

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 12 2014

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen

Case No.: 2011-CP-07-2700

Tad Segars,

Plaintiff/Appellant

v.

Ocean Estate Builders, Inc., Ed Flynn,
Individually, David Garcia d/b/a Yinet
Plastering, Inc., Advanced Roofing, Inc.,
Teofilo Lezcano, Individually and d/b/a
Advanced Roofing, Inc., a/k/a Yuko
Construction, Inc., and Jaguar Masonry, Inc.,

Of Whom CNC Construction Company, Inc
Is the

Respondent

RECORD ON APPEAL

Thomas J. Finn
Finn Law Firm, P.C.
P.O. Box 6003
Hilton Head Island, South Carolina
29938
Phone: (843) 682-3555
Fax: (843) 682-3558
finlaw@hargray.com
Attorney for the Appellant

Paul E. Sperry, Esq.
J. Patrick Norris, Esq.
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Attorneys for Respondent CMC
Construction Company, Inc.

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Thomas J. Finn
P.O. Box 6003
Hilton Head Island, S.C.
29938
(843) 682-3555

May 7, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 09-CP-07-04538

TAD SEGARS,)
Plaintiff,)
Vs.)
OCEAN ESTATE BUILDERS,)
INC.)
Defendant.)

COMPLAINT
(Jury Trial Demanded)

2009 SEP 23 PM 3:46
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

The Plaintiff complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Tad Segars is citizen and resident of the State of South Carolina, and own real property in Beaufort County, South Carolina.
2. Defendant, Ocean Estate Builders, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and which is or was, authorized to do business in South Carolina and was the corporate entity which was responsible for constructing the residence at 87 Singleton Beach Road, on Hilton Head Island, South Carolina.
3. The 87 Singleton Beach Residence was built in 2000 and a certificate of occupancy was issued on, June 22, 2000. Upon information and belief, the problems or defects are a result of defective construction.
4. The defects in construction complained of include but are not limited to:
 - A. Improper roofing installation thereby allowing water infiltration and decay of structural components;

- B. Improper and/or incomplete roof flashing;
 - C. Improper roofing and flashing thereby allowing water infiltration and decay of structural components;
 - D. Improper installation of the siding and failure of the siding;
 - E. Improper installation and failure of structural systems;
 - F. Improper and lack of proper caulking;
5. As a direct and proximate result and consequence of the numerous construction defects and problems, the Plaintiffs have and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of the residence.

FOR A FIRST CAUSE OF ACTION
(Negligence Ocean Estate Builders)

6. Plaintiffs incorporate into this cause of action the allegations of paragraph 1-5 above as if repeated verbatim herein.

7. Defendant Ocean Estate Builders, as general contractor for the subject residence owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

8. The deficiencies and defects which exist at the 87 Singleton Beach Residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ocean Estate Builders, in one or more of the following particulars:

- A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction.

B. In failing to properly supervise the subcontractors and/or other trades in order to insure 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 insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

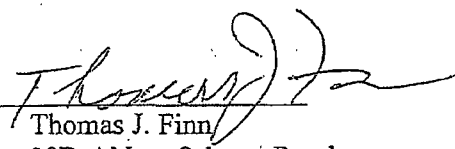
E. In failing to inform the architect and/or owner of the defects in the plans and specifications, owed a duty to Plaintiffs to exercise that degree of skill necessary to select an architect and contractor and oversee the project and otherwise deliver the building free of construction defects and which were designed and built in conformity with customary and ordinary standards of the building and construction industry.

9. As a direct and proximate result and consequence of the negligence and/or gross negligence of the general contractor, Plaintiff has suffered injuries and damages in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, Plaintiff's pray for judgment against the Defendant for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, P.C.

By:



Thomas J. Finn

38D-4 New Orleans Road

Post Office Box 6003

Hilton Head Island, S.C. 29938

(843)682-3555

Hilton Head Island, South Carolina

This 22nd day of September, 2009.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS

Plaintiff(s)

vs.

