllers, Inc. breached its obligation to perform CL-100 services at the Subject Property for Plaintiff in accordance in accordance with established industry standards and all applicable laws and regulations.

136. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs and expenses, prejudgment and post judgment interest.

Wherefore, Plaintiff prays for judgment against the Defendants and is entitled to recover the cost to repair the defects including actual

damages, consequential damages, including loss of use and loss of value, plus punitive damages and attorney's fees where applicable, costs, prejudgment interest, and postjudgment interest.

Jury Trial Demanded.

CAPELL THOMSON, LLC

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May 17, 2021

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CASE NO. 2020-CP-07-00776
KATHLEEN M. RANKIN,)	
)	
Plaintiff,)	**DEFENDANT HILTON HEAD EXTERMINATORS, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**
)	
v.)	
)	
PALATIAL HOMES, INC. A/K/A)	
PALATIAL HOMES, LLC N/K/A)	
PALATIAL HOMES DESIGN, LLC,;)	
CESAR CASTRO D/B/A HERITAGE)	
PLASTERING, INC. N/K/A HERITAGE)	
PLASTERING & STUCCO LLC; CMC)	
STEEL WORKS, INC.; AMI)	
IRONWORKS LLC A/K/A AMERICAN)	
MASTER IRONWORKS, LLC;)	
ENALDO URRIOLA D/B/A)	
ADVANCED ROOFING SERVICES)	
N/K/A ANKON CONSTRUCTION)	
SERVICES, LLC; KELCA COUNTERS)	
INC.; JOHN DOES 1-20; CAMBRIDGE)	
BUILDING, INC; TWO BROTHERS)	
PLASTERING, INC.; WILLIAM T.)	
RUARKS D/B/A RUACON QUALITY)	
CONSTRUCTION; JIMMY M. METCALF,)	
JR. D/B/A QUALITY ROOF SERVICES;)	
IONUT D. ISTRATE D/B/A ISLAND)	
PLASTERS LLC; 11 HARROGATE)	
DRIVE REALTY TRUST; MICHAEL)	
GRONDAHL; HILTON HEAD)	
EXTERMINATORS, INC.)	
INC., AND IMPERIAL PEST)	
CONTROLLERS, INC.,)	
)	
Defendants.)	
_____)	

Defendant Hilton Head Exterminators, Inc. ("Defendant" or "HHE") responds to Plaintiff's Second Amended Complaint as follows:

1. Every allegation of the Second Amended Complaint not specifically admitted below is denied.

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FOR A FIRST DEFENSE TO PARTIES AND JURISDICTION

2. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 1 through 23 and therefore denies those allegations.

3. In response to the allegations of Paragraph 24, it admits only that it is a corporation organized and existing pursuant to the laws of the State of Georgia, which operates as Beaufort County Exterminators, LLC d/b/a Hilton Head Exterminators, Inc. HHE lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 24 and therefore denies those allegations.

4. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 25 and therefore denies those allegations.

5. The allegations of Paragraph 26 constitute conclusions of law which require no response.

FOR A FIRST DEFENSE TO FACTUAL ALLEGATIONS

6. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 27 through 36 and therefore denies those allegations.

7. It denies the allegations of Paragraphs 37 through 39.

8. It lacks knowledge or information sufficient to form a belief as to the allegations or Paragraphs 40 through 63 and therefore denies those allegations.

9. It denies the allegations of Paragraphs 64 and 65.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Negligence/Gross Negligence – As to Palatial Homes)

10. In response to Paragraph 66, it repeats its responses above.

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11. The allegations of Paragraphs 67 through 70 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Breach of Express & Implied Warranties – As to Palatial Homes)

12. In response to Paragraph 71, it repeats its responses above.

13. The allegations of Paragraphs 72 through 77 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Negligence/Gross Negligence – As to Original Construction Subcontractors)

14. In response to Paragraph 78, it repeats its responses above.

15. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 79 and therefore denies those allegations.

16. It denies the allegations of Paragraphs 80 through 82.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanship – As to Original Construction Subcontractors)

17. In response to Paragraph 83, it repeats its responses above.

18. It lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 84 and therefore denies those allegations.

19. It denies the allegations of Paragraphs 85 and 86.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Negligence/Gross Negligence – As to Cambridge Building, Inc.)

20. In response to Paragraph 87, it repeats its responses above.

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21. The allegations of Paragraphs 88 through 91 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION
(Breach of Express & Implied Warranties – As to Cambridge Building, Inc.)

22. In response to Paragraph 92, it repeats its responses above.

23. The allegations of Paragraphs 93 through 98 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION
(Negligence/Gross Negligence – As to Cambridge Subcontractors)

24. In response to Paragraph 99, it repeats its responses above.

25. The allegations of Paragraphs 100 through 103 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION
(Neligence/Gross Negligence – As to Grondahl Defendants)

26. In response to Paragraph 104, it repeats its responses above.

27. The allegations of Paragraphs 105 through 107 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION
(Violation of South Carolina Residential Property Condition Disclosure Act – As to Grondahl Defendants)

28. In response to Paragraph 108, it repeats its responses above.

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29. The allegations of Paragraphs 109 through 114 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION
(Negligent Misrepresentation – As to Grondahl Defendants)

30. In response to Paragraph 115, it repeats its responses above.

31. The allegations of Paragraphs 116 through 123 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE ELEVENTH CAUSE OF ACTION
(Breach of Contract – As to Grondahl Defendants)

32. In response to Paragraph 124, it repeats its responses above.

33. The allegations of Paragraphs 125 through 127 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE TWELFTH CAUSE OF ACTION
(Negligence/Gross Negligence – As to Imperial Pest Controllers, Inc.)

34. In response to Paragraph 128, it repeats its responses above.

35. The allegations of Paragraphs 129 through 132 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

FOR A FIRST DEFENSE TO THE THIRTEENTH CAUSE OF ACTION
(Breach of Contract – As to Imperial Pest Controllers, Inc.)

36. In response to Paragraph 133, it repeats its responses above.

37. The allegations of Paragraphs 134 through 136 are directed toward other defendants and therefore require no response from HHE; however, out of an abundance of caution, to the extent those paragraphs imply or infer any liability on the part of HHE, it denies those allegations.

38. It denies that Plaintiff is entitled to the relief claimed under the "WHEREFORE" paragraph.

FOR A SECOND DEFENSE

39. Upon information and belief, Plaintiff's damages were caused by the acts or omissions of third parties over whom Defendant had no control.

FOR A THIRD DEFENSE

40. Upon information and belief, Plaintiff's recovery is barred or limited by the doctrines of comparative negligence and assumption of the risk.

FOR A FOURTH DEFENSE

41. Upon information and belief, Plaintiff's recovery is barred by the applicable statute of limitations or repose.

FOR A FIFTH DEFENSE

42. Upon information and belief, Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant.

FOR A SIXTH DEFENSE

43. Upon information and belief, Plaintiff has failed to mitigate damages.

FOR A SEVENTH DEFENSE

44. Upon information and belief, Plaintiff's claims were due to and caused by Plaintiff's own negligence, gross negligence, recklessness, wilfulness and wantonness.

FOR AN EIGHTH DEFENSE

45. Certain of Plaintiff's claims may be barred by the application of the Economic Loss Rule.

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FOR A NINTH DEFENSE

46. Plaintiff's claim for punitive damages against Defendant cannot be sustained because any award of punitive damages under South Carolina law without bifurcating the trial of all punitive damages issues would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR A TENTH DEFENSE

47. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that a jury may impose, would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR AN ELEVENTH DEFENSE

48. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to

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judicial review on the basis of objective standards would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy.

FOR A TWELFTH DEFENSE

49. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR A THIRTEENTH DEFENSE

50. Plaintiff's claim for punitive damages against Defendant cannot be sustained because an award of punitive damages under South Carolina law without proof of every element beyond a reasonable doubt would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

FOR A FOURTEENTH DEFENSE

51. Plaintiff's claim for punitive damages cannot be sustained because an award of punitive damages under state law without the same protections that are accorded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy and self-incrimination and the rights to confront adverse witnesses, a speedy trial and the effective assistance of counsel, would violate Defendant's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the

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Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination.

FOR A FIFTEENTH DEFENSE

52. Any award of punitive damages based on anything other than Defendant's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy because any other judgment for punitive damages in this case cannot protect Defendant against impermissible multiple punishment for the same wrong.

FOR A SIXTEENTH DEFENSE

53. Defendant would show that, upon information and belief, Plaintiff had constructive knowledge and/or actual knowledge of those conditions referred to in the Complaint; such circumstances constituting a complete bar to Plaintiff's claims.

FOR A SEVENTEENTH DEFENSE

54. To the extent that repairs have been made to the subject structure, Defendant has not been afforded an opportunity to inspect and examine the alleged damages, and therefore pleads the Spoilation of Evidence Doctrine as a complete defense to the Complaint.

FOR AN EIGHTEENTH DEFENSE

55. If applicable, the claims against Defendant are barred by the terms and conditions contained within the contract documents between Defendant and Plaintiff.

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FOR A NINETEENTH DEFENSE

56. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

FOR A TWENTIETH DEFENSE

57. Defendant pleads the defenses and statutory caps set forth in S.C. Code Ann. §15-32-510 et seq., including, but not limited to, the statutory caps set forth in S.C. Code Ann. §15-32-530. Defendant further requests bifurcation in accordance with S.C. Code Ann. §15-32-520.

FOR AN ADDITIONAL DEFENSE

58. Defendant specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Second Amended Complaint, Defendant prays that it be dismissed, with costs, and for such other relief as the Court may grant.

KERNODLE COLEMAN

By: s/ Stephen M. Kozick
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ATTORNEYS FOR HILTON HEAD EXTERMINATORS, INC.

May 18, 2021
Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, Plaintiff, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants.	C.A. No. 2020-CP-07-00776 **Motion for Leave to File Second Amended Summons and Complaint**

TO: ALL COUNSEL OF RECORD

Plaintiff hereby moves pursuant to Rules 15(a) and 19 of the South Carolina Rules of Civil Procedure for leave of Court to file the attached proposed Second Amended Summons and Complaint. This amendment is made to add an additional party. Plaintiff is informed and believes that, due to the stage of discovery in this matter, there will be no prejudice to the parties as a result of this amendment.

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
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Attorneys for Plaintiff

April 22, 2021
Charleston, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **SECOND AMENDED SUMMONS** (Jury Trial Demanded)

TO: ALL DEFENDANTS ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Second Amended Complaint on the subscriber at his office, Capell Thomson, LLC, 321 E. Bay Street, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to

appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

CAPELL THOMSON, LLC

Glynn L. Capell (16552)
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Charles W. Thomson (101471)
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Attorneys for Plaintiff

DATE

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **SECOND AMENDED COMPLAINT** (Jury Trial Demanded)

The Plaintiff, Kathleen M. Rankin ("Plaintiff"), complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is an individual who owns real property located at 11 Harrogate Drive, Wexford Plantation, Hilton Head Island, Beaufort County, South Carolina ("Subject Property").

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2. As to Defendant Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC:

a) Defendant Palatial Homes, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

b) Defendant Palatial Homes, LLC is, upon information and belief, a limited liability company organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

c) Defendant Palatial Homes Design, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Upon information and belief, Palatial Homes, Inc.; Palatial Homes, LLC; and Palatial Homes Design, LLC are successors in interest to and/or amalgamated with one another in that they involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for the entities to assume the debts of one another;

b) the entities were or are consolidated;

c) the entities are a mere continuation of one another;

d) the transfer from one company to another was fraudulent in fact;

e) the legal distinction between the three entities is blurred;

f) the interests of the three entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

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g) there would exist a great injustice if the actions of one did not apply to the others.

4. The term "Palatial Homes" used hereinafter refers to Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC.

5. Defendant Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

6. Upon information and belief, Heritage Plastering & Stucco LLC is a successor in interest to and/or is amalgamated with Heritage Plastering, Inc. in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Heritage Plastering & Stucco LLC to assume the debts of Heritage Plastering, Inc.;

b) the two entities were or are consolidated;

c) Heritage Plastering & Stucco LLC is a mere continuation of Heritage Plastering, Inc.;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

7. Defendant CMC Steel Works, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

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8. Defendant AMI Ironworks LLC a/k/a American Master Ironworks, LLC is, upon information and belief, two limited liability companies organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

9. Upon information and belief, AMI Ironworks LLC is a successor in interest to and/or is amalgamated with American Master Ironworks, LLC in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for AMI Ironworks LLC to assume the debts of American Master Ironworks, LLC;

b) the two entities were or are consolidated;

c) AMI Ironworks LLC is a mere continuation of American Master Ironworks, LLC;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

10. Defendant Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC is, upon information and belief, an individual—doing business as a sole proprietorship or unincorporated business organization that is now organized and existing as a limited liability company—who is domiciled in and has a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

11. Upon information and belief, Ankon Construction Services, LLC is a successor in interest to and/or is amalgamated with Advanced Roofing

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Services in that it involves the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

a) there was an agreement for Ankon Construction Services, LLC to assume the debts of Advanced Roofing Services;

b) the two entities were or are consolidated;

c) Ankon Construction Services, LLC is a mere continuation of Advanced Roofing Services;

d) the transfer from one company to the other was fraudulent in fact;

e) the legal distinction between the two entities is blurred;

f) the interests of the two entities are so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

g) there would exist a great injustice if the actions of one did not apply to other.

12. Defendant Kelca Counters, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

13. Each Defendant John Doe 1–20 is an individual, entity, or entities, domiciled and/or operating under the laws of one of the United States of America that participated in the construction of the Subject Property by providing labor and/or materials for the stucco, framing, roofing, railings, decks, waterproofing, flashings, tiling, painting, and caulking. Each Defendant John Doe 1–20 is a party "whose true name is unknown," named pursuant to Rule 10(a)(1), SCRCP, and Plaintiff will amend this pleading when any or all of their true names are discovered.

14. Defendant Cambridge Building, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

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15. Defendant Two Brothers Plastering, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

16. Defendant William T. Ruarks d/b/a Ruacon Quality Construction is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

17. Defendant Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

18. Defendant Ionut D. Istrate d/b/a Island Plasters LLC is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

19. Defendant 11 Harrogate Drive Realty Trust is, upon information and belief, a revocable trust established by Michael Grondahl, whose sole purpose was to own the Subject Property, and who did own the Subject Property at all times relevant hereto.

20. Defendant Michael Grondahl is, upon information and belief, an individual domiciled in New Hampshire and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

21. Upon information and belief, Michael Grondahl is or was the sole trustee of the 11 Harrogate Drive Realty Trust.

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22. Defendants 11 Harrogate Drive Realty Trust and Michael Grondahl are hereinafter referred to collectively as "Grondahl Defendants."

23. Upon information and belief, Grondahl Defendants are successors in interest to one another, amalgamated with one another, a single-business enterprise, and/or alter-egos, in that they are characterized by one or more of the following:

a) the legal distinction between them being blurred;

b) there being an agreement for them to assume the debts of one another;

c) being consolidated;

d) being mere continuations of one another;

e) the transfers from one to the other being fraudulent in fact;

f) being under-capitalized;

g) failing to observe corporate formalities;

h) failing to pay dividends;

i) insolvency;

j) lacking proper records;

k) siphoning of funds by its members;

l) being used as a mere façade for the operation of the dominant shareholder, member, and associate;

m) their interests being so amalgamated that it has resulted in bad faith, abuse, fraud, wrongdoing; and

n) there being a broad element of injustice and fundamental un-fairness if the acts of Grondahl Defendants were not regarded as the acts of one another.

24. Defendant Hilton Exterminators, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

25. Defendant Imperial Pest Controllers, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws

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of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

26. This Court has jurisdiction over the subject matter and the parties to this action.

FACTUAL ALLEGATIONS

27. The Town of Hilton Head Island issued a Building Permit for the original construction of the Subject Property on March 3, 2005 and issued the corresponding Certificate of Occupancy on January 30, 2006.

28. The Building Permit did not contain any bold type notice to the owners of the property of their rights to contract for a guarantee of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement.

29. Upon information and belief, Palatial Homes acted as general contractor for the Subject Property and was responsible for coordination and supervision of construction.

30. Upon information and belief, Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC installed the stucco, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

31. Upon information and belief, CMC Steel Works, Inc. installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

32. Upon information and belief, AMI Ironworks LLC a/k/a American Master Ironworks, LLC installed the railings, flashings, and other related appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

33. Upon information and belief, Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise designed and oversaw construction of same.

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34. Upon information and belief, Kelca Counters, Inc. installed the tiling, inclusive of tile floors and shower/bathroom tiling, and was responsible for the necessary subcomponents to the tiling and other related appurtenances at the Subject Property.

35. Upon information and belief, Hilton Exterminators, Inc. performed the pretreatment application to the footings and piers during the original construction of the Subject Property and also provided a Wood Infestation Report once original construction was substantially complete.

36. The term "Original Construction Subcontractors" used hereinafter refers to the following Defendants collectively: Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; Hilton Exterminators, Inc.; and John Does 1–20.

37. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Palatial Homes and Original Construction Subcontractors including, but not limited to, the following:

a) Failure to install the exterior stucco cladding and related flashings in accordance with the manufacturer's installation instructions, industry standards, and applicable building code;

b) Installing the exterior stucco cladding system as a "barrier wall" rather than a drainable system;

c) Failure to install appropriate flashings or weep assemblies in the stucco cladding;

d) Failure to appropriately install through-wall flashing assemblies in the stucco cladding;

e) Failure to install appropriate engineered sealant joints at the intersection of dissimilar materials, most notably at the intersection between the stucco and the window jambs;

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f) Improper installation of exterior trim board;

g) Improper installation of doors and windows;

h) Improper installation of building wrap;

i) Improper installation/waterproofing of steel support columns;

j) Improper installation and/or use of defective products on the exterior railings;

k) Improper installation of tiling, inclusive of components beneath the tiling;

l) Improper deck installation;

m) Improper deck waterproofing installation and use of improper materials for deck waterproofing;

n) Improper sloping of decks;

o) Use of improper fasteners in the stucco system;

p) Use of improper fasteners in the framing system supporting floors that began to sag;

q) Improper cutting of framing support members;

r) Improper framing and/or foundation unable to handle structural loads;

s) Improper shingle-roof and roof framing installation;

t) Installing wood columns in contact with grade;

u) Installing stucco and stucco trim in contact with grade;

v) Failure to apply the appropriate amount of pretreat pesticide beneath the residence;

w) Failure by multiple trades, inclusive of the pest control trade, to note the stucco- and wood-to-grade condition;

x) Violations of the South Carolina Pesticide Control Act;

y) Improper painting and caulking;

z) Lack of or improper flashing and waterproofing at junction of roofs, decks, walls, concrete and windows;

aa) Failure to notice defective work of other trades prior to performing subsequent work;

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bb) Improper design and failure to install drainage systems;

cc) Improper accounting for routine thermal expansion and contraction of construction components;

dd) Failure to construct the Subject Property so as to make the exterior building envelope watertight thereby violating the building code in effect in Beaufort County at the time the work was performed;

ee) Failure to investigate the subcontractors to determine if they were competent and capable of performing their work in accordance with good construction practices;

ff) Failure to adequately supervise the work of subcontractors and/or employees;

gg) Failure to discover defects in the work performed by subcontractors and/or employees;

hh) Failure to properly investigate and correct defective work and resulting damages;

ii) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

jj) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

kk) Such other failures as will be shown through the discovery and trial of this matter.

38. The negligence/gross negligence of Palatial Homes and each of the Original Construction Subcontractors caused property damage that was not discoverable in the exercise of reasonable diligence, as a result of exposure to harmful particles over a period of time, as opposed to resulting from a sudden and fortuitous trauma.

39. The negligence/gross negligence of Palatial Homes and each of the Original Construction Subcontractors includes violations of the relevant building codes.

40. Upon information and belief, Grondahl Defendants owned the Subject Property from in or around August 2013 until in or around December 2018.

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41. Upon information and belief, Grondahl Defendants contracted with Defendant Cambridge Building, Inc. to perform certain repairs and renovations to the Subject Property. This work included repairs to fire damage around the chimney shaft, other work around the rear porch, and fallen tree damage to the roof and other areas inside the house.

42. The Town of Hilton Head Island issued a Building Permit for repairs and renovations to the Subject Property on May 9, 2016. As to this project, upon information and belief:

a) The scope of work was to repair fire damage to the chimney shaft and other work around the rear porch.

b) Cambridge Building, Inc. was the general contractor and was responsible for coordination and supervision of construction.

c) Two Brothers Plastering, Inc. and Ionut D. Istrate d/b/a Island Plasters LLC installed the stucco, flashings, and other related appurtenances, and otherwise designed and oversaw construction of same.

d) William T. Ruarks d/b/a Ruacon Quality Construction installed the framing, decks, windows and doors, building wrap, flashings, and related appurtenances.

e) Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances, and otherwise designed and oversaw construction of same.

43. Grondahl Defendants' and Cambridge Building, Inc.'s repairs to fallen tree damage around the roof and other areas inside the house constituted a separate project. For this second project, the Town of Hilton Head Island issued an Emergency Building Permit on October 27, 2016.

44. Upon information and belief, the scope of this second project included roofing work, framing work, and stucco work.

45. Upon information and belief, neither Grondahl Defendants nor Cambridge Building, Inc. obtained a final inspection of this second project from the Town of Hilton Head Island.

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46. The term "Cambridge Subcontractors" used hereinafter refers to the following Defendants collectively: Two Brothers Plastering, Inc.; Ionut D. Istrate d/b/a Island Plasters LLC; William T. Ruarks d/b/a Ruacon Quality Construction; and Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services.

47. Upon information and belief, the Subject Property contains numerous design and construction defects committed by Cambridge Building, Inc. and Cambridge Subcontractors, including, but not limited to, the following:

a) Improper cutting of framing support members;

b) Improper framing and/or foundation unable to handle structural loads;

c) Improper shingle-roof installation;

d) Installing stucco and stucco trim in contact with grade;

e) Failure by multiple trades to note the stucco- and wood-to-grade condition;

f) Painting over/concealing existing termite tubes;

g) Leaving tree debris behind in attic;

h) Failure to notice defective work of other trades prior to performing subsequent work;

i) Failure to discover defects in the work performed by subcontractors and/or employees;

j) Failure to construct the Subject Property in accordance with applicable building codes and industry standards;

k) Failure to obtain final inspection as required from the Town of Hilton Head Island;

l) Failure to act as a reasonably prudent contractor or subcontractor would act under similar circumstances; and

m) Such other failures as will be shown through the discovery and trial of this matter.

48. Upon information and belief, Grondahl Defendants entered into a contract to sell the Subject Property to Plaintiffs in or around December 2018.

49. Per the written contract between Grondahl Defendants and Plaintiff (the "Contract"), Grondahl Defendants were responsible for providing CL-100 reporting to Plaintiff.

50. Upon information and belief, Grondahl Defendants were in possession of a CL-100 report generated on behalf of a previous potential purchaser. Despite that this report noted wood-destroying organisms, Grondahl did not provide it to Plaintiff.

51. The Contract provided that the structure of the Subject Property shall be reasonably sound.

52. The Contract provided that the property shall be habitable, and that Grondahl Defendants must repair deficiencies which render the property uninhabitable.

53. The Contract provided that Plaintiff had reviewed a South Carolina Property Condition Disclosure Statement.

54. Grondahl Defendants should have been aware of the defective construction conditions at the Subject Property but did not disclose those conditions to Plaintiff.

55. Grondahl Defendants discovered damage subsequent to executing the South Carolina Property Condition Disclosure Statement. This may be inferred from the first CL-100 report produced by Imperial Pest Controllers, Inc.

56. Grondahl Defendants did not disclose the first CL-100 report or its contents to Plaintiff, nor did he update the South Carolina Property Condition Disclosure Statement.

57. Subsequent to the purchase of the Subject Property, Plaintiff discovered evidence that windows had been sealed with silicone caulking that appeared to have been installed during Grondahl Defendants' ownership, which shows that Grondahl Defendants were aware of and deal with water intrusion issues around the windows.

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58. Also subsequent to the purchase of the Subject Property, Plaintiff discovered evidence that contractors quoted necessary repair work to Grondahl Defendants, coupled with discovering that this necessary repair work had not been performed. These unrepaired conditions included some light stucco work. Grondahl Defendants did not disclose these conditions to Plaintiff prior to Plaintiff's purchase of the Subject Property.

59. Also subsequent to the purchase of the Subject Property, Plaintiff discovered evidence of termite tubes that had been painted over, which appears to have been performed during Grondahl Defendants' ownership. Grondahl Defendants did not disclose the existence of termite activity to Plaintiff prior to Plaintiff's purchase of the Subject Property.

60. Some defects in the residence that Grondahl Defendants failed to disclose were latent defects of which Plaintiff did not know and did not accept.

61. Plaintiff reasonably relied on Grondahl Defendants' representations that there were no construction defects existing at the Subject Property. Grondahl Defendants failed to deliver the Subject Property in the condition as promised in the Contract.

62. Upon information and belief, Imperial Pest Controllers, Inc. provided two separate CL-100 letters throughout Grondahl Defendants' sale of the Subject Property. They were dated October 17, 2018 and December 11, 2018, respectively.

63. Upon information and belief, Imperial Pest Controllers, Inc.'s CL-100 services were deficient in the following manners:

a) Failure to disclose whether wood destroying fungi was active or non-active in the first CL-100;

b) Failure to disclose the existence of wood destroying fungi whatsoever in the second CL-100;

c) Failure to report the existence termite tubes;

d) Failure to report the existence of stucco- and wood-to grade conditions;

e) Violations of the South Carolina Pesticide Control Act; and

f) Such other failures as will be shown through the discovery and trial of this matter.

64. Due to the deficiencies noted throughout, continuous and repeated exposure to harmful conditions, including water intrusion and termite infestation, has occurred, resulting in physical consequential damages. These events have occurred every year since construction and constitute "occurrences" and compensable damages. Further, the negligence/gross negligence of each Defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to Plaintiff's residence and property and Plaintiff's use and enjoyment of her residence.

65. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages and attorney's fees where applicable, plus costs, prejudgment interest, and postjudgment interest.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence — As to Palatial Homes)

66. Each and every allegation set forth above is incorporated here.

67. Palatial Homes owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

68. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Palatial Homes, as general contractor, in one or more of the following particulars:

a) In failing to properly construct the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction

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conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In failing to inform the architect and/or owner of defects in the plans and specifications;

f) In constructing the Subject Property in violation of applicable building codes; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

69. Palatial Homes failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

70. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

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SECOND CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Palatial Homes)

71. Each and every allegation set forth above is incorporated here.

72. Palatial Homes held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

73. Palatial Homes provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

74. Certain implied warranties arose from the work performed by Palatial Homes, including, but not limited to, a warranty of workmanlike construction and habitability.

75. Palatial Homes further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

76. As set forth above, Palatial Homes breached its implied and express warranties.

77. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

THIRD CAUSE OF ACTION

(Negligence/Gross Negligence — As to Original Construction Subcontractors)

78. Each and every allegation set forth above is incorporated here.

79. Each of the Original Construction Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

80. Each of the Original Construction Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that

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a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

81. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion and defects in the framing, siding, decking, waterproofing/flashing, flooring, painting, and other components of the residence, inclusive of work of other trades.

82. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanship — As to Original Construction Subcontractors)

83. Each and every allegation set forth above is incorporated here.

84. Each of the Original Construction Subcontractors impliedly warranted that its scope of work would be performed in a careful, diligent, and workmanlike manner, free of construction defects, and in conformance with the applicable building codes and industry standards.

85. As set forth more fully above, each of the Original Construction Subcontractors breached the implied warranty of workmanship.

86. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

FIFTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Cambridge Building, Inc.)

87. Each and every allegation set forth above is incorporated here.

88. Cambridge Building, Inc. owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design

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defects and in conformity with customary and ordinary standards of the building and construction industry.

89. The deficiencies and defects which exist to Cambridge Building, Inc.'s work at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of Cambridge Building, Inc., as general contractor, in one or more of the following particulars:

a) In failing to properly construct its work at the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;

b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c) In accepting non-conforming or defective materials;

d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;

e) In constructing its work at the Subject Property in violation of applicable building codes;

f) In failing to obtain all necessary inspections, including final inspection, from the Town of Hilton Head Island; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

90. Cambridge Building, Inc. failed to use slight care and breached its duty in a reckless manner such that a general contractor of ordinary

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reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

91. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SIXTH CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to Cambridge Building, Inc.)

92. Each and every allegation set forth above is incorporated here.

93. Cambridge Building, Inc. held itself out to the public and to Plaintiff as specifically qualified to perform residential construction in Beaufort County, South Carolina.

94. Cambridge Building, Inc. provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

95. Certain implied warranties arose from the work performed by Cambridge Building, Inc., including, but not limited to, a warranty of workmanlike construction and habitability.

96. Cambridge Building, Inc. further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

97. As set forth above, Cambridge Building, Inc. breached its implied and express warranties.

98. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential

damages, including loss of use and loss of value, plus costs, prejudgment interest and postjudgment interest.

SEVENTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Cambridge Subcontractors)

99. Each and every allegation set forth above is incorporated here.

100. Each of the Cambridge Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards.

101. Each of the Cambridge Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

102. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion, termite infestation, and defects to the framing, siding, decking, flooring, painting, and other components of the residence, inclusive of work of other trades.

103. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and postjudgment interest.

EIGHTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Grondahl Defendants)

104. Each and every allegation set forth above is incorporated here.

105. Grondahl Defendants, as owners of the Subject Property, owed duties to Plaintiffs to reasonably hire and supervise contractors, review the construction and repairs, to obtain all required inspections from the Town of Hilton Head Island in connection with repairs projects, to discover and report construction defects throughout the entire time he owned the residence (2013–2018), and to otherwise either deliver the Subject

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Property free of construction and design defects or to disclose such defects, as would a reasonable owner of property under such circumstances.

106. Grondahl Defendants failed to use slight care and breached his duties in a reckless manner such that an owner of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

107. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

NINTH CAUSE OF ACTION

(Violation of South Carolina Residential Property Condition Disclosure Act — As to Grondahl Defendants)

108. Prior to the sale of the Subject Property from Grondahl Defendants to Plaintiff, Grondahl Defendants executed and provided Plaintiff with a Residential Property Condition Disclosure Statement ("Disclosure Statement").

109. On the Disclosure Statement, Grondahl Defendants failed to represent that he had no knowledge of any problems with the following:

a) Roof system;

b) Floors, windows, doors, interior walls, exterior walls, patio, deck, walkways, and other structural components including modifications;

c) Dry Rot or Fungus;

d) Violations or variances of building codes or permits; and

e) Problems caused by water to the property.

110. Grondahl Defendants should have known that there were problems with all of the items referenced in the previous paragraph.

111. Grondahl Defendants had a duty to update the Disclosure Statement if he were to discover any defective conditions subsequent to

signing it. Despite learning of such defective conditions, Grondahl Defendants failed to update the Disclosure Statement or otherwise inform Plaintiff of such conditions.

112. Grondahl Defendants knew the Disclosure Statement to be false, incomplete, or misleading.

113. Accordingly, Grondahl Defendants violated the South Carolina Residential Property Condition Disclosure Act, S.C. Code § 27-50-10, *et seq*.

114. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, attorney's fees, plus costs, prejudgment interest and postjudgment interest.

TENTH CAUSE OF ACTION

(Negligent Misrepresentation — As to Grondahl Defendants)

115. Each and every allegation set forth above is incorporated here.

116. Grondahl Defendants, through disclosure statements, advertisements, sales brochures and other marketing literature, website advertisements, and by statements and actions of their agents, made numerous misrepresentations to Plaintiff, including, but not limited to, the quality and luxury of the Subject Property.

117. The representations made by Grondahl Defendants and their agents to Plaintiff were untrue and were misrepresentations of material facts.

118. Grondahl Defendants had a pecuniary interest in making such false representations to Plaintiff in that the representations were made for the purpose of selling the residence for a substantial amount of money.

119. Grondahl Defendants owed a duty to Plaintiff and to the other potential purchasers of the residence to use due care in ensuring that its representations concerning the Subject Property were accurate and truthful.

120. Plaintiff reasonably and justifiably relied upon the representations of Grondahl.

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121. In the exercise of reasonable care, Grondahl Defendants knew or should have known his representations were false and that Plaintiff would rely on the representations.

122. Grondahl Defendants failed to exercise reasonable care in making the representations.

123. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and prejudgment and post judgment interest.

ELEVENTH CAUSE OF ACTION

(Breach of Contract — As to Grondahl Defendants)

124. Each and every allegation set forth above is incorporated here.

125. Grondahl Defendants contracted to transfer the Subject Property to Plaintiff and to make certain repairs to ensure they conveyed the Subject Property free of construction defects.

126. As set forth more fully above, Grondahl Defendants breached his obligation to transfer the Subject Property in the condition as promised to Plaintiff in accordance with the contract and repair addendum.

127. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs and expenses, prejudgment and post judgment interest.

TWELFTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Imperial Pest Controllers, Inc.)

128. Each and every allegation set forth above is incorporated here.

129. Imperial Pest Controllers, Inc. had duties and standards of care to properly perform its services at the Subject Property in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes, industry standards, and industry regulations.

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130. Imperial Pest Controllers, Inc. failed to use slight care and breached its duties and standards in a reckless manner such that a pest control service company of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

131. This breach of duty included faulty workmanship and services resulting in physical, consequential damages including termite infestation and defects to the framing, siding, decking, flooring, painting, and other components of the residence.

132. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and postjudgment interest.

THIRTEENTH CAUSE OF ACTION

(Breach of Contract — As to Imperial Pest Controllers, Inc.)

133. Each and every allegation set forth above is incorporated here.

134. Imperial Pest Controllers, Inc. contracted to perform CL-100 services at the Subject Property for Plaintiff in accordance in accordance with established industry standards and all applicable laws and regulations.

135. Imperial Pest Controllers, Inc. breached its obligation to perform CL-100 services at the Subject Property for Plaintiff in accordance in accordance with established industry standards and all applicable laws and regulations.

136. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, plus costs and expenses, prejudgment and post judgment interest.

Wherefore, Plaintiff prays for judgment against the Defendants and is entitled to recover the cost to repair the defects including actual

damages, consequential damages, including loss of use and loss of value, plus punitive damages and attorney's fees where applicable, costs, prejudgment interest, and postjudgment interest.

Jury Trial Demanded.

