THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

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

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

Appeal Case No. 2024-002011

Steven Maness Appellant

v.

Gunter Heating & Air and Teddy Gunter Respondent

FINAL BRIEF OF APPELLANT

Steven Maness, pro se

305 Kilgore Farms Circle

Simpsonville, South Carolina 29681

864-905-1314

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STATEMENT OF JURISDICTION

This appeal is from an order granting summary judgment in favor of Respondents Gunter Heating & Air and Teddy L. Gunter, entered on September 18, 2024. Appellant filed a timely Rule 59(e) motion to alter or amend, which was denied on October 29, 2024. Appellant then filed a Notice of Appeal on November 20, 2024, pursuant to Rule 203(d)(1)(B), SCACR. Jurisdiction is proper in this Court under S.C. Code Ann. § 14-8-200(a)(1).

ISSUES PRESENTED

1. Did the trial court err in granting summary judgment where genuine issues of material fact existed as to the cause and timing of the HVAC failure?
2. Did the trial court err in applying the statute of repose under S.C. Code § 15-3-640 where the HVAC system is a removable appliance using refrigerant and natural gas, not an improvement to real property?
3. Did the trial court err in refusing to apply S.C. Code § 15-3-670, which provides exceptions to the statute of repose for hidden, concealed defects, building code violations, recklessness, gross negligence and concealment of a cause of action.
4. Did the trial court err in holding that the discovery rule did not apply where the defect and damage were not reasonably discoverable until 2018?
5. Did the trial court err in relying on misleading factual assertions based on a prior insurance claim and irrelevant prior proceedings to support summary judgment?

STATEMENT OF THE CASE

In 2005, Gunter Heating & Air and Teddy L. Gunter installed the original HVAC system, including ductwork, in Appellant Steven Maness's newly constructed home. In response to water and mold damage discovered in 2018 — which State Farm Fire and Casualty Company initially acknowledged and partially covered as HVAC-related/caused loss, but subsequently declined to fully pay as the scope of repair expanded. Respondent denied all responsibility. (R. pp. 85, 86, 87, 90) Appellant filed suit in 2021.

The initial complaint named both State Farm and Gunter Heating & Air, alleging claims for negligent installation and failure to cover a loss. The original complaint was filed on September 24, 2021. Respondents Gunter Heating & Air and Teddy Gunter filed their Answer on October 20, 2021.

After a December 6, 2022 hearing, State Farm was denied Summary Judgment for breach of contract but was granted Summary Judgment for acting in bad faith.

On December 1, 2023, Appellant filed a Motion to Compel in an effort to obtain the EDT Report from Respondent. The motion was granted on January 22, 2024.

On April 25, 2024, Respondents filed a two-paragraph Motion for Summary Judgment.

On June 6, 2024, State Farm and Appellant resolved litigation between themselves.

On August 23, 2024, Appellant filed with the court a sworn affidavit and engineering report of Warren Maddox, P.E., detailing findings from his inspection of the Maness home.

On August 26, 2024, Appellant filed a sworn affidavit in response to the Motion for Summary Judgment.

Just days before the scheduled Motion for Summary Judgment hearing, on August 30, 2024 (the Friday before Labor Day), Respondents filed with the trial court an extensive memorandum in support of their Summary Judgment motion, well outside the ten-day window required by Rule 56(c), S.C.R.C.P., and without any notice to Appellant.

On September 3, 2024, three (3) days before the hearing, Respondent’s counsel emailed Appellant a 13-page memorandum with multiple lengthy exhibits.

The summary judgment hearing was held on September 6, 2024.

On September 18, 2024, the court issued an Order Granting Summary Judgment in favor of Respondents.

With the trial court closed for several days after Hurricane Helene, Appellant timely filed a Motion to Reconsider the Summary Judgment ruling on October 3, 2024.

Appellant's Motion to Reconsider was denied on October 29, 2024.

Appellant filed a Notice of Appeal on November 20, 2024.

STATEMENT OF FACTS

In 2005, Respondents, Gunter Heating & Air and Teddy Gunter installed the HVAC system, including extensive metal ductwork, in Appellant's newly constructed home. For at least three years, Gunter Heating performed seasonal HVAC work and inspections. (R. 37, Motion for Summary Judgment Hearing Transcript/Tr. p. 29:8 – 16)

The system heated and cooled adequately, requiring only normal maintenance until September 25, 2018, when Appellant-Maness noticed sudden moisture issues — including swelled and buckling hardwood flooring and difficulty opening and closing the front door. (R. pp. 88, 89, 96)

Upon inspection, Appellant discovered excessive moisture dripping from all parts of the HVAC ductwork throughout the home's crawlspace. When floor insulation was pulled down underneath the master bathroom cabinet, extreme wetness was found around the HVAC duct/floor connection and under the bathroom cabinet, revealing pervasive moisture damage, condensation and mold. Wood rot was also discovered under the subfloor, damage ultimately traced back to poorly insulated metal ductwork in the crawlspace, later confirmed by 2 separate forensic engineering reports.

Maddox Engineering Report and supporting affidavit of Warren Maddox, P.E., Appellant's technical expert (R. pp. 97 – 103; R. pp. 55 – 57, respectively)

The affidavit of Appellant Steven Maness, (R. pp. 58 – 65)

The EDT Report prepared for Respondents by Jeff Jaco, Respondent's technical expert (R. pp. 283 – 300).

This area of concentrated damage, discovered under the master bathroom cabinet, was under the home, contained in the crawlspace, over 30 feet from the crawlspace door, over, then under four horizontal drainpipes, around and behind two brick column supports, up, then between floor trusses, then behind a thick layer of floor insulation (easiest one to access). During the water remediation process three (3) areas like this were found: two (2) at opposite ends of the lower level, under bathroom cabinets, forty-one (41) feet from each other and one (1) in the middle of the lower level, under the main kitchen cabinet. (R. p. 84, First-floor layout with areas highlighted, from Motion to Reconsider (MTR) Exhibit A4

Appellant immediately notified State Farm Insurance and filed a claim.