OCEAN ESTATE BUILDERS, INC.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

09-CP - 07- 00

2009 SEP 23 PM 3:16
CLERK OF COURT
BEAUFORT COUNTY
S.C.

(Please Print)

Submitted By: Thomas J. Finn

Address: Post Office Box 6003 Hilton Head Island, S.C.
29938

SC Bar #: 66534

Telephone #: (843)682-3555

Fax #: (843)682-3558

Other:

E-mail: finlaw@hargray.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20__-CP-__ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☒ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature: Thomas J. Finn

Date: 9/22/09

ALLIANCE FOR ADR COUNTY ES 2017
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TAD SEGARS)

Plaintiff,)

Vs.)

OCEAN ESTATE BUILDERS,)
INC.)

Defendant(s).)
_____)

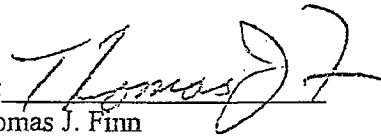
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 09-CP-07-04538

2009 SEP 23 PM 3:46
CLERK OF COURT
BEAUFORT, S.C.

SUMMONS

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 the said Complaint on the subscriber at this office, 38D-4 New Orleans Road, Post Office Box 6003, Hilton Head Island, South Carolina 29938, within (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.**

FINN LAW FIRM, P.C.

By: 

Thomas J. Finn

38D-4 New Orleans Road

Post Office Box 6003

Hilton Head Island, S.C. 29938

Attorney for Tad Segars,

(843)682-3555

Hilton Head Island, South Carolina

This 22nd day of September, 2009

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

Plaintiff,

vs.

OCEAN ESTATE BUILDERS, INC. AND ED
FLYNN, INDIVIDUALLY,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 09-CP-07-4538

ANSWER ON BEHALF OF OCEAN
ESTATE BUILDERS, INC. AND ED FLYNN,
INDIVIDUALLY TO THE AMENDED
COMPLAINT

10 SEP 2009 PM 3:14
BEAUFORT COUNTY SC
CLERK OF COURT

TO: THOMAS J. FINN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF ABOVE NAMED:

The Defendant Ocean Estate Builders, Inc. and Ed Flynn, Individually (collectively referred to as "Ocean Estate"), herein files this Answer to the Plaintiff's Amended Complaint, and would respectfully show as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Amended Complaint not hereinafter admitted is expressly denied.

FOR A SECOND DEFENSE

2. Defendant admits, upon information and belief, that Plaintiff is a citizen and resident of the State of South Carolina and owns a residence located at 87 Singleton Beach, Hilton Head Island, South Carolina (the "residence"); that Ocean Estate is a corporation organized in the State of South Carolina, conducting business in Beaufort County and engaged in the construction business; that Ocean Estate performed general construction work related to the

construction of the Plaintiff's residence; All remaining allegations of the Plaintiff's Amended Complaint are again denied.

FOR A THIRD DEFENSE

3. The Defendant Ocean Estate would herein allege that the Amended Complaint fails to state facts sufficient to constitute a cause of action against the Defendant Ocean Estate.

FOR A FOURTH DEFENSE

4. The Defendant Ocean Estate would herein allege that the Plaintiff's Amended Complaint is barred by the applicable statute of limitations and/or the doctrine of laches.

FOR A FIFTH DEFENSE

5. The Defendant Ocean Estate would allege that the Plaintiff has waived any claims that he may have against the Defendant Ocean Estate.

FOR A SIXTH DEFENSE

6. The Defendant Ocean Estate would allege that the Plaintiff is estopped to assert claims against the Defendant Ocean Estate.

FOR A SEVENTH DEFENSE

7. The Defendant Ocean Estate would allege that any injuries and damages of the Plaintiff, if any, were due to and caused by his own negligence, gross negligence, willfulness, wantonness, and unlawfulness in those particulars set forth in Plaintiff's Amended Complaint; that the aforementioned conduct on the part of the Plaintiff was greater than any alleged wrongful conduct on the part of the Defendant Ocean Estate; and that under the comparative negligence doctrine this fact operates as a complete bar to the Plaintiff's claim; alternatively, if any wrongful conduct on the part of Plaintiff were less than that of the Defendant Ocean Estate,

then Plaintiff's claims should be reduced and apportioned to the extent of his own wrongful conduct.