CAPELL THOMSON, LLC

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Attorneys for Plaintiff

DATE

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
	)	
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**DEFENDANT HILTON HEAD EXTERMINATORS, INC.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC,; CESAR CASTRO D/B/A HERITAGE PLASTERING, INC. N/K/A HERITAGE PLASTERING & STUCCO LLC; CMC STEEL WORKS, INC.; AMI IRONWORKS LLC A/K/A AMERICAN MASTER IRONWORKS, LLC; ENALDO URRIOLA D/B/A ADVANCED ROOFING SERVICES N/K/A ANKON CONSTRUCTION SERVICES, LLC; KELCA COUNTERS INC.; JOHN DOES 1-20; CAMBRIDGE BUILDING, INC; TWO BROTHERS PLASTERING, INC.; WILLIAM T. RUARKS D/B/A RUACON QUALITY CONSTRUCTION; JIMMY M. METCALF, JR. D/B/A QUALITY ROOF SERVICES; IONUT D. ISTRATE D/B/A ISLAND PLASTERS LLC; MICHAEL GRONDAHL; HILTON HEAD EXTERMINATORS, INC. INC., AND IMPERIAL PEST CONTROLLERS, INC.,	)	
	)	
Defendants.	)	
	)	

TO: CHARLES W. THOMSON, ESQUIRE AND GLYNN L. CAPELL, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Hilton Head Exterminators, Inc. ("Defendant"), by its undersigned attorney, will move before the Presiding Judge of the Fourteenth Judicial Circuit, Beaufort County Courthouse, South Carolina, as soon as counsel may be heard, for an

order granting Defendant summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. There is no genuine issue as to any material fact for the Negligence and Breach of Implied Warranty of Workmanship causes of action asserted by Plaintiff against Defendant.

This Motion will be supported by a memorandum of law and affidavits which will be filed and served prior to the hearing.

KERNODLE COLEMAN

By: s/ Stephen M. Kozick
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ATTORNEYS FOR DEFENDANT HILTON HEAD EXTERMINATORS, INC.

June 21, 2022

Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
	)	
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**DEFENDANT HILTON HEAD EXTERMINATORS, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

Defendant Hilton Head Exterminators, Inc. submits the following memorandum of law in support of its Motion for Summary Judgment.

I. FACTS

This case involves moisture and termite damage discovered by Plaintiff following her "as is" purchase of the residence located at 11 Harrogate Drive, Hilton Head, South Carolina (the "Residence"). Palatial Homes, Inc. constructed the Residence, and Defendant Hilton Head Exterminators, Inc. ("Defendant" or "HHE") applied the termite pre-treatment to the soil in March 2003, prior to construction. On March 3, 2005, the Town of Hilton Head issued a building permit, and the Certificate of Occupancy for the Residence was issued on January 30, 2006.

HHE provided a termite warranty for prior owners of the Residence from June 1, 2005, to April 27, 2012. The warranty was cancelled on April 27, 2012, when the prior owners elected not to renew the termite warranty. HHE did not provide any further termite services at the Residence after April 27, 2012. Affidavit of Brian DeChirico ("DeChirico Aff.") ¶¶ 8, 11 (Exhibit A). ***The Residence then apparently went uninspected and untreated for termites for***

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approximately six years and eight months before Plaintiff purchased it.

On or about December 6, 2018, Plaintiff entered into a Contract of Sale (the "Contract") to purchase the Residence from seller Michael Grondahl for the purchase price of $1,240,000.00. (Exhibit B at 1.) The Contract expressly states that the Residence was being sold "as-is," "where-is," with "no repairs" and "no concessions." (Exhibit B at 2.) Plaintiff did not obtain a home inspection. Instead, she relied on a previous home inspection report produced by the seller's real estate agent. (Rankin Dep. 22:22-23:14, Mar. 5, 2021.) Plaintiff testified that she did not even see the previous home inspection report, and she doesn't know if her real estate agent reviewed it. (Rankin Dep. 23:19-23.) Plaintiff stated that the seller's real estate agent represented to Plaintiff's real estate agent that there were no significant issues with the Residence, even though it "had been vacant at different times," and Plaintiff's real estate agent did not believe another inspection was necessary. (Rankin Dep. 23:24-24:9.)

Furthermore, the section of the seller's Residential Property Condition Disclosure Statement regarding wood-destroying insects, which includes termites, was ***completely blank*** and did not address whether the Residence had any past or present termite infestations, damage, or termite treatment or coverage. (Exhibit C at 3; Rankin Dep. 24:16-24, 126:4-15) (emphasis added). Plaintiff testified this did not raise any red flags for her because she was not aware of the amount of damage termites can do to a house, and she was not surprised the termite section of the disclosure was also blank because the seller "listed no representation on all of the other boxes." (Rankin Dep. 126:16-127:3.) She did not know if the prior owner had a termite warranty for the Residence. (Rankin Dep. 124:7-12.) Plaintiff obtained an Official South Carolina Wood Infestation Report, or CL-100, prior to closing, and the visual CL-100 inspection did not identify any visible termite activity or damage. (Exhibit D; Rankin Dep. 30:24-31:7.)

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Plaintiff closed on the purchase of the Residence on December 18, 2018. She testified that she moved into the Residence in early January 2019, and shortly thereafter, she claims she observed a substance that she later learned was "termite excrement" at the top of one of the columns on the first-floor porch on the rear of the residence. (Rankin Dep. 80:6-81:2, 124:18-125:19.) She testified that months later, in late spring or early summer 2019, a painter discovered termites in the breakfast nook on the rear of the residence while painting sheetrock. While he was painting, some of the sheetrock crumbled and exposed the termites. (Rankin Dep. 25:3-14.) During the same timeframe, a repair contractor hired by Plaintiff discovered numerous construction defects at the Residence, including structural stability issues with the second floor balcony on the rear of the Residence and flashing and waterproofing issues. (Rankin Dep. 26:12-28:18, 39:25-40:15, 47:16-48:15, 88:7-17.)

On January 15, 2020, more than a year after she purchased the Residence, Plaintiff contacted the Department of Pesticide Regulation ("DPR"), Clemson University, to perform an investigation regarding the CL-100 inspection performed at the Residence by another party and the discovery of termite damage. DPR performed an inspection on January 22, 2020, and DPR Pesticide Investigator Kristin Lenox-Rustin subsequently issued a report dated June 18, 2020, which was amended on June 24, 2020. The June 24th report indicates that during demolition and repairs, certain hidden conditions were revealed, including a form board in the block and rear patio slab. (Exhibit E at 1.) After discussing conditions at the Residence, DPR addressed former and current pest control companies that provided services at the Residence. With respect to HHE, which had not provided any termite services since April 2012, DPR concluded that HHE's March 23, 2003 pre-treatment did not address Exterior Insulation and Finish System, or EIFS, stucco in contact with the ground. (Exhibit E at 3.) DPR did not require HHE to correct this issue and simply issued an informational letter to HHE on January 15, 2021. (Exhibit F.) DPR

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instead issued a warning letter to Terminix, the current pest control company at the Residence, for not addressing EIFS-to-ground contact, as well as a termiticide use violation. (Exhibit E at 4; Exhibit G.)

Plaintiff filed her original Complaint on March 26, 2020. Plaintiff filed an Amended Complaint on October 19, 2020, naming additional defendants. In her Amended Complaint, Plaintiff asserts claims for Negligence/Gross Negligence and Breach of Implied Warranty of Workmanship against HHE. Am. Compl. ¶¶ 74-82. HHE filed an Answer and affirmative defenses, and the parties engaged in discovery. HHE filed its Notice of Motion and Motion for Summary Judgment on June 21, 2022, and now submits this Memorandum in Support of its Motion for Summary Judgment for the Court's consideration.

II. SUMMARY JUDGMENT STANDARD

South Carolina Rule of Civil Procedure 56(c) states that summary judgment is appropriate when "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."

> "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." [*Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)] (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). However, "[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch,* 354 S.C. 648, 582 S.E.2d 432 [(Ct. App. 2003)]." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). "The

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nonmoving party must come forward with specific facts showing there is a genuine issue for trial. [*Rife v. Hitachi Cont. Machinery Co., Ltd*, 363 S.C. 209, 214, 609 S.E.2d 565, 568. (Ct. App. 2005)]." *Id.*, 377 S.C. at 198, 659 S.E.2d at 203.

III. ARGUMENT

A. No Evidence Exists Regarding the Conditions at the Residence, Whether Conditions were Waived, or Any Alleged Deficiencies in HHE's Pretreatment and Inspections at the Residence.

Page three of the June 24, 2020 DPR report states that DPR Regulation § 27-1085(G)(2)(b)—addressing EIFS-to-ground contact—was "neither met nor wa[i]ved during [HHE's] March 23, 2003 pretreatment." (Exhibit E at 3.) Plaintiff relies on this statement from Investigator Lenox-Rustin as her only evidence of a deficiency in HHE's pretreatment and warranty services which may have allowed termites to enter the Residence. However, aside from the March 23, 2003 HHE invoice for a termite pretreatment of the soil that ***occurred prior to construction***, it is undisputed that ***no other documents regarding HHE's termite services at the Residence exist***. Accordingly, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, Mr. Kevin DeLorenzo, readily admits that DPR does not know whether the alleged EIFS-to-ground contact was waived, or what conditions existed at the Residence up until 2012. Affidavit of Kevin DeLorenzo ("DeLorenzo Aff.") ¶ 14 (Exhibit H). DPR has no way of making such a determination because DPR can only report what its investigator observes at the time of its inspection. (DeLorenzo Aff. ¶ 14.) In this case, the inspection occurred on January 22, 2020, ***approximately seven years and nine months after HHE's involvement at the Residence ended.***

HHE clearly satisfied the DPR regulation regarding the retention and destruction of records by waiting five years before destroying the records in 2017. (DeChirico Aff. ¶¶ 5-6.) Mr. DeLorenzo, who is an expert in the field of termite treatments, inspections and regulation,

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agrees that HHE's destruction of records for the Residence was proper following cancellation of termite services in April 2012. (DeLorenzo Aff. ¶ 16.)

Neither Plaintiff nor DPR has any evidence showing that the termite pretreatment performed on March 23, 2003, was in any way incorrect or deficient in the amount of termiticide applied. In fact, due to the passage of time, it is impossible to test the soil to determine whether the pretreatment was deficient. Mr. DeLorenzo testified that DPR is only able to test the soil within six months following application of termiticide. (DeLorenzo Aff. ¶ 17.) Mr. DeLorenzo's affidavit reflects that DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when performing future inspections and treatments at other properties. (DeLorenzo Aff. ¶ 12.) As such, the informational letter issued to HHE is not tracked against HHE's enforcement history. (DeLorenzo Aff. ¶ 12.) Mr. DeLorenzo states that he would have also agreed not to issue an informational letter in this case due to the lack of available records. (DeLorenzo Aff. ¶ 13.)

B. Plaintiff's Claim for Negligence/Gross Negligence Should be Dismissed as HHE Did Not Owe Plaintiff a Duty of Care, and Plaintiff's Damages were Caused by the Intervening Negligence of Prior Owners.

In her Amended Complaint, Plaintiff claims that HHE had a duty and standard of care to properly perform its work on the Residence "in a good and workmanlike manner, free of defects, and in conformance with the applicable building codes and industry standards." Am. Compl. ¶ 75. Plaintiff claims that HHE breached its alleged duty and standard of care in a reckless manner that caused damage to Plaintiff. Am. Compl. ¶¶ 76-78.

A plaintiff must prove the following elements to recover on a claim for negligence: "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Chakrabarti v. City of*

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Orangeburg, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (2013) (citing *Carolina Chloride, Inc. v. Richland Cnty.*, 394 S.C. 154, 163, 714 S.E.2d 869, 873 (2011)). "'If any of these elements is absent a negligence claim is not stated.'" *Chakrabarti*, 403 S.C. at 314, 743 S.E.2d at 112 (quoting *Summers v. Harrison Constr.*, 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989)). "A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing." *Jackson v. S.C. Dep't of Corr.*, 301 S.C. 125, 126, 390 S.E.2d 467, 468 (Ct. App. 1989) (internal citation omitted). "Gross negligence involves a conscious failure to exercise due care." *Jackson*, 301 S.C. at 126-27, 390 S.E.2d at 468 (internal citation omitted).

There is no genuine issue of material fact as to Plaintiff's negligence/gross negligence claim because no evidence exists regarding HHE's termite pretreatment and subsequent warranty inspections except for the March 23, 2003 pretreatment invoice for work performed by HHE, ***before a structure was even built***. The affidavit of DPR's Structural Program Manager, Mr. DeLorenzo, reflects that there is no way to determine whether the EIFS-to-ground condition was waived by a prior owner, or the conditions at the Residence, when HHE's termite warranty was in effect because no records exist, and DPR did not inspect the Residence years earlier during HHE's involvement at the property. (DeLorenzo Aff. ¶¶ 14-15.)

HHE has retained the services of termite expert Dr. Maxcy Nolan, III, and after a review of relevant case documents and a site inspection at the Residence, Dr. Nolan concurs with Mr. DeLorenzo's testimony. Affidavit of Dr. Maxcy Nolan, III ("Nolan Aff.") ¶¶ 7-8 (Exhibit I).) Dr. Nolan has extensive education and experience in the areas of termite treatments, inspection and regulation, and he has served as an expert in numerous termite damage cases in South Carolina. (Nolan Aff. ¶¶ 2-4.)

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Both Mr. DeLorenzo and Dr. Nolan also agree that HHE does not owe Plaintiff a standard of care because HHE cancelled its termite warranty on the Residence ***six years and eight months prior to Plaintiff's purchase*** of the Residence. (Delorenzo Aff. ¶ 18; Nolan Aff. ¶ 11.) Prior to her purchase, HHE never had any contact or relationship with Plaintiff regarding termite services at the Residence. Terminix, not HHE, has the current termite warranty on the Residence and received a warning letter from DPR. (Exhibit E at 4; Exhibit G; DeLorenzo Aff. ¶ 11.) HHE destroyed records properly pursuant to DPR regulations. (DeLorenzo Aff. ¶ 16; Nolan Aff. ¶ 7.) No evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operators. (Nolan Aff. ¶ 11.) Since HHE never owed a duty of care to Plaintiff, Plaintiff's negligence claim must fail. Furthermore, there is absolutely no evidence demonstrating that HHE consciously failed to exercise due care, as is required in a claim for gross negligence.

Plaintiff's negligence claim also fails because the ***six year and eight month period*** prior to Plaintiff's purchase of the Residence, in which apparently no termite inspection or treatment services were provided, is an intervening or superseding cause of Plaintiff's termite damage attributable to the prior owners of the residence. "'For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated." *Dawkins v. Sell*, 434 S.C. 572, 581, 865 S.E.2d 1, 6 (Ct. App. 2021) (*Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 205, 781 S.E.2d 534, 536 (2015) (quoting *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997)). Certainly, HHE could not have reasonably foreseen or anticipated that individuals who owned the Residence prior to Plaintiff's purchase would fail to have the property inspected and treated for termites, thus causing damage to Plaintiff. It is widely known that Hilton Head Island is an area with significant Formosan termite pressure, and termite treatments and inspections are

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considered necessities by termite experts. (DeLorenzo Aff. ¶¶ 19-20; Nolan Aff. ¶ 12.) Experts also recommend termite re-treatments, or boosters, to protect against termite infestation. (DeLorenzo Aff. ¶ 21; Nolan Aff. ¶ 12.) If prior owners failed to re-treat or inspect the Residence for termites for a period of almost seven years before Plaintiff purchased it, Dr. Nolan opines that it is likely that the termite infestation began during this time period. (Nolan Aff. ¶ 13.) HHE cannot reasonably have any duty to Plaintiff almost seven years later for termite damage caused during a period of time when HHE did not provide any termite services. That liability rests with the prior owners and Plaintiff's due diligence in the course of purchasing the Residence.

C. Under South Carolina Law, Plaintiff's Claim for Breach of Implied Warranty of Workmanship Does Not Apply to Pest Control Companies or Chemical Treatments with Limited Lifespans and Should be Dismissed.

Plaintiff's second cause of action against HHE is Breach of Implied Warranty of Workmanship. Am. Compl. ¶¶ 79-82. She identifies HHE as one of the "Original Construction Subcontractors" and alleges that HHE "impliedly warranted that its scope of work would be performed in a careful, diligent, and workmanlike manner, free of construction defects, and in conformance with the applicable building codes and industry standards." Am. Compl. ¶ 80. Plaintiff alleges that HHE breached this alleged warranty and suffered damages as a result. Am. Compl. ¶¶ 81-82.

"A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner." *Smith v. Breedlove*, 377 S.C. 415, 422, 661 S.E.2d 61, 71 (2008) (citing *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 344, 384 S.E.3d 730, 736 (1989)). "[T]o establish a claim for breach of the implied warranty of workmanlike services, the plaintiff must show that the builder failed to perform its work in a careful, diligent, and workmanlike manner." *Magnolia N. Prop. Owners'*

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Ass'n, Inc. v. Heritage Cmtys., Inc., 397 S.C. 348, 368-69, 725 S.E.2d 112, 123 (Ct. App. 2012) (citing *Smith*, 377 S.C. at 422, 661 S.E.2d at 71. The implied warranty of workmanship "***only applies to builders in the business of building new dwellings for sale***." *Smith*, 377 S.C. at 422, 661 S.E.2d at 71 (emphasis added); *Champy v. Beazer Homes Corp.*, No. 3:15CV04098MBS, 2016 WL 1110241, at *3 (D.S.C. Mar. 21, 2016) ("[L]iability for the implied warranty of workmanship is limited to the 'builder who contracts to construct a dwelling.'" (quoting *Kennedy*, 299 S.C. at 344, 384 S.E.2d at 736.)) The rationale behind this cause of action is "that the purchaser is forced to rely on the skill of the professional builder." *Smith*, 277 S.C. at 423, 661 S.E.2d at 72.

HHE is a pest control company, not a builder of new homes. HHE did not have any involvement whatsoever in the construction of the Residence purchased by Plaintiff. Thus, Plaintiff's claim for breach of the implied warranty of workmanship is inapplicable to HHE. Moreover, HHE only applied the initial termite pre-treatment at the Residence. Unlike large structures constructed by a builder, termite treatments have a much more limited lifespan. (DeLorenzo Aff. ¶¶ 20-21; Nolan Aff. ¶ 12.) The termite warranty issued by HHE was cancelled in 2012 because the owner of the Residence at that time elected not to renew the warranty. There is no evidence indicating that any termite inspections or treatments occurred at the Residence for approximately six years and eight months prior to Plaintiff's purchase in December 2018. In addition, the affidavits of termite experts Mr. DeLorenzo and Dr. Nolan reflect that is impossible to determine whether HHE's prior work at the Residence was performed in accordance with industry standards due to the passage of a significant period of time and the proper destruction of service records years ago. (DeLorenzo Aff. ¶¶ 14-17; Nolan Aff. ¶¶ 7-8.)

IV. CONCLUSION

For the reasons set forth above, Defendant HHE respectfully requests that the Court grant Defendant's Motion for Summary Judgment and dismiss Plaintiff's Negligence/Gross Negligence and Breach of Implied Warranty of Workmanship claims with prejudice.

KERNODLE COLEMAN

By: s/ Stephen M. Kozick
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ATTORNEYS FOR DEFENDANT HILTON HEAD EXTERMINATORS, INC.

August 11, 2022

Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
	)	
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF BRIAN DECHIRICO**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A	)	
PALATIAL HOMES, LLC N/K/A	)	
PALATIAL HOMES DESIGN, LLC,	)	
et al.,	)	
	)	
Defendants.	)	
	)	

PERSONALLY appeared before me, Brian DeChirico, who first being duly sworn, deposes and states as follows:

1. That I, Brian DeChirico, am over eighteen (18) years of age and am fully competent to testify as to the matters stated in this affidavit, and it is based on my own personal knowledge.

2. I am the Manager for Hilton Head Exterminators, Inc. ("HHE") located at 2 Cardinal Court, Hilton Head, SC 29926, and I have served in this capacity since January 1, 2021.

3. I began working for HHE on May 19, 2019, as a replacement for the outgoing HHE Manager, Bill Robertson. I participated in a one-and-a-half-year transition period, training with Mr. Robertson, which is a testament to HHE's level of care for the customers it serves.

4. I am generally familiar with the prior services rendered by HHE at 11 Harrogate Drive, Hilton Head, SC 29928 based on the policies followed by HHE and through my discussions with past and present HHE employees, including Mr. Robertson and John Holbrook.

5. HHE no longer has any records related to 11 Harrogate Drive, as HHE's document retention policy is to keep records for a period of five (5) years following cancellation of a termite warranty. After five (5) years, the records are destroyed. HHE's document retention policy complies with the records retention and destruction regulations promulgated by the Department of Pesticide Regulation ("DPR"), Clemson University.

6. Based on HHE's document retention policy, the termite service records for 11 Harrogate Drive would have been destroyed in 2017.

7. Based on my review of a document in the Town of Hilton Head Building Department's possession, HHE applied a termite pre-treatment at 11 Harrogate Drive on March 23, 2003, prior to construction.

8. Based on my conversations with past and present HHE employees, including Mr. Robertson and John Holbrook, it is my understanding that HHE had a warranty with prior owner(s) of 11 Harrogate Drive from approximately June 1, 2005 to April 27, 2012. It is also my understanding that the termite warranty at 11 Harrogate Drive was cancelled by HHE on April 27, 2012, because the owner of the residence at that time did not elect to renew the termite warranty.

9. Prior to this lawsuit, I am not aware of any person or entity claiming that HHE's termite pre-treatment or termite warranty services at 11 Harrogate Drive were in any way deficient.

10. I am not aware that any EIFS-to-ground contact existed at 11 Harrogate Drive during HHE's warranty on the property, which ended on April 27, 2012.

11. HHE did not provide termite services of any kind at 11 Harrogate Drive after April 27, 2012.

FURTHER AFFIANT SAYETH NOT

By: _____

Brian DeChirico

SWORN to before me this
3 Day of August, 2022
_____

Notary Public for SC
My Commission Expires: 3/8/2023

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THE ALLIANCE GROUP REALTY

CONTRACT OF SALE - OFFER AND ACCEPTANCE

This Contract of Sale - Offer and Acceptance ("Contract") is entered into by and between:

Kathleen M. Rankin
("Purchaser") whose address is set forth in Page 6, and

11 Harrogate Drive Realty Trt
("Seller") whose address is set forth in Page 6.

THE ☐ PURCHASER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE.

ALL TIME PERIODS USED IN THIS CONTRACT SHALL BE CALCULATED BY CALENDAR DAYS AND NOT BUSINESS DAYS.

1. **PROPERTY DESCRIPTION.** Purchaser agrees to purchase, and Seller agrees to sell, all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in South Carolina and being described as follows:

Legal: 11 WEXFORD K

Mailing: 11 Harrogate DRIVE Hilton Head Island SC 29928 (the "Property")

2. **PURCHASE PRICE.** The total Purchase Price for the Property is $ ~~1,225,000.00~~ $1,240,000.00 mg 12/6/2018 to be paid by Purchaser as follows: KMR 12/06/2018

a.	Earnest Money deposited herewith ("Deposit")	$ 100,000.00
b.	Additional Deposit to be paid by n/a	$ 0.00
c.	A First Mortgage for at least n/a years at prevailing interest rates and terms	$ 0.00
d.	Balance in collected funds at Closing	$ ~~1,125,000.00~~ $1,140,000.00 mg 12/6/2018

KMR 12/06/2018

3. **FINANCING CONTINGENCY.** If a mortgage is referred to in Section 2, this Contract is subject to the Purchaser obtaining a financing commitment from a Nationwide Mortgage Licensing System & Registry approved mortgagee or mortgage broker. Purchaser shall use best efforts to obtain financing and shall supply the prospective lender(s) with all requisite information.

a. **Purchaser shall complete a loan application and must provide a prequalified letter from the lender within** n/a **days.**

b. **Purchaser shall obtain a loan commitment within _____ days ("Financing Contingency Period").**

All time periods run from the Effective Date defined on Page 6. If Purchaser's bona fide loan application does not result in a commitment within the Financing Contingency Period, Purchaser shall have the affirmative obligation of providing written notice to Seller that the financing contingency has not been satisfied, and that the Purchaser has elected to terminate this Contract. Such notice must include a lender's loan denial letter and must be provided during the Financing Contingency Period. Upon receipt of notice and execution of any required release forms, the Escrow Agent (defined in Section 9 of this Contract) shall return the Deposit to the Purchaser. Upon such payment, this Contract shall have no force or effect, and neither party hereto shall have any rights against the other hereunder. **The parties acknowledge and agree that time is of the essence with respect to the Financing Contingency Period. No right to cure shall apply to the Financing Contingency Period. If Purchaser does not provide Seller written notice of failure to obtain financing during the Financing Contingency Period, the financing contingency shall be waived. Purchaser acknowledges that this financing contingency is limited in time.**

Initials: Purchaser KMR 12/06/18 Date _____ Seller mg Date 12-6-2018

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4. **FURNISHINGS, SYSTEMS AND APPLIANCES.** The Property includes all heating and air conditioning systems, all electric and plumbing systems, all fixtures attached to the Property, and shall additionally include the following:

[x] Refrigerator [x]Freezer [x] Washer [x] Dryer [x] Stove/Oven [x] Microwave [x] Cook Top & Attachments
[x] Dishwasher [x]Ceiling Fans [x] Irrigation System [x] Pool Equipment [ ] Septic System
[x] Window Treatments [x] Trash Compactor [x] Bathroom Mirrors [x] Water Softener [ ] Furnished [x] Other
wine refrigerator, outdoor grill, microwave & refrigerator in morning kitchen in master suite, upstairs kitchenette appliances, wall mounted tv's inside & outside
If sold furnished, all furniture and furnishings are included unless specifically excepted by an attached list of excluded items.

5. **WOOD INFESTATION REPORT.** Seller agrees to provide at its expense an "Official South Carolina Wood Infestation Report (CL-100)" in which no infestation or damage is reported, or if there is damage observed, it is cosmetic only and insufficient to recommend repair. Such report must be dated within 30 days of the Closing and shall be provided to Purchaser's closing attorney not less than 14 days prior to Closing. If infestation by termites or other wood destroying organisms, or damage sufficient to recommend repair in the opinion of a licensed contractor, is observed, Seller shall cause same to be eradicated and/or repaired prior to Closing. If repairs are not completed by the Closing, then Purchaser shall have the option of (a) delaying Closing until the repairs are completed, or (b) if permitted by Purchaser's lender, Seller shall permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the costs of such repair. If the Property has not been previously occupied, Seller shall provide the Purchaser by Closing a written certification from a licensed pest control operator certifying that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms.

6. **OTHER TERMS.** Other terms and conditions of this Contract are: KMR 12/06/2018 mg 12/6/2018
(a) All TV's and stereo equipment convey in AN AS-is condition.
(b) Home conveyed in AN "as-is; where-is" condition. Seller to make NO repairs or concessions. mg 12-6-2018 KMR 12/06/2018

7. **DATE OF CLOSING.** The closing of this Contract shall take place on or before 12/20, 2018 (the "Closing") at the office of Purchaser's attorney or other offices stipulated by Purchaser. Unless otherwise provided herein, Seller shall deliver possession of, and keys to, the Property, free of debris and in a clean condition, to Purchaser at Closing. Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final closing statements for the transaction.

8. **CONDITION OF PROPERTY.** At Closing, all appliances and systems referenced in Section 4, including heating, air conditioning, electric and plumbing systems, fireplace/chimney, irrigation, pool and spa, shall be in good working order, and their physical condition shall be subject to reasonable wear and tear regardless of age. Further, the structure shall be reasonably sound and the roof free of leaks at Closing. Purchaser, at Purchaser's expense, may have inspections of the Property performed by licensed professionals. All such inspections must be completed within 5 days of the Effective Date ("Inspection Period"). Within the Inspection Period, Seller or Seller's broker must be provided with a copy of all inspection reports, identifying any repairs for the Seller to address. Seller shall respond to Purchaser's request for repairs within ~~seven (7)~~ two (2) days from receipt of the request for repairs. Seller shall make all repairs required by this Section identified in the inspection report(s). In the event the agreed upon repairs are not completed by the Closing, then Purchaser shall have the option of (a) delaying Closing until the repairs are completed, or (b) if permitted by Purchaser's lender, Seller shall permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the cost of such repair(s). Other than the Property condition requirements set forth in this Section, the Property shall be conveyed in its present condition "As Is". "As is" means the Property shall be conveyed in the condition existing on the Effective Date, subject to the terms of this Contract. The Property is a resale property. It is not new construction. Normal wear and tear is to be expected. For example, fogged windows, appliance rust, overgrown or dead landscaping, tile or countertop cracks, missing or torn screens, and uneven walkways or driveways are considered normal wear and tear and are not subject to repair unless otherwise required by this Contract. Seller shall not be obligated to make the Property comply with current building codes if the Property was constructed in compliance with the then applicable building codes. The Property shall be habitable, and Seller must repair deficiencies which render the Property uninhabitable as determined by licensed professionals. Purchaser and/or Purchaser's representative shall be permitted to conduct a walk-through inspection prior to Closing to re-inspect the Property and verify the completion of any Seller repairs.

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9. **DEPOSITS/DEFAULT.** The Deposit shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the terms hereof within the stipulated time, and after notice of said default is provided pursuant to the notice provisions of Section 15, with a 10 day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Escrow Agent shall not disburse the Deposit until Seller and Purchaser have executed a release form authorizing the disbursement or until a court of competent jurisdiction has directed a disbursement. Upon the expiration of five (5) years from the date of the Closing without the written agreement of the parties directing the disbursement of the Deposit, or the initiation of a lawsuit to determine the distribution of the Deposit, Escrow Agent may disburse the Deposit to the South Carolina Treasurer as unclaimed property. In the event of any litigation commenced because of a default hereunder, the prevailing parties in such litigation shall be entitled to recover attorney fees and court costs from the non-prevailing parties. The parties hereto hereby acknowledge that the Deposit shall be held in escrow by Daniel A. Saxon (the "Escrow Agent"). Additionally, the parties authorize the Escrow Agent to transfer the Deposit to the settlement agent in advance of Closing. The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its attorney fees, cost disbursements, and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending resolution of the disposition of said funds, and Escrow Agent shall bear no further responsibility for said Deposit.

10. **RISK OF LOSS AND DAMAGE.** In case the Property is wholly or substantially damaged by fire, storm or other casualty, Purchaser may elect, within 20 days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the terms of this Contract, or terminate this Contract and receive back all money deposited hereunder. **In the event the Property is damaged by the Purchaser, or by any person upon the Property on the Purchaser's behalf (i.e. , inspector), such damage shall be repaired at Purchaser's expense.**

11. **PRORATIONS; CLOSING COSTS; ASSESSMENTS.** All expenses of ownership (and rents, if any) shall be prorated to the date of Closing. Purchaser agrees to purchase from Seller the fuel, if any, situated in any tank on the Property at the prevailing rate with the cost of measurement thereof being paid by Seller. Purchaser is responsible for any Town, City or County Transfer fee, and for the County recording fees for the deed and any loan documents. Additionally, Purchaser shall pay the cost of securing a title examination, title insurance, and a survey (except any survey required by the South Carolina Coastal Tidelands & Wetlands Act, which is the responsibility of Seller). Unless otherwise agreed to in this Contract, Purchaser shall assume outstanding assessments or fees, if any, to cover the costs of water and/or sewer infrastructure. Seller shall be responsible for the South Carolina deed-recording fee required by SC Code §12-24-10. Each party shall pay its own attorney's fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any regime or property owner association special assessment approved by its Board of Directors or similar body prior to Closing; provided, however, if such special assessment is levied and/or billed in installments over more than one year, the Seller shall be obligated to pay the installment for the full current calendar year of Closing only, and the Purchaser shall assume the installments in future calendar years. Notwithstanding the foregoing, a special assessment to cover insurance premiums, whenever assessed prior to Closing, shall be pro-rated based on ownership over the period covered by the premium.

The Property ☒ does ☐ does not have a homeowners' association transfer fee, community enhancement fee, or initiation fee due upon the transfer of the Property. If applicable, said fee is based on a percentage of the Purchase Price or is a flat fee and shall be paid by the ☐ Seller ☒ Purchaser. The foregoing is not intended to include processing or administrative fees charged by owner association management agents, and such processing or administrative fees are to be paid by Seller.

12. **BROKER DISCLAIMER.** Seller and Purchaser agree that the brokers, as listed on page 7 of this Contract, are acting only as real estate agents or brokers in this transaction and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, terms of the sale or title to the Property, nor are they responsible or accountable for payment of the Purchase Price or for any other funds, except any portion of the Deposit actually received. Neither broker guarantees payment of any check received as deposit money hereunder. Seller and Purchaser acknowledge that the brokers: (1) give no guaranty or warranty of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the merchantability or fitness for a particular purpose regarding the Property; (3) give no guaranty or warranty concerning any inspection or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no guaranties or warranties regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guaranties or warranties regarding any

Initials: Purchaser KMR Date 12/06/18 Seller MG Date 12-6-2018

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regime or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure Statement. The Selling Agent, or the transaction broker providing services to Purchaser, recommends that the Purchaser obtain professional inspections of the Property.

13. **TITLE.** Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for the Beaufort County and surrounding area, title shall be deemed to be marketable. Purchaser acknowledges that the Selling Agent, or the transaction broker providing services to Purchaser, has recommended that an attorney examine the title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all regime and property owner regular or special assessments.

14. **NON-RESIDENT TAX WITHHOLDING.** Seller shall comply with the provisions of South Carolina Code §12-8-580 and U.S. Internal Revenue Code §1445 (as amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.

15. **NOTICE**. Each notice required or permitted to be given under this Contract ("Notice") must comply with the requirements of this Section 15. Any such Notice shall be in writing and shall be deemed to have been given if delivered by hand, email (provided that the recipient returns emailed confirmation of receipt), facsimile, recognized overnight courier service (such as UPS or Federal Express), or mailed by certified mail, return receipt requested, with postage prepaid and addressed:

a. to the party at the address set forth on Page 6 herein; or

b. to the Seller or Purchaser's real estate agent (or transaction broker) or closing attorney.

16. **MEGAN'S LAW**. The Purchaser and Seller agree that the Listing and Selling Broker listed on page 7 hereof and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Purchaser and Seller agree that no course of action may be brought against the Listing and Selling Broker listed on page 7 hereof and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Purchaser and Seller agree that the Purchaser and Seller have the sole responsibility to obtain any such information. The Purchaser and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

17. **STATUTORY AND OTHER ADDENDA.**

a. In the event the Property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Paragraph 48-39-10, et. seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Seller's expense.

b. The Purchaser has [X] has not [ ] reviewed a South Carolina Property Condition Disclosure Statement.

c. The South Carolina Vacation Rental Act does [ ] does not [X] apply to this transaction.

d. This Contract applies [ ] does not apply [X] to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto.

e. Flood Insurance is required [X] is not required [ ] for any federally insured mortgage on the Property.

f. A list of excluded items per Section 4 is [ ] is not [X] attached hereto.

g. Also attached hereto and incorporated herein are the following Addenda:

Initials: Purchaser KMR 12/06/18 Date _____ Seller mg Date 12-6-2018

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18. **MISCELLANEOUS.** The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be executed in counterparts, each of which shall be deemed to be an original. The parties agree that any offer, counteroffer, and/or acceptance may be communicated by the use of facsimile (FAX) or e-mail, and that the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the originals were present on the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right granted hereunder, or to insist upon strict compliance with any obligation specified herein, and no practice of variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that: (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing. The undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if required by the lender. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent which consent shall not be unreasonably withheld. In the event of such approved assignment, the original Purchaser shall not be released from its obligations under this Contract unless otherwise agreed. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

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THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE BROCHURE.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The last date of execution of this Contract by a party, or if applicable, the last date that this Contract was initialed by a party shall be the **Effective Date** for all time periods set forth herein. A signature or initial by either party must be dated to be binding upon the other party.