Appellant also notified Respondent Gunter, and Appellant initiated water remediation through Servpro of North Greenville.

Respondent visited the home the next day on September 26, 2018, inspected the system, and apparently closed all the foundation vents. After a few phone calls, Respondent instructed Appellant to file a claim. (R. pp. 37 – 39, Tr. 29:23 – 31:3; R. p. 86)

During drying and remediation Appellant and Servpro technicians together, made multiple openings in the larger ductwork trunkline vapor barrier to release trapped water. This occurred after the damage was discovered in order to expedite the drying process. (R. p. 25 – 26, Tr. 17:9 – 18:10)

State Farm adjuster Daniel Addis and Servpro both documented the loss as due to HVAC defect. Prior water issue with dishwasher was noted in the claim but State Farm or Servpro did not indicate in any way, any connection with any prior claim, specifically the dishwasher leak, either in writing or verbally. (R. p. 85, MTR Ex. A5)

Gunter retained Engineering Design & Testing (EDT), whose engineer Jeff Jaco inspected the home for several hours on March 14, 2019 and identified verbally, directly to Appellant, inadequate or missing duct insulation at the duct "boots" as the primary root cause of the water damage. (R. p. 25 Tr. 17: 9 – 15; R. p. 286 (EDT Report p. 4); R. p. 91)

Respondent then denied Appellant's demand citing "system age and wear and tear."

> "INSURED CONTACT Rec'd call from Mr. NI "He states the RP didn't properly insulate the ductwork and at every register there is no insulation. They also didn't install the correct size return air vent which was inadequate to move the air which also caused the problem over time. He also has property damage he needs to claim. I asked if repairs have been made and he said they have not because the unit has not been replaced.
>
> Called OIC and rep Anita Rice is no longer with the company
> Claim reassigned to: Sean Warman 412-858-1144 cm@motoristgroup.com
> Spoke to Sean Warman and asked if claim has been denied. He said it has. He stated their expert said it was normal wear and tear. I asked for a copy of their report and he said they do not share it. Gave him email to send us denial letter."
> 04-29-2019 - 10:03 AM: McClinton, Toni, State Farm Ins. (R. p. 87, MTR Ex. A7)

The actual report from EDT was withheld from Appellant for nearly 5 years. Respondent refused to deliver it, then Respondent's counsel instructed EDT/Jeff Jaco to refuse a properly served subpoena in 2023. In a Motion to Compel hearing in early 2024, Appellant cited six written requests and subpoena for the report along with long overdue interrogatories. Judge Morgan GRANTED Motion to Compel for its delivery in January, 2024. (R. pp. 49 – 54)

Experts from EDT and Maddox Engineering both concluded that the system had been improperly installed from the outset, with undersized or absent insulation around metal ducts throughout the duct system, causing long-term condensation. These deficiencies were

concealed within the crawlspace (under the house) completely outside and out of view from the living area. They were very difficult to access, up between floor trusses & under floor insulation (poorly insulated/sealed boots). (R. pp. 32 – 33, Tr. p. 24: 23 – Pg 25:3; R. pp. 298 – 300, EDT report figures 23-27)

In other areas, requiring a destructive test to measure actual insulation thickness wrapping of the ductwork. (R. p. 102, Maddox report, page 6)

Background regarding past insurance claim.

In 2008, a dishwasher leak caused surface-level water damage in the kitchen, requiring replacement of several hardwood boards and refinishing. Everything was put back into place exactly as before (the home was just over 2 years old), except the granite counter top, which was cracked upon removal (all tops required replacement in order to match). That claim was handled by a contractor, inspected by mortgage holder Wells Fargo and State Farm. Then State Farm paid the balance of the contractor's bill. State Farm pursued subrogation against Frigidaire for the entire cost and Appellant was refunded his deductible. (R. p. 28, Tr. p. 20: 14 – 21: 4)

Following that event, Gunter Heating & Air was called to replace a short duct segment just under the floor register containing construction debris elsewhere in the crawlspace but left the undamaged section under the kitchen cabinet adjacent to the dishwasher untouched. The photographic record shows this same section remained unchanged until 2018. The Respondent was the last and only contractor to perform any work or make any modifications whatsoever to the duct system.

2008 Before (R. pp. 216, 93 – 94) and 2009 After Gunter repair. (R. pp. 215, 95; R. p. 27, Tr. p. 19: 2 – 11)

2008 (R. pp. 268) and 2018 (R. p. 299/Fig 25, R. p. 107) photos of kitchen ductwork comparison. (R. p. 29, Tr. p. 21:16 – 22:1)

Maddox Engineering concluded that no amount of homeowner maintenance could have detected or prevented the defect. "Homeowner maintenance would not have prevented the moisture damage that has occurred." (R. p. 103)

SUMMARY OF REASONS FOR REVERSAL

This appeal seeks reversal of the trial court's summary judgment for the following fundamental reasons:

1. **Errors of Law**

   S.C. Code § 15-3-640 The trial court misapplied the statute of repose by treating improperly installed insulation on a HVAC system (which is an appliance) as a permanent real property improvement.

   S.C. Code § 15-3-670 A-B The trial court failed to apply statutory exceptions for fraud, gross negligence, recklessness, concealment of a cause of action and specific building code violations.

   S.C. Code § 15-3-670 C, 1&2 The trial court failed to acknowledge the very obvious hidden nature of multiple hidden insulation and duct-sealing deficiencies, despite respective evidence and supporting testimony, including two professional engineering reports and one affidavit.