FOR AN EIGHTH DEFENSE

8. The Defendant Ocean Estate would allege that the Plaintiff's Amended Complaint is frivolous and Defendant Ocean Estate is entitled to costs and attorneys fees against the Plaintiff pursuant to § 15-36-10 of the South Carolina Code.

FOR A NINTH DEFENSE

9. Plaintiff's claims, if any, are the result of acts and omissions of other entities over whom this Defendant had no control, which bars Plaintiff's claims against this Defendant.

FOR A TENTH DEFENSE

10. Plaintiff's claims are, upon information and belief, barred as the Plaintiff has failed to make a claim against Defendant Ocean Estate within the applicable warranty.

FOR A ELEVENTH DEFENSE

11. Plaintiff failed to give Defendant Ocean Estate reasonable notice of the existence of the alleged defects claimed in the Amended Complaint due to alleged faulty workmanship and/or materials and failed to provide Defendant Ocean Estate a reasonable opportunity to correct any such alleged defects. Plaintiff's failure to give Defendant Ocean Estate notice of an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FOR A TWELFTH DEFENSE

12. Defendant Ocean Estate states, upon information and belief, that any express or implied warranties were limited in duration from the date of completion, acceptance and/or occupancy of the residence by the Plaintiff. The failure of the Plaintiff, within the warranty

period from the date of completion and acceptance of the project by the Plaintiff, to give notice or make any claim for alleged deficiencies in the workmanship and/or materials provided by Defendant Ocean Estate, constitutes a complete defense to all claims asserted by the Plaintiff.

FOR A THIRTEENTH DEFENSE

13. The alleged damages about which Plaintiff's Amended Complaint arose is a result of acts or omissions of others over whom Defendant Ocean Estate had no control which occurred after Defendant Ocean Estate had fully performed its duties. If Defendant Ocean Estate was negligent in the manner provided by the Plaintiff, which is denied, the acts or omissions of others superseded and were a proximate cause of any damages suffered by the Plaintiff.

FOR A FOURTEENTH DEFENSE

14. Plaintiff's Amended Complaint is deficient in that Plaintiff has failed to add indispensable parties in this case.

FOR A FIFTEENTH DEFENSE

15. Plaintiff is not entitled to recover in tort for purely economic losses.

FOR A SIXTEENTH DEFENSE

16. That upon information and belief, Plaintiff has failed to properly maintain the residence.

FOR A SEVENTEENTH DEFENSE

17. Plaintiff's claims against this Defendant is barred by applicable statute of frauds.

FOR AN EIGHTEENTH DEFENSE

18. That the injuries and damages of Plaintiff were caused by an Act of God over which this Defendant had no control and for which is not responsible.

Parcel Data		BUILDING INFO	
GENERAL			
Parcel Status	ACTIVE	GIS Bldg Name	
Assess Key	08305103	Zoning	
Primary Owners Name	SEGARS JADIF	Year Built	2000
Parcel Address	87 SINGLETON BEACH ROAD	Sq Ft of Heated Living Space	4,076
Tax District	510	Special Tax Assessment 1	SW
Map/Parcel	12-400	Special Tax Assessment 2	
PCA/PCS	4115	Special Tax Assessment 3	
Subdivision or Local Area	G052	Special Tax Assessment 4	
Acreage	0.00		
Num of Lots	0.0	VALUE	ASSESSMENT
Last Sale Date	08/1998		APPRAISAL
Last Sale Price	\$353,750.00	Land	\$650,000.00
Last Sale Type	0	Building(s)	\$759,800.00
Deed Book and Page Num	10850568	Net	\$1,409,800.00
Parent Parcel		Assessed	\$55,772.00
		Special Tax District 1	\$50.76
		Special Tax District 2	\$0.00
		Special Tax District 3	\$0.00
		Special Tax District 4	\$0.00