WITNESSES:

_____

_____

Authentisign
Kathleen M. Rankin
12/06/2018 9:24 AM EST

Purchaser Kathleen M. Rankin

_____

Purchaser

12/06/2018

Date

Purchaser's Address for Purposes of Notice:

52 New Orleans Road

Hilton Head Island, SC 29928

_____

Email: _____

WITNESSES:

Cynthia Nix

_____

_____

_____, Trustee

Seller 11 Harrogate Drive Realty Trt

_____

Seller

12-6-2018

Date

Seller's Address for Purposes of Notice:

_____

_____

_____

Email: _____

Initials: Purchaser K.M.R 12/06/18 Date ____ Seller mg Date 12-6-2018

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This Contract is an unmodified ☒ or modified ☐ version of the HHAAOR form residential contract. If modified, all modifications must either be hand written or inserted in capitalized, bold text, so all parties are aware of the modifications to the HHAAOR form residential contract.

LISTING AGENT/BROKER IS ACTING ON BEHALF OF SELLER AS A (CHOOSE ONLY ONE) ☒ SELLER'S AGENT

☐ DUAL AGENT ☐ DESIGNATED AGENT ☐ TRANSACTION BROKER

Listing Agent/Broker or Team MLS ID: 063C

Company Name: Charter One Realty

Address: 11 Park Lane Hilton Head Island SC 29928

Company License No.: 8465

Agent/Broker Name: Stephen Timperman

Agent/Broker SC Real Estate License No.:

Agent/Broker Email: steve@charteronerealty.com

Agent/Broker Phone Number: 843-384-8988

SELLING AGENT/BROKER IS ACTING ON BEHALF OF PURCHASER AS A (CHOOSE ONLY ONE) ☒ BUYER'S AGENT
☐ SELLER'S AGENT ☐ DUAL AGENT OR ☐ DESIGNATED AGENT ☐ TRANSACTION BROKER

Selling Agent/Broker or Team MLS ID: 543

Company Name: The Alliance Group Realty

Address: 890 Wm. Hilton Pkwy Hilton Head Island SC 29928

Company License No.: 16034

Agent/Broker Name: Nonna Klinect

Agent/Broker SC Real Estate License No.: 102444

Agent/Broker Email: nonna@livelowcountrylife.com

Agent/Broker Phone Number: 843-593-0096

Initials: Purchaser KMR 12/06/18 Date _____ Seller MG Date 12-6-2018

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STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION
DISCLOSURE STATEMENT

The South Carolina Code of Laws (Title 27, Chapter 50, Article 1) requires that an owner of residential real property (single family dwelling unit or a single transaction involving transfer of four dwelling units or less) shall provide to a purchaser this completed and signed disclosure statement prior to forming a real estate contract. This disclosure must be provided in connection with any sale, exchange, installment land sale, and lease with an option to purchase contract. This disclosure statement is not required in connection with transactions listed and exempted by South Carolina Code Section § 27-50-30.

Owners should answer the questions fully, honestly, and appropriately by attaching documents, checking a box for each check box question, and writing in the blanks on this disclosure statement.

If a question is answered "yes" or asks for a description, then owner must explain or describe the issue or attach a descriptive report from an engineer, contractor, pest control operator, expert, or public agency. If owner attaches a report, owner shall not be liable for inaccurate or incomplete information in the report unless owner was grossly negligent in obtaining or transmitting the information. If owner fails to check "yes" or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees. If a question is answered "no" for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered "no representation" for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner's answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the purchaser. The real estate licensee must disclose material adverse facts about the property if actually known by the licensee about the issue, regardless of owner responses on this disclosure. Owner is solely responsible to complete this disclosure as truthfully and fully as possible. Owner and purchasers are solely responsible to consult with their attorneys regarding any disclosure issues. By signing below, owners acknowledge their duties and that failure to disclose known material information about the property may result in owner liability.

Owner must provide the completed disclosure statement to the purchaser prior to the time the owner and purchaser sign a real estate contract unless the real estate contract states otherwise. Owner should provide a signed copy to the purchaser and keep a copy signed by the purchaser.

A real estate contract, not this disclosure, controls what property transfers from owner to purchaser.

Property Address (including unit # or identifier) 11 Harrogate DRIVE

Hilton Head Island SC 29928

Owner: (____) (____) Purchaser (____) (____) acknowledge receipt of a copy of this page which is page 1 of 5.

REV: 6/2017

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Apply this question below and the three answer choices to the numbered issues (1-14) on this disclosure.
As owner, do you have any actual knowledge of any problem(s)* concerning?
*Problem includes present defects, malfunctions, damages, conditions, or characteristics.

I. WATER SUPPLY AND SANITARY SEWAGE DISPOSAL SYSTEM	Yes	No	No Representation
1. Water supply	☐	☐	☒
2. Water quality	☐	☐	☒
3. Water pressure	☐	☐	☒
4. Sanitary sewage disposal system for any waste water	☐	☐	☒

A. Describe water supply ☐ County ☒ City ☐ Private ☐ Corporate ☐ Community ☐ Well ☐ Other_____

B. Describe water disposal ☐ Septic ☒ Sewer ☐ Private ☐ Corporate ☐ Government ☐ Other_____

C. Describe water pipes ☐ PEX ☐ Copper ☐ PVC/CPVC ☐ Polybutylene ☐ Steel ☐ Other/Unknown X

II. ROOF, CHIMNEYS, FLOORS, FOUNDATION, BASEMENT, AND OTHER STRUCTURAL COMPONENTS AND MODIFICATIONS OF THESE STRUCTURAL COMPONENTS	Yes	No	No Representation
5. Roof system	☐	☐	☒
6. Gutter system	☐	☐	☒
7. Foundation, slab, fireplaces, chimneys, wood stoves, floors, basement, windows, driveway, storm windows/screens, doors, ceilings, interior walls, exterior walls, sheds, attached garage, carport, patio, deck, walkways, fencing, or other structural components including modifications	☐	☐	☒

A. Approximate year that current roof covering was installed or modified:_____. Approximate year structure was built: 2006

B. During your ownership, describe any known roof system leaks and repairs: limb & tree damage from hurricane Matthew, all repairs completed by professional Contractors

III. PLUMBING, ELECTRICAL, HEATING, COOLING, AND OTHER MECHANICAL SYSTEMS	Yes	No	No Representation
8. Plumbing system (pipes, fixtures, water heater, disposal, softener, plumbing components)	☐	☐	☒
9. Electrical system (wiring, panel, fixtures, A/V wiring, outlets, switches, electrical components)	☐	☐	☒
10. Appliances (range, stove, ovens, dishwasher, refrigerator, washer, dryer, other appliances)	☐	☐	☒
11. Built-in systems and fixtures (fans, irrigation, pool, security, lighting, A/V, other)	☐	☐	☒
12. Mechanical systems (pumps, garage door opener, filtration, energy equipment, safety, other)	☐	☐	☒
13. Heating system(s) (HVAC components)	☐	☐	☒
14. Cooling system(s) (HVAC components)	☐	☐	☒

Owner: (KW)(____) Purchaser (____)(____) acknowledge receipt of a copy of this page which is page 2 of 5.

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A. Describe Cooling System [X] Central [ ] Ductless [ ] Heat Pump [ ] Window [ ] Other_____

B. Describe Heating System [X] Central [ ] Ductless [ ] Heat Pump [ ] Furnace [ ] Other_____

C. Describe HVAC Power [ ] Oil [ ] Gas [X] Electric [ ] Solar [ ] Other_____

D. Describe HVAC system approximate age and any other HVAC system(s): _____

IV. PRESENT OR PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS OR DRY ROT OR FUNGUS, THE DAMAGE FROM WHICH HAS NOT BEEN REPAIRED

A. Describe any known present wood problems caused by termites, insects, wood destroying organisms, dry rot or fungus:

B. Describe any termite/pest treatment, coverage to property, name of provider, and termite bond (if any):

C. Describe any known present pest infestations:

V. THE ZONING LAWS, RESTRICTIVE COVENANTS, BUILDING CODES, AND OTHER LAND USE RESTRICTIONS AFFECTING THE REAL PROPERTY, ANY ENCROACHMENTS OF THE REAL PROPERTY FROM OR TO ADJACENT REAL PROPERTY, AND NOTICE FROM A GOVERNMENTAL AGENCY AFFECTING THIS REAL PROPERTY

Apply this question below and the three answer choices to the numbered issues (15-23) on this disclosure.
As owner, do you have any actual knowledge or notice concerning the following:

	Yes	No	No Representation
15. Violations or variances of the following: zoning laws, restrictive covenants, building codes, permits or other land use restrictions affecting the real property	[ ]	[ ]	[X]
16. Easements (access, conservation, utility, other), party walls, shared private driveway, private roads, released mineral rights, or encroachments from or to adjacent real property	[ ]	[ ]	[X]
17. Legal actions, claims, foreclosures, bankruptcies, tenancies, judgments, tax liens, other liens, insurance issues, or governmental actions that could affect title to the property	[ ]	[X]	[ ]
18. Room additions or structural changes to the property during your ownership	[ ]	[X]	[ ]
19. Problems caused by fire, smoke, or water to the property during your ownership	[X]	[ ]	[ ]
20. Drainage, soil stability, atmosphere, or underground problems affecting the property	[ ]	[ ]	[X]
21. Erosion or erosion control affecting the property	[ ]	[ ]	[X]
22. Flood hazards, wetlands, or flood hazard designations affecting the property	[ ]	[ ]	[X]
23. Flood Insurance covering the property	[ ]	[X]	[ ]

A. Describe any green energy, recycling, sustainability or disability features for the property:_____

B. Describe any Department of Motor Vehicles titled manufactured housing on the property:_____

Owner: (_____) (_____) Purchaser (_____) (_____) acknowledge receipt of a copy of this page which is page 3 of 5.

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VI. BURIED, UNBURIED, OR COVERED PRESENCE OF THE FOLLOWING: LEAD BASED PAINT, LEAD HAZARDS, ASBESTOS, RADON GAS, METHANE GAS, STORAGE TANKS, HAZARDOUS MATERIALS, TOXIC MATERIALS, OR ENVIRONMENTAL CONTAMINATION

A. Describe any known property environmental contamination problems from construction, repair, cleaning, furnishing, intrusion, operating, toxic mold, methamphetamine production, lead based paint, lead hazards, asbestos, radon gas, methane gas, formaldehyde, corrosion-causing sheetrock, storage tanks, hazardous materials, toxic materials, environmental contamination, or other: _____

VII. EXISTENCE OF A RENTAL, RENTAL MANAGEMENT, VACATION RENTAL, OR OTHER LEASE CONTRACT ANTICIPATED TO BE IN PLACE ON THE PROPERTY AT THE TIME OF CLOSING

A. Describe the lease terms and any leasing problems, if any: N/A

B. State the name and contact information for any property management company involved (if any): _____

C. Describe known outstanding charges owed by tenant for gas, electric, water, sewer, and garbage: _____

VIII. THE EXISTENCE OF A METER CONSERVATION CHARGE, AS PERMITTED BY SECTION 58-37-50 THAT APPLIES TO ELECTRICITY OR NATURAL GAS SERVICE TO THE PROPERTY

A. Describe any utility company financed or leased property on the real property: N/A

B. Describe known delinquent charges for real property's gas, electric, water, sewer, and garbage: N/A

IX. PLEASE USE THE SPACE BELOW FOR "YES" ANSWER EXPLANATIONS AND ATTACH ANY ADDITIONAL SHEETS OR RELEVANT DOCUMENTS AS NEEDED

#19 - due to hurricane Matthew & minor smoke damage caused by exterior fireplace due to operation of fans. All repairs done & completed by professional contractors.

Owner: (____) (____) Purchaser (____) (____) acknowledge receipt of a copy of this page which is page 4 of 5.

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This disclosure does not limit the obligation of the purchaser to inspect the property and improvements which are the subject of the real estate contract. Purchaser is solely responsible for conducting their own off site conditions and psychologically affected property inspections prior to entering into a real estate contract. The real estate licensees (acting as listing or selling agents, or other) have no duty to inspect the on site or off site conditions of the property and improvements. Purchasers should review all applicable documents (covenants, conditions, restrictions, bylaws, deeds, and similar documents) prior to entering into any legal agreements including any contract. The South Carolina Code of Laws describes the Residential Property Condition Disclosure Statement requirements and exemptions at § 27-50-10 (and following) which can be read online (www.scstatehouse.gov or other websites).

Current status of property or factors which may affect the closing:

☐ Owner occupied ☐ Short sale ☐ Bankruptcy ☒ Vacant (How long vacant?) _____
☐ Leased ☐ Foreclosure ☐ Estate ☐ Other: _____

A Residential Property Condition Disclosure Statement Addendum ☐ is ☐ is not completed and attached. This addendum should be attached if the property is subject to covenants, conditions, restrictions, bylaws, rules, or is a condominium.

Owner acknowledges having read, completed, and received a copy of this Residential Property Condition Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: 8-28-2018 Time: _____

Owner Printed Name: 11 Harrogate Drive Realty Trust

Owner Signature: _____ Date: _____ Time: _____

Owner Printed Name: _____

Purchaser acknowledges prior to signing this disclosure:

t☐ Receipt of a copy of this disclosure
t☐ Purchaser has examined disclosure
t☐ Purchaser had time and opportunity for legal counsel
t☐ This disclosure is not a warranty by the real estate licensees
t☐ This disclosure is not a substitute for obtaining inspections of on site and off site conditions
t☐ This disclosure is not a warranty by the owner
t☐ Representations are made by the owner and not by the owner's agents or subagents
t☐ Purchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers, or other qualified professionals

Purchaser Signature: _____ Date: _____ Time: _____

Purchaser Printed Name: _____

Purchaser Signature: _____ Date: _____ Time: _____

Purchaser Printed Name: _____

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STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION
DISCLOSURE STATEMENT ADDENDUM

Prior to signing contract, owner shall provide this disclosure addendum to the purchaser if the property is subject to a homeowners association, a property owners association, a condominium owners association, a horizontal property regime, or similar organizations subject to covenants, conditions, restrictions, bylaws or rules (**CCRBR**). These organizations are referred to herein as an owners association.

Purchasers should review the applicable documents (covenants, conditions, restrictions, bylaws, deeds, condominium master deed, and similar documents), all related association issues, and investigate the owners association prior to entering into any legal agreements including a contract. Owners association charges include any dues, fees, assessments, reserve charges, or any similar charges. Purchasers are solely responsible to determine what items are covered by the owners association charges.

Property Address: 11 Harrogate DRIVE Hilton Head Island SC 29928

Describe owners association charges: $ 16,965 Per YEAR (month/year/other)

What is the contact information for the owners association? Cheistine Wilkins

As owner do you have any actual knowledge of answers to the following questions?
Please check the appropriate box to answer the questions below.

	Yes	No	No Representation
1. Are there owners association charges or common area expenses?	☒	☐	☐
2. Are there any owners association or **CCRBR** resale or rental restrictions?	☐	☐	☒
3. Has the owners association levied any special assessments or similar charges?	☒	☐	☐
4. Do the **CCRBR** or condominium master deed create guest or visitor restrictions?	☐	☒	☐
5. Do the **CCRBR** or condominium master deed create animal restrictions?	☐	☐	☒
6. Does the property include assigned parking spaces, lockers, garages or carports?	☐	☐	☒
7. Are keys, key fobs or access codes required to access common or recreational areas ?	☐	☐	☒
8. Will any membership other than owner association transfer with the properties?	☐	☒	☐
9. Are there any known common area problems?	☐	☐	☒
10. Is property or common area structures subject to South Carolina Coastal Zone Management Act?	☐	☐	☒
11. Is there a transfer fee levied to transfer the property?*	☒	☐	☐

(Question does not include recording costs related to value or deed stamps.)*

Explain any yes answers in the space below and attach any additional sheets or relevant documents as needed: _____

Owner signature: _____ Date: 8-28-2018 Time: _____
11 Harrogate Drive Realty Trust

Owner signature: _____ Date: _____ Time: _____

Purchaser signature: _____ Date: _____ Time: _____

Purchaser signature: _____ Date: _____ Time: _____

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OFFICIAL SOUTH CAROLINA WOOD INFESTATION REPORT

Date: 12/11/2018 **File #:** 11 Harrogate Dr

THIS REPORT IS VALID FOR **30 DAYS** ONLY. THIS REPORT IS **NOT** A GUARANTEE OR WARRANTY AGAINST FUTURE INFESTATION OR DAMAGE. IT IS RECOMMENDED BY THE DEPARTMENT OF PESTICIDE REGULATION THAT THE **PURCHASER** OF THE STRUCTURE, RATHER THAN THE SELLER, OBTAIN THIS WOOD INFESTATION REPORT.

This is to report that a qualified inspector employed by the below named firm has carefully inspected accessible areas, including attics and crawl spaces which permit entry, of the property located at the below address for termites, other wood-destroying organisms, and wood-destroying fungi. The inspection for the presence of wood-destroying fungi is only required to the level below the first main floor as defined in Section 27-1085 K(3)(f) of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act. This report specifically excludes hidden areas, areas not readily accessible, and the undersigned pest control operator disclaims that he has made any inspections of such hidden areas or of such areas not readily accessible.

The inspection described has been made on the basis of visible evidence, and special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood-destroying organisms. Probing and/or sounding of those areas and other visible and accessible wood members showing evidence of infestation was performed. This report is submitted without warranty, guarantee, or representation as to concealed evidence of infestation or damage or as to future infestation.

If there is evidence of active infestation or past infestation of termites and/or other wood-destroying organisms or fungi, it must be assumed that there is some damage to the building caused by this infestation; however, any visible damage to a wood member in accessible areas has been reported. The below-named firm's inspectors are not engineers or builders, and you may wish to call a qualified engineer, licensed contractor, or expert in the building trade to provide their opinion as to whether there is structural damage to this property.

LOCATION AND DESCRIPTION OF PROPERTY INSPECTED: 11 Harrogate Dr, Hilton Head Island, SC, 29928-3367

If any of the following items are marked YES, describe on the reverse side of this page.

Were any areas of the property obstructed or inaccessible? YES [X] NO [ ]

Infestation:	Active Infestation		Previous Infestation	
1. There is visible evidence of:	YES	NO	YES	NO
a. Subterranean termites	[ ]	[X]	[ ]	[X]
b. Drywood termites	[ ]	[X]	[ ]	[X]
c. Old house borers	[ ]	[X]	[ ]	[X]
d. Powder post beetles	[ ]	[X]	[ ]	[X]
e. Other wood-destroying insects	[ ]	[X]	[ ]	[X]
2. There is visible evidence of prior subterranean termite treatment	YES [ ]		NO [X]	
3. There is evidence below the first main floor of the presence of				
a. Active wood-destroying fungi (wood moisture content ≥ 28%)	YES [ ]		NO [X]	
b. Non-active wood destroying fungi (wood moisture content < 28%)	YES [ ]		NO [X]	
4. There is evidence of the presence of excessive moisture conditions below the first main floor (20% or above wood moisture content, standing water, etc.)	YES [ ]		NO [X]	

Wood moisture content of the wooden substructure ranged from _____% to _____%

Damage: Termite, other wood-destroying insects and fungi (Note: reporting of fungi damage to wood, commonly called water damage, decay or rot, is limited to the area below the first main floor of the structure as defined in 27-1085 K(3)(f) SCRR.)

At the time of our inspection, there were visibly damaged wooden members (e.g. insect damage to columns, sills, joists, plates, door jambs, headers, exterior stairs, porches, or fungi damage below the first main floor) YES [ ] NO [X]

If the answer is YES, specify causes and location(s) on back.

Damage Observed: Damage must be disclosed even if repairs are deemed unnecessary. If visible evidence of active or previous infestation caused by any wood-destroying organism is reported, it must be assumed that some degree of damage is present. Said damage and location(s) must be described on the reverse side of this report. It is recommended that evaluation of damage and any corrections be performed by a licensed contractor or structural engineer approved by the purchaser.

Treatment:	Check appropriate box
1. The property described was treated by us for the prevention or control of _____ (wood-destroying organism for which treatment was made) _____ (date of treatment)	[ ]
2. An Official Waiver of Standards Form (subterranean termite treatment) has been issued. [NOTE: a signed copy must be attached to this report]	[ ]
3. The property is covered by a warranty associated with the above treatment. The purchaser should contact the company regarding information required to transfer the warranty.	[ ]
4. The property described has not been treated by us for any wood-destroying organisms.	[X]

See other side of this report for additional conditions governing this report. CL-100 Approved by the South Carolina Pest Control Association, Inc., and the Division of Regulatory and Public Service Programs of Clemson University

FORM CL-100 Revised 9/12 (supersedes earlier versions)

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File #: 11 Harrogate Dr

CONDITIONS GOVERNING THIS REPORT

Please read carefully.

This report is based on the observations and opinions of our inspector. It must be noted that all buildings have some wood members which are not visible or accessible for inspection. It is not always possible to determine the presence of infestation without extensive probing and in some cases actual dismantling of parts of the structure being inspected.

All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible, areas concealed by wall coverings, floor coverings, insulation, furniture, equipment, stored articles, or any portions of the structure in which inspection would necessitate tearing out or marring finished work. We do not move furniture, appliances, equipment, etc. Plumbing leaks may not be apparent at the time of inspection. If evidence of such leaks is disclosed, liability for the correction of such leaks is specifically denied. No opinion can be rendered as to infestation or damage on that portion of sheathing, siding, or other susceptible material which continues below soil grade.

The areas of the substructure and attic that are accessible and open for inspection have been inspected. The substructure is defined as that portion of the building below the first main floor living space.

Detached garages, sheds, lean-tos, fences, or other buildings on the property are not included in this inspection report unless specifically noted.

The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon.

This property was not inspected for the presence or absence of health related molds or fungi. This inspection was conducted solely for visible evidence of wood destroying organisms and their damage and was limited to the visible and accessible areas of the structure(s) only. Inspection for the presence of wood-destroying fungi is only required to the level below the first main floor. We are not qualified to and do not render an opinion concerning mold related air quality or any other health related issues relating to this structure. Questions concerning the presence or absence of health related molds or fungi or other health related issues, which may be associated with this property, should be addressed to a properly trained Industrial Hygienist, Physician or Public Health Official.

REMARKS

THIS SPACE IS TO BE USED TO DETAIL ANY "YES" ANSWERS FROM THE FRONT OF THIS FORM. INCLUDE ITEM NUMBER WITH EACH EXPLANATION. CLARIFICATION AND EXPLANATION OF OTHER ITEMS MAY ALSO BE INCLUDED.

Additional pages are attached. YES ☐ NO ☒

INACC: Outside foundation not visible for inspection where covered by porches, attached slabs, decks or trim boards or where any type of siding is below grade level. Area of the subfloor & attics hidden by insulation or other materials are inaccessible. Area of the attic without flooring are inaccessible. Some interior walls & floors obstructed by homeowner belongings, furnishings & floor coverings.

Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in this property. I do further state that neither I nor the company for which I am acting is associated in any way with any party to this transaction.

LICENSE NUMBER OF PERSON SIGNING THIS: CA011393
(MUST BE CERTIFIED IN CATEGORY 7A)
BUSINESS LICENSE NUMBER: B0001273

FIRM: Imperial Pest Controllers, Inc.
BY: _____ LICENSEE'S SIGNATURE
ADDRESS: Post Office Box 22387
Hilton Head Island, SC 29925

ACKNOWLEDGMENT:

PURCHASER ACKNOWLEDGES THAT A COPY OF THIS REPORT HAS BEEN REVIEWED AND RECEIVED.

DATE ACKNOWLEDGED

PURCHASER'S SIGNATURE

This report and the issuing licensee are regulated by Clemson University's Department of Pesticide Regulation.

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IMPERIAL
• PEST CONTROLLERS •

"GET THE ROYAL TREATMENT"

Welcome New Homeowner: 11 Harrogate

Imperial Pest Controllers, Inc. completed a CL-100 inspection of this home. The CL-100 is a mandatory inspection done for all real estate closings. Our findings are forwarded to the attorneys who are handling the closing.

As we all know, Hilton Head Island and the surrounding Lowcountry is a beautiful place to live, but it is also the perfect environment for many unwanted pests. Over 23 years of experience has taught us that the most effective program for controlling pests is a quarterly service combined with a professional, problem-solving approach. However, we are happy to do any of a variety of services, including monthly, bi-monthly, annual, exterior only, etc. We also have "green products" which can be used on interior pest control treatments.

We also specialize in termite control and services.

As a welcome to you, we would like to offer you a quarterly pest control service at $140 or a Semi-annual pest control service at $220 with a coupon for **50% off** your first service (or a comparable savings if you choose a different service).

If you have any questions or wish to set an appointment for your first service, please contact our office at (843) 681-7352 and we will be happy to help make your home a bug-free one! We look forward to hearing from you.

Greg John
Manager

Please visit our website at: www.imperialpestcontrollers.com or check us out on Facebook!

Termite Treatments Mosquito Misting Bed Bugs Rodent Control Granular Yard & Flea Treatments
Real Estate Clearance Letters Borate Treatments Cleanouts

P.O. Box 22387 • Hilton Head, SC 29925
(843) 681-7352 Office • (843) 681-7548 Fax
imperialpestcontrollers.com

Case File Number: 012220-36-01

CLEMSON UNIVERSITY

Report of Structural Pest Inspection

Department of Pesticide Regulation
511 Westinghouse Road
Pendleton, SC 29670
864.646.2150
http://dpr.clemson.edu

Date Issued: June 24, 2020

Inspector: Kristin Lenox-Rustin

Homeowner: Kathy Rankin

ADDENDUM TO Report Issued June 18, 2020,

The property in reference to Kathy Rankin located at 11 Harrogate Dr., Hilton Head Island, SC was inspected by the Department of Pesticide Regulation on January 22, 2020 and the following conditions were found. This report details those findings as they relate to wood destroying organisms, their damage, and standard procedure required to control and report the presence of those organisms.

This structure is built on a slab foundation, and thus only the accessible portions of the interior and exterior walls were inspected. The supported slab is constructed on hollow block with Exterior Insulation and Finish Systems, EIFS. Areas of the exterior and garages were inaccessible due to stored items, construction wrap, equipment and scaffolding. At the time of inspection, repairs were being performed to the entirety of the rear structure and interior breakfast room. The rear balcony had been removed. All references to direction in this report are given from Harrogate Drive and facing the front of the structure (see attached graph).

This inspection revealed subterranean termite damage and intact subterranean termite shelter tubes visibly painted over and in unpainted areas of the right rear attic. Subterranean termite damage and intact subterranean termite shelter tubes and mud were observed in the central rear of the main attic. DPR observed four termite cartons the General Contractor of Next Level, Chris Baker, said he removed from the rear balcony, a column and breakfast room. The cartons were consistent with Formosan termites.

EIFS removed during repairs exposed hidden subterranean termite damage, intact and partial (broken) subterranean termite shelter tubes throughout the rear of the structure as noted on the accompanying graph. Subterranean termite shelter tubes and mud with ground contact were observed between the outdoor fireplace block and rear patio supported slab. A form board with termite shelter tube soil contact was also revealed in that area. Subterranean termites build shelter tubes of mud as they travel across exposed areas. Shelter tubes are required to be

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removed during a termite treatment; when intact, therefore, their presence is considered presumptive evidence of subterranean termite activity.

Formosan subterranean termites are an extremely aggressive imported species which forms colonies of several million individuals (as opposed to the native eastern subterranean termite, whose colonies rarely exceed 300,000). Formosan subterranean termite colonies produce extremely large numbers of swarmers in the spring of the year, and most swarming occurs within a period of a week or two. Swarmers emerge at twilight or in the early evening and are strongly attracted to light. They typically shed their wings soon after their first contact with a solid object and then explore extensively by walking, as they look for moist crevices in which to start a new colony.

Formosan subterranean termites, like other subterranean termites, must maintain contact with the ground in order to obtain moisture. However, if an adequate source of moisture is available, Formosan termites are also able to form colonies in other protected areas (e.g. wall voids below leaking pipes or air-conditioning ducts on which moisture may condense). In these areas Formosan termites build a sponge-like material called "carton," which retains moisture for long periods and thus allowing the survival of the colony as long as some source of moisture is available. Strategies to prevent aerial infestation by Formosan subterranean termites include the elimination of plumbing leaks, accumulations of organic debris (which may hold moisture), and other above-ground sources of moisture. It is also, obviously, extremely important to maintain the exterior of the structure in good repair.

Standard treatment methods are effective against Formosan termites, though particular care must be taken to insure that all secondary colonies are located and treated. All sources of moisture must also be eliminated, and all carton material must be treated with an approved insecticide or removed. In cases where colonies may be hidden or inaccessible areas are present, fumigation may be necessary to control termites in above-ground areas. Fumigation does not provide any residual control and should not be performed except in conjunction with (and always after) a thorough ground treatment.

Although no live subterranean termites were observed, the presence of intact subterranean termite shelter tubes is generally accepted as presumptive evidence of activity. The possibility of an active infestation of subterranean termites cannot be conclusively dismissed.

In view of the indications of activity noted above, the structure should therefore be treated as outlined in Section 27-1085 of the South Carolina Pesticide Control Act (the Standards for the Prevention or Control of Wood-Destroying Organisms).

The Town of Hilton Head Island records show Hilton Head Exterminators performed a pretreatment application to footing and piers at 11 Harrogate Dr. on March 23, 2003, with 140 gallons of a .1% solution of *Termidor 80WG* (EPA Reg. No. 7969-209) for Palatial Homes.
Case File #012220-36-01

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Their records further show this structure was completed in 2005. Beaufort County records show the structure was sold by Palatial Homes on February 23, 2006. Hilton Head Exterminators Termite Control Manager, John Holbrook, explained that on February 14, 2006, Palatial Homes ordered an Official South Carolina Wood Infestation Report. The structure was pretreated for subterranean termites by them and under contract from June 1, 2005, and transferred to the next owner, Billy Silas, until April 27, 2012.

The following section of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act (the Standards for the Prevention or Control of Wood Destroying Organisms) was neither met nor waved during their March 23, 2003 pretreatment:

1) Section 27-1085 (G) (2) (b): "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."
   *Hilton Head Exterminators failed to address EFIS ground contact. The form board was hidden from view while under their contract.

Hilton Head Exterminators is not required to correct the above deficiency.

This structure was also treated for subterranean termites by Terminix Services, Inc. on June 26, 2019 and is presently under contract with them. Records provided by Terminix show installation of a *Sentricon Termite Colony Elimination System* with *Recruit HD* (EPA Reg. No.62719-608, Dow AgroSciences) consisting of 48 *Sentricon* stations.

The label of *Recruit HD* specifies that stations be installed around the structure at a spacing not to exceed 20 feet where soil access is not restricted. (An example of restricted access would include areas such as driveways that may be > 20 feet wide.) Inspection around the exterior of the structure on January 22, 2020, located all 48 stations. These were found to be spaced less than 20 feet apart, except for a label-allowed wider spacing at the driveway.

Terminix records also indicate they treated the foundation on June 26, 2019, with 32 gallons of a .125% solution of *Termidor HE* (EPA Reg. No. 7969-329, BASF) around the rear of Case File #012220-36-01

the structure for active termites. Records further show a soil treatment was made to piers on December 6, 2019, with .25 gallons of a .125% solution of *Termidor HE*. Next Level Construction LLC General Contractor, Chis Baker, concurred a treatment was made to the rear balcony piers, one of which contained a termite carton he displayed to DPR. On January 27, 2020, Terminix performed a pretreatment for new piers with 6 gallons of a .125% solution of *Termidor HE*. Terminix performed an additional pier pretreatment on February 18, 2020, with 10 gallons of a .05% solution of *Premise Pre-Construction* (EPA Reg. No.432-1331, Bayer.) Both treatments were at new pier locations on the rear earth filled patio.

The following section of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act (the Standards for the Prevention or Control of Wood Destroying Organisms) was neither met nor waived during their June 26, 2019 treatment:

2) Section 27-1085 (G) (2) (b): "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."
*Terminix failed to address EFIS ground contact. The general contractor has broken EIFS ground contact. The previously hidden form board is still in place.

The label directions for *Termidor HE* states, "CONCRETE SLAB OVER SOIL... Vertical Drilling/Injection- To treat under the slab, drill vertically through the slab along the interior perimeter of the foundation... If there is clear evidence of termite activity or damage in an interior partition wall, it may be necessary to drill holes along one side of the slab adjacent to the interior partition wall. All drill holes through the slab must be spaced no wider than 18 inches apart. Apply Termidor HE finished dilution to the soil below the slab by injecting through the holes drilled through the slab at the rate of 2 gallons per 10 linear feet per foot of depth."

This investigation found that this treatment was performed contrary to label directions. It is a violation of Section 46-13-90 (1) B of the South Carolina Pesticide Control Act to use any pesticide in a manner inconsistent with label directions.

*The rear attached earth filled supported slab is 46 inches in depth. Eleven of Terminix drill holes were at 19 to 26-inch intervals; greater than 18 inches.

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On March 16, 2020, Terminix drill/treated and plugged the rear attached supported slab with 13 gallons of a .125% solution of *Termidor HE* to correct the interval deficiency. On April 20, 2020, DPR observed slab drilling in compliance with label directions.

Wood decay fungi damage was observed in the right rear outdoor bathroom adjacent to the shower where repaired trim had been removed (see graph). The wood moisture content of this area was 13%. Although the current moisture level is too low to support growth of decay fungi (28% or above), the presence of decay fungi damage indicates that active decay fungi have been present for significant periods of time in the past. Repairs were observed to the left garage entrance door frame. The wood decay fungi visible to the left side of repaired door frame appears to be due to the infiltration of rainwater, possibly through a structural fault, from above this area. The moisture conditions in these areas are subject to change with the weather. Replacement of vulnerable wood with pressure treated lumber, and thorough caulking and sealing to reduce moisture infiltration will help prevent future damage.

Two Official South Carolina Wood Infestation Reports, OSCWIR, in reference to this structure issued by Imperial Pest Controllers, Inc. on October 17, 2018 and December 11, 2018 did not comply with Section 27-1085 K of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act in that they did not disclose moisture readings. In addition, the back of the October 17, 2018 report lists water damage; however, the front of the report did not disclose if the presence of wood-destroying fungi was active (3a) or non-active (3b).

> Section 27-1085 (K) (3) The inspection for the Wood Infestation Report must include at a minimum:… (f): "The determination of the nature and activity of all wood-destroying fungi, including decay damage whether active or not, present in the structure below the level of the first main living-area floor."