2. **Material Fact Disputes**

   Genuine disputes of material fact exist regarding the cause, discoverability, and nature of the HVAC failure and resulting damages, that should prevent summary judgment. These include:

   - Whether the 2008 dishwasher leak caused any damage to the ductwork
   - Whether the 2008 photo shows dishwasher damage or early duct condensation under the cabinet
   - Whether the ductwork was ever cleaned, modified or repaired, besides by Respondent
   - Whether the Respondent made a ductwork repair in late 2008, after all other dishwasher leak repairs were complete
   - Whether building code violations occurred
   - Whether the defect was reasonably discoverable before September 2018

- Whether the small claims case against the builder was relevant or even admissible
- Whether the small claims action against the builder was for the same causes of action and/or involved the same parties
- Whether the holes in the bottom of some duct runs were made by Servpro and Appellant as testified

The trial court misapplied the statute of limitations by failing to properly apply the discovery rule to latent construction defects and relied entirely on a narrative presentation by Respondent's counsel, despite contradictory evidence and the *absence* of evidence to support virtually all his assertions.

3. **Procedural Violations**

The trial court improperly considered late-filed memoranda and evidence submitted and notice given to Appellant only three days before the hearing in violation of Rule 56(c), S.C.R.C.P., depriving Appellant of a fair opportunity to respond.

4. **Improper Use of Incomplete Prior Proceedings**

The trial court improperly relied on an incomplete small claims court record where nearly all of Appellant's entire testimony was inadvertently erased by the court and that of the builder/defendant remained. The case involved completely different issues and parties, disregarding the requirements of res judicata or collateral estoppel under South Carolina law.

Each of these errors independently, and certainly collectively, mandate reversal of the trial court's granting summary judgment.

SUMMARY OF ARGUMENT

Summary judgment was improper where obvious and disputed material facts remained as to the cause and discovery of the damage.

The statute of repose does not apply to removable appliances like HVAC systems or its insulation wrap. Even if it did, clear exceptions under § 15-3-670 for building code violations, recklessness, gross negligence, concealment and hidden defects preclude its use here.

The trial court failed to address Appellant's argument that the HVAC system/ductwork/insulation does not constitute a permanent improvement to real property and ignored the statutory exceptions raised under § 15-3-670. These legal and factual errors require reversal and remand for trial.

The defect was latent, concealed outside the living space, under the home, within a crawl space beneath the home, and Appellant had no reasonable notice of it before 2018. The trial court erred in fact finding, granting summary judgment and denying reconsideration. This is particularly in error when this decision relied exclusively on late-filed lengthy memo filled with disputed statements and no actual evidence. All this, coupled with Respondent's misleading narrative regarding irrelevant past insurance claims and prior proceedings with no bearing whatsoever on the failure of the Respondent to properly apply the required insulation, causing severe property damage to Appellant's home. Additionally, the court ignored material evidence of a breach of duty by the Respondent outlined in 2 PE reports and supporting affidavits from Appellate and his technical expert Maddox which were timely filed by Appellant ahead of the hearing on September 6, 2025. (R. pp. 55 – 65)

ARGUMENT

I. The Trial Court Erred in Granting Summary Judgment Where Genuine Issues of Material Fact Remained

Summary judgment should be granted cautiously, especially in negligence cases, where the existence of a duty and breach are often fact-intensive inquiries. "Negligence cases are ordinarily not susceptible of summary adjudication." *Tupper*, 326 S.C. at 323, 487 S.E.2d at 190. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997)

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), S.C.R.C.P.; Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In reviewing such a motion, the court must view all evidence and inferences in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002).

Here, the trial court failed to properly apply this standard and instead improperly weighed disputed evidence by accepting Respondent's misleading narrative. There are numerous genuine issues of material fact, including evidence of expert testimony that should be submitted to a jury.

1. <u>Whether the 2008 dishwasher leak caused any damage to the ductwork</u>

Other than Respondent's speculative theory, there is <u>no evidence</u> at all the dishwasher affected the duct insulation under the cabinet, much less of the entire home. State Farm, working with Servpro water mitigation professionals would have been the first ones, and with good reason, to call this out. State Farm had clear line of sight to all past claims and while they make note of the dishwasher leak in 2008, there is no mention of *any connection* with the past dishwasher leak. Of note here, the exact same failure was seen under bathroom cabinets at opposite ends of the house more than 25 feet in each direction from the dishwasher in the kitchen. (R. p. 84)

This assertion is made without any supporting evidence or expert opinion, other than Respondent's counsel's opinion of what he can see in the photos from 2008. Additionally, and very importantly, Gunter was at the time Appellant's HVAC service company. Respondent came on site and replaced a section of ductwork in the house which was completed *after* the dishwasher leak repairs were complete. See replaced duct from closet in bathroom. (R. pp. 93, 94 and 95, MTR Exhibits, A13, A14 and A15), (R. pp. 215 & 216)

This duct section Respondent replaced was in a separate part of the bathroom, not the under-cabinet where initial damage was discovered, leaving the rest un-touched. Appellant paid Gunter Heating and Air $150.00.

> "We never had the multiple people inspecting and doing things with the ductwork. The only person to touch that ductwork after we took possession of the house, despite what he has said was apparently done in 2008, the only person to touch that ductwork and do anything with it was Gunter……They replaced a small section of the ductwork that had a pack of crackers that you could see, this goes along with the bits of wood." **Maness, MSJH (R. p. 27, Tr. P 19: 2 – 11), (R. pp. 93 – 95, 215)**

2. Whether the 2008 photo shows dishwasher leak damage or early duct condensation which had been trapped under the small cabinet section.

   See State Farm pictures: (R. p. 268, State Farm # 507), (R. p. 269, SF# 508) and (R. p. 264, SF# 464).

   These photos, 268 and 269 show the HVAC leaking, inadequately sealed and insulated duct under the kitchen cabinet in 2008. Photo 264 shows it from the top with cabinet removed because the dishwasher leaked.