CONSTRUCTION RECORDS Query

06/04/2009

District	Map	Parcel	Permit	Seq	Date Iss	Code	GeneralContractor	OwnerName
510	12	10R	50191	16014	2/13/96	M	OWNER	JOHN MOORE
510	12	10R	53079	18207	11/14/97	M	HELP-U-BUILD	EVA SINGLETON
510	12	10R	9800467	20127	1/12/99	B	OCEAN ESTATE BUILDERS	SEAGERS

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 09-CP-07-4538

TAD SEGARS)
Plaintiff,)
Vs.)
OCEAN ESTATE BUILDERS,)
INC., and ED FLYNN, individually)
Defendants.)

CONSENT ORDER TO
40(J)

The below parties hereby consent to allow the Plaintiff to remove the above captioned case off the Beaufort County Trial Roster Pursuant to SCRCP, 40(J).

The below parties further agree that discovery will remain open and either party may proceed with any form of discovery they desire.

It is furthered Ordered that should the case be restored to the roster, it will be subject to being called to trial within thirteen (13) months of the date that it is restored to the roster.

IT IS SO ORDERED.

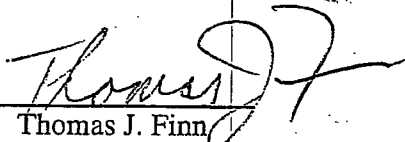
Honorable Carmen Mullen
Presiding Judge
Fourteenth Judicial Circuit

This _____ day of October, 2010.
Beaufort, South Carolina 29901.

WE CONSENT:

FINN LAW FIRM

BY:



Thomas J. Finn
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555 phone
(843)682-3558 fax
Attorney for Plaintiff, Tad Segars

MURPHY & GRANTLAND, P.A.

BY:



Charles G. Blackburn
Post Office Box 6648
Columbia, S.C. 29260
(803) 782-4100
(803)782-4140
Attorney for Defendant's, Ocean
Estate Builders, Inc., and Ed Flynn, individually



MURPHY & GRANTLAND, P.A.

Charles G. Blackburn
Direct dial 803-454-1208
cblackburn@murphygrantland.com

September 28, 2010

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Town of Hilton Head Building Department
One Town Center Court
Hilton Head Island, SC 29928

RE: Tad Segars vs. Ocean Estate Builders, Inc.
Civil Action No.: 09-CP-07-04538
Our File No.: 1289-0006

Dear Sir/Madam:

This law firm represents Ocean Estate Builders, Inc. in the above-referenced matter. During the course of our investigation, we have determined it necessary to obtain a copy of your entire file with respect to permitting history of the Plaintiff's residence (87 Singleton Beach Road, Hilton Head, SC 29928). In that regard, enclosed is a Subpoena for a complete copy of your file. Also enclosed please find an Acceptance of Service for this Subpoena, please sign and return in the envelope provided for you.

Please note that this Subpoena covers all manner of records. If your office has several different departments which maintain records covered by this Subpoena, then you should coordinate retrieval of all records in responding to this Subpoena. This Subpoena does not differentiate between various categories of records/documents based on where they are housed or stored.

You will note that this is a Subpoena for records only. A personal appearance is not required. Please return the documents, along with the enclosed Certification of Authenticity stating that the copies are a true, accurate and complete copy of all of the requested documents, as kept in the normal course of business. Also, pursuant to the S.C. Rules of Evidence, we must have this Certificate notarized in order for them to be self-authenticated for use at trial. If you prefer, your own form may be utilized to certify the authenticity of the records, but please have it notarized. These documents must be received by this office on or before **October 12, 2010**, as indicated on the Subpoena. We will pay for any reasonable expenses incurred in complying with our request.

By copy of this correspondence, I am advising all counsel that the records have been requested from your office. This letter will serve to notify counsel that once the subject documents have been received, they will be available for review and copy at our office, upon appointment.

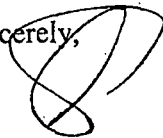
Please do not hesitate to call me if you have any questions concerning this matter or if there are any problems regarding this request.