Questions have arisen regarding the lack of fungal damage to the rear balcony and subterranean termite damage being reported. The general contractor's photos during repairs depict two termite cartons in the rear balcony, one in a support column, and one in the breakfast room. The Imperial Pest Controllers issued OSCWIR reports state, "This report is valid for 30 days only. This report is not a guarantee or warranty against future infestations or damage… All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible… We do not move furniture, appliances, equipment, etc. …No opinion can be rendered as to infestation or damage on that portion of sheathing, siding, or other susceptible material which continues below soil grade. The areas of the substructure and attic that are accessible and open for inspection have been inspected… The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon… Inspection for the presence of wood-destroying fungi is only required to the level below the first main floor." Remarks include, "INACC: Outside foundation not visible for inspection where
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covered by porches, attached slabs, decks or trim boards or any type of siding is below grade level. Area of the subfloor & attic hidden by insulation or other materials are inaccessible. Area of attic without flooring are inaccessible. Some interior walls & floors obstructed by homeowner belongings, furnishings & floor coverings.

The October 17, 2018 OSCWIR remarks also included Damage: H20/Fungal damage: Bottom of garage service door at left side garage, including frame, jamb, trim. And, interior base molding on right wall next to shower in outside pool bathroom." DPR observed repairs in those areas. The areas behind those repairs would not have been visible at the time of the December 11, 2018 OSCWIR.

DPR observed intact subterranean termite tubes and damage in the rear attic area. Some areas of the attic area lacked flooring. At the time of inspection, a drop-down ladder had been installed from the exterior to access the area. The attic's original access is in a closet covered by a 24"x 23" metal panel and wire shelves; therefore, not readily accessible. In addition, DPR observed subterranean termite damage, intact termite shelter tubes and mud in the accessible central rear area of the main attic with subfloor and not covered by insulation. However, due to the aggressive nature of Formosan termites it could not be concluded the damage and mud tubes were present at the time the OSCWIR's were issued.

It is beyond the expertise of this department and not within the scope of this report to provide any assessment of the extent of damages found which may require repair or to comment on the adequacy of previous repairs. Any such evaluation should be made by a qualified building expert.

NOTE: Because this Structural Pest Inspection may provide the basis for enforcement action against the Commercial Applicators involved (including, if applicable, the Designated Certified Applicators), and/or the Business Licenses, if there is additional information not contained herein or not previously provided, in writing, which the regulated person wishes this Department to consider in determining its enforcement response, it should be sent to the Departmental representative named below. To be considered, it must be postmarked within ten (10) days of the receipt of this report.

SUBMITTED BY Kristin Lenox-Rustin
Kristin Lenox-Rustin
Pesticide Investigator

Enclosure -graph

Case File #012220-36-01

cc: Gregory John, DCA, Imperial Pest Controller, Inc.
Chris Hynes, Branch Manager, Terminix Services, Inc.
Bill Robertson, General Manager, Hilton Head Exterminators
Kevin DeLorenzo, Structural Program Manager, DPR

Case File Number: 012220-36-01

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

CLEMSON
UNIVERSITY

15 January 2021

William H. Robertson
Hilton Head Exterminators Inc.
37 Hunter Rd.
Hilton Head Island, SC 29926

RE: CATEGORY III INFORMATIONAL LETTER

Dear Mr. Robertson:

Reference your 2003-2005 subterranean termite pretreatment of the structure in reference to Kathy Rankin located at 11 Harrogate Drive, Hilton Head Island, SC. The Department of Pesticide Regulation inspected this structure on 22 January 2020; the findings of that inspection were detailed in an amended Structural Pest Inspection Report issued 24 June 2020. During this treatment, the following Standards for Prevention or Control of Wood Destroying Organisms were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act:

1) **Section 27-1085 (G) (2) (b):** "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."

   * Hilton Head Exterminators failed to address EIFS ground contact.

Case File # 012220-36-01
License # CA007152

DEPARTMENT OF PESTICIDE REGULATION
511 Westinghouse Road Pendleton, SC 29670 864.646.2150 FAX 864.646.2179
Regulatory & Public Service Programs Public Service Activities

It is a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms. It is hoped that this letter will encourage more caution with future subterranean termite treatments. This is an informational letter only and will not be tracked cumulatively against your enforcement history. If you have any questions regarding this or other matters, feel free to contact the department anytime.

Sincerely,

Ryan A. Okey
Pesticide Program Chief

cc: Kristin Lenox-Rustin, DPR
Kevin DeLorenzo, DPR
Regulatory Coordinator, DPR

Case File # 012220-36-01
License # CA007152

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

CLEMSON
UNIVERSITY

15 January 2021

Chris A. Haynes
Terminix
32 Browns Cove Rd.
Ridgeland, SC 29936

RE: COMMERCIAL APPLICATOR WARNING LETTER

Dear Mr. Haynes:

Reference your 26 June 2019 subterranean termite treatment on the structure in reference to Kathy Rankin located at 11 Harrogate Drive, Hilton Head Island, SC. The Department of Pesticide Regulation inspected this structure on 22 January 2020; the findings of that inspection were detailed in an amended Structural Pest Inspection Report issued on 24 June 2020. During this treatment, the following Standards for Prevention or Control of Wood Destroying Organisms were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act:

1) **Section 27-1085 (G) (2) (b):** "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."

   * Terminix failed to address EIFS ground contact.

The 26 June 2019 subterranean termite treatment was also partially performed utilizing *Termidor HE* (EPA Reg. No. 7969-329, BASF) around the rear of the structure for active termites. The *Termidor HE* label states, "CONCRETE SLAB OVER SOIL... Vertical Drilling/Injection: To treat under the slab, drill vertically through the slab... All drill holes through the slab must be spaced no wider than 18 inches apart." Eleven of Terminix's drill holes were at 19 to 26-inch intervals.

Case File # 012220-36-01
License # CA012073

DEPARTMENT OF PESTICIDE REGULATION
511 Westinghouse Road Pendleton, SC 29670 864.646.2150 FAX 864.646.2179
Regulatory & Public Service Programs Public Service Activities

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

It is a violation of **Section 46-13-90 (1) B** of the South Carolina Pesticide Control Act to use a pesticide product in a manner inconsistent with the label. This treatment deficiency has since been corrected as noted in our 24 June 2020 report.

It is a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms and to use a pesticide product in a manner inconsistent with the label. The specifics of this case indicate this warning letter is the appropriate enforcement response. Future violations of the Act may result in civil penalties or suspension of your South Carolina Certified Applicator's License. It is hoped that this warning letter will ensure future compliance with all of the state pesticide laws. If you have any questions regarding this or other matters, feel free to contact the department anytime.

Sincerely,

Ryan A. Okey
Pesticide Program Chief

cc: Kristin Lenox-Rustin, DPR
Kevin DeLorenzo, DPR
Regulatory Coordinator, DPR

Case File # 012220-36-01
License # CA012073

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF KEVIN DELORENZO**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

PERSONALLY appeared before me, Kevin DeLorenzo, who first being duly sworn, deposes and states as follows:

1. That I, Kevin DeLorenzo, am over eighteen (18) years of age and am fully competent to testify as to the matters stated in this affidavit, and it is based on my own personal knowledge.

2. I am the Structural Program Manager for the Department of Pesticide Regulation ("DPR"), Clemson University, and I have served in this capacity for approximately six (6) years.

3. I began working for the DPR in June 2000, and I have previously held the position of Regulatory Specialist for approximately sixteen (16) years.

4. I received my Bachelor of Science in Environmental Resource Management from Penn State University in 1993.

5. As Structural Program Manager for DPR, I am responsible for directing and supervising the activities and reviewing the reports for DPR structural investigations.

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6. On January 15, 2020, DPR received a complaint regarding an Official South Carolina Wood Infestation Report, or CL-100, for the home purchased by Kathy Rankin and located at 11 Harrogate Drive, Hilton Head, South Carolina. The DPR case file number for this matter is 012220-36-01.

7. DPR Pesticide Investigator Kristin Lenox-Rustin was assigned to the investigation, and on January 22, 2020, she inspected the property at 11 Harrogate Drive.

8. Investigator Lenox-Rustin submitted the findings of her investigation to me in a report dated June 18, 2020, and an amended report dated June 24, 2020.

9. Investigator Lenox-Rustin determined that EIFS-to-ground contact existed at the property.

10. Investigator Lenox-Rustin reported that Hilton Head Exterminators ("HHE") failed to waive or address the EIFS-to-ground contact during its pretreatment of the property for termites in 2003, and during its warranty on the property, which ended in April 2012. The investigator reported that a form board was hidden from HHE's view during its contract on the property, and DPR did not require HHE to correct the EIFS-to-ground issue. HHE was issued a Category III Informational Letter.

11. Investigator Lenox-Rustin determined that Terminix had a current termite warranty on the property and reported that Terminix failed to address the EIFS-to-ground contact, along with a termiticide use violation. DPR required Terminix to address the termiticide use violation deficiency. A contractor broke the EIFS–to–ground contact. A Commercial Applicator Warning Letter was issued to Terminix.

12. The Category III Informational Letter issued to HHE is simply a tool used by DPR to inform a pest control company that had previously serviced the property of conditions

conducive to termite activity, so that its technicians will be aware of such conditions when performing work at other properties. In other words, the Informational Letter serves as a training tool for pest control technicians. The Informational Letter to HHE on January 15, 2021, will not be tracked cumulatively against HHE's enforcement history.

13. As DPR Structural Program Manager, I would have also agreed not to issue an informational letter in this case due to the lack of available records.

14. Since the only HHE record that exists is a March 23, 2003 pretreatment invoice, dated prior to construction of a residence at the property, it is impossible for DPR to determine whether the EIFS-to-ground condition at 11 Harrogate Drive was waived, or the conditions at the property during HHE's warranty up until 2012. DPR Investigators are only able to observe what is visible at the time of inspection, which, in this case, was on January 22, 2020.

15. To the best of my knowledge, there have been no other DPR inspections at 11 Harrogate Drive during the time period HHE had a termite warranty for the property.

16. DPR Regulation § 27-1085 M (1) (g) was the applicable records maintenance regulation at the time HHE had a termite warranty on 11 Harrogate Drive. This regulation required PCOs to maintain records for a period of two (2) years after the date of treatment. Following the cancellation of HHE's warranty in April 2012, HHE's disposal of records for 11 Harrogate Drive in 2017 was proper.

17. DPR did not make a determination regarding whether the 2003 pretreatment was deficient in the amount of termiticide applied because it is impossible based on the lack of available records. For enforcement purposes only, DPR is able to test the soil within six (6) months of a termiticide application.

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18. From a regulatory standpoint, HHE does not owe Plaintiff Kathleen Rankin a duty or standard of care because HHE cancelled its warranty on the property six (6) years and eight (8) months prior to her purchase of the property.

19. As DPR Structural Program Manager, I am familiar with the challenges presented by both Eastern Subterranean and Formosan termites in various parts of South Carolina, including the Hilton Head area.

20. Formosan termite pressure in coastal South Carolina areas, including Hilton Head, poses a significant threat to a variety of residential and commercial structures. Termite treatments and inspections are necessary to protect these structures, and prolonged periods of time without termite treatments and inspections can lead to termite infestations.

21. DPR recommends that structures be re-treated, or receive booster treatments, for termites periodically to ensure that the chemical barrier remains in place.

22. If 11 Harrogate Drive was left untreated and uninspected for termites for a period of six (6) years and eight (8) months, it significantly increased the likelihood that that structure could be infested by subterranean termites.

FURTHER AFFIANT SAYETH NOT

ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

By: Kevin DeLorenzo

Kevin DeLorenzo

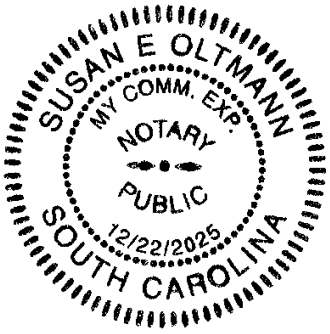
SWORN to before me this

9th Day of August, 2022

Susan E. Oltmann

Notary Public for South Carolina

My Commission Expires: 12/22/2025



ELECTRONICALLY FILED - 2022 Aug 11 11:50 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700776

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF DR. MAXCY P. NOLAN, III**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

PERSONALLY appeared before me, Dr. Maxcy P. Nolan, III, who first being duly sworn, deposes and states as follows:

1. That I, Dr. Maxcy P. Nolan, III, am over eighteen (18) years of age and am fully competent to testify as to the matters stated in this affidavit, and it is based on my own personal knowledge.

2. I am the owner and President of NIPCAM, which is located at 298 Swamp Fox Lane, Seneca, South Carolina 29678. NIPCAM provides consulting services to property owners on a wide array of pest control issues, including termite infestation and treatment.

3. I have a PhD in Entomology from Clemson University, and I am routinely hired as an expert witness in cases involving termite infestation and damage.

4. I frequently conduct investigations involving termite infestation and damage, as well as formulating treatment plans. I am familiar with the standard of care applicable to pest

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control operators for all services they may provide. I have been recognized as an expert on numerous occasions by South Carolina Circuit Courts in the area of pest control.

5. I have been retained by Hilton Head Exterminators, Inc. ("HHE") to investigate claims related to termite infestation and damage at 11 Harrogate Drive, Hilton Head, South Carolina.

6. I have interviewed HHE personnel regarding HHE's termite pretreatment and warranty for 11 Harrogate, which was cancelled in 2012. I have reviewed relevant documents, including Plaintiff's Amended Complaint, documents produced by the Department of Pesticide Regulation ("DPR"), Clemson University, and the March 23, 2003 HHE invoice for a termite pretreatment, which occurred prior to construction of 11 Harrogate Drive. I also conducted a site inspection at 11 Harrogate Drive on February 1, 2022.

7. I am aware that the March 23, 2003 HHE termite pretreatment invoice is the only HHE document that exists related to 11 Harrogate Drive. I am also aware that HHE retained its records for the residence for a period of five (5) years following HHE's cancellation of the termite warranty in 2012 due to the homeowners' decision not to renew the warranty. In my professional opinion, HHE's destruction of the records in 2017 was proper and complied with DPR regulations concerning maintenance of records by pest control applicators.

8. In my professional opinion, it is impossible to determine whether the alleged EIFS-to-ground contact noted in the June 24, 2020 DPR report was waved or existed when HHE provided services at the residence. The March 23, 2003 invoice only reflects a termite pretreatment performed before the residence was even built. No records or evidence have been produced showing that a waver was not obtained by HHE, or that EIFS-to-ground contact existed at the residence during HHE's termite warranty, which ended in 2012. The DPR inspection at 11

Harrogate occurred almost seven (7) years later, on January 22, 2020, and the DPR investigator was only able to see conditions existing at that time.

9. In is also my opinion that the Category III Informational Letter issued by DPR to HHE is just that – information that HHE can use to keep its termite technicians aware of possible building conditions conducive to termite infestations. This letter does not require HHE to address any issues found at 11 Harrogate Drive, and such letters are not counted against a pest control applicator's enforcement history.

10. Based on my review of documents in the case, there is no evidence that the termite pretreatment performed by HHE was deficient, and due to the passage of more than 19 years, it would be impossible to make such a determination today. In my experience, a soil test to determine sufficient termiticide can only be performed up to six months after a treatment.

11. In my professional opinion, HHE does not owe the plaintiff in this case a duty or standard of care because HHE's termite warranty was cancelled six (6) years and eight (8) months before she purchased 11 Harrogate Drive. There is absolutely no evidence that HHE violated any duties or standards of care because no records exist to make such a determination. The pest control applicator with the current termite warranty on the residence is responsible for any treatment and/or inspection issues. In addition, it is my opinion that HHE has not violated any laws, regulations, or industry standards applicable to pest control applicators.

12. I have served as an expert in numerous cases in the Hilton Head area, including the Wexford subdivision where 11 Harrogate Drive is located. This area has a high concentration of Formosan termites, and regular termite inspections and treatments are necessary for the protection of residential structures. Based on my training and experience, I recommend

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that homeowners perform termite retreatments, or boosters, every five (5) years to protect their properties.

13. It is my professional opinion to a reasonable degree of scientific certainty that the termite infestation and damage discovered at 11 Harrogate Drive likely began at some point during the period of six (6) years and eight (8) months prior to Plaintiff Kathleen Rankin's purchase of the residence when the residence was not inspected or treated for termites.

14. I have attached my CV to this Affidavit. The CV contains information demonstrating my education, training, and experience.

FURTHER AFFIANT SAYETH NOT

By: _____
Dr. Maxcy P. Nolan, III

SWORN to before me this

3rd Day of August, 2022

Megan E. Chavis

Notary Public for South Carolina

My Commission Expires: March 25, 2023

Megan E. Chavis
Notary Public, State of South Carolina
My Commission Expires March 25, 2023

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

KATHLEEN M. RANKIN,

Plaintiff,

vs. CIVIL ACTION NUMBER
2020-CP-07-00776

PALATIAL HOMES, INC., a/k/a PALATIAL HOMES, LLC, a/k/a PALATIAL HOMES DESIGN, LLC, CESAR CASTRO d/b/a HERITAGE PLASTERING, INC., n/k/a HERITAGE PLASTERING & STUCCO LLC, CMC STEEL WORKS, INC., AMI IRONWORKS LLC, a/k/a AMERICAN MASTER IRONWORKS, LLC, ENALDO URRIOLA d/b/a ADVANCED ROOFING SERVICE n/k/a ANKON CONSTRUCTION SERVICES, LLC, KELCA COUNTERS, INC., and JOHN DOES 1-20; CAMBRIDGE BUILDING, INC.; TWO BROTHERS PLASTERING, INC.; WILLIAM T. RUARKS d/b/a RUACON QUALITY CONSTRUCTION; JIMMY J. METCALF, JR, d/b/a QUALITY ROOF SERVICES; IONUT D. ISTRATE d/b/a ISLAND PLASTERS LLC; MICHAEL GRONDAHL; HILTON HEAD EXTERMINATORS, INC.; AND IMPERIAL PEST CONTROLLERS INC.;

Defendants.
---------/

The videoconference deposition of KATHLEEN RANKIN, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Kyle J. Saniga, Certified Court Reporter and Notary Public, at Coastal Court Reporting, 1 Corpus Christi Place, Hilton Head, South Carolina, on the 5th day of March 2021, commencing at or about the hour of 10:11 a.m.

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Q I appreciate you letting me know about that. And do you recall who you purchased the home from at 11 Harrogate?

A I don't remember the gentleman's name. I believe it was actually a trust.

Q Okay. Did you walk through the home prior to purchasing it?

A Yes.

Q Or putting a contract on it? Okay.

At the time you looked at it did you see anything about the condition of the home that concerned you?

A No.

Q As you looked at the home did you have any intention or designs on doing any remodeling?

A There were two items I had hoped to do, one was to put hardwood floors on the first -- hardwood flooring on the first floor and I think a kitchen light and new granite or new quartz countertops.

Q Okay. Did you retain someone to perform an inspection of the home at 11 Harrogate on your behalf?

A No, I did not. The reason I did not

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was that Steve Tipperman and my real estate agent -- Steve Tipperman was the listing agent on the house.

He told my agent that there had been a recent home inspection. There had been a previous buyer prior to my purchasing the home, that their financing had fallen through and that's why the house was on the market and that there had been no requested repairs by the previous buyer, that everything on the home inspection had come out fine.

Q Steve Tupperman represented this to your realtor?

A Yes.

Q Who was Steve Tupperman with? What's the listing agent?

A I don't remember the name of the firm he works for.

Q Okay. And did he provide that prior inspection report to you and your realtor?

A Not to me, no.

Q How about to your realtor?

A I don't know if he did or not.

Q Did your realtor ever advise you to get your own independent inspection --

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A No, she --
Q -- despite what Mr. Tupperman --
A My realtor felt that based on the information provided by Steve Tipperman or Tupperman that it was not necessary. That the house had been vacant at different times but that everything was in working -- good working order and there had been no significant issues reported in the previous home inspection.
Q Okay. Do you know how long that house had been vacant prior to your purchase?
A It was my understanding about three or four months.
Q Did the -- did the effect of the purchaser -- strike that.
Did the purchaser provide a disclosure statement to you?
A Yes.
Q I think we've seen that in the documents and we'll take a look at it but just before we do, did the disclosure statement raise any issues for you or your realtor that you asked to look into?
A Not that I recall.
Q When was your move-in date?

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A Yes.
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A Not that I recall.
Q When was your move-in date?

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A When I was picking this stuff that I didn't know was excrement out of the little holes.

Q Right, right. In this Exhibit 3 -- I can't share it with you on the screen -- but it's the disclosure statement. I just had one quick question about that.

If Charlie can show it to you. I'm looking at Section 4 and it's the -- section on present or past infestation or wood-destroying insects or organisms.

A Okay.

Q And the -- there's nothing filled out by the seller in there, is that correct?

A Correct.

Q Did you -- when you purchased that house did that raise any flags with you or did you ask any questions about that?

A It didn't -- it did not really raise any flags. I was not aware to what extent termites -- the amount of termite damage that could be done to a house and because he listed no representation on all of the other boxes I wasn't surprised that that was empty.

You know, it just -- it didn't raise

A It was January of -- January of 2019 I believe.
Q And after moving in what issues, if any, have you discovered about your house?
MR. THOMSON: Object to the form. Go ahead and answer.
THE WITNESS: The -- it was in the spring, late spring, early summer I was having some painting done in the -- on the first floor of the house and there was a point where the painter was brushing some dust off the walls in the breakfast area and the sheetrock fell away exposing live termites.
BY MR. BOYD:
Q What was the name of the painter that you had doing that work?
A I don't recall.
Q Do you have any records relating to that work?
A I could possibly find my canceled check. I don't remember the company's name.
Q And this was interior painting on the first floor?
A Correct.

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Q Which room did the sheetrock fall away from the wall?
A The breakfast -- the breakfast room.
Q And where was that located? If you're looking at an aerial view of the first floor where would that be?
A It is to the right on -- the right side of the house rear facing the patio.
Q You said it was spring or summer of 2019?
A Correct.
Q Prior to that incident did you notice or observe any leaks in your home?
A No. There was one -- excuse me, there was one or two windows in the master bedroom area that the seal was gone on the windows so that the windows had fogged up and when I had someone come out and look at it they showed me where there had been calking, clear silicone calking applied to the interior and exterior of the window frame.
Q Who was it that you -- well let me ask this, when did you first notice the fogging of the windows in the master bedroom?
A Require to the purchase of the home.

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Q Okay.
A That was not a -- seeing the fogged glass was not a concern because I knew that that could be replaced.
Q Okay. And who did you have to come look at that? Who replaced those window seals?
A I do not recall.
Q And did you end up having those windows replaced?
A They have been subsequently replaced, yes, but not at that time.
Q And why not?
A Well because it -- there was other things starting to happen and that same time, being -- such as the second floor balcony was becoming problematic that it was starting to move and the -- at that -- approximately that same time was when the termite issue, the sheetrock fell away in the breakfast room.
Q Okay. Well let me make sure I understand the dates. You noticed the fogged windows before purchase but you actually had someone to come look at this sometime around the same time as the termite issue?
A Yes.

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Q So sometime in spring or summer of 2019?
A Correct.
Q And tell me about the -- let's go back to that you said it was an exterior porch issue?
A Yes, the second floor balcony.
Q Second floor balcony, what side of the home?
A The rear of the house overlooking the pool area.
Q What room is that where you walk on that balcony -- in other words -- go ahead.
A The billiard room.
Q All right. Tell me what you felt or observed when you walked out on that balcony?
A That there was a movement to the balcony that you could feel it shift when you walked out onto it.
Q Did you notice that shift or movement during the preclosing walk-through?
A No.
Q Did you walk out on the -- that balcony during the pre-closing walk-through?
A Yes.
Q When did you first feel this movement

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A No, I did not.
Q When did you first notice the door issue?
A It was probably the Fall of 2019.
Q Did you not use that door very often after --
A No, I used it quite frequently. There's only one -- either you come in through the garage, one of the garages or the front door. There's not a secondary access on the front side of the house, so the door was used on a daily basis but we just had to lock the door each time we came through it.
Q But you did notice that the first time you used it that it was not closing properly?
A No. I did not notice it the first -- when we first moved in.
Q Okay.
A It was -- the door started swinging open with a good breeze.
Q So it got worse as you -- so the door was working fine until Fall of 2019?
A Correct.
Q All right. What else?
A When we started doing -- when we

started doing the repairs or actually rebuilding we started out with the second floor balcony looking to do -- take off the tile, get into the structure of it to determine what needed to be done to correct the movement and then to re -- rebuild the deck and that's when we started to discover the termite damage.

Q Okay.

A Extensive termite damage and it went from there. We went from the deck where there was inadequate structure, support structure for the weight of the deck to the termite damage and then to exposing more and more termite damage on the ground level up through the second floor on the back side of the house.

Q All right. I've got a gap in some information here you need to help me fill in because we talked about --

A Okay.

Q -- we talked about the second floor balcony before. You mentioned that you called some contractors, plural --

A Uh-huh.

Q -- that one came out and you don't remember anything about that situation and

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thing that showed the whole back side of the house -- a good portion of the back side of the house covered in tarps because there was rain happening but each section was being rebuilt a piece at a time.

Q Okay.

A And in this March, April timeframe is when we were looking at -- had to order all new windows.

Q And what was wrong with the windows?

A The windows had been installed incorrectly.

Q And what told you that? Was that Next Level?

A Yes.

Q Other than the window seals fogging, almost two windows in the master bedroom had you observed any issues with any window in the house?

A No.

Q Okay. What was the issue that Next Level -- that was occurring with the windows, what was the installation issue?

A Flashing.

Q Okay. Do you have any background or

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expertise in architecture, engineering or construction?

A No.

Q Okay. Are you going to be giving any opinions in this case about that or is that something that you're relying upon your contractors and experts for?

A It will be the contractor and experts.

Q Okay. And what specifically did -- is it Chris, Chris of Next Level, is that his name?

A Yes.

Q What did he say about the flashing in the windows?

A Just that it had been installed incorrectly.

Q Did he explain how?

A No, not that I recall.

Q And -- all right. You said that Next Level is going to continue to work around the -- in March of 26th the back portion of the house had been -- the stucco had been removed and the framing had been replaced or was in process of being replaced?

A Correct.

Q And when did you move to the next side

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Q Okay. Do you know who the original HVAC installer was?
A No, I do not.
Q Are you pursuing any HVAC claims in this case?
A Not at this time.
Q You had mentioned there was an issue with some showers and water that led to some exterior stucco issue?
A Yes.
Q Were those due to shower leaks or pan leaks?
A The issue with this shower specifically is that the waterproofing membrane behind that wall tile failed and that allowed the stucco on the exterior of that wall to separate, pull away from the house.
Q Okay. Do you know what product was behind the shower -- this second floor shower when originally installed?
A No, I do not.
Q And this inspection report, which you were not provided with prior to closing, indicates that quite a bit of calcium deposit which indicated to this inspector a leak issue.

spoke to or when they came to the house. I have no recollection.

There's been a lot that's gone on since then that has put everything else in the far corner of my mind I guess.

Q Things related to the house or just outside of what's going on in this lawsuit?

A Thing related to the house.

Q Okay, all right, all right. Did they -- the one contractor that came out to meet you, did they provide you with an estimate?

A I don't recall. I'm sorry, I just -- I don't recall.

Q Let's go back to the issue with the painter.

When the plaster, the drywall fell away from the wall exposing the termites what happened next? What did you do? What did they do?

A I called I don't remember if it was Hilton Head Exterminators or Imperial Pest about the termites and I ended up working with Terminix to deal with the eradication process.

Q How did it end up that you contacted either Hilton Head or Imperial --

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A Well because Imperial had done the CL -- actually two CL100s on the house. One for the buyer prior to my own purchase of the house and one for me. Both of those CL100s came back clean. When I called them regarding the live termites they said a CL100 is only good for 30 days.

I called Hilton Head Exterminators and if I remember correctly they basically said that they would not -- they would not put a bond on the house and that was what I was looking for, that there would be a -- getting through this process that there would be a viable bond for the property.

Q Do you know whether Imperial had issued a bond on the home at any time prior?

A I do not know.

Q And so after -- do you recall the names of anyone you spoke with from Hilton Head or Imperial?

A No, I don't.

Q Did you make notes of your conversations?

A No, I did not.

Q Okay. Did they send you anything in

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Q Okay. Talking about the narrative here on this second page?
A Yes.
Q Okay, all right.
A The -- sorry. Go ahead.
Q No, go ahead. Is there any other comments you want to make about that?
A Well, there's -- throughout this process that I've gone through I have learned to detect styrofoam housing product.
Q Uh-huh.
A And when -- the first week or two that I was in the house my -- I smoke, okay, and I don't smoke in the house I always go outside.
So I had no patio furniture at the house yet so I would sit on the edge of the spa in the morning to have my cup of coffee and my cigarette and as I'm looking at this styrofoam column I didn't even think about it being styrofoam I'm looking and it's one of the things that made decide I needed to have the house power washed because there's all these little -- looked like waterway areas that were full of like dirt and I'm picking this stuff out with my fingernails as I'm standing there drinking my

coffee and come to find out it was all termite excrement.

Q Uh-huh.

A So, you know, that was before any patio furniture was there, before I made the real move into the house and so it was -- this column was full of it.

The structure -- the column, this one specific column was supporting 25, 30 percent of the weight of the second floor balcony and it was covered in termite stuff.

Q Uh-huh.

A Thankfully I didn't know what it was when I was picking it out of the little holes. It's just -- so I have the problem with the CL100 that I mean if somebody had walked around the back of the patio looking at the exterior of the house for any indication of termites how could they -- and this is their whole product that they do, these CL100s, how could they miss it?

To me it was -- if I had known then what I know now type of thing it would have been -- the CL100 had to be wrong.

Q And the stucco that you have on your

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doing it for the general pest control work at the house?
A Correct.
Q Okay.
A That's what I learned after this all became an apparent problem.
Q Right. Do you know if the prior owner of the house had a termite warranty on the house?
A I do not -- at this point I do not believe he did but I'm not -- I don't know for sure.
Q Okay.
A Every -- the people that I spoke to at Imperial to Hilton Head Exterminators and to Terminix, no one seemed to know of a bond in place.
Q Okay. You had testified earlier that when you were outside at some point you looked at one of the stucco columns and you'd seen some debris or dirt or excrement is what you testified to on the column. Do you recall when that happened or when you saw that?
A That was in January. That was like the -- one of the first or second week I was in

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that house.
Q Okay. So it would be January 2019?
A 2019, correct.
Q Okay. And who told you that it was termite excrement?
A The lady from Clemson.
Q Okay.
A The investigator from Clemson.
Q And when did she tell you that?
A The first time she came out to the house and I don't remember when that was but I know that there are e-mails that document her visits to the house.
Q Okay. I want to say I've seen the report and I want to say it was sometime after that, maybe the summer, maybe last summer, something like that.
A Well that's when she came out to the house.
Q Okay.
A She -- her visits were in 2019 and 2020 but when I first moved into the house and I saw that and that's -- was in the first two weeks of January 2019.
Q Okay.

doing it for the general pest control work at the house?
A Correct.
Q Okay.
A That's what I learned after this all became an apparent problem.
Q Right. Do you know if the prior owner of the house had a termite warranty on the house?
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A When I was picking this stuff that I didn't know was excrement out of the little holes.

Q Right, right. In this Exhibit 3 -- I can't share it with you on the screen -- but it's the disclosure statement. I just had one quick question about that.

If Charlie can show it to you. I'm looking at Section 4 and it's the -- section on present or past infestation or wood-destroying insects or organisms.

A Okay.

Q And the -- there's nothing filled out by the seller in there, is that correct?

A Correct.

Q Did you -- when you purchased that house did that raise any flags with you or did you ask any questions about that?

A It didn't -- it did not really raise any flags. I was not aware to what extent termites -- the amount of termite damage that could be done to a house and because he listed no representation on all of the other boxes I wasn't surprised that that was empty.

You know, it just -- it didn't raise

any flags because he didn't know anything else about it, the house, how would he know about that. I just --

Q Okay, fair enough. Have you hired -- other than having the department of pesticide regulation come out, Kristen Lennox, have you hired any other experts as far as the termite damage at your property?

A No, I have not.

Q Okay. And I believe I just have one more question. You testified earlier that you had eifs on the trim of the house, eifs stucco and then had hard coat stucco on the main portion of the house.

I believe you said something -- I might have misheard it and I apologize if I did -- but you were talking about how eifs may have allowed entry for the termites?

A Effus, yes.

Q And how did you come to that conclusion?

A Hilton Head Exterminators educated me about it.

Q Okay.

A Saying that that could not be at ground

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1–20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Exterminators, Inc.; and Imperial Pest Controllers, Inc.; *Defendants*.	C.A. No. 2020-CP-07-00776 **Plaintiff's Memorandum in Opposition to Hilton Head Exterminator, Inc.'s Motion for Summary Judgment**

The Plaintiff, by and through her undersigned attorneys, submit this Memorandum in Opposition to Hilton Head Exterminator, Inc.'s Motion for Summary Judgment filed on June 22, 2022.

FACTS

The Plaintiff in this matter owns a large single-family residence in the Wexford Plantation neighborhood of Hilton Head Island. In 2020, she discovered her house was badly infested by termites. Pictures of this massive damage are attached as Exhibit A. She immediately placed the relevant pest control companies on notice. Upon not receiving an acceptable

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offer to remedy, she promptly filed suit. The termite infestation necessitated immediate repairs. Those repairs remained ongoing throughout the early stages of this lawsuit and have since been completed. They cost Plaintiff more than $527,000. She seeks to recoup those repair costs and other incidental damages in this lawsuit.

Plaintiff brought construction defect claims against the contractors who constructed her house and brought failure-to-disclose claims against those who sold the house to her. All of those parties have settled with the Plaintiff.

The only parties remaining are two pest control contractors. One is Hilton Head Exterminators, Inc., who provided pretreatment for the 2003-2005 original construction, followed by regular inspections and treatments up until at least April 2012. Plaintiff filed this lawsuit in March 2020, less than eight years after Hilton Head Exterminators last performed services at the residence. The other pest control Defendant is Imperial Pest Controllers, Inc., who provided subsequent pest control and CL100 services. Imperial is not a party to this motion. Only Hilton Head Exterminators seeks summary judgment in the present motion.

Kristen Lenox-Rustin is an inspector for Clemson University's Department of Pesticide Regulation, a governmental agency. She inspected Plaintiff's residence in January 2020. She issued a report dated June 24, 2020. In this report, she opines that Hilton Head Exterminators failed to address the condition where EIFS synthetic stucco was in contact with the ground. Ms. Lenox-Rustin further opines that this failure constituted a violation of S.C. Code Regs. § 27-1085(G)(2) (from the Rules and Regulations for the Enforcement for the South Carolina Pesticide Control Act). Ms. Lenox-Rustin's report is attached as Exhibit B. Plaintiff did not retain Ms. Lenox-Rustin to give expert testimony on Plaintiff's behalf because Ms. Lenox-Rustin is a neutral governmental agency employee. Plaintiff does, however, intend to request that this Court qualify Ms. Lenox-Rustin as an expert at trial and expects to use her testimony in support of Plaintiff's claims.