   Compare these with EDT Report Figures 23, 24, 25, 26 and 27. (R. p. 298 – 300)

   Respondent introduced a photo which he incorrectly identifies it in his comparison with EDT report photos showing poorly insulated boots (this particular duct is Figure 25 in the EDT report) in an effort to characterize it as pristine and perfect about the time of the dishwasher leak. (R. p. 299)

   > "A couple of other things, Your Honor, the State Farm file, there is in the color pictures I presented on Bates stamp number 507 [R. p. 268], we see in this -- taken apparently in 2008, we see the sub flooring, which shows a huge water stain. And it appears to be ductwork, which is wrapped and then abutting the underside of the sub flooring. that is the HVAC ductwork. It's not sagging. It's not torn. It doesn't look like it looked in Mr. Jayco's report in limited spots, but that's clearly, Your Honor, moisture on the underside of the sub flooring. Who knows what it did to get into my client's work? And that's -- you know, those are pictures from ten years before this incident and eleven years before Mr. Jayco was able to inspect it." **Williams, (R. p. 42, Tr. P 34: 9-21)**

However, Jaco noted Figure 25 boot wasn't sealed properly which explains why the subflooring was saturated in the 2008 picture. A quick side by side comparison of photos will show that (R. p. 268) matches for its angle & perspective with Jaco's Figure 25 (R. p. 299), eleven years later. Its apparent poor insulation and obvious lack of seal, per Jaco's comment below, looks exactly the same in 2019, when Jeff Jaco performed the inspection. See EDT Report caption: "View of

the third register where an air leak was detected, and staining was present." (R. p. 299, Figure 25)

The picture may not have shown sagging as the others, but it did leak air and it did condense as the evidence shows in the 2008 picture, except then everyone was focused on the dishwasher leak. We only can determine what this photo shows in light of the 2018 absolute complete failure of the duct insulation wrap throughout the home. Of note again, Respondent attempts to use the 2008 photo to *illustrate in a misleading way* it had been negatively impacted by the dishwasher leak, by comparing it to a different duct boot altogether in the EDT Report, presumably either R. p. 299, Figure 26 or R. p. 300, Figure 27, both appeared worse, neither of which could possibly be the air-leaking duct under the kitchen cabinet as called out Jeff Jaco.

What the 2008 dishwasher leak photos illustrate, knowing what we know now:

Appellant contends the photo actually shows early condensation, literally trapped within the base of that cabinet section which had just been removed. The water from the dishwasher, as can be seen in the following pictures, with cabinet & hardwood boards removed, (R. p. 259, SF# 460), (R. p. 264, SF# 464), and (R. p. 267, SF# 476).

Clearly in these photos, the water moved distinctly *away* from the duct opening. (R. p. 262, SF# 462, Water at doorway) The dishwasher leak water never flowed into the duct opening as argued by Respondent.

One can see *now in retrospect* what was happening but every single expert missed it; Servpro, State Farm Adjusters, flooring contractor, all followed by Gunter Heating and Air later to repair the afore mentioned section that had old snack food from construction, which was completely unrelated. With all these experts completely missing this early condensation. In light of why they were all there, a faulty dishwasher, how could the court possibly hold the homeowner responsible as was done? Yet another important issue, decided wholly based on Respondent's continually misleading narrative, not expert analysis, testimony or jury decision.

3. Whether the ductwork was ever cleaned, modified or repaired, besides by Respondent

Respondent actually argued 1st (both in written memo and in the hearing) that **BECAUSE** the duct section in the kitchen had been replaced as a result of the dishwasher leak 10 years earlier, Respondent's work was compromised or damaged.

> "They removed 20 linear feet of ductwork, my client's work in 2008, because of damage. They removed -- at least, one register, they removed and replaced that because of damage from that loss." **Williams (R. p. 18, Tr. p. 10: 9 – 12)**

Appellant then testifies: “So they did not [have to] replace 20 linear feet of Gunter's work. No one, no one and I have proof of that. I have pictures. You can look at the pictures that he's filed here. And then you can look at pictures I have.” **Maness (R. p. 29, Tr. p. 21: 16 – 19)**

“There was no [apparent] damage whatsoever to the duct located under the floor. Gunter arrived to evaluate both everything and to address the small section containing the aforementioned snack crackers.” Maness (R. p. 78, MTR p 13: 17 – 19), (R. pp. 95 and 215)

Then once water mitigation and reconstruction contractors evaluated the duct as the drying process was underway, everyone on site in 2008 agreed it *had not* been damaged by any water from the dishwasher.

During the MSJ Hearing as Respondent realizes it didn’t have to be replaced, his argument immediately changed 180 degrees to basically indicate it should have been:

> “Mr. Maness argued that no repairs were made. Well, Your Honor, I made the State Farm file part of this exhibit. And by the way, Mr. Maness has all these documents. They were produced by State Farm in discovery. But there are specific line items showing the linear feet that was called for to be replaced. Now, whether Mr. Maness hired his own contractor that, ultimately, didn't do that, I don't know, but State Farm absolutely called for those items to be replaced. If they were damaged and not replaced, then that's even greater argument as to why this should be kicked.” Williams (R. p. 43, Tr. p. 35: 6 – 16)

However, the only company or personnel to ever modify the ductwork was the Respondent, Gunter Heating & Air. The reason the system was never reverse vacuum cleaned as planned was due to the builder’s trash – which was a walkthrough item during the home purchase never resolved by builder/Hogan and one reason why Appellant included it in a small claims action. Because Appellant had to clean out all the registers himself and have Gunter replace one small duct section where moldy crackers were discovered after Appellate went in himself to perform the cleanout of the sawdust, etc. (R. pp. 94, 233: Item #C3)

During the MSJ hearing, and Respondent counsel argued eight (8) times that his client’s work had been modified, changed, or greatly compromised in some way:

> “Those are in my -- Mr. Jayco's report is filed with the Court, but I've got a colored copy. Mr. Jayco noted that there are multiple tears in the ductwork. Those are figures 19, 21, 23 of his report, which is what you see here in these colored pictures and what I filed with the Court. He, ultimately, said those tears might contribute to excess condensation.” Williams (R. p. 14, Tr. p. 6: 9-14)