Telephone 803-782-4100 • Facsimile 803-782-4140 / 803-454-1258
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Charles G. Blackburn
Jeff C. Kull William H. Frye Tim J. Newton Peter E. Farr William M. Connor, V Chris A. Majure

With best regards, I am

Sincerely,

A handwritten signature in black ink, appearing to be "Charles G. Blackburn", written over the word "Sincerely,".

Charles G. Blackburn

CGB/amt
Enclosures

cc: All Counsel of Record (*w/enclosures*)

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF BEAUFORT

Tad Segars,

Plaintiffs,

Vs.

Ocean Estate Builders, Inc.,

Defendants.

SUBPOENA DUCES TECUM IN A CIVIL CASE

Civil Action No.: 2009-CP-07-04538
Pending in Beaufort County

TO: TOWN OF HILTON HEAD, BUILDING DEPARTMENT, ONE TOWN CENTER COURT, HILTON HEAD
ISLAND, SOUTH CAROLINA 29928

☐ YOU ARE COMMANDED to appear in the above-named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM, DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody and control at the place, date and time specified below (list documents or objects):

Any and all documentation regarding the permitting history for the Plaintiff's residence located at 87 Singleton Beach Road, Hilton Head, SC 29928.

PLACE

**Murphy & Grantland, PA
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, SC 29260**

DATE AND TIME

October 12, 2010 @ 9:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(B)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGERS AGENTS OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Charles G. Blackburn, Esquire, Post Office Box 6648, Columbia, SC 29260 (803) 782-4100, Ext. 1208

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ATTORNEY FOR DEFENDANT, OCEAN ESTATE BUILDERS, INC. DATE: 9/28/10
ISSUING OFFICER'S SIGNATURE AND TITLED (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

PROOF OF SERVICE

SERVED	DATE		FEES AND MILEAGE TENDERED TO WITNESS
			☐ YES ☐ NO AMOUNTS _____
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
SERVED BY (PRINT NAME)		TITLE	

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____	DATE	SIGNATURE OF SERVER _____
		ADDRESS OF SERVER _____

Rule 45, South Carolina Rules of Civil Procedure, Part (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after the service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expenses resulting from the inspection and copying command.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed, or regularly transacts business, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer, director, or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed, or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer, director, or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is it privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

CERTIFICATE OF AUTHENTICITY

The undersigned state that he or she is the records custodian or a person with knowledge regarding the records pertaining to the property located at 87 Singleton Beach Road, Hilton Head, SC 29928 that this is a full and complete copy of all records in my possession or knowledge regarding the construction and/or inspection of the above-mentioned property, that these are true and accurate copies of the original, that these records were recorded during the normal course of business at, near, or during the matters noted in the records.

I certify that the above is correct.

RECORDS CUSTODIAN OR PERSON HAVING
KNOWLEDGE REGARDING RECORDS

Dated: _____

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Tad Segars,

vs.

OCEAN ESTATE BUILDERS, INC.,

Plaintiff,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 09-CP-07-04538

ACCEPTANCE OF SERVICE

Due and legal service of the Subpoena Duces Tecum is accepted and a copy of same retained by me this _____ day of, 2010

RECORDS CUSTODIAN

Town of Hilton Head Building Permit Department

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

Plaintiff,

vs.

OCEAN ESTATE BUILDERS, INC. AND ED
FLYNN, INDIVIDUALLY,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 09-CP-07-4538

**OCEAN ESTATE BUILDERS, INC. AND ED
FLYNN, INDIVIDUALLY FIRST
SUPPLEMENTAL RESPONSES TO
INTERROGATORIES AND REQUEST FOR
PRODUCTION TO PLAINTIFF.**

**TO: THOMAS J. FINN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO
THE PLAINTIFF ABOVE NAMED:**

The Defendant Ocean Estate Builders, Inc. (hereinafter referred to as "Ocean Estate")
supplementing its responses to Plaintiff's Interrogatories and Requests for Production, states as
follows:

Counsel for Ocean Estate has in his possession:

1. Records received from Town of Hilton Head Island (Seagers TOHHI0001
through Seagers TOHHI0047) pursuant to Ocean Estate's record subpoena.