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Despite Ms. Lenox-Rustin's findings that Hilton Head Exterminators violated state regulations, Hilton Head Exterminators argues that the Plaintiff has not shown a scintilla of evidence upon which a jury could find that it was negligent. Its Motion for Summary Judgment must be denied.

ARGUMENT

When considering a Motion for Summary Judgment, "the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). A mere scintilla of evidence is sufficient to defeat a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

The report by Kristen Lenox-Rustin attached as Exhibit B constitutes more than just a scintilla of evidence from which a jury could find Hilton Head Exterminators is liable to Plaintiff in negligence. In her investigation, Ms. Lennox-Rustin discovered that both non-treated form board and EIFS synthetic stucco were in contact with grade. These both create a high-risk pathway for termite activity. Although Ms. Lennox-Rustin found that the form board was hidden from view for Hilton Head Exterminators, the EIFS was in plain view. Hilton Head Exterminators therefore had a duty to note this condition when it was at the residence applying treatment. Its failure to do so constituted a violation of the Rules and Regulations for the Enforcement for the South Carolina Pesticide Control Act, as cited by Ms. Lennox-Rustin.

I. The Duty Hilton Head Exterminators owed the previous owner of the Subject Property flowed to Plaintiff.

Hilton Head Exterminators owed Plaintiff a duty to provide due care in providing its services to the Subject Property, despite the lack of contractual privity between Hilton Head Exterminators and Plaintiff. South Carolina allows the imposition of tort liability to a third party as a result of contractual obligations despite the absence of privity between the tortfeasor and the third party. *Terlinde v. Neely*, 275 S.C. 395 (S.C. 1980). "The key

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inquiry is foreseeability, not privity. In our mobile society, it is clearly foreseeable" that a homeowner will sell a property to a buyer who will enjoy the fruits of those who worked at that property. *Id*.

Here, Hilton Head Exterminators provided services to the Subject Property up through April 2012. The duty it owed to use due care in providing pest control inspection services to the Subject Property flows to Plaintiff. *See id*

Hilton Head Exterminators submits affidavits from two different pest control experts (DeChirico and Nolan) stating that Hilton Head Exterminators does not owe a duty to Plaintiff, presumably at the present moment. This is a red herring. Plaintiff does not aver that Hilton Head Exterminators owes Plaintiff a duty at the present moment. The issue is whether it owed a duty to the owner of the Subject Property as of the time it committed the tort. On the issue of duty, the defense affidavits submitted to this Court serve no purpose other than to obfuscate the issue.

Again, the key issue is foreseeability. This should be decided in Plaintiff's favor as a matter of law in accordance with South Carolina law. *See id*. At worst, it would be an issue for the jury to decide whether it was foreseeable that the previous owner would sell the residence to somebody else.

II. Hilton Head Exterminators Breached its Duty.

Plaintiff easily establishes the breach element, especially at the summary judgment level. The Exhibit B Lennox-Rustin satisfies this element.

Ryan Okey, the Program Chief for Clemson's Department of Pesticide Regulation, apparently agreed with Ms. Lennox-Rustin's conclusion that Hilton Head Exterminators violated that state regulations. He sent Hilton Head Exterminators a letter informing them that they had violated the regulations. That letter is attached as Exhibit C.

Hilton Head Exterminators' two experts (DeChirico and Nolan) state that they would not have reprimanded Hilton Head Exterminators because they have not seen definitive proof that the EIFS to grade condition existed

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as of 2012. Lennox-Rustin and Okey, however, appear to disagree. Their position is prudent because it would be highly unlikely that these EIFS to grade conditions would not have existed from time of original construction until 2012.

DeChirico and Nolan do not deny that Hilton Head Exterminators should have noted EIFS to grade issues if any existed at the time Hilton Head Exterminators inspected the property. Whether or not the EIFS to grade condition existed as of 2012 and prior is an issue of fact. Issues of fact must go to the jury.

III. Hilton Head Exterminators' Negligent Acts Caused Damages.

Hilton Head Exterminators' failure to report the EIFS to grade contact led to massive damages. Had they reported this condition, the previous owner presumably would have fixed it. Instead, termites had a pathway into the wall cavities from which they traveled to cause terrible damage throughout the entire house.

Hilton Head Exterminators' expert Nolan notes that the damages likely occurred subsequent to its providing of services to the residence. This is another red herring. Again, Hilton Head Exterminators' failure to note the EIFS to grade condition left a pathway through which termites could travel in place at the Subject Property. Whether that damage occurred immediately or six years later is not relevant to Plaintiff's negligence claim.

IV. Hilton Head Exterminators' Other Miscellaneous Defenses Fail.

1. Intervening Negligence

Hilton Head Exterminators also avers that it is entitled to summary judgment on account of intervening negligence of others. Its burden here is to show that all damages at the Plaintiff's residence were caused by somebody else's negligence rather than its own. It fails mightily in meeting this burden. Other intervening parties might have been negligent here. The issue of who is responsible for which of Plaintiff's damages must be decided by a jury, not disposed in this motion.

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2. Lack of Express Warranty Records

Hilton Head Exterminators and its two experts point to the lack of express warranty paperwork as somehow precluding Plaintiff's claims. But Plaintiff did not bring a breach of express warranty claim against Hilton Head Exterminators. Whether such a warranty existed or not does not negate Plaintiff's negligence cause of action.

3. Implied Warranty of Workmanship

Plaintiff's cause of action for implied warranty of workmanship is valid. Hilton Head Exterminators argues that South Carolina's implied warranty of workmanship law does not apply to pest control contractors. It is undisputed that licensed contractors who work at a residence issue an implied warranty of workmanship. *Rutledge v. Dodenhoff*, 254 S.C. 407, 175 S.E.2d 792 (S.C. 1970). This implied warranty is separate and distinct from the warranty of habitability, which applies only to new residences being placed into the stream of commerce, regardless of whether or not the seller is a builder. *See Lane v. Trenholm Bldg. Co.*, 229 S.E 2d 728, 267 S.C. 497 (S.C., 1976); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989).

On page 10 of its brief, Hilton Head Exterminators submits and out-of-context quote from *Smith v. Breedlove* in support of its argument that the implied warranty of workmanship should not flow to pest controllers. In this quote, the Court is referencing the *circuit court's* position that the implied warranty of wokmanlike service applies only to builders. *Smith v. Breedlove*, 661 S.E.2d 67, 377 S.C. 415 (S.C., 2008). Reading this opinion in its entirety is instructive. The issue in that case was whether an unlicensed layperson who had built a home for himself would issue such an implied warranty. The Court found that the unlicensed homeowner did not issue such a warranty. It reasoned that an implied warranty of workmanship flows from the virtue of a contractor representing to the public he is capable of performing construction work, in part by way of him carrying a builder's license. *Id.*

There is no South Carolina caselaw that explicitly addresses whether or not its implied warranty doctrine also applies to pest control contractors,

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but from the tangentially relevant caselaw, we can piece together that pest controllers do issue an implied warranty to homeowners and downstream purchasers. The implied warranty flows to architects who carry an architectural license. *Beachwalk Villas Condominium Ass'n, Inc. v. Martin*, 406 S.E.2d 372, 305 S.C. 144 (S.C. 1990). The licensing element and representations to the public are key. "As a general rule, it may be said that where a person holds himself out as especially qualified to perform work of a particular character there is an implied warranty that the work shall be done in a reasonably good and workmanlike manner and that the completed product or structure shall be reasonably fit for its intended purpose." 17A C.J.S. Contracts § 329. Because the licensing element and representations to the public are key, it stands to reason that South Carolina's implied warranty law flows to licensed pest control contractors.

Hilton Head Exterminators carries a pest control license and represents to the public that it is capable of performing professional pest control services. Accordingly, Plaintiff's cause of action for implied warranty is prudent.

CONCLUSION

Hilton Head Exterminators offers opposing expert theory opining that it was not negligent. It submits two different experts who disagree with the two experts upon which Plaintiff relies. No matter how convincing these counter-opinions might sound, there is no way for Hilton Head Exterminators to surmount its evidentiary burdens in this motion. The Plaintiff is entitled to a jury trial on the matter.

The disposition of this motion is as easy as it seems. Plaintiff submitted evidence of negligence in the form of a violation of pest control regulations. Hilton Head Exterminators' Motion for Summary Judgment must be denied.

Respectfully submitted,

CAPELL THOMSON, LLC

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August 12, 2022
Charleston, South Carolina

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Sample of Photographs of Termite Damage at the Rankin Residence

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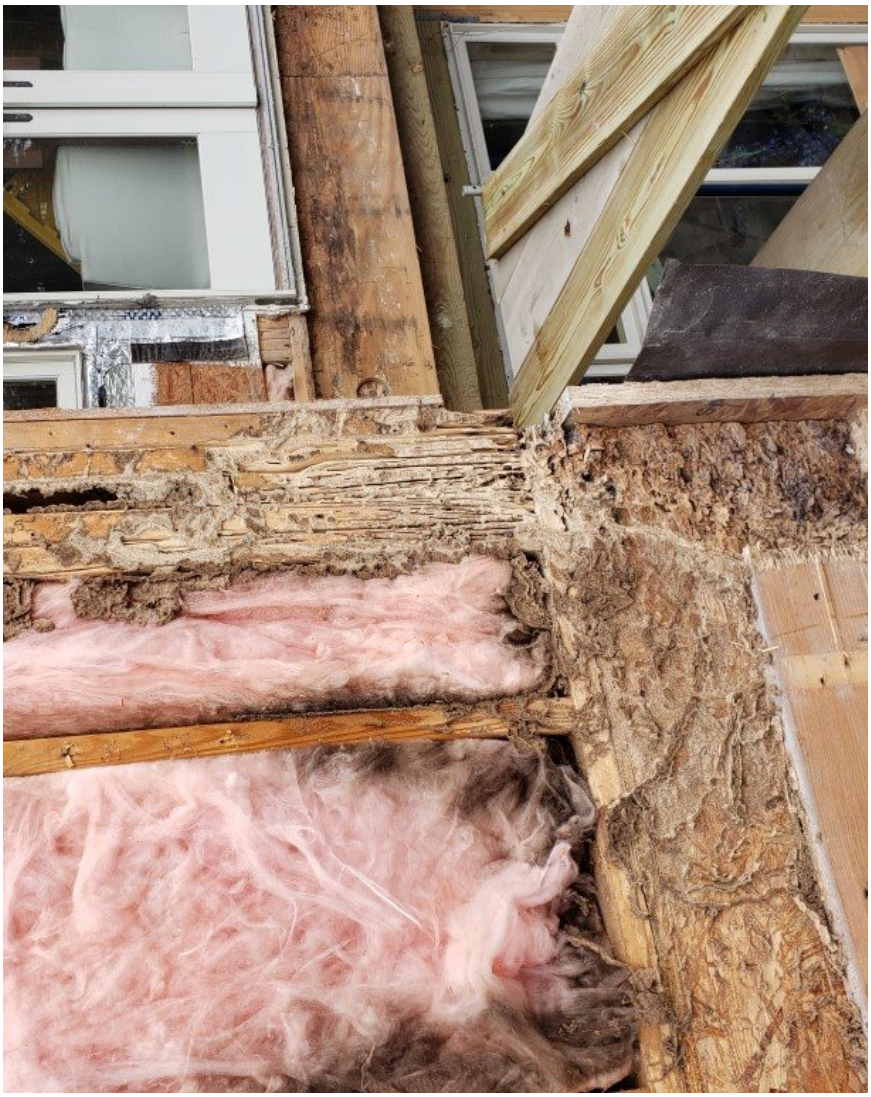


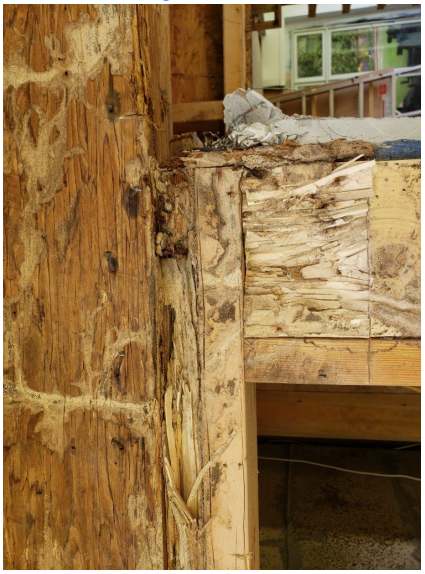


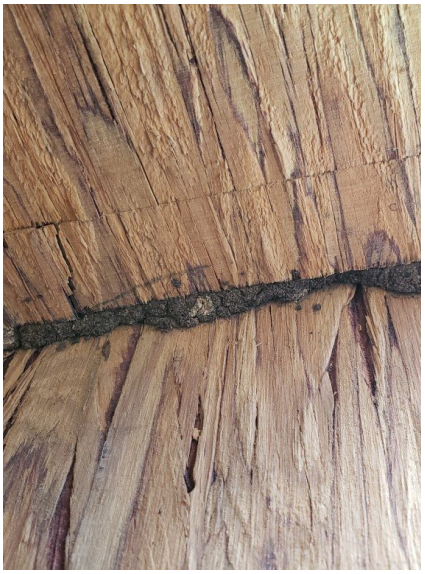


























Case File Number: 012220-36-01

CLEMSON UNIVERSITY

Report of Structural Pest Inspection

Department of Pesticide Regulation
511 Westinghouse Road
Pendleton, SC 29670
864.646.2150
http://dpr.clemson.edu

Date Issued: June 24, 2020

Inspector: Kristin Lenox-Rustin

Homeowner: Kathy Rankin

ADDENDUM TO Report Issued June 18, 2020,

The property in reference to Kathy Rankin located at 11 Harrogate Dr., Hilton Head Island, SC was inspected by the Department of Pesticide Regulation on January 22, 2020 and the following conditions were found. This report details those findings as they relate to wood destroying organisms, their damage, and standard procedure required to control and report the presence of those organisms.

This structure is built on a slab foundation, and thus only the accessible portions of the interior and exterior walls were inspected. The supported slab is constructed on hollow block with Exterior Insulation and Finish Systems, EIFS. Areas of the exterior and garages were inaccessible due to stored items, construction wrap, equipment and scaffolding. At the time of inspection, repairs were being performed to the entirety of the rear structure and interior breakfast room. The rear balcony had been removed. All references to direction in this report are given from Harrogate Drive and facing the front of the structure (see attached graph).

This inspection revealed subterranean termite damage and intact subterranean termite shelter tubes visibly painted over and in unpainted areas of the right rear attic. Subterranean termite damage and intact subterranean termite shelter tubes and mud were observed in the central rear of the main attic. DPR observed four termite cartons the General Contractor of Next Level, Chris Baker, said he removed from the rear balcony, a column and breakfast room. The cartons were consistent with Formosan termites.

EIFS removed during repairs exposed hidden subterranean termite damage, intact and partial (broken) subterranean termite shelter tubes throughout the rear of the structure as noted on the accompanying graph. Subterranean termite shelter tubes and mud with ground contact were observed between the outdoor fireplace block and rear patio supported slab. A form board with termite shelter tube soil contact was also revealed in that area. Subterranean termites build shelter tubes of mud as they travel across exposed areas. Shelter tubes are required to be

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removed during a termite treatment; when intact, therefore, their presence is considered presumptive evidence of subterranean termite activity.

Formosan subterranean termites are an extremely aggressive imported species which forms colonies of several million individuals (as opposed to the native eastern subterranean termite, whose colonies rarely exceed 300,000). Formosan subterranean termite colonies produce extremely large numbers of swarmers in the spring of the year, and most swarming occurs within a period of a week or two. Swarmers emerge at twilight or in the early evening and are strongly attracted to light. They typically shed their wings soon after their first contact with a solid object and then explore extensively by walking, as they look for moist crevices in which to start a new colony.

Formosan subterranean termites, like other subterranean termites, must maintain contact with the ground in order to obtain moisture. However, if an adequate source of moisture is available, Formosan termites are also able to form colonies in other protected areas (e.g. wall voids below leaking pipes or air-conditioning ducts on which moisture may condense). In these areas Formosan termites build a sponge-like material called "carton," which retains moisture for long periods and thus allowing the survival of the colony as long as some source of moisture is available. Strategies to prevent aerial infestation by Formosan subterranean termites include the elimination of plumbing leaks, accumulations of organic debris (which may hold moisture), and other above-ground sources of moisture. It is also, obviously, extremely important to maintain the exterior of the structure in good repair.

Standard treatment methods are effective against Formosan termites, though particular care must be taken to insure that all secondary colonies are located and treated. All sources of moisture must also be eliminated, and all carton material must be treated with an approved insecticide or removed. In cases where colonies may be hidden or inaccessible areas are present, fumigation may be necessary to control termites in above-ground areas. Fumigation does not provide any residual control and should not be performed except in conjunction with (and always after) a thorough ground treatment.

Although no live subterranean termites were observed, the presence of intact subterranean termite shelter tubes is generally accepted as presumptive evidence of activity. The possibility of an active infestation of subterranean termites cannot be conclusively dismissed.

In view of the indications of activity noted above, the structure should therefore be treated as outlined in Section 27-1085 of the South Carolina Pesticide Control Act (the Standards for the Prevention or Control of Wood-Destroying Organisms).

The Town of Hilton Head Island records show Hilton Head Exterminators performed a pretreatment application to footing and piers at 11 Harrogate Dr. on March 23, 2003, with 140 gallons of a .1% solution of *Termidor 80WG* (EPA Reg. No. 7969-209) for Palatial Homes.
Case File #012220-36-01

Their records further show this structure was completed in 2005. Beaufort County records show the structure was sold by Palatial Homes on February 23, 2006. Hilton Head Exterminators Termite Control Manager, John Holbrook, explained that on February 14, 2006, Palatial Homes ordered an Official South Carolina Wood Infestation Report. The structure was pretreated for subterranean termites by them and under contract from June 1, 2005, and transferred to the next owner, Billy Silas, until April 27, 2012.

The following section of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act (the Standards for the Prevention or Control of Wood Destroying Organisms) was neither met nor waved during their March 23, 2003 pretreatment:

1) Section 27-1085 (G) (2) (b): "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."
   *Hilton Head Exterminators failed to address EFIS ground contact. The form board was hidden from view while under their contract.

Hilton Head Exterminators is not required to correct the above deficiency.

This structure was also treated for subterranean termites by Terminix Services, Inc. on June 26, 2019 and is presently under contract with them. Records provided by Terminix show installation of a *Sentricon Termite Colony Elimination System* with *Recruit HD* (EPA Reg. No.62719-608, Dow AgroSciences) consisting of 48 *Sentricon* stations.

The label of *Recruit HD* specifies that stations be installed around the structure at a spacing not to exceed 20 feet where soil access is not restricted. (An example of restricted access would include areas such as driveways that may be > 20 feet wide.) Inspection around the exterior of the structure on January 22, 2020, located all 48 stations. These were found to be spaced less than 20 feet apart, except for a label-allowed wider spacing at the driveway.

Terminix records also indicate they treated the foundation on June 26, 2019, with 32 gallons of a .125% solution of *Termidor HE* (EPA Reg. No. 7969-329, BASF) around the rear of Case File #012220-36-01

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the structure for active termites. Records further show a soil treatment was made to piers on December 6, 2019, with .25 gallons of a .125% solution of *Termidor HE*. Next Level Construction LLC General Contractor, Chis Baker, concurred a treatment was made to the rear balcony piers, one of which contained a termite carton he displayed to DPR. On January 27, 2020, Terminix performed a pretreatment for new piers with 6 gallons of a .125% solution of *Termidor HE*. Terminix performed an additional pier pretreatment on February 18, 2020, with 10 gallons of a .05% solution of *Premise Pre-Construction* (EPA Reg. No.432-1331, Bayer.) Both treatments were at new pier locations on the rear earth filled patio.

The following section of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act (the Standards for the Prevention or Control of Wood Destroying Organisms) was neither met nor waived during their June 26, 2019 treatment:

2) Section 27-1085 (G) (2) (b): "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."
*Terminix failed to address EFIS ground contact. The general contractor has broken EIFS ground contact. The previously hidden form board is still in place.

The label directions for *Termidor HE* states, "CONCRETE SLAB OVER SOIL... Vertical Drilling/Injection- To treat under the slab, drill vertically through the slab along the interior perimeter of the foundation... If there is clear evidence of termite activity or damage in an interior partition wall, it may be necessary to drill holes along one side of the slab adjacent to the interior partition wall. All drill holes through the slab must be spaced no wider than 18 inches apart. Apply Termidor HE finished dilution to the soil below the slab by injecting through the holes drilled through the slab at the rate of 2 gallons per 10 linear feet per foot of depth."

This investigation found that this treatment was performed contrary to label directions. It is a violation of Section 46-13-90 (1) B of the South Carolina Pesticide Control Act to use any pesticide in a manner inconsistent with label directions.

*The rear attached earth filled supported slab is 46 inches in depth. Eleven of Terminix drill holes were at 19 to 26-inch intervals; greater than 18 inches.

On March 16, 2020, Terminix drill/treated and plugged the rear attached supported slab with 13 gallons of a .125% solution of *Termidor HE* to correct the interval deficiency. On April 20, 2020, DPR observed slab drilling in compliance with label directions.

Wood decay fungi damage was observed in the right rear outdoor bathroom adjacent to the shower where repaired trim had been removed (see graph). The wood moisture content of this area was 13%. Although the current moisture level is too low to support growth of decay fungi (28% or above), the presence of decay fungi damage indicates that active decay fungi have been present for significant periods of time in the past. Repairs were observed to the left garage entrance door frame. The wood decay fungi visible to the left side of repaired door frame appears to be due to the infiltration of rainwater, possibly through a structural fault, from above this area. The moisture conditions in these areas are subject to change with the weather. Replacement of vulnerable wood with pressure treated lumber, and thorough caulking and sealing to reduce moisture infiltration will help prevent future damage.

Two Official South Carolina Wood Infestation Reports, OSCWIR, in reference to this structure issued by Imperial Pest Controllers, Inc. on October 17, 2018 and December 11, 2018 did not comply with Section 27-1085 K of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act in that they did not disclose moisture readings. In addition, the back of the October 17, 2018 report lists water damage; however, the front of the report did not disclose if the presence of wood-destroying fungi was active (3a) or non-active (3b).

> Section 27-1085 (K) (3) The inspection for the Wood Infestation Report must include at a minimum:… (f): "The determination of the nature and activity of all wood-destroying fungi, including decay damage whether active or not, present in the structure below the level of the first main living-area floor."

Questions have arisen regarding the lack of fungal damage to the rear balcony and subterranean termite damage being reported. The general contractor's photos during repairs depict two termite cartons in the rear balcony, one in a support column, and one in the breakfast room. The Imperial Pest Controllers issued OSCWIR reports state, "This report is valid for 30 days only. This report is not a guarantee or warranty against future infestations or damage… All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible… We do not move furniture, appliances, equipment, etc. …No opinion can be rendered as to infestation or damage on that portion of sheathing, siding, or other susceptible material which continues below soil grade. The areas of the substructure and attic that are accessible and open for inspection have been inspected… The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon… Inspection for the presence of wood-destroying fungi is only required to the level below the first main floor." Remarks include, "INACC: Outside foundation not visible for inspection where

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covered by porches, attached slabs, decks or trim boards or any type of siding is below grade level. Area of the subfloor & attic hidden by insulation or other materials are inaccessible. Area of attic without flooring are inaccessible. Some interior walls & floors obstructed by homeowner belongings, furnishings & floor coverings.

The October 17, 2018 OSCWIR remarks also included Damage: H20/Fungal damage: Bottom of garage service door at left side garage, including frame, jamb, trim. And, interior base molding on right wall next to shower in outside pool bathroom." DPR observed repairs in those areas. The areas behind those repairs would not have been visible at the time of the December 11, 2018 OSCWIR.

DPR observed intact subterranean termite tubes and damage in the rear attic area. Some areas of the attic area lacked flooring. At the time of inspection, a drop-down ladder had been installed from the exterior to access the area. The attic's original access is in a closet covered by a 24"x 23" metal panel and wire shelves; therefore, not readily accessible. In addition, DPR observed subterranean termite damage, intact termite shelter tubes and mud in the accessible central rear area of the main attic with subfloor and not covered by insulation. However, due to the aggressive nature of Formosan termites it could not be concluded the damage and mud tubes were present at the time the OSCWIR's were issued.

It is beyond the expertise of this department and not within the scope of this report to provide any assessment of the extent of damages found which may require repair or to comment on the adequacy of previous repairs. Any such evaluation should be made by a qualified building expert.

NOTE: Because this Structural Pest Inspection may provide the basis for enforcement action against the Commercial Applicators involved (including, if applicable, the Designated Certified Applicators), and/or the Business Licenses, if there is additional information not contained herein or not previously provided, in writing, which the regulated person wishes this Department to consider in determining its enforcement response, it should be sent to the Departmental representative named below. To be considered, it must be postmarked within ten (10) days of the receipt of this report.

SUBMITTED BY Kristin Lenox-Rustin
Kristin Lenox-Rustin
Pesticide Investigator

Enclosure -graph

Case File #012220-36-01

cc: Gregory John, DCA, Imperial Pest Controller, Inc.
Chris Hynes, Branch Manager, Terminix Services, Inc.
Bill Robertson, General Manager, Hilton Head Exterminators
Kevin DeLorenzo, Structural Program Manager, DPR

Case File Number: 012220-36-01

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CLEMSON
UNIVERSITY

15 January 2021

William H. Robertson
Hilton Head Exterminators Inc.
37 Hunter Rd.
Hilton Head Island, SC 29926

RE: CATEGORY III INFORMATIONAL LETTER

Dear Mr. Robertson:

Reference your 2003-2005 subterranean termite pretreatment of the structure in reference to Kathy Rankin located at 11 Harrogate Drive, Hilton Head Island, SC. The Department of Pesticide Regulation inspected this structure on 22 January 2020; the findings of that inspection were detailed in an amended Structural Pest Inspection Report issued 24 June 2020. During this treatment, the following Standards for Prevention or Control of Wood Destroying Organisms were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act:

1) **Section 27-1085 (G) (2) (b):** "In the structure being treated, all wood contacting the ground must be of the proper grade of treated lumber as specified in the current edition of the appropriate Building Code. Where the proper grade of treated wood is not used in a ground contact situation the ground contact must be broken by setting the affected part of the building on a solid concrete base or other such base which is impervious to termites or must otherwise be altered so that there is no direct contact with the ground. Rigid foam-board insulation of polystyrene insulation or similar materials, including the various synthetic stucco systems, are susceptible to subterranean termite attack and must be treated the same as untreated wood in contact with the ground. These requirements cannot be met solely by treatment of the soil immediately adjacent to and in contact with the untreated wood, rigid-foam insulation, or similar material."

   * Hilton Head Exterminators failed to address EIFS ground contact.

Case File # 012220-36-01
License # CA007152

DEPARTMENT OF PESTICIDE REGULATION
511 Westinghouse Road Pendleton, SC 29670 864.646.2150 FAX 864.646.2179
Regulatory & Public Service Programs Public Service Activities

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It is a violation of the South Carolina Pesticide Control Act to fail to properly perform the Standards for Prevention or Control of Wood Destroying Organisms. It is hoped that this letter will encourage more caution with future subterranean termite treatments. This is an informational letter only and will not be tracked cumulatively against your enforcement history. If you have any questions regarding this or other matters, feel free to contact the department anytime.

Sincerely,

Ryan A. Okey
Pesticide Program Chief

cc: Kristin Lenox-Rustin, DPR
Kevin DeLorenzo, DPR
Regulatory Coordinator, DPR

Case File # 012220-36-01
License # CA007152

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	COURT OF COMMON PLEAS FOURTEENTH CIRCUIT
Kathleen M. Rankin, *Plaintiff*, v. Hilton Exterminators, Inc. and Imperial Pest Controllers, Inc., *Defendants*.	C.A. No. 2020-CP-07-00776 **Plaintiff's Motion to Alter or Amend Order Granting Summary Judgment to Hilton Head Exterminators, Inc.**

Plaintiff moves pursuant to Rule 50(e) to alter or amend the Order Granting Hilton Head Exterminators, Inc.'s Motion for Summary Judgment entered on August 31, 2022.

I. The Order's primary holding misapplies the summary judgment standard by disposing two key questions of fact as a matter of law.

All experts in this matter likely agree that Hilton Head Exterminators, Inc. would have violated pest control regulations if the following two questions of fact are answered in the affirmative:

1) The EIFS-to-grade issue existed at the Subject Property as of its last inspection (services expired on April 27, 2012); and
2) Hilton Head Exterminators, Inc. neglected to report that issue to the previous owner of the property.

Two different Department of Pesticide Regulation agents made reasonable inferences that it is probable that those two questions would be answered in the affirmative. One was inspector Kristen Lenox-Rustin. The other was Pesticide Program Chief Ryan A. Oakey.

The experts upon which Hilton Head Exterminators rely aver that the two questions of fact above have not been proven definitively. They do not deny that those questions of fact might could be answered in the affirmative. This is not good enough for an award of summary judgment.

In fact, it is most probable that the two above questions of fact are answered in the affirmative. The EIFS location has been the same since original construction. Grading conditions can change, but it is highly

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improbable that they were altered enough here, sometime after April 2012, such that this change was the root cause of the EIFS-to-grade issue that exists today. Further, the cost to fix the EIFS-to-grade issue is relatively low. Therefore, it is most probable that it would have been fixed if Hilton Head Exterminators had pointed it out to the previous owner. Its failure to do so resulted in massive hidden damage over the years:



Summary judgment is a drastic remedy that should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003). Even where there is no dispute as to the evidentiary facts, but only

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as to the conclusions or **inferences** to be drawn from them, summary judgment should be denied. *Id*. All ambiguities, conclusions, and **inferences** arising from the evidence must be construed most **strongly** against the moving party. *Id*.

Both Kristen Lenox-Rustin and Ryan A. Oakey are professionals with the Department of Pesticide Regulation. The Order's primary holding is tantamount to a finding that the inferences these two professionals made are per se unreasonable, even when viewed strongly in the light most favorable to Plaintiff.

II. The Order's secondary "Findings of Law" constitute legal error.

Your Honor did not rule on intervening negligence at the hearing. Yet the Order suggests that intervening negligence of others caused all of the damage to Plaintiff's property. HHE failed to prove this beyond a scintilla of doubt, as is required for summary judgment.

The Order also suggests that HHE's destruction of records is something that should be interpreted in its own favor, even at the summary judgment phase. Even if the DPR requires HHE to keep records for only five years for DPR purposes, HHE should know it can be liable for up to 8 years after its work at the property is complete. The inferences to be drawn from HHE's failure to retain records should be exactly the opposite of what the Order provides. The inferences that can be drawn from HHE's lack of records should be resolved strongly in Plaintiff's favor at summary judgment phase.

III. If the Court would still like to apply the summary judgment standard in the manner it has, Plaintiff respectfully requests the opportunity to take certain depositions.

"Because summary judgment is such a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Evening Post Publishing Company d/b/a The Post and Courier v. Berkeley County School District*, 392 SC 76, 708 S.E.2d 745 (2011).

Here, the affidavits that Hilton Head Exterminators relied on were submitted two days before the hearing of the underlying motion. Plaintiff

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respectfully requests the right to depose these experts to extract their opinions more fully before summary judgment is granted.

Plaintiff did not obtain affidavits from the Department of Pesticide Regulation agents who provided evidence in support of her claims for two reasons. The first was a good faith belief that evidence she had already provided was sufficient to surpass the summary judgment standard that would apply to her claims. The second reason was a belief that it would not be proper to request that a public official perform the work of an advocate. Hilton Head Exterminators apparently had no qualms asking a different public servant to advocate on its behalf. HHE provided this information two days before the hearing of the underlying motion. Plaintiff respectfully requests the opportunity to do the same.

IV. The Order's holding on Implied Warranty constitutes error of law

Your Honor made no oral ruling as to whether the law provides a cause of action in implied warranty against a pest controller. The Order provided that no such cause of action exists in South Carolina, despite that you did not rule as such. This finding of law is not necessary to dispose this motion.

Moreover, the Order's holding on implied warranty contradicts South Carolina law. The Order cites a quote within *Smith v. Breedlove*[1] where the Court is simply quoting what the circuit court said in that matter, and uses it to buttress a holding that the case does not support when read in its entirety.

Plaintiff incorporates her Memorandum in Opposition to the underlying motion by reference with respect to this issue (and all others). Particularly this rule:

> "As a general rule, it may be said that where a person holds himself out as especially qualified to perform work of a particular character (i.e., carries a license) there is an implied warranty that the work shall be done in a reasonably good and workmanlike manner and

[1] 661 S.E.2d 67, 377 S.C. 415 (S.C. 2008)

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> that the completed product or structure shall be reasonably fit for its intended purpose."

Waggoner v. Midwestern Development, Inc., 83 SD 57, 64, 154 NW2d 803, 807 (1967) (quoting 17A CJS *Contracts* § 329).[2] In other words, an implied warranty arises by law when a licensed professional performs work that it is licensed to do. Here, HHE carried a pest control license at all applicable times.

The Order also mentions the limited lifespan of pest control treatment materials, despite that Plaintiff does not allege that HHE failed to properly apply pest control treatment. Hilton Head Exterminators is simply trying to create new law, mentioning facts irrelevant to this motion, despite that making such new law is not necessary to dispose this motion. The Order's holding on implied warranty should not be snuck in through the back door as law of the case. Another pest controller Defendant still remains in the case.

V. The Order includes factual findings that are irrelevant to the disposition of the underlying motion.

The Order makes many "findings of fact" that were not argued and are not material to the disposition of HHE's motion. Hilton Head Exterminators now operates under the same ownership and has the same attorney as its co-defendant Imperial Pest Controllers, Inc., who is the last remaining Defendant to this case other than HHE. The Order should not be sneaking debatable findings of fact through the back door, locking them in such that they apply to Plaintiff's claims against the other party, especially if they are not material to the underlying motion.