> “They removed 20 linear feet of ductwork, my client's work in 2008, because of damage. They removed -- at least, one register, they removed and replaced that because of damage from that loss.” Willaims (R. p. 18, Tr. p. 10: 9-12)
>
> “So, Your Honor, these incidents that we were not informed of, I think they're incredibly critical because they affected my client's work. Again, this is exactly why the statute of repose exist and the discovery rule as well.” Williams (R. p. 18, Tr. p. 10: 22-25)
>
> “Documents of that are attached as Exhibit E. The claims made through State Farm showed that my client's work was modified in this claim, Your Honor.” Willams (R. p. 19, Tr. p. 11: 6-8)
>
> “In 2018, at some point, State Farm got Serv-Pro to come back out to the house. So now we have a third incident, an incident where moisture and remediation company is coming to the house to deal with some of the same areas. It was only after that, as I mentioned, that Jeff Jayco came in and inspected the ductwork in March of 2019 and noted the tears and all these other things. He's doing that after three different remediation -- four different -- three different remediation companies doing work four different times. Again, after a lawsuit was previously filed against Hogan Builders. Mr. Jayco mentioned in his affidavit that he did this June, I believe, that no county inspector would pass this mechanical work that showed the tears in the ductwork that this showed.” Willams (R. p. 19, Tr. p. 11: 9-23)
>
> “Again, we think statute of limitations is an issue, Your Honor, the discovery rule says that you have – you would have or should've known this damage existed. Not only did he file a construction defect suit against Hogan Builders, which we've provided in our filings, he specifically complained of the HVAC ductwork. Apparently, had multiple people inspect that work and work on it, do a clean out of that. Your Honor, I think the discovery rule bars this.” Williams (R. pp 20 – 21, Tr. pp. 12:18 – 13:1)
>
> “Who knows what it did to get into my client's work?” Williams (R. p. 42, Tr. p. 34: 18-19)
>
> “And that's just what we found, Your Honor. We don't know what else might have happened to this house that might have affected my client's work because he hasn't produced anything about it.” Williams (R. pp. 45 – 46, Tr. pp. 37:23 – 38:1)

However the facts are, there is absolutely no evidence of any damage from a dishwasher leak 10 years prior or any modifications whatsoever (other than by Respondent in 2009).

Again, the last person or company to have eyes and hands on the ductwork at the Appellant's home and do anything to it was the Respondent. (R. pp. 69 – 70)

4. Whether the defect was reasonably discoverable before September 2018

The trial court ruled:

(A) a past insurance claim for a faulty dishwasher, fully subrogated to the manufacturer for its internal defect causing the leak; and

(B) a small claim against Appellant's home builder for failing to resolve a walk-through purchase agreement (over 13 years before the entire to vacuum out all the HVAC registers which was up in the living space of the home, and

(C) for scratched glass on the front door and sidelight windows

That these past items constitute notice of a slow-progressing defect. This finding is in error because Appellate could not have reasonably discovered the defect until it presented itself, as it did in September, 2018. "You asked about homeowner maintenance and home owner maintenance would not have prevented the moisture damage that has occurred." Maddox Report, Pg 7. (R. p. 103)

> According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. *Dean v. Ruscon Corp.,* 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. *Young v. South Carolina Dep't of Corrections,* 333 S.C. 714, 511 S.E.2d 413 (Ct.App. 1999).
>
> Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996)
> In *Dean*, the South Carolina Supreme Court held the statute of limitations doesn't begin to run until the plaintiff "knew or by the exercise of reasonable diligence should have known that he had a cause of action." Importantly, the Court emphasized that mere suspicion or isolated incidents of damage do not necessarily trigger the limitations period. Especially when the defect is latent and not reasonably discoverable.

Appellant's expert witness confirmed that the duct system, as installed by Respondents in 2005, lacked sufficient insulation and was improperly constructed in a way that led to hidden and progressive damage through condensation. The damage became visible only in 2018 when wood swelling and misalignment occurred in the door frame and subfloor — years after any

surface-level plumbing issues had been resolved and long after Gunter had inspected and left the duct system unchanged.

Respondent argued the homeowner should have discovered the defect as early as 2008. However, this theory is contradicted by photographic evidence, expert testimony, and Gunter's own post-2008 conduct, including their failure to address or identify any defect during a visit after the dishwasher leak. The presence of a short, unrelated segment of construction debris removed in 2008 is not evidence that the central defect, the lack of insulation surrounding metal ducts, was observable or known. On the contrary, it was concealed under floors, within a crawl space, behind foil vapor barrier wrapping hidden from view. Without what is essentially destructive testing as Maddox performed: See Maddox Engineering Report, Page 6, showing depth probe measuring thickness of insulation under vapor barrier layer. (R. p. 102) Also, EDT Report, Figures 23-27 where the flooring insulation must be removed to inspect and see defective duct boots. (R. pp. 298 – 300)

Furthermore, the opinions from Maddox Engineering and EDT establish that the ductwork condensation was a latent defect and could not have been discovered with reasonable diligence until symptoms emerged in 2018. These facts, what was visible, when damage became apparent, and whether the homeowner acted reasonably are inherently factual questions suitable for a jury. See Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998) (whether plaintiff exercised reasonable diligence under the discovery rule is a question for the jury).

The trial court usurped the jury's role in resolving these factual issues. The trial court's conclusion that Appellant should have known of the defect earlier was based on speculation and improper inferences against the non-movant. Accordingly, summary judgment was improper.

II. The HVAC System Does Not Constitute an Improvement to Real Property

The trial court erred in concluding that the statute of repose under S.C. Code Ann. § 15-3-640 barred Appellant's claim by treating the HVAC system, including its ductwork, as an "improvement to real property." Under South Carolina law, determining whether an item constitutes a permanent improvement turns on whether it was intended to be a permanent part of the structure and essential to the purpose for which the building is used.