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[2] *Waggoner* was a seminal case on implied warranty law. It has been cited with approval by the Supreme Court of South Carolina at least three times. *See Arvai v. Shaw*, 289 S.C. 161, 345 S.E.2d 715 (S.C. 1986); *Rutledge v. Dodenhoff*, 254 S.C. 407, 175 S.E.2d 792 (S.C. 1970); and *Rogers v. Scyphers*, 161 S.E.2d 81, 251 S.C. 128 (S.C. 1968)

Respectfully submitted,

CAPELL THOMSON, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellThomson.com
Charles W. Thomson (101471)
CThomson@CapellThomson.com
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Attorneys for Plaintiff

September 7, 2022
Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2020-CP-07-00776
KATHLEEN M. RANKIN,	)	
	)	
Plaintiff,	)	**DEFENDANT HILTON HEAD EXTERMINATORS, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND ORDER GRANTING SUMMARY JUDGMENT TO HILTON HEAD EXTERMINATORS, INC.**
	)	
v.	)	
	)	
PALATIAL HOMES, INC. A/K/A PALATIAL HOMES, LLC N/K/A PALATIAL HOMES DESIGN, LLC, *et al.*,	)	
	)	
Defendants.	)	
	)	

Defendant Hilton Head Exterminators, Inc. ("Defendant" or "HHE"), by and through its undersigned counsel, submits this Response in Opposition to Plaintiff's Rule 59(e) Motion to Alter or Amend this Court's August 31, 2022 Order granting summary judgment to HHE as to Plaintiff's claims for negligence and breach of implied warranty of workmanship. After reviewing HHE's Motion for Summary Judgment, the written briefs submitted by counsel for Plaintiff and HHE, the affidavits submitted by HHE, and hearing oral arguments presented by counsel, this Court correctly determined that no genuine issue of material fact exists, and HHE is entitled to judgment as a matter of law.

I. STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the . . . judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) (quoting *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 200 (1988)) (other citations omitted). "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (other citations omitted); *see*

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also Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider.") (citing *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999)). Reconsideration of a judgment after it is entered "is an extraordinary remedy which should be used sparingly." *Peake v. United States*, No. 1:20-cv-1450-CMC, 2020 WL 8483819, at *1 (D.S.C Dec. 17, 2020) (citing *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998)). "[M]ere disagreement does not support a Rule 59(e) motion." *Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993) (other citations omitted).

II. ARGUMENT

A. This Court's August 31, 2022 Order Correctly Applied the Summary Judgment Standard Based on the Undisputed Lack of Evidence Regarding HHE's Involvement at the Residence, Which Ended in April 2012, Approximately Six Years and Eight Months Before Plaintiff Purchased It.

In her Motion to Alter or Amend, Plaintiff argues that HHE would have violated South Carolina pest control regulations if EIFS-to-ground contact existed at the residence at issue (the "Residence") when HHE's services expired on April 27, 2012, and if HHE neglected to report that issue to prior owners of the Residence. (Mot. Alter p. 1.) Plaintiff asserts that it is "most probable" that EIFS-to-ground contact existed, and that HHE failed to report this issue to prior owners. *Id.* Plaintiff also asserts that two Department of Pesticide Regulation ("DPR") employees, Pesticide Investigator Kristin Lenox-Rustin and Assistant Director Ryan Okey, have also "made reasonable inferences" supporting Plaintiff's assertions in a DPR inspection report and a letter issued by Mr. Okey's office. *Id.*

Plaintiff's assertions are fatally flawed for several reasons. First, it is undisputed that no records exist regarding HHE's treatments and inspections at the Residence, except for one building department record ***pre-dating*** construction of the Residence. Accordingly, it is

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impossible to determine what conditions existed at the residence during HHE's termite warranty that ended on April 27, 2012. Second, even if EIFS-to-ground contact existed during HHE's warranty, which HHE disputes, Plaintiff completely ignores the possibility that ***the prior owners elected to waive that condition and signed a valid waiver which was contained in HHE's records***. Once again, it is impossible to make such a determination without utter speculation because HHE's records were maintained and then properly destroyed after a period of five years. (HHE Memorandum in Support of Its Motion for Summary Judgment, hereinafter "Memorandum," p. 5-6, 8.) HHE submitted affidavits from HHE Manager Brian DeChirico, DPR Structural Manager Kevin DeLorenzo, and independent entomology expert Dr. Maxcy Nolan, III, regarding HHE's proper maintenance and destruction of records following the cancellation of termite services on April 27, 2012. (Memorandum, Exhibits A, H, and I.) Mr. DeLorenzo and Dr. Nolan also testified that it is impossible to determine conditions at the Residence and whether a waiver was signed by prior owners due to the lack of available records. (Memorandum, Exhibit H at ¶ 14, Exhibit I at ¶ 8.)

Lastly, Plaintiff assumes that the June 24, 2020 inspection report, prepared by Investigator Lenox-Rustin more than eight years after the cancellation of HHE's termite warranty, and the DPR "informational letter" issued by Assistant Director Okey's office support Plaintiff's claims that certain conditions existed at the Residence and that HHE was somehow negligent with respect to prior owners. However, Plaintiff never deposed or sought an affidavit from Investigator Lenox-Rustin to ascertain the limitations of her findings or an explanation of what purpose an "informational letter" serves. Nor has Plaintiff deposed or sought an affidavit from Assistant Director Okey to learn that his office sends out letters as an administrative function, and that Mr. Okey has no substantive knowledge of the DPR investigation in this case. Plaintiff has not taken a single deposition in the case, and Plaintiff did not produce any affidavits

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in opposition to HHE's Motion for Summary Judgment. In contrast, HHE produced an affidavit from Mr. Kevin DeLorenzo, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, which explains the limitations of DPR's findings in this matter as to HHE, as well as the training purpose of an "informational letter" for pest control operators. Mr. DeLorenzo testified that based on the lack of available records, he would have also agreed not to send a letter to HHE. Mr. DeLorenzo's affidavit also addresses DPR records retention regulations at the time of HHE's warranty, the challenges posed by termites in the Hilton Head area, and the need for termite booster treatments, among other topics relevant to HHE. (Memorandum, Exhibit H.)

Based on the undisputed lack of records, and the affidavits submitted by Mr. DeLorenzo and Dr. Nolan, there are no reasonable inferences that can be drawn in Plaintiff's favor regarding her negligence or breach of implied warranty of workmanship claims, even in the light most favorable to Plaintiff. If DPR, the state agency responsible for regulating the pest control industry in South Carolina, and Dr. Nolan, an independent entomology expert serving in numerous cases in South Carolina, have provided uncontradicted testimony stating that it is impossible to determine conditions at the Residence during HHE's warranty and whether any conditions were waived by prior owners, it is equally impossible for a jury to make such a determination. Any determination by a jury would be based solely on speculation as to what conditions existed and what information was contained in the destroyed HHE records. Accordingly, this Court correctly ruled that HHE is entitled to summary judgment on both of Plaintiff's claims.

B. This Court's Findings Regarding Intervening or Superseding Negligence in Its August 31, 2022 Order Did Not Constitute Legal Error.

Plaintiff's Motion to Alter or Amend baldly asserts that HHE failed to prove that the intervening or superseding negligence of prior owners caused termite damage to the Residence

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(Mot. Alter p. 3), yet Plaintiff does not offer any support for this argument. HHE's Motion for Summary Judgment was supported by the affidavits of Mr. DeLorenzo, DPR Structural Program Manager, and Dr. Nolan, an independent entomology expert, on the issue of intervening or superseding negligence. Both affidavits addressed the six year and eight-month period after the cancellation of HHE's termite warranty in April 2012. It is undisputed that the Residence went uninspected and untreated for termites for this extensive period of time, prior to Plaintiff's "as is" purchase in December 2018.

Mr. DeLorenzo testified that if the Residence was left untreated and uninspected for termites for six years and eight months, it "significantly increased the likelihood that the structure could be infested by subterranean termites." (Memorandum, Exhibit H at ¶ 22.) Dr. Nolan's testimony went even farther: "It is my professional opinion to a reasonable degree of scientific certainty that the termite infestation and damage discovered at 11 Harrogate Drive likely began at some point during the period of six (6) years and eight (8) months prior to Plaintiff Kathleen Rankin's purchase of the residence when the residence was not inspected or treated for termites." (Memorandum, Exhibit I at ¶ 13.) Plaintiff failed to counter the opinions of these experts in her Response in Opposition to HHE's Motion for Summary Judgment, and Plaintiff has failed to produce any expert opinions, affidavits, or other evidence in support of its argument on this issue. Therefore, this Court's findings regarding intervening or superseding negligence should not be altered.

Plaintiff has now also decided to argue that this Court's Order was somehow incorrect because the Order suggests that HHE's destruction of records should be interpreted in HHE's favor. (Mot. Alter p. 3.) Plaintiff claims she is entitled to inferences regarding the lack of records, even though it is undisputed that the records were properly destroyed five years after HHE cancelled the termite warranty on the Residence. Plaintiff neglected to raise this issue in

her Response in Opposition to HHE's Motion for Summary Judgment, or during the hearing for HHE's Motion for Summary Judgment; therefore, she cannot raise this issue for the first time in her Motion to Alter or Amend. *Commercial Credit Loans, Inc.*, 334 S.C. at 186, 512 S.E.2d at 129. Plaintiff has waived her right to the Court's consideration of this issue.

C. Plaintiff Has Waived Her Right to Argue that She is Entitled to Take the Depositions of Defense Experts.

Plaintiff argues that summary judgment should not have been granted to HHE without Plaintiff's "full and fair opportunity to complete discovery." (Mot. Alter p. 3.) She further states that she only learned of the affidavits from Mr. DeLorenzo and Dr. Nolan two days before HHE's Motion for Summary Judgment hearing on August 15, 2022. As a result, she now requests the right to depose both defense experts.

Once again, Plaintiff failed to raise this issue in her Response in Opposition to HHE's Motion for Summary Judgment, or during the hearing for HHE's Motion for Summary Judgment. Plaintiff has thus waived her right to consideration of this issue. Furthermore, it is disingenuous to argue that Plaintiff has not had a full and fair opportunity to engage in discovery when: (1) Plaintiff has taken no depositions in the case since her Amended Complaint was filed on October 19, 2020; (2) Plaintiff has been aware of Dr. Nolan's involvement in the case on behalf of HHE since his attendance at a site inspection on February 1, 2022; and (3) Mr. DeLorenzo and Dr. Nolan were identified as experts in supplemental discovery responses served on Plaintiff on August 3, 2022, almost two weeks before HHE's Motion for Summary Judgment hearing. Plaintiff made no requests to depose these experts after their identification in discovery. Plaintiff's decision not to take any depositions was a "strategic decision[ ] for which the Plaintiff bears responsibility." *Ingle ex rel. Estate of Ingle v. Yelton*, 439 F.3d 191, 198 (4th Cir. 2006) (internal citations omitted). HHE's subsequent submission of affidavits from Mr. DeLorenzo

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and Dr. Nolan to explain relevant documents and present expert opinions was entirely appropriate in support of HHE's Motion for Summary Judgment.

D. Under South Carolina Law, Plaintiff's Claim for Breach of Implied Warranty of Workmanship Does Not Apply to Pest Control Companies or Chemical Treatments with Limited Lifespans, and the Court's Written Order on this Issue Constitutes Judge Price's Final Order.

Plaintiff asserts that this Court's August 31, 2022 Order includes legal rulings Judge Price did not make orally during HHE's Motion for Summary Judgment hearing. Plaintiff then argues that this Court's holding on Plaintiff's claim for breach of implied warranty of workmanship contradicts South Carolina law. (Mot. Alter p. 4.)

"The South Carolina Supreme Court has held that under Rule 58 'the written order is the judge's final order' and until entry of the written order the judge is free to change his mind." *Brailsford v. Brailsford*, 380 S.C. 443, 451-52, 669 S.E.2d 342, 346 (Ct. App. 2008) (quoting *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001)) (other internal citations omitted). "An oral order of the court is not final and binding until reduced to writing, signed by the judge, and delivered for recordation." *Brailsford*, 380 S.C. at 452, 669 S.E.2d at 346 (citing *Case v. Case*, 243 S.C. 447, 134 S.E.2d 394 (1964)). Pursuant to South Carolina law, Judge Price's written Order finding that breach of implied warranty of workmanship does not apply to pest control companies is the final order of the court, even though Judge Price did not make an oral ruling on that issue at HHE's Motion for Summary Judgment hearing. This Court considered the written briefs submitted by the parties and all legal arguments contained therein prior to issuing its Order.

In her Motion to Alter or Amend, Plaintiff cites the *Waggoner* case, a South Dakota case, and several South Carolina Supreme Court cases which allegedly support the position that a breach of implied warranty of workmanship applies to any "licensed professional perform[ing]

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work that it is licensed to do." (Mot. Alter p. 5.) All of the cases cited by Plaintiff involve builders of new homes, not pest control operators such as HHE, which are hired to treat and inspect homes for termites. As discussed in HHE's Memorandum, South Carolina law has recognized the claim of breach of implied warranty of workmanship as to builders of new homes. South Carolina has not yet recognized such a claim for pest control companies that provide services or chemical treatments with limited lifespans. (Memorandum p. 9-10.) Even if such a claim was recognized in South Carolina, which HHE denies, ***the lack of records in this case precludes the determination of whether any warranty was breached by HHE***. Plaintiff also argues that this Court's holding on Plaintiff's breach of implied warranty of workmanship claim "should not be snuck in through the back door" because another pest control company, Imperial Pest Controllers, Inc. ("IPC"), is the last remaining defendant in the case. (Mot. Alter p. 5.) This argument is without merit, as Plaintiff did not assert a breach of implied warranty of workmanship claim against IPC in her Amended Complaint. This Court correctly granted summary judgment to HHE on Plaintiff's breach of implied warranty of workmanship claim, and the Court's ruling should not be altered.

E. This Court's Factual Findings Are Relevant to the Dismissal of HHE and Have No Bearing on the Last Remaining Defendant in the Case.

Plaintiff argues that this Court's Order also "sneaked" in facts not relevant to HHE's Motion for Summary Judgment, which may benefit the sole remaining defendant in the case, IPC. (Mot. Alter p. 5.) Plaintiff's argument is not only baseless but fails to point to any specific factual findings contained within this Court's Order. HHE and IPC were two separate entities at all times relevant to this lawsuit. They provided different services at the Residence at different times, and the claims asserted by Plaintiff against HHE and IPC are not identical. HHE's Memorandum only briefly mentioned that IPC performed a CL-100 inspection at the Residence

prior to Plaintiff's purchase. No other facts specific to IPC were discussed by HHE in its Memorandum, and no such facts were included in this Court's August 31, 2022 Order. Plaintiff's vague argument is not a valid basis to alter the Court's Order. This is also another issue raised for the first time by Plaintiff and not subject to review on a Motion to Alter or Amend.

III. CONCLUSION

For the reasons set forth above, Defendant HHE respectfully requests that the Court deny Plaintiff's Motion to Alter or Amend this Court's August 31, 2022 Order.

KERNODLE COLEMAN

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September 14, 2022

Charleston, South Carolina

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State of South Carolina)
)
County of Beaufort)

Court of General Sessions
2020-CP-07-00776

Kathleen M. Rankin v. Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC, Hilton Head Exterminators, Inc., et al.

Transcript of Record

August 15, 2022
Beaufort, South Carolina

B E F O R E:

The Honorable Bentley D. Price, Judge.

A P P E A R A N C E S (All present by video or telephone):

Charles W. Thomson
Attorney for the Plaintiffs

Stephen M. Kozick
Attorney for the Defendant

Elana Friedman
Transcriber

THE COURT: To resolve number 10, Kathleen Rankin v. Palatial Homes.

This is Hilton Exterminators' motion for summary judgment.

MR. KOZICK: Yes, sir, Your Honor. Good afternoon. My name is Steve Kozick. I represent Hilton Head Exterminators. Mr. Charlie Thomson is appearing for the plaintiff in this matter. This is our motion for summary of judgment.

THE COURT: All right.

MR. KOZICK: This case involves plaintiffs' purchase of a house in the Wexford subdivision on Hilton Head Island and her subsequent discovery of construction defects, water intrusion, and termite damage.

We go way back to March of 2003. My clients, Hilton Head Exterminators, performed the pre-treatment in the dirt before construction started two years later. They then had a termite warranty on the property from 2005 to April of 2012. At that time the prior homeowner elected not to renew it, and that was our last involvement at the property.

It's also important to note, Your Honor, that it's undisputed that other than that one pre-treatment record of the dirt, as in the town's building file, no other records regarding my client's involvement at the property exist. They were maintained according to the DPR records maintenance rules and destroyed in 2017. So we really don't know what the

conditions were or what things happened during my client's involvement with the property between 2003 and 2012.

After the prior homeowners elected not to renew the warranty, the property was left untreated and uninspected for termites for a period of roughly six years and eight months before plaintiff purchased the residence. I think that's also undisputed in the case that nobody's been able to find any evidence that it was ever treated by anybody else. This property was sitting down in the marsh untreated for termites.

In December of 2018, plaintiff purchased the residence for 1.24 million as is, with no home inspection report and an incomplete seller disclosure report. Shortly after she moved in, she discovered construction defect issues, some water intrusion and termite issues.

In January of 2020, about a little more than a year after she purchased the house, she asked the Department of Pesticide Regulation at Clemson University, or DPR, to come conduct an investigation regarding a CL-100 that was done by another party and the termites there. So in January of 2020, DPR investigator, Kristin Lenox-Rustin, came out and assessed the termite issues of the property.

Plaintiff had currently hired Terminix, who is not a party to this case, and Investigator Lenox-Rustin issued a DPR warning letter to Terminix for not addressing the east stucco deground contact at the property, along with a termite

germicide usage violation.

My client, Hilton Head Exterminators, was issued an informational letter by DPR since it had a prior warranty on the property years back. And according to the investigator that -- or the affidavit we've obtained from Investigator Lenox-Rustin's boss, Mr. Kevin DeLorenzo, who's the structural program manager at DPR, it is said that informational letters are simply issued as training tools, but they don't have solid evidence that as controlled company committed some error. The reality is DPR doesn't know what Hilton Head Exterminators did out there because the records no longer exist. So they can't tell whether east ground stucco existed or whether that had been waived because all of those documents are gone. And Mr. DeLorenzo has also testified that the destruction of their records was appropriate based on the time they maintained them.

So as a result of this, the plaintiff has filed negligence and breach of implied warranty of workmanship claims against Hilton Head Exterminators.

I would say, once again, Your Honor, we have affidavits from Mr. DeLorenzo, who is the investigator's boss, for the purpose of explaining what an informational letter is, for the purpose of explaining what DPR can determine when they come on scene. And as I've said, there's no evidence that exists regarding the condition of the property at the time Hilton

Head Exterminators was involved with it, whether any of the conditions were waived or whether there were any issues with the termite pre-treatment that was done back in 2003.

In Mr. DeLorenzo's affidavit, I'm not going to go into this in any detail, but he explains that you could only test for termiticide levels in the ground after so many months and then it's just gone; you can't test for it. And there have been no claims that the pre-treatment was in any way deficient.

THE COURT: Did anyone occupy the home from 2012 to 2019 when she purchased it, as is?

MR. KOZICK: There were prior owners, yes, sir. And I believe, based on the plaintiff's testimony in this case, at least one of the prior owners, maybe the one that sold to her, had represented that the property was vacant for periods of time. I don't know if they were using it as a rental property or allowing other family members to use it or anything like that.

THE COURT: Okay.

MR. KOZICK: But basically I want to address something in the plaintiff's response because I think it confuses the roles. Plaintiff's response has indicated that Ms. Lenox-Rustin, the investigator, has determined there was a violation at the property. And that the letter that was ultimately issued by Mr. Ryan Okey, who's actually the assistant director

of DPR, he's one of the big leagues up there, he must have agreed with her. And that's just simply not process. The investigator's assigned to handle the case. She reports to Mr. DeLorenzo, who we have the affidavit from. He signs off on her report, and he thought it was fine to issue the informational letter just based on the fact that there no records available.

He also testified in his affidavit, he would have been fine sending nothing to these people because he has no idea what happened out there. Nobody does. And he was very blunt in his affidavit by saying, the investigator could only see what they see when they go out there, and that was in January of 2020, more than eight years after Hilton Head had been out there.

And with Mr. Okey, his -- he has no involvement in the process other than his office is the one that sends out the letters. He's not familiar with the details of the case. Once the report comes to Mr. DeLorenzo, Mr. DeLorenzo approves it and says, yes, the letters can go out, whatever type of letters they are. They go to Mr. Okey's office and they're distributed in that forum.

There have been no opposing affidavits from plaintiff countering or refuting any of the testimony from Mr. DeLorenzo or the other witness or expert witness we had who submitted an affidavit, Dr. Maxcy Nolan, who I'm sure the Court is familiar

with. He's frequently served as a termite expert in cases all over South Carolina. More often on the plaintiff's side than the defense side. But he agreed that the structural records by Hilton Head Exterminators was appropriate. And as a matter of fact, they held on to them several years longer than they had to under the current DPR rules. And he found no evidence that Hilton Head Exterminators violated any standard of care, either to a prior owner or to Ms. Rankin seven years later. Because of the lack of the records in the case, there's just no way to determine what was waived, what conditions existed, and what Hilton Head Exterminators may or may not have done to the property.

THE COURT: Mr. Thomson?

MR. THOMSON: Yes, Your Honor. I think this case is not quite as good it might sound from Mr. Kozick's recitation of it. That, I think, all of the experts in here would agree that the failure to inform the owner that a stucco degrade or a (indiscernible) degrade condition existed which violated a pest control regulation. What their experts are saying is that, well, nobody can prove definitively that the stucco degrade condition existed up till 2012 when they left the property. That's just a question of fact, I think. It's more likely than not that it did exist. There's no evidence suggesting that it did not. They're basically just saying, well, there's no record, so I'm just going to not jump on the

limb and say they're negligent. But it's the battle of two experts with defining the facts in between. And that's the province of a jury, not a (audio interference).

THE COURT: Well, is your argument is that Hilton Head Exterminators should have made the owner aware of any defect that existed in 2012?

MR. THOMSON: Correct. Part of the duty of a pest control -- or not my client, but the previous owner. So part of the duty of a pest controller, out there doing inspections, they're spraying, if they see a condition that is conducive to bring termites into the house, they're supposed to notate that. And in fact, I've used their very expert, Maxcy Nolan, as a plaintiff's expert against the pest controller making that same exact point. The reason --

THE COURT: But that's not to say, the house (indiscernible) for something that happened -- I mean, to notify somebody that -- at the closure of the contract in 2012, they're not to keep up with every subsequent homeowner and say, oh, yeah, by the way, back, you know, whenever I had a contract with Creedy and Sumner (phonetic), I was just going to let you know this is what I've done. But you don't have that whole responsibility.

MR. THOMSON: No, Your Honor, and we're not arguing that. Their breach of duty happened in 2012 to the previous owner, and the duty they owed the previous owner extends to the

current. It's a foreseeability issue that the property might be sold. There's case law on that, Rutledge v. Dunlap (phonetic).

So that's when the breach occurred, 2012. And by law, the duty that they owed the previous owner is a duty they owe to the current owner.

THE COURT: That -- will they hear something to say that they asked Hilton Head whether they performed the duties and (indiscernible) some type of assurance that it had been done?

MR. THOMSON: They have not.

THE COURT: All right. (Indiscernible).

MR. THOMSON: Thank you, Your Honor.

THE COURT: (Indiscernible).

(End of Transcript of Record)

CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Beaufort)

I, ELANA FRIEDMAN, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 15th day of August, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 19, 2023



Elana Friedman
Transcriber

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No.: 2023-000117

Kathleen M. Rankin, Appellant,

v.

Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Nov 20 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No.: 2023-000117

Kathleen M. Rankin, Appellant,

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of which Hilton Head Exterminators, Inc., is the Respondent.

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STATEMENT OF ISSUES ON APPEAL

I. DID THE LOWER COURT ERR IN FINIDNIG THAT "NO EVIDENCE EXISTS" TO SUPPORT APPELLANT'S NEGLIGENCE CLAIM?

II. DID THE LOWER COURT ERR IN FINDING THAT RESPONDENT HILTON HEAD EXTERMINATORS, INC. DID NOT OWE APPELLANT A DUTY OF CARE?

III. DID THE LOWER COURT ERR IN FINDING—AS A MATTER OF LAW—THAT APPELLANT'S DAMAGES WERE CAUSED BY THE INTERVENING NEGLIGENCE OF PRIOR OWNERS?

IV. DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT AS TO APPELLANT'S IMPLIED WARRANTY CLAIM?

STATEMENT OF THE CASE

This appeal stems from a negligence action brought by Appellant Kathleen M. Rankin against Respondent Hilton Head Exterminators, Inc. ("HHE") for its failure to identify and/or address conditions present at her home, which posed a high-risk pathway for termite activity, and later caused and/or contributed to termite infestation of the property. (Second Am. Compl. R. p. 85, at pp. 91-103).[1] In addition to her negligence claim, Ms. Rankin asserts that HHE breached its implied warranty of workmanship as to the inspections it carried out on the property. (R. at p. 103). She does not claim that HHE was negligent in its application of chemical pesticide treatment.

A central issue in this appeal is whether the lower court erred in granting HHE's Motion for Summary Judgment where the parties presented conflicting evidence—from different employees at Department of Pesticide Regulation—as to whether HHE failed to address a high-risk pathway for termite activity during its inspections of the property in violation of the South Carolina Pesticide Control Act.

Motion for Summary Judgment

At the hearing on HHE's Motion for Summary Judgment, Ms. Rankin presented a report authored on June 24, 2020 by Ms. Kristen Lenox-Rustin, a field investigator for Clemson University's Department of Pesticide Regulation ("DPR"), based on Ms. Lenox-Rustin's first-hand inspection of the residence in January of 2020. (Report of Structural Pest Inspection, R. pp. 246-252; Memo in Opp. to Motion for Sum. Judgment, R. pp. 231-254; Hearing Tr., R. pp. 270-279). Ms. Lenox-Rustin found that HHE had failed to address conditions where Exterior

[1] HHE provided pre-treatment for the 2003-2005 original construction of the home, followed by regular inspections and treatments up until at least April 2012. Ms. Rankin closed on the purchase of the Residence on December 18, 2018.

Insulation Finishing System (EIFS) stucco was in contact with the ground and that allowing said condition was a violation of the South Carolina Pest Control Act. (Report, R. p. 248).

In addition to the report, Ms. Rankin presented an informational letter from Mr. Ryan Okey, the Pesticide Program Chief at DPR, to William Robertson of HHE, dated January 15, 2021. (Letter, R. pp. 253-254). Mr. Okey's letter expressly referenced Investigator Lenox-Rustin's report and stated, "[T]he following standards for Prevention of Control of Wood Destroying Organisms [Section 27-1085(G)(2)(B)] were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act." (R. at Ibid.). The letter further stated, "Hilton Head Exterminators failed to address EIFS ground contact. It is a violation of the South Carolina Pesticide Control Act to fail to properly preform the Standards for Prevention or Control of Wood Destroying Organisms. It is hoped that this letter will encourage more caution with future subterranean termite treatments." (R. at Ibid.)

Despite Ms. Lenox-Rustin's first-hand observation that EIFS stucco was in contact with the ground, and her finding that HHE failed to address this issue in violation of the South Carolina Pesticide Act, and the subsequent letter issued by Mr. Okey affirming the same, Respondent HHE argued, "There is no genuine issue of material fact as to Plaintiff's negligence/gross negligence because no evidence exists regarding HHE's termite pretreatment and subsequent warranty inspections," and, "No evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operation." (Resp. Memo in Support of Summ. Judgment, at R. p. 161).

In support of its Motion for Summary Judgment, HHE submitted an affidavit from Mr. Kevin DeLorenzo, Structural Program Manager for DPR, which acknowledged Ms. Lenox-Rustin's findings and Mr. Okey's letter, but then stated he could have also arrived at a different

conclusion, stating, "As DPR Structural Program Manager, I would have ***also*** agreed not to issue an informational letter in this case due to the lack of available records." [Emphasis added] (Affidavit, at R. pp. 197-198). Mr. DeLorenzo's affidavit states that HHE destroyed records relating to services it provided at the home, but that such destruction was not a violation of DPR regulations for records maintenance. (Affidavit, at R. p. 198, para. 16). Mr. DeLorenzo, who is not a qualified legal expert, then opined, "From a regulatory standpoint, HHE does not owe Plaintiff Kathleen Rankin a duty or standard of care because HHE cancelled its warranty on the property six (6) years and eight (8) months prior to her purchase of the property." (Affidavit, at R. p. 199, para 18).

Mr. DeLorenzo's affidavit does not refute the fact that Ms. Lenox-Rustin observed EIFS stucco in contact with the ground—itself evidence that HHE had not properly addressed this high-risk pathway for termite activity during its inspections. Additionally, his affidavit does not withdraw nor does it amend Ms. Lenox-Rustin's report or Mr. Okey's letter. Rather, Mr. DeLorenzo appears to draw a different conclusion than Ms. Lenox-Rustin and Mr. Okey based on his understanding of the facts.[2]

After submission of briefs by both parties and a hearing on HHE's Motion for Summary Judgment, the lower court eventually issued an Order granting HHE's Motion, finding that (1) No evidence exists regarding the conditions at the residence, whether conditions were waived, or any alleged deficiencies in HHE's pretreatment and inspection at the residence, (2) Plaintiff's claim fails as HHE did not owe Plaintiff a duty of care, and—that as a matter of law—Plaintiff's damages were caused by the intervening negligence of prior owners, and that (3) Summary Judgment on Plaintiff's Implied Warranty claim was appropriate because Plaintiff had failed to

[2] Unlike Ms. Lenox-Rustin, Mr. DeLorenzo did not perform the field inspection of the property nor personally observe that EIFS stucco was in contact with the ground.

submit evidence in support of the claim. (Amended Order, R. pp. 20-29; Memo in Support, R. pp. 155-230; Memo in Opposition, R. pp. 231-254; Hearing Tr., R. pp. 270-279).

Relevant Procedural History

On March 26, 2020, Ms. Rankin initiated the present lawsuit in Beaufort County, South Carolina, against the general contractor and several subcontractors who constructed and/or provided services to a home she purchased in the Wexford Plantation neighborhood of Hilton Head Island. (Summons and Compl., R. pp. 30-44). On October 19, 2020, Ms. Rankin filed an Amended Summons and Complaint, wherein she named Hilton Head Exterminators, Inc. as a Defendant, asserting claims against it for negligence and breach of implied warranty of workmanship. (R. pp. 45-72). On December 8, 2020, Hilton Head Exterminators, Inc. filed its Answer to the Amended Complaint, generally denying the allegations and raising various affirmative defenses. (R. pp. 73-84).

On April 22, 2021, Ms. Rankin filed a Motion for Leave to file a Second Amended Complaint for purposes of adding an additional defendant to the lawsuit. (R. pp. 122-152). HHE and the other named defendants consented to the amendment by way of Consent Order, entered on May 17, 2021. (R. pp. 4-8).

On May 20, 2021, Ms. Rankin filed her Second Amended Complaint. (R. pp. 85-111). HHE filed its Answer to Plaintiff's Second Amended Complaint on May 19, 2021, again generally denying the negligence and breach of implied warranty claims against it and raising various affirmative defenses. (R. pp. 112-121). On June 12, 2022, HHE filed a Motion for Summary Judgment, simply stating, "There is no genuine issue as to any material fact for the negligence and breach of implied warranty of workmanship causes of action asserted by Plaintiff against Defendant." (R. pp. 153-154). HHE did not attach any affidavits in support of its motion

at the time of its filing as required by Rule 6(d), SCRCP.

On August 11, 2022, four days before the scheduled motions hearing, HHE filed its Memorandum in Support of its Motion for Summary Judgment, attaching certain affidavits in support of its Motion. (R. pp. 155-230). On August 12, 2022, Ms. Rankin filed her Memo in Opposition to Motion for Summary Judgment. (R. pp. 231-254).

On August 15, 2022, a hearing on HHE's Motion for Summary Judgment was held before the Honorable Bentley D. Price in Beaufort County, South Carolina. (Transcript, R. pp. 270-279). On August 31, 2022, the Court entered an Order Granting Hilton Head Exterminators, Inc.'s Motion for Summary Judgment. (Order, R. pp. 9-19).

On September 7, 2022, Ms. Rankin filed a Motion to Alter or Amend Order Granting Summary Judgment (R. pp. 255-260). On September 14, 2022, HHE filed its Response in Opposition to Plaintiff's Motion to Alter or Amend. (R. pp. 261-269). On December 28, 2022, the Court entered an Amended Order Granting Hilton Head Exterminators, Inc.' Motion for Summary Judgment. (R. pp. 20-29)

On January 25, 2023, Ms. Rankin timely filed her Notice of Appeal. This Appeal follows.[3]

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c)." *Turner v. Milliman*, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "In a negligence case, where the burden of proof is a preponderance of

[3] As set forth in the Complaint, Appellant brought construction defect claims against the contractors who constructed her house and brought failure to disclose claims against those who sold the house to her. All of the parties have settled with Appellant. The only parties remaining at the time of the Motion for Summary Judgment were two pest control contractors, HHE and Imperial Pest Controllers, Inc. Imperial Pest Controllers, Inc. provided subsequent pest control and CL100 services. Imperial did not join HHE in its Motion for Summary Judgment.

the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment." *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011). "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). "[S]ummary judgment is a 'drastic remedy' which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Schmidt v. Courtney*, 357 S.C. 310, 318, 592 S.E.2d 326 (Ct. App. 2003), citing *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003) (other citations omitted).

"Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Turner v. Milliman*, 392 S.C. at 122, 708 S.E.2d at 769. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 796, 377 S.C. 643 (2008). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Id*. See also, *MacFarlane v. Manly*, 264 S.E.2d 838, 840, 274 S.C. 392, 395 (1980), stating, "Summary Judgment should be granted only where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable. This is true even when there is no dispute as to the evidentiary facts if there is a dispute as to the conclusion to be drawn therefrom."

"At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *Allwin v. Russ Cooper Assocs., Inc.,* 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019) (citations omitted).

ARGUMENT

I. The Court erred in finding that "no evidence exists" to support Appellant's negligence claim against Respondent Hilton Head Exterminators, Inc.

The lower court granted HHE's Motion for summary judgment on the stated ground that "no evidence exists regarding conditions at the residence, whether conditions were waived, or any alleged deficiencies in HHE's pretreatment and inspection at the residence." (Order at R. p. 23). This finding is both factually incorrect and unsupported by the record.

First, as set forth above, Appellant presented a Report of Structural Pest Inspection from Department of Pesticide Regulation Investigator Kristen Lenox-Rustin, documenting Ms. Lenox-Rustin's first-hand observations that EIFS stucco was in contact with the ground, thereby presenting a high-risk pathway for termite activity. (Report, R. pp. 246-252). HHE readily admits that it provided a termite warranty on the home from June 1, 2005 to April 27, 2012, stating "HHE provided a termite warranty for prior owners of the Residence from June 1, 2005, to April 27, 2012." (Memo in Supp. of Summ. Judgment, at R. p. 155). "In a negligence case, where the burden of proof is a preponderance of the evidence standard, the non-moving party must only submit a mere scintilla of evidence to withstand a motion for summary judgment." *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011). Here, the documented first-hand observation by a DPR investigator that EIFS stucco was in contact with the ground is more than a mere scintilla of evidence that HHE failed to address this issue during its engagement at the property from June 1, 2005 to April 27, 2012. As the report expressly states, "Hilton Head Exterminators failed to address EIFS ground contact." (R. at p. 248). At minimum, the documented observations contained in the report undermine the lower court's conclusion that "no evidence exists regarding conditions at the residence." (Order, at R. p. 23).