In Ervin v. Continental Conveyor & Equipment Co., 674 F. Supp. 2d 709 (D.S.C. 2009), the court held that a conveyor system, although bolted to the floor and hardwired, was not a permanent improvement to real property because it was removable, non-essential to the building's structural purpose, and capable of being relocated. The court emphasized that the system was not specifically integrated into the construction of the building and could function in any number of similar facilities.

This reasoning applies with equal force to the HVAC system at issue. The system is modular and mechanical, not structural. It is routinely replaced or upgraded during a home's lifespan. The ductwork, blower, and condenser components are not integrated into the permanent construction of the home but are utility-based fixtures designed for removal and service. Homes frequently undergo multiple HVAC installations throughout their useful lives, further demonstrating their lack of *permanence*.

The trial court's conclusion that the HVAC system constitutes an improvement to real property expands the statute's reach beyond its intended bounds and should be reversed. The court emphasized the importance of "permanence" in evaluating whether an item falls under the statute of repose. But an HVAC system is a mechanical assembly that is routinely replaced, upgraded, or modified over the life of a home. The ductwork, blower, and external units are modular and separable, and are designed to be serviced or replaced — unlike concrete foundations, framing, or plumbing stacks.

Although ductwork may be affixed to the home's structure, it does not transform the HVAC system into a permanent improvement to real property. However, here it's about the wrapping and sealant.

In this case the engineering reports show clearly the insulation wrapping of the duct or more specifically the lack of it, as the root cause. Is this possibly the intent of the statute? Appellant argues, certainly not. It's not that the HVAC system failed in its central purpose, to heat and

cool. Rather, it generated from itself a unique failure mode and did great damage to flooring and subflooring throughout the home, 3 sets of cabinets in 2 bathrooms and the kitchen. Appellant argues this could not have been the intent.

Moreover, Appellant raised this argument in both his pre-hearing memorandum and his Motion to Reconsider, citing Ervin and explaining that the HVAC system is a natural gas and refrigerant-based appliance that could be removed and installed in another home with an identical floor plan.

"a transferrable appliance/product/system which uses refrigerant and natural gas. This particular unit could actually be completely disconnected and moved about a mile away to Thorncliff Ct…. The lower level is exactly the same as Plaintiff's home……and could certainly function equally in that location. (R. p. 71, MTR p 6:13 – 18)

The trial court failed to address this issue, despite its centrality to the statute of repose.

Accordingly, the statute of repose under § 15-3-640 does not apply, and summary judgment was improper.

III. Even If the Statute of Repose Applies, It Is Precluded by S.C. Code § 15-3-670

Even assuming the HVAC system qualifies as a permanent improvement to real property under S.C. Code Ann. § 15-3-640, the statute of repose is inapplicable under the express exceptions set forth in S.C. Code Ann. § 15-3-670. That statute bars the use of the repose defense in cases involving:

- Gross negligence or recklessness in construction or design § 15-3-670(A)
- Concealment of a cause of action § 15-3-670 (A)
- Building code violations that may serve as evidence of gross negligence or recklessness § 15-3-670 B
- Hidden defects not discoverable through reasonable diligence § 15-3-670 (C)

Gross Negligence and Code Violations

Respondent's own expert called out poorly insulated and unsealed boots in multiple areas of the EDT report:

> "The surface of the flooring near the HVAC register is cooled by air leakage at the duct to register connection and poorly insulated areas of the metal duct. The condensed water is then absorbed by the wood which causes the hardwood flooring to expand or the water runs downward into the duct insulation." Jeff Jaco (R. p. 286, EDT Report p. 4)

The Maddox Engineering report also confirming findings of Jeff Jaco, found other violations:

> "The insulation should be 2.25" installed thickness, but it is only 0.6" to 1.2" thick. **This is a code violation. 2003 IRC M1601.2.1(3)/(3.2), M1601.3.4 and 2003 IECC (Energy Conservation Code) 503.3.3.3** As the insulation thickness is decreased, the R-value is also decreased. This allows the surface temperature to be colder, thus allowing condensation to form." Warren Maddox (R. p. 98, Maddox Engineering Report, Pg 2)

The Maddox Engineering report, submitted with Appellant's affidavit in response to the Summary Judgment hearing, identifies multiple building code violations in the installation of the HVAC ductwork. These include the absence of required insulation at duct boots and improper sealing of metal-to-wood transitions, which directly caused long-term condensation and subfloor damage.

Under § 15-3-670(B), these violations are admissible as evidence of gross negligence, recklessness and concealment of a cause of action. Appellant also raised this argument in his Rule 59(e) Motion to Reconsider, citing both the statutory language and the expert findings. The *Respondent had a duty* to properly apply the correct type and amount (thickness) of insulation and sealant, but failed throughout the duct system in the Appellant's home. The trial court's order failed to address this exception entirely, despite its direct applicability.

Concealment of a Cause of Action

Moreover, the defect was concealed behind vapor barrier (foil like material wrap) and subflooring and was not discoverable through reasonable diligence, even by professionals, until visible damage manifested in 2018. This further supports the application of § 15-3-670(A) and (C), which bar the statute of repose where the defect is hidden and not reasonably discoverable.

Accordingly, even if the HVAC system were deemed an improvement to real property, the statute of repose cannot be asserted as a defense under § 15-3-670.

IV. The Trial Court Erred in Considering Late-Filed Memoranda and Evidence in Violation of Rule 56(c)

South Carolina Rule of Civil Procedure 56(c) requires that motions for summary judgment and supporting documents be served at least ten days prior to the hearing. This rule ensures that the non-moving party has a fair opportunity to review and respond to the evidence and arguments presented.

In this case, Respondents filed a 13-page memorandum with multiple exhibits on Friday, August 30, 2024, the Friday before Labor Day, just three business days before the scheduled hearing on September 6, 2024. Appellant did not receive the memorandum until Tuesday, September 3, 2024, via email. This was well outside the ten-day window required by Rule 56(c), and Appellant had no meaningful opportunity to respond.