Second, as noted above, Ms. Rankin also presented an informational letter from Mr. Ryan Okey, the Pesticide Program Chief at DPR, to William Robertson of HHE, dated January 15, 2021. (R. pp. 253-254). Mr. Okey's letter expressly referenced Ms. Lenox-Rustin's report and stated, "[T]he following standards for Prevention of Control of Wood Destroying Organisms [Section 27-1085(G)(2)(B)] were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act." (R. at p. 253). The letter further stated, "Hilton Head Exterminators failed to address EIFS ground contact. It is a violation of the South Carolina Pesticide Control Act to fail to properly preform the Standards for Prevention or Control of Wood Destroying Organisms. It is hoped that this letter will encourage more caution with future subterranean termite treatments." (R. pp. 253-254).

Mr. Okey's letter, like Ms. Lenox-Rustin's report, offers more than a mere scintilla of evidence that HHE was negligent in failing to address the EIFS stucco ground contact condition during its many years of engagement at the property. The lower court's conclusion that "no evidence exists" regarding any alleged deficiencies in HHE's inspections at the residence is directly undercut by the Ms. Lenox-Rustin's report and Mr. Okey's letter, both of which identify the violative conditions at the property and note HHE's failure to address them.

Third, HHE's inability to produce documentation demonstrating whether any prior owners waived the EIFS-ground-contact condition at the residence has no bearing on summary judgment, particularly where HHE destroyed all of its records relating to services it rendered at the property. The fact that HHE may have been statutorily authorized to destroy its records, does not preclude it from saving documentation, which could later absolve it from liability. While HHE's failure to follow best practices as to records retention may have a bearing on its ability to defend itself, it has zero bearing on a motion for summary judgment, where "[t]he evidence and

all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). HHE should not be rewarded where it is the architect of its own dilemma.

II. The lower court erred in finding that HHE did not owe Appellant a duty of care.

The lower court granted HHE's Motion for Summary Judgment, finding—as a matter of law—that the HHE did not owe Appellant a duty of care. (Order at R. p. 25). As a basis for this decision, the court reasoned, "there is no genuine issue of material fact as to Plaintiff's negligence/gross negligence claim because no evidence exists regarding HHE's termite pretreatment and subsequent warranty inspections." (Order at R. p. 26). Again, the lower court's analysis disregards three things: First, HHE readily admits that it provided a termite warranty for prior owners of the Residence from June 1, 2005 to April 27, 2012. (Memo in Support, at R. p. 155). Second, Appellant presented a Report of Structural Pest Inspection from DPR Investigator Kirsten Lenox-Rustin documenting her first-hand observations that EIFS stucco was in contact with the ground; evidence that HHE had failed to address this issue at any time during its six year and eleven-month involvement with the property. This official DPR report—which has neither been withdrawn nor amended since—expressly states, "Hilton Head Exterminators failed to address EIFS ground contact." (R. at p. 248). Third, Ms. Rankin presented a letter from the Pesticide Program Chief at DPR, expressly affirming Investigator Lenox-Rustin's findings and advising HHE that "standards for Prevention of Control of Wood Destroying Organisms were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act." (R. pp. 253-254). This letter, which has also neither been amended nor withdrawn, expressly states, "Hilton Head Exterminators failed to address EIFS ground contact." (R. at Ibid.)

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 796, 377 S.C. 643 (2008). Respondent's contention that "no evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control" is directly contradicted by the aforementioned report and letter. (Order, R. at p. 26). At minimum, the evidence presented by Appellant creates a genuine issue of material fact as to whether HHE was negligent in carrying out its inspections of the property.

Moreover, even if this Court were to assume *arguendo* that no genuine issue of material exists, summary judgment would *still* not be appropriate because a dispute exists as to the conclusions or inferences to be drawn from the evidence in this case. "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 796, 377 S.C. 643 (2008). Here, it appears DPR Investigator Lenox-Rustin and DPR Pesticide Program Chief, Mr. Okey, have both drawn different conclusion from the investigation of the subject property than DPR Structural Manager David DeLorenzo. It was error for the lower court to grant summary judgment where different employees of the same regulatory agency appear to diverge in their conclusions.

The lower court also erred in finding that HHE does not owe Appellant a duty of care because "HHE never had any contact or relationship with Plaintiff regarding termite services at the Residence." (Order at R. p. 26). It is notable that the lower court fails to cite any caselaw to support this conclusion. However, the lower court's finding, which appears to focus on a lack of privity between HHE and Ms. Rankin, runs in direct contravention to the well-settled holding in

Dorrell v. South Carolina Dept. of Transp., 361 S.C. 312, 318, 605 S.E.2d 12 (2004), which specifically states:

> A tortfeasor may be liable for injury to a third party arising out of the tortfeasor's contractual relationship with another, despite the absence of privity between the tortfeasor and the third party. Barker v. Sauls, 289 S.C. 121, 122, 345 S.E.2d 244, 244 (1986) (citing Terlinde v. J.F. Neely, Sr., 275 S.C. 395, 399, 271 S.E.2d 768, 770 (1980)). The tortfeasor's liability exists independently of the contract and rests upon the tortfeasor's duty to exercise due care. Id. (citing Edward's of Byrnes Downs v. Charleston Sheet Metal Co., 253 S.C. 537, 542, 172 S.E.2d 120, 122 (1970)). This common law duty of due care includes the duty to avoid damage or injury to foreseeable plaintiffs. See Terlinde, 275 S.C. at 399, 271 S.E.2d at 770 (stating that the "key inquiry" in determining whether to impose liability is "foreseeability, not privity").

Here, HHE failed to address the EIFS stucco ground contact condition at any time during its six year and eleven-month involvement with the property. As a result, the termites had a pathway into the wall cavities of the home. It is foreseeable that this failure, which is a direct violation of the South Carolina Pesticide Act, would have a damaging effect on the home and affect subsequent purchasers of the property. It was error for the lower court to grant summary judgment where HHE breached its common law duty to avoid damage or injury to foreseeable plaintiffs.

III. The lower court erred in finding—as a matter of law—that Appellant's damages were caused by the intervening negligence of prior owners.

The lower court found that Appellant's damages were caused by prior owners of the residence because "apparently no termite inspection or treatment services were provided" for several years following HHE's engagement with the property. (Order at R. p. 27). Per the lower court, this alleged break in services is an intervening and superseding cause of Plaintiff's damage, excusing HHE from any liability, including its documented failure to properly address

the EIFS-ground condition at any point during its nearly seven-year involvement with the property. (R. at Ibid.)

"The defense of intervening third-party negligence ordinarily presents a question of fact for the jury and only rarely becomes a question of law for the court to determine." *Dawkins v. Sell*, 434 S.C. 572, 582, 865 S.E.2d 1, 6 (Ct. App. 2021). "To exculpate a negligent defendant, the intervening cause must be one which breaks the sequence or causal connection between the defendant's negligence and the injury alleged. The superseding act must so intervene as to exclude the negligence of the defendant as one of the proximate causes of the injury." *Gause v. Smithers*, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013). "In order to relieve the defendant of responsibility for the event, the intervening cause must be a superseding cause. It is a superseding cause if it so entirely supersedes the operation of the defendant's negligence that it alone, without his negligence contributing thereto in the slightest degree, produces the injury." *Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 781 S.E.2d 534 (2015).

In the present case, HHE's failure to note the EIFS ground-contact condition left a pathway through which termites could travel to the property. As the DPR Report specifically states, "Formosan subterranean termite, like other subterranean termites, must maintain contact with the ground in order to obtain moisture." (R. p. 247). "Hilton Head Exterminators failed to address EFIS ground contact." (R. p. 248). It is clear that HHE's failure to address this issue directly contributed to the damages present at the home. Minimally, a material question of fact exists as to the degree to which HHE's documented failures contributed to the termite infestation and damages. It was error for the Court to find—as a matter of law—that a mere break in services, is an intervening and superseding cause of Appellant's damages.

IV. The lower court erred in granting summary judgment as to Appellant's Implied Warranty claim.

The lower court granted summary on Appellant's Implied Warranty claim on the stated ground that "Plaintiff failed to submit any evidence that HHE breached this alleged cause of action." (Order, R. p. 28). This finding is, again, directly contradicted by the record. As set forth in Appellant's Memorandum in Opposition to Summary Judgment, "As a general rule it may be said that where a person holds himself out as especially qualified to perform work of a particular character there is an implied warranty that the work shall be done in a reasonably good and workmanlike manner and that the completed product or structure shall be reasonably fit for its intended purposes." 17A C.J.S. Contracts § 329. (Memo in Opposition at R. p. 237). "It is settled law that where a person holds himself out as specially qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes to do shall be of proper workmanship and reasonably fitted for its intended purpose." *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct App. 1983).

In the present case, it is undisputed that HHE is a licensed pest control operator, which represents to the public that it is capable of performing professional pest control services. Appellant asserts that HHE breached its implied warranty of workmanship when it failed to address the EIFS stucco ground-contact condition at any point during its six year and eleven-month involvement with the property. As set forth above, this failure is documented in the DPR report issued by Investigator Lenox-Rustin and the letter issued by Pesticide Program Chief Ryan Okey. It was error for the lower court to grant summary judgment as to Appellant's breach of implied warranty claim where there was evidence to support the claim.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court grant her appeal, reverse the lower court's order granting summary judgment, and remand this case for a trial on the merits. It was error for the lower court to grant summary judgment where Appellant submitted evidence that Respondent Hilton Head Exterminators, Inc. had failed to address a high-risk pathway for termite activity in violation of the South Carolina Pesticide Control Act. Both the Report of Structural Pest Inspection issued by DPR Investigator Lenox-Rustin and the letter issued by DPR Pesticide Program Chief Ryan Okey are more than a scintilla of evidence supporting Appellant's claims. At minimum, the evidence presented by Appellant creates a genuine issue of material fact as to whether HHE was negligent in carrying out inspections of the property.

Even if there was not a dispute as to the evidentiary facts, there is still a dispute as to what inferences can be drawn from the facts making summary judgment inappropriate in this case. Further, HHE owed a duty to properly carry out its professional services. It was foreseeable that its failure to address the EIFS stucco ground contact condition would have a damaging effect on the home and affect subsequent purchasers of the property. Finally, it is settled law that where a person holds himself out as specially qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes to do shall be of proper workmanship and reasonably fitted for its intended purpose. There is more than a mere scintilla of evidence that HHE breached this duty when it failed to address the EIFS stucco ground contact condition at any point during its six year and eleven-month involvement with the property.

[Signature on following page]

Respectfully submitted,

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Mount Pleasant, South Carolina
November 20, 2023

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No.: 2023-000117

Kathleen M. Rankin, Appellant,

v.

Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

[Signature on following page]

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November 20, 2023

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

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Kathleen M. Rankin, Appellant,

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Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco, LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Terminix Service, Inc.,

Defendants,

Of which Hilton Head Exterminators, Inc., is the Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court correctly found that no evidence exists to support Appellant's negligence claim against Respondent.

II. The circuit court correctly found that Respondent did not owe Appellant a duty of care.

III. The circuit court correctly found that Appellant's damages were caused by the intervening negligence of prior owners of the Residence.

IV. The circuit court correctly granted summary judgment as to Appellant's breach of implied warranty of workmanship claim based on the lack of evidence and controlling South Carolina law.

STATEMENT OF THE CASE

This appeal arises from the circuit court's order granting summary judgment in favor of Respondent Hilton Head Exterminators, Inc. ("Respondent" or "HHE") as to Appellant's negligence/gross negligence and breach of implied warranty of workmanship claims. Appellant filed her original Complaint on March 26, 2020, asserting construction defect claims against various contractors for moisture intrusion and other damage discovered following her purchase of a residence in Hilton Head, South Carolina. She filed an Amended Complaint on October 19, 2020, naming additional defendants, including Respondent. In her Amended Complaint, Appellant asserted claims for negligence/gross negligence and breach of implied warranty of workmanship against Respondent (R. pp. 63-64), claiming Respondent failed to properly treat the residence for termites with the appropriate amount of pesticide, note certain conditions at the residence, and comply with South Carolina pest control regulations (R. p. 55). Appellant filed a Second Amended Complaint on May 20, 2021, adding yet another defendant but no additional claims against Respondent. Respondent timely filed Answers and affirmative defenses to both amended Complaints. (R. pp. 73-82; R. pp. 112-121).

Respondent's Motion for Summary Judgment

Following a lengthy period of discovery, Respondent filed a Notice of Motion and Motion for Summary Judgment on June 21, 2022. Respondent then filed a Memorandum in Support of Its Motion for Summary Judgment with exhibits on August 11, 2022. The exhibits included documents obtained in discovery, excerpts from Appellant's deposition, and affidavits from Brian DeChirico, Manager, HHE; Kevin DeLorenzo, Structural Program Manager, Department of Pesticide Regulation ("DPR"), Clemson University; and entomology expert Dr. Maxcy P. Nolan, III, Owner and President, NIPCAM. (R. pp. 155-230).

Appellant filed a Memorandum in Opposition with exhibits on August 12, 2022. In support of her Memorandum, she relied on a June 24, 2020 Report of Structural Pest Inspection prepared by DPR Pesticide Investigator Kristin Lenox-Rustin, and a DPR informational letter issued to HHE on January 15, 2021. (R. pp. 246-254). Appellant did not submit any deposition testimony or affidavits in support of her Memorandum. Investigator Lenox-Rustin's June 24, 2020 report is based on an inspection she performed at Appellant's residence on January 22, 2020. (R. pp. 246-252). In the report, Investigator Lenox-Rustin states that "that DPR Regulation § 27-1085(G)(2)(b)—addressing EIFS[stucco]-to-ground contact—was neither met nor wa[i]ved during [HHE's] March 23, 2003 pretreatment.'" (R. p. 248). The pretreatment referenced in her report occurred approximately 16 years and 10 months prior to Investigator Lenox-Rustin's inspection, and approximately seven years and nine months after HHE cancelled its termite warranty, when a prior owner decided not to renew it. (R. p. 166). DPR did not require HHE to correct this issue and simply issued an informational letter dated January 15, 2021. (R. pp. 253-254). In the same report, DPR cited Terminix, the pest control company providing services at the time of the inspection, for not addressing EIFS-to-ground contact, along with a termiticide use violation. DPR issued a warning letter to Terminix. (R. pp. 248-249; R. pp. 194-195).

The Honorable Bentley D. Price, Circuit Court Judge, conducted a hearing for Respondent's Motion for Summary Judgment on August 15, 2022. Judge Price subsequently issued an Order granting Respondent's Motion for Summary Judgment on August 31, 2022. (R. pp. 9-19). In his Order, Judge Price first concluded that no evidence exists regarding the conditions at the residence during HHE's warranty, whether conditions were waived by previous owners, or any alleged deficiencies in HHE's pretreatment and inspections. (R. pp. 12-14). It was undisputed that the March 23, 2003 termite pretreatment discussed in Investigator Lenox-Rustin's June 24th

report was documented by one invoice obtained from a building file, showing that HHE performed the pretreatment of the soil before any structure was built. No EIFS-to-ground contact could have existed at that time. (R. p. 15). Furthermore, Kevin DeLorenzo, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, provided undisputed testimony that an investigator can only observe what is present on the day of the inspection, and in this case, the inspection took place approximately seven years and nine months after HHE ceased providing services at the residence. (R. p. 13). DPR has no records that it ever inspected the residence previously. (R. p. 15). Mr. DeLorenzo testified that HHE properly destroyed records on the residence in 2017, in accordance with DPR regulations for records maintenance and destruction; therefore, it is impossible for DPR to determine whether the EIFS-to-ground condition existed almost eight years earlier, or whether one of the previous homeowners signed a waiver, waiving treatment of the EIFS-to-ground condition. (R. p. 13).

The court acknowledged that "DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when performing future inspections and treatments at other properties. As such, the informational letter issued to HHE is not tracked against HHE's enforcement history." (R. pp. 13-14). Mr. DeLorenzo stated that he would also have agreed not to issue any letter at all to HHE due to the lack of records. (R. p. 14). The court also held that the lack of HHE records in the case, as well as the passage of a significant amount of time since HHE's involvement at the residence, precludes a determination that HHE's termite chemical pretreatments were in any way deficient.[1] (R. p. 13).

[1] Page 1 of the Initial Brief of Appellant states that "[s]he does not claim that HHE was negligent in its application of chemical pesticide treatment"; therefore, pursuant to South Carolina Appellate Court Rule 208(b)(1)(C), Appellant is bound by this statement and has abandoned that claim in Paragraph 37 of her Second Amended Complaint.

Based on the lack of HHE records described above, along with the affidavit testimony of Mr. DeLorenzo and independent entomology expert Dr. Maxcy Nolan, III, the second conclusion reached by Judge Price is that it is impossible to determine whether HHE owed a duty or breached any standard of care to Appellant or any prior owners. (R. pp. 14-16). Dr. Nolan provided uncontradicted expert testimony that "no evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operators." (R. p. 15). As a result, Judge Price dismissed Appellant's negligence/gross negligence claim. (R. p.15). The court further held that Appellant's damages were caused by the intervening negligence of prior owners. (R. p. 16). Prior to Appellant's purchase, the residence sat uninspected and untreated for termites for a period of approximately six years and eight months in an area with significant Formosan termite pressure. (R. p. 16). This undisputed fact was supported by the sworn testimony of defense experts, Mr. DeLorenzo and Dr. Nolan. (R. p. 16). Finally, Judge Price held that Appellant's claim for breach of implied warranty of workmanship applies only to builders of new homes, not pest control operators, under South Carolina law. (R. pp. 17-18).

Appellant's Motion to Alter or Amend Order Granting Summary Judgment

Appellant filed a Motion to Alter or Amend Order Granting Summary Judgment to Hilton Head Exterminators, Inc. on September 7, 2022. Respondent filed its Response in Opposition on September 14, 2022. Judge Price considered both submissions. He refused to overturn the summary judgment ruling in favor of HHE; however, he considered two revisions suggested by Appellant for an Amended Order Granting Defendant Hilton Head Exterminators, Inc.'s Motion for Summary Judgment. Appellant requested that the "Factual Findings" subsection title be changed to "Preamble." Appellant also asked that instead of ruling on the merits of her breach of implied warranty of workmanship claim, the court should hold that Appellant "failed to submit

any evidence that would support her contention that HHE breached any implied warranty, if one exists." (R. p. 28). Judge Price incorporated both revisions in the Amended Order Granting Defendant Hilton Head Exterminators, Inc.'s Motion for Summary Judgment filed on December 28, 2022. Appellant then filed her Notice of Appeal on January 25, 2023.

STATEMENT OF FACTS

This case involves moisture and termite damage discovered by Appellant following her "as is" purchase of the residence located at 11 Harrogate Drive, Hilton Head, South Carolina (the "Residence"). Palatial Homes, Inc. constructed the Residence, and Respondent Hilton Head Exterminators, Inc. ("Respondent" or "HHE") applied the termite pre-treatment to the soil in March 2003, prior to construction. On March 3, 2005, the Town of Hilton Head issued a building permit, and the Certificate of Occupancy for the Residence was issued on January 30, 2006.

HHE provided a termite warranty for prior owners of the Residence from June 1, 2005, to April 27, 2012. The warranty was cancelled on April 27, 2012, when the prior owners elected not to renew the termite warranty. HHE did not provide any further termite services at the Residence after April 27, 2012. (R. p. 166). ***The Residence then apparently went uninspected and untreated for termites for approximately six years and eight months before Appellant purchased it.***

On or about December 6, 2018, Appellant entered into a Contract of Sale (the "Contract") to purchase the Residence from seller Michael Grondahl for the purchase price of $1,240,000.00. (R. p. 169). The Contract expressly states that the Residence was being sold "as-is," "where-is," with "no repairs" and "no concessions." (R. p. 170). Appellant did not obtain a home inspection. Instead, she relied on a previous home inspection report produced by the seller's real estate agent. (R. p. 206, line 22–p. 207, line 14). Appellant testified that she did not even see the previous home inspection report, and she doesn't know if her real estate agent reviewed it. (R. p. 207, lines 19-

23). Appellant stated that the seller's real estate agent represented to Appellant's real estate agent that there were no significant issues with the Residence, even though it "had been vacant at different times," and Appellant's real estate agent did not believe another inspection was necessary. (R. p. 209, line 24-p. 210, line 9).

Furthermore, the section of the seller's Residential Property Condition Disclosure Statement regarding wood-destroying insects, which includes termites, was ***completely blank*** and did not address whether the Residence had any past or present termite infestations, damage, or termite treatment or coverage. (R. p. 178; p. 210, lines 16-24; p. 229, lines 4-15). (emphasis added). Appellant testified this did not raise any red flags for her because she was not aware of the amount of damage termites can do to a house, and she was not surprised the termite section of the disclosure was also blank because the seller "listed no representation on all of the other boxes." (R. p. 229, line 16-p. 230, line 3). She did not know if the prior owner had a termite warranty for the Residence. (R. p. 226, lines 7-12). Appellant obtained an Official South Carolina Wood Infestation Report, or CL-100, prior to closing, and the visual CL-100 inspection did not identify any visible termite activity or damage. (R. p. 182-184; p. 222, line 24-p. 223, line7).

Appellant closed on the purchase of the Residence on December 18, 2018. She testified that she moved into the Residence in early January 2019, and shortly thereafter, she claims she observed a substance that she later learned was "termite excrement" at the top of one of the columns on the first-floor porch on the rear of the residence. (R. p. 224, line 6-p. 225, line 2; p. 226, line 18-p. 227, line 19). She testified that months later, in late spring or early summer 2019, a painter discovered termites in the breakfast nook on the rear of the residence while painting sheetrock. While he was painting, some of the sheetrock crumbled and exposed the termites. (R. p. 213, lines 3-14). During the same timeframe, a repair contractor hired by Appellant discovered

numerous construction defects at the Residence, including structural stability issues with the second floor balcony on the rear of the Residence and flashing and waterproofing issues. (R. p. 214, line 12-p. 216, line 18; p. 217, line 25-p. 218, line 15; p. 219, line 16-p. 220, line 15; p. 221, lines 7-17).

On January 15, 2020, more than a year after she purchased the Residence, Appellant contacted the Department of Pesticide Regulation ("DPR"), Clemson University, to perform an investigation regarding the CL-100 inspection performed at the Residence by another party and the discovery of termite damage. ***Approximately 16 years and 10 months after the March 23, 2003 pretreatment, and seven years and nine months after HHE cancelled its termite warranty at the Residence,*** DPR performed an inspection on January 22, 2020, and DPR Pesticide Investigator Kristin Lenox-Rustin subsequently issued a report dated June 18, 2020, which was amended on June 24, 2020. The June 24th report indicates that during demolition and repairs, certain hidden conditions were revealed, including a form board in the block and rear patio slab. (R. p. 185). After discussing conditions at the Residence, the DPR report addressed former and current pest control companies that provided services at the Residence. With respect to HHE, which had not provided any termite services since April 2012, DPR concluded that HHE's March 23, 2003 pre-treatment did not address Exterior Insulation and Finish System, or EIFS, stucco in contact with the ground. (R. p. 187). DPR did not require HHE to correct this issue and simply issued an informational letter to HHE on January 15, 2021. (R. pp. 192-193). DPR instead issued a warning letter to Terminix, the current pest control company at the Residence, for not addressing EIFS-to-ground contact, as well as a termiticide use violation. (R. p. 188; pp. 194-195).

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). South Carolina Rule of Civil Procedure 56(c) states that summary judgment is appropriate when "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."

> "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." [*Fleming*, 350 S.C. at 493-94, 567 S.E.2d at 860] (citation omitted). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid–South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

However, "[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch,* 354 S.C. 648, 582 S.E.2d 432 [(Ct. App. 2003)]." *Singleton v. Sherer*, 377 S.C. 185, 197-98, 659 S.E.2d 196, 203 (Ct. App. 2008). Nor can the nonmoving party rely on speculation or the building of one inference on another to create a genuine issue of material fact. *Gibson v. Epting*, 426 S.C. 346, 353, 827 S.E.2d 178, 182 (Ct. App. 2019) (citing *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985)). "The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. [*Rife v. Hitachi Cont. Mach. Co., Ltd*, 363 S.C. 209, 214, 609 S.E.2d 565, 568. (Ct. App. 2005)]." *Id.*, 377 S.C. at 198, 659 S.E.2d at 203. "'[S]ummary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are

contested in a deficient manner.'" *Guinan v. Tenet Health Sys. of Hilton Head, Inc.*, 383 S.C. 48, 53, 677 S.E.2d 32, 35 (Ct. App. 2009) (quoting *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006)).

ARGUMENT

I. The circuit court correctly found that no evidence exists to support Appellant's negligence claim against Respondent.

Appellant asserts the June 24, 2020 DPR Report of Structural Pest Inspection prepared by Investigator Lenox-Rustin, and the January 15, 2021 informational letter issued by the office of Ryan Okey, Pesticide Program Chief, DPR, provide "more than a mere scintilla of evidence" that Respondent failed to address EIFS-to-ground contact during Respondent's termite pretreatment of the Residence. (Appellant's Br. 7-8). Appellant's assertion is fundamentally flawed for a number of reasons.

First, the June 24, 2020 DPR Report of Structural Pest Inspection states that the EIFS-to-ground contact observed at the Residence was "neither met nor waved during [HHE's] ***March 23, 2003 pretreatment.***" (R. p. 248) (emphasis added). It is undisputed that the only record documenting HHE's termite pretreatment at the Residence is an HHE invoice found in the Town of Hilton Head Building Department file produced by Appellant in discovery. The invoice is dated March 23, 2003, which pre-dates the March 3, 2005 Town of Hilton Head building permit for the Residence by almost two years. Thus, the March 23, 2003 termite pretreatment consisted of a soil treatment before the Residence was constructed. Without a structure, EIFS-to-ground contact could not exist. The January 15, 2021 informational letter issued by Mr. Okey's office to HHE references the "2003-2005 subterranean termite pretreatment of the structure." (R. p. 253). Once again, however, the only document reflecting a pretreatment is the March 23, 2003 invoice described above.

Second, Investigator Lenox-Rustin conducted her inspection at the Residence ***approximately 16 years and 10 months after the pretreatment, and seven years and nine months after HHE last provided any termite services at the Residence.*** (R. p. 246) (emphasis added). According to the affidavit of Mr. DeLorenzo, DPR Structural Program Manager and Investigator Lenox-Rustin's supervisor, "there have been no other DPR inspections at [the Residence] during the time period HHE had a termite warranty for the property." (R. p. 198). It is undisputed that Investigator Lenox-Rustin never inspected the Residence during HHE's termite warranty period, which lasted from June 1, 2005 to April 27, 2012. Therefore, she has no knowledge of the condition of the property or surrounding landscaping that existed during that time, or if there were any changes to the condition of the Residence or the property made after April 27, 2012. Mr. DeLorenzo testified that "DPR investigators are only able to observe what is visible at the time of inspection, which, in this case, was on January 22, 2020." (R. p. 198).

Third, it is undisputed that no other records exist regarding the termite services and warranty provided by HHE at the Residence, and that HHE's records were properly disposed of pursuant to DPR regulations. The affidavit of DPR Structural Manager Kevin DeLorenzo states that "DPR Regulation § 27-1085M(1)(g) was the applicable records maintenance regulation at the time HHE had a termite warranty on 11 Harrogate Drive. This regulation required [pest control operators] to maintain records for a period of two (2) years after the date of treatment." (R. p. 198). The affidavit of Brian DeChirico, Manager, HHE, states that HHE maintained the records for a period of five years, three years longer than the DPR regulatory requirement, prior to their destruction in 2017. (R. p. 166). Mr. DeLorenzo testified that "[f]ollowing the cancellation of HHE's warranty in April 2012, HHE's disposal of records for 11 Harrogate Drive in 2017 was proper." (R. p. 198). Independent entomology expert, Dr. Maxcy Nolan, III, also opined that

"HHE's destruction of records in 2017 was proper and complied with DPR regulations concerning maintenance of records by pest control applicators." (R. p. 202). Appellant has failed to produce any evidence or testimony to dispute the proper maintenance and destruction of HHE's records.

Appellant argues that the "fact that HHE may have been statutorily authorized to destroy its records, does not preclude it from saving documentation, which could later absolve it from liability." (Appellant's Br. 8). Appellant therefore concedes that HHE was authorized to destroy documents following the retention period prescribed by DPR. At the same time, Appellant proposes the legally unsupported and impractical requirement for businesses with thousands of client accounts to retain records in perpetuity, in case they are sued at some unknown point in the future. Appellant then accuses HHE of a "failure to follow best practices as to records retention." (Appellant's Br. 8). The phrase "best practices" is vague, at best, and Appellant fails to support this argument with any legal authority. As a result, this issue has been abandoned and should not be considered on appeal. *See Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); *Johnson v. Sam English Grading, Inc.*, 412 S.C. 433, 453, 772 S.E.2d 544, 554 (Ct. App. 2015) (citing *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue.").[2]

[2] It should also be noted that Appellant improperly attempted to raise this issue for the first time in her Motion to Alter or Amend. (R. pp. 255-260). "An issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (citing *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999)).

Without HHE's records, it is impossible to determine the conditions existing at the Residence from June 2005 to April 2012. Investigator Lenox-Rustin can only speculate as to whether any conditions were met or waved. The findings in her June 24th report are allegations or assumptions without any evidentiary support. "Unsupported allegations or denials that simply create an inference are insufficient to withstand summary judgment." *Marsh Waterproofing v. Steeple S. Pleasantburg*, 2019 S.C. C.P. LEXIS 5687, at *3 (Greenville County Circuit Ct. Aug. 8, 2019) (citing *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984)). Even if EIFS-to-ground contact existed during HHE's warranty, which HHE disputes, prior owners may have elected to waive that condition and signed valid, written waivers excluding that condition from treatment. Those waivers would have been included in HHE's records. Both Mr. DeLorenzo and Dr. Nolan testified that it is impossible to determine conditions at the Residence and whether a waiver was signed by prior owners due to the lack of available records. (R. p. 198; pp. 202-203).

Fourth, aside from relying on the speculation in Investigator Lenox-Rustin's report and the informational letter issued by Mr. Okey's office, Appellant never deposed or sought an affidavit from Investigator Lenox-Rustin to obtain sworn testimony and further ascertain the limitations of her findings or any explanation of what purpose an "informational letter" serves. Nor has Appellant deposed or sought an affidavit from Mr. Okey, who is now the Assistant Director of DPR, to learn that his former office sends out letters as an administrative function, and that Mr. Okey has no substantive knowledge of the DPR inspection in this case. In fact, Appellant did not take a single deposition in this case which was filed more than two years before Respondent filed its Motion for Summary Judgment. Appellant made no effort to identify and depose prior homeowners to ascertain the condition of the Residence before Appellant's purchase, or whether they signed waivers regarding any conditions. Appellant did not retain any experts in the fields of

entomology or pest control regulation to provide affidavits and opinions in opposition to Respondent's Motion for Summary Judgment or Respondent's experts.

In contrast, HHE produced an affidavit from Mr. DeLorenzo, the individual overseeing the DPR Structural Program, explaining the limitations of DPR's findings in this matter as to HHE. (R. pp. 196-200). His affidavit explains that DPR issues informational letters to pest control companies with previous involvement at a property for the sole purpose of increasing termite technician awareness of such issues when performing future inspections and treatments at other properties. (R. pp.197-198). Mr. DeLorenzo further states that the informational letter to HHE is not tracked against HHE's enforcement history, and due to the lack of available records, Mr. DeLorenzo would have also agreed not to issue any letter to HHE. (R. p. 198). HHE also retained the services of an independent termite expert, Dr. Nolan. Dr. Nolan has extensive education and experience in the areas of termite treatments, inspection and regulation, and he has served as an expert in numerous termite damage cases in South Carolina. (R. pp. 201-202). After a review of relevant case documents and a site inspection at the residence, Dr. Nolan concurs with Mr. DeLorenzo's testimony. (R. pp. 202-204). Dr. Nolan testified that the informational letter issued to HHE "does not require HHE to address any issues found at 11 Harrogate Drive." (R. p. 203).

Lastly, Appellant ignores the facts that Investigator Lenox-Rustin's report does not require HHE to correct the EIFS-to-ground condition found at the Residence on January 22, 2020, almost eight years after the cancellation of HHE's warranty, or take any enforcement action against HHE. (R. p. 248). Instead, DPR cited Terminix, the pest control company with the termite warranty on the Residence in January 2020, for failure to address EIFS-to-ground contact, along with a termiticide use violation. (R. pp. 248-249). DPR also issued Terminix a Commercial Applicator Warning Letter for these violations. (R. pp. 194-195).

Based on Investigator Lenox-Rustin's inspection almost 20 years after the March 23, 2003 pretreatment, and almost eight years after HHE's termite warranty ended at the Residence, the undisputed lack of records, and the expert testimony of Mr. DeLorenzo and Dr. Nolan, there are simply no reasonable inferences that can drawn in Appellant's favor regarding her negligence claim[3], even in the light most favorable to Appellant. Both Mr. DeLorenzo, DPR's Structural Program Manager, and Dr. Nolan, an independent entomology expert with extensive experience in South Carolina termite cases, have provided uncontradicted testimony stating that it is impossible to determine conditions at the Residence from the March 23, 2003 pretreatment through the end of HHE's warranty on April 27, 2012, and whether any conditions were waived by prior owners. (R. p. 198; pp. 202-203). It is equally impossible for a jury to make that determination. Any such determination would be purely speculative as to what conditions existed and what information was contained in the properly destroyed HHE records. Appellant cannot rely on speculation to create a genuine issue of material fact (*Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (internal citation omitted)), and the circuit court's ruling on this issue should be affirmed because Appellant has attempted to dispute facts in a deficient manner (*Guinan*, 383 S.C. at 53, 677 S.E.2d at 35 (internal citation omitted)).

II. The circuit court correctly found that Respondent did not owe Appellant a duty of care.

Appellant argues that the June 24, 2020 DPR Report of Structural Pest Inspection and the January 15, 2021 informational letter to HHE create a genuine issue of material fact as to whether HHE was negligent in its inspections at the Residence. (Appellant's Br. 9-10). More specifically,

[3] For the same reasons, there are no reasonable inferences that can be drawn in Appellant's favor as to her breach of implied warranty of workmanship claim.

Appellant incorrectly argues that by focusing on the lack of privity between Appellant and HHE, the circuit court erred in finding that HHE did not owe Appellant a duty. (Appellant's Br. 10-11).

"The existence of a duty owed is a question of law for the courts." *Washington v. Lexington County Jail*, 337 S.C. 400, 405, 523 S.E.2d 204, 206 (Ct. App. 1999) (citing *Ballou v. Sigma Nu Gen. Fraternity*, 291 S.C. 140, 352 S.E.2d 488 (Ct. App. 1986)). It is accurate that HHE never had any contact or relationship with Appellant regarding termite services at the Residence. Terminix, not HHE, has the current termite warranty on the Residence, and Terminix received a warning letter for EIFS-to-ground contact and a termiticide use violation. (R. pp. 194-195). However, there is no genuine issue of material fact as to Appellant's negligence claim because, as discussed at length above in Subsection I, no evidence exists regarding HHE's pretreatment and subsequent termite warranty inspections, except for the March 23, 2003 pretreatment invoice for work performed by HHE ***before the Residence was built.*** (R. p. 166) (emphasis added).