Despite this, the trial court relied on the late-filed memorandum and exhibits in granting summary judgment. Appellant objected to the late filing both in writing and during the hearing. (R. pp. 24 – 25, Tr. pp. 16:13 – 17:8)

The trial court's failure to enforce Rule 56(c) deprived Appellant of a fair opportunity to respond and constitutes reversible error.

In Kitchen Planners, LLC v. Friedman 892 SE 2d 297, 440 SC 456 - SC: Supreme Court, 2023

The appellate court refused to strike a property owner's affidavit even though it was not filed with the motion for Summary Judgment because the affidavit was served more than ten (10) days prior to the hearing on the motion. In this case, Respondent served Appellant just three (3) days before the hearing with memorandum and exhibits

The South Carolina Supreme Court has emphasized that summary judgment is a "drastic remedy" and should be granted only when the non-moving party has had a full and fair opportunity to respond. See Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991). That did not occur here.

Accordingly, the trial court's consideration of untimely materials in violation of Rule 56(c) is an independent ground for reversal.

V. The Trial Court Erred in Considering an Incomplete and Misleading Record from Prior Small Claims Litigation

During the Summary Judgment hearing, the trial court relied in part on a 2010 small claims action initiated by Appellant against the homebuilder, Hogan Builders. That case involved a punch list of mostly minor construction issues shortly after the home was completed. However, the trial court improperly treated that proceeding as evidence that Appellant had prior notice of HVAC-related defects.

This was error for several reasons:

1. **The small claims case was unrelated to HVAC performance.**
   The action involved cosmetic issues and construction debris — such as snack crackers and wood scraps, left in floor registers. It did not involve, reference, or resolve any issue concerning ductwork insulation, condensation, or subfloor damage. The HVAC system's performance was not at issue.

   > "This did not relieve builder of obligation to clean trash from ducts. This was explicitly promised at closing, in fact on 6/18/07, Pat Hogan stated that trash was cleaned out, which was not true, this represents an extra charge from duct cleaning company and still needs completion." (Maness entry, Item C3, Better Business Bureau Agreement, 10/3/2007, Maness/Hogan Builders, Respondent Exhibit E, R. p. 233)

2. **The record was incomplete and unreliable.**
   The magistrate who presided over the small claims case acknowledged that a large portion of the recorded testimony, including most of Appellant's, was lost due to equipment failure, while the builder Hogan's remained. The magistrate attempted to summarize the missing testimony in a post-trial return.

   > "The magistrate filed a Return with the Circuit Court on January 30, 2010. In the Return, the magistrate [Simms] acknowledged that an absent clerk necessitated his operation of the equipment used for recording the proceedings. The magistrate further acknowledged that he did not operate the equipment properly and as a result **a sizeable portion of the recorded testimony was missing, most of which belonged to Plaintiffs**. The magistrate attempted to recount the testimony and summarize portions of the missing testimony in his Return." Maness (R. p. 77, MTR p 12), (R. p. 188)

3. **The trial court improperly used the small claims case to infer notice.**
   Respondents argued and the trial court appeared to accept, that the presence of construction debris in 2008 should have alerted Appellant to a latent HVAC defect that did not manifest until 2018. This is speculative and unsupported by the record. The debris was removed, and Gunter Heating & Air inspected the system afterward, making a minor repair elsewhere but leaving the kitchen ductwork untouched. (R. p. 78), (R. pp. 215, 95; R. p. 27, Tr. p. 19: 2 – 11)

4. **The small claims case does not satisfy the legal standards for res judicata or collateral estoppel.**
   Under South Carolina law, res judicata bars a subsequent action only when the prior judgment was rendered on the merits, involved the same cause of action, and was between the same parties. See Pye v. Aycock, 323 S.C. 316, 474 S.E.2d 56 (Ct. App. 1996). Collateral estoppel requires that an issue was actually litigated and determined in the prior proceeding. See Graham v. State Farm Fire & Cas. Ins. Co., 277 S.C. 389, 287 S.E.2d 495 (1982). Neither standard is met here.

   The trial court's reliance on this incomplete and irrelevant record was improper and further supports reversal.

VI. The Trial Court Erred in Allowing Misuse of Prior Proceedings in Violation of Principles of Res Judicata and Collateral Estoppel

The trial court erred in allowing Respondents to rely on the 2010 small claims proceeding against Hogan Builders and the 2008 State Farm Insurance claim to imply notice or bar Appellant's present claims. Neither prior matter involved Gunter Heating & Air or the HVAC installation at issue here. Neither proceeding adjudicated the cause of the 2018 moisture damage, nor did they involve the same parties or legal issues.

Under South Carolina law:

- **Res judicata** bars a subsequent action only when the prior judgment was rendered on the merits, involved the same cause of action, and was between the same parties. See *Pye v. Aycock*, 323 S.C. 316, 474 S.E.2d 56 (Ct. App. 1996).
- **Collateral estoppel** precludes re-litigation only when an issue has been actually litigated and determined in a prior proceeding. See *Graham v. State Farm Fire & Cas. Ins. Co.*, 277 S.C. 389, 287 S.E.2d 495 (1982); *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 403 S.E.2d 625 (1991).

  Here, the 2010 small claims case was limited to minor construction debris and cosmetic issues. It did not involve any claim of HVAC failure, ductwork condensation, or subfloor damage. The 2008 State Farm claim related to a dishwasher leak and was fully remediated. Neither proceeding involved Gunter Heating & Air, and neither resolved any issue now before this Court. The record is silent regarding any actual connection raised by State Farm Insurance regarding the 2018 dishwasher leak claim.

  Allowing Respondents to leverage those prior events as if they legally barred Appellant's claims is contrary to established South Carolina law and constituted reversible error.