The affidavits of both DPR Structural Program Manager, Mr. DeLorenzo, and Dr. Nolan reflect that it is impossible to determine whether the EIFS-to-ground condition existed during HHE's warranty period at the Residence, or whether such a condition was waived by a prior owner, because no records exist. (R. p. 198; pp. 202-203). And DPR is only able to observe what is visible at the time of its inspection. (R. p. 198). In this case, the DPR inspection occurred approximately 16 years and 10 months after the March 23, 2003 pretreatment, and approximately seven years and nine months after HHE's termite warranty was cancelled due to non-renewal. (R. p. 246). There is no way to determine whether HHE breached any duty or standard of care to a prior owner of the Residence, and there is no way to determine what duty, if any, HHE owed to Appellant, when she purchased the Residence approximately six years and eight months after HHE

cancelled its warranty. A party opposing summary judgment "'cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another.'" *Gibson*, 426 S.C. at 353, 827 S.E.2d at 182 (quoting *Beale*, 769 F.2d at 214).

Furthermore, based on the facts of this case, Mr. DeLorenzo states that "[f]rom a regulatory standpoint, HHE does not owe [Appellant] a duty or standard of care because HHE cancelled its warranty on the property six (6) years and eight (8) months prior to her purchase of the property." (R. p. 199). Dr. Nolan agrees, and his affidavit provides the following opinions:

> In my professional opinion, HHE does not owe the [Appellant] in this case a duty or standard of care because HHE's termite warranty was cancelled six (6) years and (8) months before she purchased 11 Harrogate Drive. There is absolutely no evidence that HHE violated any duties or standards of care because no records exist to make such a determination. The pest control applicator with the current warranty on the residence is responsible for any treatment and/or inspection issues. In addition, it is my opinion that HHE has not violated any laws, regulations, or industry standards applicable to pest control applicators.

(R. p. 203). In response to HHE's Motion for Summary Judgment, Appellant did not counter the expert opinions of Mr. DeLorenzo and Dr. Nolan with opinions from other experts, or offer any affidavits supporting her assertion that HHE owed Appellant a duty of care. Appellant instead relies upon the allegation HHE failed to address EIFS-to-ground contact, without providing any evidence such a condition existed or was not waived years earlier, when HHE provided a termite warranty for a previous owner.

III. The circuit court correctly found that Appellant's damages were caused by the intervening negligence of prior owners of the Residence.

Appellant argues that the alleged failure of HHE to note EIFS-to-ground contact creates a genuine issue of material fact as to whether HHE contributed to the termite infestation and damages discovered at the Residence more than six years and eight months after HHE last provided any services. (Appellant's Br. 11-12). However, as discussed in detail in Subsections I and II

above, the lower court correctly concluded that there is no evidence as to whether EIFS-to-ground contact existed or was waived by prior owner following the proper disposal of HHE records in 2017. The inspection by DPR Investigator Lenox-Rustin took place approximately seven years and nine months after HHE last provided any services, and no evidence has been produced by any entity, including DPR, establishing that a termite infestation began or occurred during the period in which HHE provided a termite warranty for the Residence. In fact, Appellant now concedes that there are no issues with the chemical termite treatments previously provided by HHE at the Residence (Appellant's Br. 1), so there is no reason to believe that a termite infestation occurred during HHE's involvement at the Residence. Appellant provided no testimony from anyone at DPR, or any experts, who opine that a termite infestation occurred years earlier, when HHE provided termite services.

"In order to relieve the defendant of responsibility for the event, the intervening cause must be a superseding cause. It is a superseding cause if it so entirely supersedes the operation of the defendant's negligence that it alone, without his negligence contributing thereto in the slightest degree, produces the injury." *Matthews v. Porter*, 239 S.C. 620, 628, 124 S.E.2d 321, 325 (1962). "'For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated.'" *Dawkins v. Sell*, 434 S.C. 572, 581, 865 S.E.2d 1, 6 (Ct. App. 2021) (*Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 205, 781 S.E.2d 534, 536 (2015) (quoting *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997)).

There is no evidence showing that HHE was in any way negligent during its termite pretreatment or warranty coverage of the Residence from March 2003 to April 2012, and it is undisputed that the Residence was not treated for termites for six years and eight months prior to

Appellant's "as is" purchase, with almost no inspections performed on her part. (R. p. 170; p. 178; p. 206, line 22-p. 207, line 14; p. 207, lines 19-23; 209, line 24–p. 210, line 9; p. 210, lines 16-24; p. 229, lines 4-15; p. 229, line 16-p. 230, line 3; p. 226, lines 7-12). The dereliction of prior owners to treat the Residence for termites, alone, clearly supersedes the mere allegations of negligence directed at HHE and resulted in Appellant's damages. HHE could not have reasonably foreseen or anticipated that individuals who owned the Residence prior to Appellant's purchase would fail to have the property inspected or treated for termites, thus causing damage to the Residence.

DPR Structural Program Manager, Mr. DeLorenzo, testified that if the Residence was left untreated and uninspected for termites for six years and eight months, it "significantly increased the likelihood that the structure could be infested by subterranean termites." (R. p. 199). Dr. Nolan's testimony goes even farther: "It is my professional opinion to a reasonable degree of scientific certainty that the termite infestation and damage discovered at 11 Harrogate Drive likely began at some point during the period of six (6) years and eight (8) months prior to [Appellant's] purchase of the residence when the residence was not inspected or treated for termites." (R. p. 204). Both Mr. DeLorenzo and Dr. Nolan provided testimony regarding the significant amount of Formosan termite pressure in the Hilton Head area and stressed the necessity of termite treatments, regular inspections, and even booster treatments to protect residential structures. (R. p. 199; pp. 203-204). Appellant did not counter the opinions of these experts, nor did she produce any expert opinions, affidavits, or other evidence in support of her argument on this issue. As a result of the lack of evidence regarding HHE's alleged negligence, and the uncontradicted expert opinions on behalf of HHE, the circuit court correctly found that "liability rests with the prior owners and [Appellant's] due diligence in the course of purchasing the Residence." (R. p. 27).

IV. The circuit court correctly granted summary judgment as to Appellant's breach of implied warranty of workmanship claim based on the lack of evidence and controlling South Carolina law.

Appellant argues that the circuit court erred in granting summary judgment as to her breach of implied warranty of workmanship claim by holding that she failed to provide any evidence that HHE breached that cause of action. (Appellant's Br. 13). Aside from Appellant's misplaced reliance on the June 24, 2020 DPR Report of Structural Pest Inspection and the January 15, 2021 informational letter, she has failed to produce any evidence that HHE owed or breached any kind of implied warranty to Appellant. Based on the significant passage of time since HHE provided any termite services at the Residence and the lack of evidence discussed above in Subsections I through III, it is impossible to determine whether HHE owed or breached any kind of warranty to Appellant.

More importantly, Appellant's claim for breach of implied warranty of workmanship applies to builders of new construction, not pest control operators, under established South Carolina law. "A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent, workmanlike manner." *Smith v. Breedlove*, 377 S.C. 415, 422, 661 S.E.2d 61, 71 (2008) (citing *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 344, 384 S.E.2d 730, 736 (1989)). "[T]o establish a claim for breach of the implied warranty of workmanlike services, the plaintiff must show that the builder failed to perform its work in a careful, diligent, and workmanlike manner." *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc.*, 397 S.C. 348, 368-69, 725 S.E.2d 112, 123 (Ct. App. 2012) (citing *Smith*, 377 S.C. at 422, 661 S.E.2d at 71. The implied warranty of workmanship "*only applies to builders in the business of building new dwellings for sale.*" *Smith*, 377 S.C. at 422, 661 S.E.2d at 71 (emphasis added); *Champy v. Beazer Homes Corp.*, No. 3:15CV04098MBS, 2016

WL 1110241, at *3 (D.S.C. Mar. 21, 2016) ("[L]iability for the implied warranty of workmanship is limited to the 'builder who contracts to construct a dwelling.'" (quoting *Kennedy*, 299 S.C. at 344, 384 S.E.2d at 736.)) The rationale behind this cause of action is "that the purchaser is forced to rely on the skill of the professional builder." *Smith*, 277 S.C. at 423, 661 S.E.2d at 72.

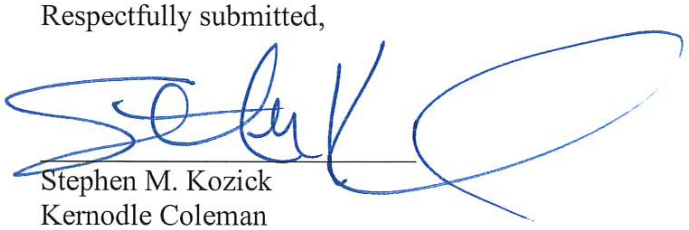
HHE is a pest control company, not a builder of new homes. HHE did not have any involvement whatsoever in the construction of the Residence purchased by Appellant. Thus, Appellant's claim for breach of the implied warranty of workmanship is inapplicable to HHE. Moreover, the only existing evidence shows that HHE applied the initial termite pre-treatment to the soil ***prior to construction of the Residence***. (R. p. 166) (emphasis added). Unlike large structures constructed by a builder, termite treatments have a much more limited lifespan. The affidavits of Mr. DeLorenzo and Dr. Nolan directly support this point. (R. p. 199; pp. 203-204). The termite warranty issued by HHE was cancelled in 2012 because the owner of the Residence at that time elected not to renew the warranty. There is no evidence indicating that any termite inspections or treatments occurred at the Residence for approximately six years and eight months prior to Plaintiff's purchase in December 2018. In addition, the affidavits of termite experts Mr. DeLorenzo and Dr. Nolan reflect that is impossible to determine whether HHE's prior work at the Residence was performed in accordance with industry standards due to the passage of a significant period of time and the proper destruction of service records years ago. (R. p. 198; pp. 202-203). As such, Appellant's breach of implied warranty of workmanship was properly dismissed by the circuit court.

CONCLUSION

For the reasons set forth above, the circuit court properly granted HHE's Motion for Summary Judgment, dismissing Appellant's negligence/gross negligence and breach of implied

warranty of workmanship claims as a matter of law. HHE respectfully requests that this Court affirm the circuit court's order on the grounds set forth herein, as well as any other grounds found in the record pursuant to Rule 220(c), SCACR.

Respectfully submitted,



November 7, 2023

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-000117

Kathleen M. Rankin, Appellant,

v.

Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco, LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.;

Defendants.

Of whom Hilton Head Exterminators, Inc., is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent Isle Of Palms Pest Control, Inc. complies with Rule 21 1 (b), SCACR.

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November 16, 2023

Charleston, South Carolina

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

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Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

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REPLY ARGUMENT

As a preliminary matter, Respondent HHE's Brief misrepresents the Record in this case, selectively omitting facts which are essential to this Court's review. First, Respondent refers to the subject home as an "as is" purchase, intimating that Ms. Rankin purchased the home subject to any and all defects, including the EIFS stucco defect—a defect which HHE indisputably failed to correct at any point during its admitted six-year and eleven-month engagement at the property. A review of the Contract of Sale, however, establishes that "as is" in this case refers to "normal wear and tear" and expressly excludes any structural damage or habitability issues. (Contract of Sale, R. at p. 170, para. 8). The contract specifically provides that "the structure shall be reasonably sound" and that "[t]he property shall be habitable." (R. at Ibid). Contrary to HHE's intimations, the "as is" provision contained in the Contract is subject to these express limitations, which are contained in the provision itself: "'As is' means the property shall be conveyed in the condition existing on the Effective Date, *subject to the terms of this Contract*." (R. at Ibid, emphasis added).

Further, even if the Contract of Sale did not contain these express limitations, which it clearly does, HHE has no standing to enforce the terms of a contract to which it was not a party or third-party beneficiary. "Generally, a third person not in privity of contract with the contracting parties has no right to enforce a contract." *Wogan v. Kunze*, 366 S.C. 583, 604, 623 S.E2d 107, 119 (Ct. App. 2005). Here, Respondent's Brief attempts to hide behind the misinterpretation of an inapplicable contract to which it was neither a party nor intended beneficiary.

Second, Respondent's Brief attempts to divert attention away from the central issue in this appeal by focusing on Respondent's *pretreatment* of the property. (Respondent's Final

Brief, p. 7). This is a red herring. The central issue in this appeal is whether the lower court erred in granting HHE's Motion for Summary Judgment where the parties presented conflicting evidence—from different employees at Department of Pesticide Regulation—as to whether HHE failed to address a high-risk pathway for termite activity during its *inspections* of the property in violation of the South Carolina Pesticide Control Act. HHE readily admits that it provided a termite warranty for prior owners of the Residence from June 1, 2005 to April 27, 2012. (Respondent's Memo in Support at R. p. 155). The Report of Structural Pest Inspection from DPR Investigator Kristin Lenox-Rustin sets forth her first-hand observations that EIFS stucco was in contact with the ground, evidence that HHE had failed to address this issue at any time during its six year and eleven-month involvement with the property. This official DPR Report—which has neither been withdrawn nor amended since—expressly states, "Hilton Head Exterminators failed to address EIFS ground contact."[1] (Report, emphasis added, at R. p. 248)

The Pesticide Program Chief at DPR expressly affirmed Investigator Lenox Rustin's findings and advised HHE that "standards for Prevention and Control of Wood Destroying Organisms were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act." (R. pp. 253-254). This official letter, which has also neither been amended nor withdrawn, expressly states, "Hilton Head Exterminators failed to address EIFS ground contact." (Letter, emphasis added, R. p. 253). Here, summary judgment is not appropriate because a genuine issue of material fact exists as to whether HHE was negligent in carrying out its inspections of the property, having failed to

[1] Respondent's Brief attempts to draw attention away from its own failure address the EIFS ground contact issue during its nearly seven-year engagement at the property by noting that Terminix also received a letter from DPR. This is, again, another diversionary tactic. The fact that Terminix received a similar letter does not absolve HHE of its duty to comply with the South Carolina Pest Control Act and properly carry out its inspection of the subject property during the period in which it was engaged.

address the EIFS ground contact during its engagement at the property.

Additionally, summary judgment is not appropriate because a reasonable inference can drawn from both the official DPR Report and official DPR Letter that HHE's failure to properly address the EIFS-ground condition caused and/or *contributed* to the termite infestation at the property. This is a more than just a reasonable inference. As the official DPR Report states, "Formosan subterranean termite, like other subterranean termites, must maintain contact with the ground in order to obtain moisture." (Report, R. p. 247). Here, "[t]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). Viewed in this light, a reasonable inference can be drawn from the fact that Ms. Lenox-Rustin observed EIFS stucco in contact with the ground—itself evidence that HHE had not properly addressed this high-risk pathway for termite activity during its earlier inspections. Indeed, it would be speculative to assume that the EIFS grade issue had somehow spontaneously appeared after HHE's involvement with the property.

Third, HHE's Brief suggests that the prior owners' failure to renew their termite warranty somehow absolves HHE from its obligation to have properly inspected the property during the time it was engaged. Respectfully, this is not a cogent argument, particularly when it concerns the issue of summary judgment. "The defense of intervening third-party negligence ordinarily presents a question of fact for the jury and only rarely becomes a question of law for the court to determine." *Dawkins v. Sell*, 434 S.C. 572, 582, 865 S.E.2d 1, 6 (Ct. App. 2021). Here, a material question of fact exists as to *the degree* to which HHE's failures caused and/or contributed to the termite infestation and damages. It was error for the Court to find—as a matter of law—that a mere break in services is an intervening and superseding cause of Appellant's damages, particularly where a reasonable inference can be drawn from the evidence

that HHE's failure to address EIFS ground contact caused and/or contributed to the extent of termite infestation and damage to the home.

Additionally, Respondent's Brief erroneously contends that that the affidavits submitted in support of its Motion in Support of Summary Judgment are "uncontradicted evidence" and that "No evidence exists showing that HHE violated any state laws, regulations, standards of care, or industry standards as they relate to pest control operators." (Respondent's Brief, p. 4). Respondent's contention is, again, directly contradicted by the record, as both the official DPR Report and official DPR Letter—the only official DPR documents in the record—establish that HHE violated the South Carolina Pesticide Control Act, failing to address EIFS ground contact at the home. (DPR Report, R. pp. 246-252, Letter, R. pp. 253-254). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *USAA Property and Cas. Ins. Co. v. Clegg*, 661 S.E.2d 791, 796, 377 S.C. 643 (2008). Here, summary judgment is not appropriate because there is clearly a dispute as to what conclusions can be drawn from the DPR Report and Letter.

Respondent's Brief also conveniently ignores the timing of its affidavits and identification of witnesses. Notably, HHE filed the underlying Motion for Summary Judgment on June 12, 2022, summarily stating, "There is no genuine issue as to any material fact for the negligence and breach of implied warrant of workmanship causes of action asserted by Plaintiff against Defendant." (R. pp. 153-154). However, HHE did not attach any affidavits in support if its motion at the time of its filing as required by Rule 6(d), SCRCP, which specifically states, "When a Motion is to be supported by Affidavit, the Affidavit shall be served <u>with</u> the motion." (Emphasis added). Instead, HHE waited until August 11, 2022, just four days (two business days) before the scheduled hearing, to file a Memorandum in Support for Summary Judgment,

attaching the subject affidavits.[2] Accordingly, HHE's contention that "Appellant did not counter the opinions of these experts" is specious at best and undermined by its strategic decision to withhold the affidavits from Appellant in the first place. Respondent's contention that that these affidavits are "uncontradicted evidence" is also directly undermined by the fact that Appellant's attorney submitted both the official DPR Report and official DPR Letter from the Pesticide Program Chief Oakey with the Memorandum in Opposition to Summary Judgment, both of which find that HHE violated the South Carolina Pest Control Act and failed to address EIFS ground contact. (Memorandum, R. pp. 231-254).

Additionally, the mere fact that Mr. DeLorenzo would have "***also*** agreed to not issue any letter to HHE" does not change the fact that the Department of Pesticide Regulation did in fact issue an official letter and official report finding that HHE had violated the South Carolina Pest Control Act and failed to address EIFS ground contact at the home. (DeLorenzo Affidavit, R. p. 198, para 13, emphasis added). The issuance of these official DPR documents, even when taken alone, creates a material issue of genuine fact as to whether HHE was negligent in carrying out its inspection of the property. Certainly, a reasonable inference can be drawn that HHE's failure to address EIFS ground contact caused and/or contributed to the termite infestation and damages.

Finally, HHE's inability to produce documentation demonstrating whether any prior owners waived the EIFS-ground-contact condition at the residence has no bearing on summary judgment, particularly where HHE destroyed all of its records relating to services it rendered at the property. In fact, "Waiver is a question of fact for the finder of fact," and, therefore, clearly not a matter that is appropriate at the summary judgment stage of litigation. See *Rwe Nukem*

[2] Dr. Nolan's affidavit had been obtained on August 3, 2022, but then withheld until the 11th. (Affidavit, R. p. 204). Additionally, Mr. DeLorenzo's affidavit was obtained on August 9, 2022, but then also withheld for a few days. (Affidavit, R. p. 200).

Corporation v. Ensr Corporation, 644 S.E.2d 730, 373 S.C. 190 (2007), citing *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). As stated in Appellant's Brief, the fact that HHE may have been statutorily authorized to destroy its records, does not preclude it from saving documentation, which could later absolve it from liability. While HHE's failure to follow best practices as to records retention may have a bearing on its ability to defend itself, it has zero bearing on a motion for summary judgment, where "[t]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Honorable Court grant her appeal, reverse the lower court's order granting summary judgment, and remand this case for a trial on the merits. It was error for the lower court to grant summary judgment where Appellant submitted evidence that Respondent Hilton Head Exterminators, Inc. had failed to address a high-risk pathway for termite activity in violation of the South Carolina Pesticide Control Act. Both the Report of Structural Pest Inspection issued by DPR Investigator Lenox-Rustin and the letter issued by DPR Pesticide Program Chief Ryan Okey create a genuine issue of material fact as to whether HHE was negligent in carrying out inspections of the property.

Even if there was not a dispute as to the evidentiary facts, there is still a dispute as to what inferences can be drawn from the facts making summary judgment inappropriate in this case. Further, HHE owed a duty to properly carry out its professional services. It was foreseeable that its failure to address the EIFS stucco ground contact condition would have a damaging effect on the home and affect subsequent purchasers of the property. Finally, as set forthin Appellant's Brief, it is settled law that where a person holds himself out as specially

qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes to do shall be of proper workmanship and reasonably fitted for its intended purpose. There is a genuine issue of material fact as to whether HHE breached this duty when it failed to address the EIFS stucco ground contact condition at any point during its six year and eleven-month involvement with the property. This case was not appropriate candidate for summary judgment and deserves a trial on the merits.

Respectfully submitted,

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Mount Pleasant, South Carolina
November 20, 2023

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No.: 2023-000117

Kathleen M. Rankin, Appellant,

v.

Palatial Homes, Inc. a/k/a Palatial Homes, LLC n/k/a Palatial Homes Design, LLC; Cesar Castro d/b/a Heritage Plastering, Inc. n/k/a Heritage Plastering & Stucco LLC; CMC Steel Works, Inc.; AMI Ironworks LLC a/k/a American Master Ironworks, LLC; Enaldo Urriola d/b/a Advanced Roofing Services n/k/a Ankon Construction Services, LLC; Kelca Counters, Inc.; John Does 1-20; Cambridge Building, Inc.; Two Brothers Plastering, Inc.; William T. Ruarks d/b/a Ruacon Quality Construction; Jimmy J. Metcalf, Jr. d/b/a Quality Roof Services; Ionut D. Istrate d/b/a Island Plasters LLC; 11 Harrogate Drive Realty Trust; Michael Grondahl; Hilton Head Exterminators, Inc.; and Imperial Pest Controllers, Inc.; Defendants,

of which Hilton Head Exterminators, Inc., is the Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

[Signature on following page]

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November 20, 2023

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Kathleen M. Rankin, Appellant,

v.

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Appellate Case No. 2023-000117

Appeal From Beaufort County
Bentley Price, Circuit Court Judge

Unpublished Opinion No. 2025-UP-375
Submitted September 1, 2025 – Filed November 12, 2025

AFFIRMED

Glynn Lindsey Capell, of Capell Thomson, LLC, of Bluffton; Charles Whaley Thomson, of Capell Thomson, LLC, of Charleston; and Jesse Sanchez, of The Law Office of Jesse Sanchez, LLC, of Mount Pleasant, all for Appellant.

Stephen Michael Kozick, of McAngus Goudelock & Courie, LLC, of Mount Pleasant, for Respondent.

PER CURIAM: This is an appeal from the grant of summary judgment on Kathleen Rankin's claim for termite damage to her Hilton Head home. Rankin contends Respondent was negligent in not addressing the fact that part of the exterior insulation and finish system stucco on the home was in contact with the ground during Respondent's termite warranty. Rankin also makes a claim under the implied warranty of workmanship. The circuit court entered judgment for Respondent, finding no evidence of negligence, no duty of care, and that any damages were due to an intervening cause. Because we find Rankin failed to raise a genuine dispute over what Respondent did or did not do at the home, we affirm.

"Summary judgment is proper[] . . . when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999) (citing Rule 56(c), SCRCP). Given the Department of Pesticide Regulation official's open acknowledgment that the department does not know what Respondent did or did not do with respect to this property; the lack of any records from Respondent's warranty period; the lack of evidence from Rankin connecting any work by Respondent to any damages; and the lack of evidence from Rankin directly contradicting the affidavit from Respondent's termite expert, who opined there is no evidence to conclude Respondent's performance during its warranty was deficient and that the termite infestation and damage likely occurred during the six plus years of nontreatment after Respondent's warranty ended, we find Rankin failed to raise a genuine evidentiary dispute as to negligence. Thus, summary judgment was proper. *See John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 435, 904 S.E.2d 889, 895 (Ct. App. 2024) (stating, to properly refute a motion for summary judgment, the nonmoving party cannot "rest upon the mere allegations or

denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial") (quoting *Thompkins v. Festival Ctr. Grp. I*, 306 S.C. 193, 195–96, 410 S.E.2d 593, 594 (Ct. App. 1991))).

The same reasoning applies to Rankin's claim under the implied warranty of workmanship. Even if we agreed with Rankin that this warranty applied to Respondent, the absence of evidence regarding what Respondent did or did not do at the home necessitates summary judgment on the claim. *See id.* (stating, to properly refute a motion for summary judgment, the nonmoving party cannot "rest upon the mere allegations or denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial") (quoting *Thompkins*, 306 S.C. at 195–96, 410 S.E.2d at 594).

Because this case is controlled by Rankin's failure to present a genuine dispute of material fact over her claims, we need not address any remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal). The circuit court's order of summary judgment is

AFFIRMED.[1]

MCDONALD, HEWITT, and TURNER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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APPEAL FROM BEAUFORT COUNTY
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of which Hilton Head Exterminators, Inc., is the Respondent.

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant Kathleen M. Rankin respectfully petitions this Honorable Court for rehearing of its Opinion No. 2025-UP-375, filed November 12, 2025, attached. Appellant submits that this Court has overlooked or misapprehended material evidence and applicable law in affirming the circuit court's grant of summary judgment.

I. THE COURT OVERLOOKED DIRECT EVIDENCE THAT CREATES A GENUINE ISSUE OF MATERIAL FACT.

This Court concluded that "Rankin failed to raise a genuine evidentiary dispute as to negligence." Op. at 2. In reaching this conclusion, the Court found that Appellant "failed to raise a genuine dispute over what Respondent did or did not do at the home," referenced "the lack of any records from Respondent's warranty period," and cited a "Department of Pesticide Regulation official's open acknowledgment that the department does not know what Respondent did or did not do with respect to this property." Op. at 2. This conclusion overlooks direct evidence in the record that creates a genuine issue of material fact.

This Court has overlooked the official Report of Structural Pest Inspection issued by DPR Investigator Kristen Lenox-Rustin, which was based on her *first-hand inspection* of the residence in January 2020. (R. pp. 246-252). Ms. Lenox-Rustin personally observed that EIFS stucco was in contact with the ground and expressly found: "*Hilton Head Exterminators failed to address EIFS ground contact.*" (R. p. 248) (emphasis added). This official DPR Report has neither been withdrawn nor amended.

This Court has also overlooked the official letter from Ryan Okey, the Pesticide Program Chief at DPR, dated January 15, 2021, which expressly affirmed Investigator Lenox-Rustin's findings and stated: "[T]he following standards for Prevention of Control of Wood Destroying Organisms [Section 27-1085(G)(2)(B)] were not properly completed as required by the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act." (R. pp. 253-254). Mr. Okey's letter further stated: "*Hilton Head Exterminators failed to address EIFS ground contact.*" (R. pp. 253-254). This official letter has likewise neither been amended nor withdrawn.

These official DPR documents constitute direct evidence of what Respondent failed to do during its admitted six-year and eleven-month engagement at the property (June 1, 2005 to April

27, 2012). Respondent's own Memorandum in Support of Summary Judgment admitted this engagement. (R. p. 155). The DPR Report and Letter are not mere allegations; they are official regulatory findings documenting Respondent's specific failure to address a high-risk pathway for termite activity in violation of the South Carolina Pesticide Control Act. This evidence creates a genuine issue of material fact as to whether Respondent was negligent in carrying out its inspections.

Unlike *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 464, 892 S.E.2d 297 (2023), where the nonmoving party's evidence (a check written on a certain date) did not provide "a meaningful factual basis on which a factfinder could determine" the relevant issue and required the factfinder to "speculate," Appellant's evidence here consists of official regulatory findings based on *first-hand observation* that expressly identify Respondent's specific failure. No speculation is required—the DPR documents directly state what Respondent failed to do. A factfinder presented with this evidence could reasonably conclude that Respondent breached its duty of care by failing to address the EIFS ground contact condition during its nearly seven-year engagement at the property.

II. THE COURT MISAPPREHENDED THE EVIDENTIARY DISPUTE BY CREDITING ONE DPR OFFICIAL'S AFFIDAVIT OVER OFFICIAL DPR DOCUMENTS.

This Court's reference to a "DPR official's open acknowledgment that the department does not know what Respondent did or did not do" appears to credit the affidavit of Kevin DeLorenzo, DPR Structural Program Manager, who stated he "would have also agreed not to issue an informational letter." (R. p. 198).

However, Mr. DeLorenzo's affidavit does *not* refute the fact that Ms. Lenox-Rustin *personally observed* EIFS stucco in contact with the ground during her inspection. His affidavit does not withdraw or amend the official DPR Report or Mr. Okey's official letter. Rather, Mr.

DeLorenzo merely opined that he *would have* reached a different conclusion—a classic factual dispute.

"At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 11, 825 S.E.2d 707, 712 (Ct. App. 2019). This Court's Opinion effectively credits Mr. DeLorenzo's after-the-fact affidavit over the contemporaneous official DPR Report and Letter, thereby improperly weighing conflicting evidence at the summary judgment stage.

Where "the evidence is susceptible to more than one reasonable inference, [it] should be submitted to the jury." *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006); *see also Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297 (2023) (citing *Vaughan* approvingly). Here, different officials of the same regulatory agency reached different conclusions from the same investigation. This is precisely the type of factual dispute that precludes summary judgment.

III. THE COURT OVERLOOKED THAT THE EVIDENCE CREATES A GENUINE ISSUE OF MATERIAL FACT AND SUPPORTS A REASONABLE INFERENCE.

The proper standard for summary judgment under Rule 56(c) is the "genuine issue of material fact" standard. As recently clarified by our Supreme Court, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463-64, 892 S.E.2d 297 (2023) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). Conversely, where the nonmoving party presents evidence supporting a *reasonable* inference in their favor, summary judgment is improper and the case must proceed to trial.

The official DPR Report documenting first-hand observations that EIFS stucco was in contact with the ground, and expressly stating "Hilton Head Exterminators failed to address EIFS

ground contact," creates a genuine issue of material fact that Respondent was negligent. This evidence supports a reasonable inference—indeed, the only reasonable inference—that Respondent failed to address this condition during its inspections. This Court's Opinion does not address why these official regulatory findings fail to create such a genuine issue.

Significantly, this case is distinguishable from *Kitchen Planners*, where the Supreme Court found the nonmoving party's evidence (a check written on September 29 to pay for parts ordered on an unknown date) "does not provide a meaningful factual basis on which a factfinder could determine" the relevant issue. 440 S.C. at 464. There, "the factfinder would be required to speculate." *Id*. Here, by contrast, no speculation is required. The official DPR documents expressly state that "Hilton Head Exterminators failed to address EIFS ground contact"—a direct finding based on first-hand observation.

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Callawassie Island Members Club, Inc. v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022) (quoting *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002)). Viewed in this light, the documented observation that EIFS stucco was in contact with the ground—a structural condition that existed during Respondent's nearly seven-year engagement—supports the reasonable inference that Respondent failed to address this condition during its inspections.

IV. THE COURT OVERLOOKED THE DISTINCTION BETWEEN THE OFFICIAL DPR DOCUMENTS AND RESPONDENT'S EXPERT AFFIDAVIT.

This Court's Opinion notes "the lack of evidence from Rankin directly contradicting the affidavit from Respondent's termite expert." Op. at 2. However, the official DPR Report and official DPR Letter *do* directly contradict Respondent's position. Both documents expressly state

that "Hilton Head Exterminators failed to address EIFS ground contact" and that this failure violated the South Carolina Pesticide Control Act.

Notably, Respondent's expert affidavit was filed only four days before the summary judgment hearing (August 11, 2022), despite the motion being filed on June 12, 2022, in violation of Rule 6(d), SCRCP, which requires affidavits to be "served with the motion." (R. pp. 153-154, 155-230). Appellant was denied meaningful opportunity to counter these late-filed affidavits.

V. THE COURT'S RULING OVERLOOKS THE NATURE OF THE EIFS GROUND CONTACT EVIDENCE.

The EIFS ground contact condition observed by Ms. Lenox-Rustin in January 2020 is a *structural condition,* not a transient state that appears and disappears. EIFS stucco does not spontaneously make contact with the ground after a pest control company's engagement ends. The reasonable inference, which must be drawn in Appellant's favor at summary judgment, is that this condition existed during Respondent's nearly seven-year engagement and that Respondent failed to address it during that time.

As the DPR Report itself explains: "Formosan subterranean termite, like other subterranean termites, must maintain contact with the ground in order to obtain moisture." (R. p. 247). The EIFS ground contact condition provided precisely this pathway. Respondent's failure to address this condition—as documented by DPR—is direct evidence of negligence.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant rehearing, vacate its Opinion affirming summary judgment, and remand this case for trial on the merits. The official DPR Report and official DPR Letter—based on first-hand observation and expressly finding that Respondent violated the South Carolina Pesticide Control Act—create a genuine

issue of material fact as to whether Respondent failed to address the EIFS ground contact condition during its engagement at the property. Unlike in *Kitchen Planners*, where the evidence required the factfinder to speculate, the official regulatory documents here directly state what Respondent failed to do. At minimum, these documents support a reasonable inference in Appellant's favor, precluding summary judgment under the proper Rule 56(c) standard.

Respectfully submitted,

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Mount Pleasant, South Carolina
November 26, 2025

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Appeal From Beaufort County
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Unpublished Opinion No. 2025-UP-375
Submitted September 1, 2025 – Filed November 12, 2025

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Because this case is controlled by Rankin's failure to present a genuine dispute of material fact over her claims, we need not address any remaining issues. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal). The circuit court's order of summary judgment is

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MCDONALD, HEWITT, and TURNER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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Kathleen M. Rankin, Appellant,

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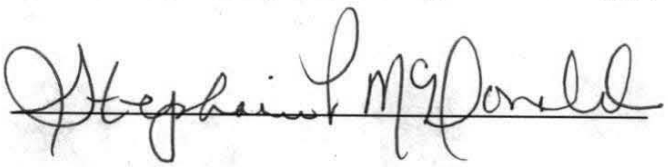
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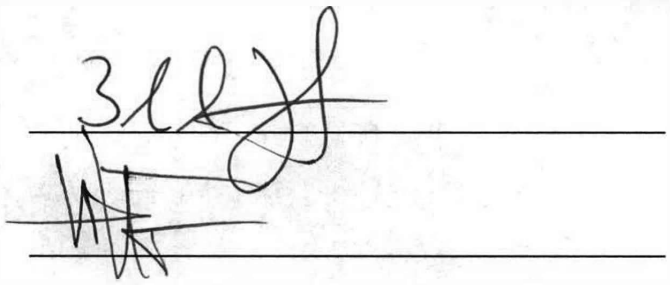
Appellate Case No. 2023-000117

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.

J.

Columbia, South Carolina

cc:
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Dec 10 2025