VII. The Trial Court Erred in Accepting an Inaccurate Narrative Regarding Prior Water Events and Discovery of the Defect

During the summary judgment hearing, Respondents introduced a late-filed memorandum containing a photograph — originally taken by State Farm in 2008 — showing moisture on the kitchen subfloor beneath a removed cabinet. Respondents used this image to argue that the HVAC defect was or should have been discoverable at that time. Respondent used the aforementioned 2008 photo argue that the homeowner had prior notice of the duct insulation defect.

This argument fails both logically and factually:

The moisture shown in the 2008 photograph is more plausibly explained as early evidence of duct sweating under the kitchen cabinet, identical in pattern and location to moisture damage later observed in both bathrooms at opposite ends of the house and, to a lesser extent, at every floor register.

This distribution is physically inconsistent with a one-time dishwasher leak being the sole source of water damage and supports Appellant's position that systemic condensation from improper duct insulation was the true cause.

At the time of the 2008 dishwasher leak, the affected area was evaluated and remediated by multiple professionals, including Gunter Heating & Air, who were called in to inspect the HVAC system. They replaced only a short section of duct containing construction debris (e.g., food wrappers), but they left the kitchen cabinet area untouched, indicating no observed damage or concern at the time. The ductwork under that cabinet remained in place, and later photographs submitted to the court demonstrate it was undisturbed until the 2018 claim.

Moreover, neither State Farm nor Gunter Heating & Air identified any HVAC duct insulation defect during their inspection following the dishwasher incident. State Farm subsequently accepted and paid part of the HVAC-related 2018 claim without referencing the prior water losses. This fact underscores that even the insurer, armed with records of both the unrelated dishwasher and an unrelated toilet tank overflow claim, did not consider those prior events to be related or indicative of the HVAC defect.

The trial court erred by accepting Respondents' unsupported and speculative narrative that

Appellant should have discovered the defect in 2008. This conclusion disregards the consistent expert findings that the HVAC failure was latent and only became apparent with the physical manifestation of damage in 2018. It further disregards the reality that no one, including the original installer, identified or suspected a defect during prior repair activity. To expect the homeowner to have done so defies logic and fairness.

This case is replete with factual disputes and technical issues requiring expert testimony and jury resolution. Summary judgment under these circumstances was not only premature, it was manifestly unjust. South Carolina courts have repeatedly held that summary judgment is inappropriate where factual disputes remain or expert interpretation is required. See Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 114, 410 S.E.2d 537, 545 (1991) ("Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify the application of the law."). This case presents precisely the type of contested factual landscape and technical complexity that demands resolution by a jury.

VIII. The Trial Court Improperly Accepted a False Narrative Based on Misleading Assertions by Respondents

The trial court's summary judgment ruling was based in part on a narrative advanced by Respondents that was not only unsupported by the record, but affirmatively contradicted by expert reports, photographs, and procedural history. Respondents' counsel repeatedly mischaracterized the facts to suggest that Appellant had prior notice of the HVAC defect, and the trial court improperly accepted those assertions as fact.

A. Misuse of the 2008 Photograph

At the hearing, Respondents' counsel presented a photograph taken by State Farm in 2008 and argued that it showed water damage caused by a dishwasher leak that "damaged [his] client's work" (R. p. 42, Tr. p. 34:9-19)

This assertion was false. The photograph shows a concentrated area of moisture centered around the under-cabinet duct boot, not the dishwasher, which was located several feet away. In hindsight, and in light of identical failures later discovered in both bathrooms, it is now clear that the moisture was caused by duct condensation, not the dishwasher.

Importantly, no one, not Servpro, not State Farm, not Gunter Heating & Air, recognized the ductwork as the source of the moisture in 2008. Gunter returned to the crawlspace after the kitchen repairs and made a duct repair under the master bathroom, but left the kitchen ductwork untouched. This confirms that even the original installer did not view the area as damaged or defective at the time.

B. False Claims of Prior Modification

Respondents also claimed that the ductwork was modified or cleaned in 2008, and that this somehow absolved them of liability. This is contradicted by the record. The ductwork under the kitchen cabinet was never altered. Gunter Heating & Air removed a short section of duct elsewhere in the crawlspace that contained construction debris, but left the kitchen section intact. Photographs from 2008 and 2018 confirm that the ductwork remained unchanged until the 2018 discovery of damage.

C. Mischaracterization of the Small Claims Case

Respondents further argued that a 2010 small claims case against the homebuilder put Appellant on notice of HVAC defects. This is false. That case involved cosmetic issues and construction debris in floor registers — not duct insulation, condensation, or subfloor damage. The trial court's reliance on this irrelevant and incomplete record was improper.

D. Improper Inference of Notice

Respondents' counsel argued that Appellant "should have known" about the defect in 2008 based on these mischaracterized facts. The trial court accepted this argument, despite the fact that:

- No professional identified the defect in 2008;
- Gunter Heating & Air inspected the system and made no repairs to the kitchen ductwork;
- State Farm paid the 2018 claim as a new HVAC-related loss;
- Two expert reports confirmed the defect was hidden and not discoverable through reasonable diligence.

These are factual disputes that should have been resolved by a jury. The trial court's acceptance of Respondents' misleading narrative, and its failure to credit Appellant's evidence and objections, was reversible error.

CONCLUSION

For the foregoing reasons, the trial court's grant of summary judgment should be reversed, and the matter remanded for trial.

The HVAC defect at issue was latent, concealed, and not reasonably discoverable until 2018.

The trial court erred in applying the statute of repose, failed to consider the statutory exceptions under S.C. Code § 15-3-670, and improperly resolved disputed facts in favor of the moving party.

The court also relied on misleading factual assertions and irrelevant prior proceedings, and violated Rule 56(c) by considering untimely evidence.

Appellant respectfully requests that this Court reverse the trial court's order and remand the case for jury trial. Appellant also requests the privilege, if necessary to make oral arguments as to the very important facts.

/S/ Steven Maness May 27, 2026

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