MURPHY & GRANTLAND, P.A.



Charles G. Blackburn, Esquire
P.O. Box 6648
Columbia, South Carolina 29260
Telephone: (803) 782-4100
Fax: (803) 782-4100
**Attorneys for Ocean Estate Builders, Inc. and Ed
Flynn, Individually**

Columbia, South Carolina
October 25, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

vs.

OCEAN ESTATE BUILDERS, INC. AND ED.
FLYNN, INDIVIDUALLY,

Plaintiff,

Defendants.

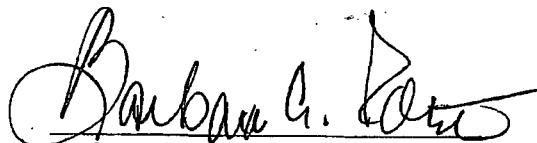
IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 09-CP-07-4538

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., Attorneys for Ocean Estate Builders, Inc. and Ed Flynn, Individually, do hereby certify that I have served a copy of *Defendants Ocean Estate Builders, Inc.'s and Ed Flynn's First Supplemental Responses to Interrogatories and Requests for Production to Plaintiff* in connection with the above-referenced case by placing a copy of the same in today's mail, via U.S. Mail, Certified Mail, Return Receipt Requested, to the following address(es):

Thomas J. Finn, Esquire
Finn Law Firm, PC
P.O. Box 6003
Hilton Head Island, SC 29938-6003



Barbara A. Porter, Legal Assistant

Columbia, SC
October 25, 2010

SUBCONTRACTOR ROSTER

Instructions: Fill in the information in each column. All license numbers must be current. This form is required before the inspection for permanent service. A specialty contractor's license is not needed for commercial work.

Permit # B9800467

Owner name: Tad Seagers General contractor: Ocean Estate Builders

Job location: Lot #29 Singleton Beach Date: 12-27-99

TRADE	CONTRACTOR	HBI BUSINESS LICENSE #	SPECIALTY CONTR LICENSE #
Electrician	Tamie Lantz	90049	
Plumber	All American	19712	
HVAC	A.R.S	94494	
Roofer	Yuko Cnts	91964	5031951
Foundation	Tajana Development	029993669	5018000
Masonry	Tajana Development	029993669	5018000
Steel	N/A	N/A	N/A
Vinyl/aluminum siding	N/A	N/A	N/A
Stucco	Alberto Granola	0299681	5018181
Insulation	L & H Insulation	90679	5000128
Sheet rock/drywall	Ocean estate Builders	995656	N/A
Carpentry- framing	Ocean estate Builders	995656	N/A
Carpentry -interior trim	Ocean estate Builders	995656	N/A
Cabinets	Ocean estate Builders	995656	N/A
Painting	Ocean estate Builders	995656	N/A
Iron railings	N/A	N/A	N/A
Wallpaper	N/A	N/A	N/A
Tile work	Stone Works	93969	5030197
Equipment	N/A	N/A	N/A
Elevator	Elevator Lpt	99086	501800
Factory fireplace	L & H Insulation	90679	
Glass	N/A	N/A	
Sprinkler (Bldg)	N/A	N/A	N/A
Sprinkler (yard)	N/A	N/A	N/A
Alarm system	Hilton Head Sec	93968	600067
Gas	Ferrai Gas	93855	N/A

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

TAD SEGARS,)

Plaintiff,)

Vs.)

OCEAN ESTATE BUILDERS,)
INC., ED FLYNN, individually,)

Defendants.)

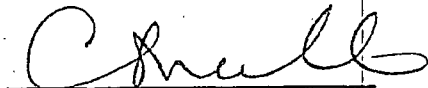
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-07 2700

CONSENT ORDER TO
RESTORE CASE TO THE
GENERAL DOCKET

11 JUN 27 PM 3:40
JENNIFER M. ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The below signed parties hereby consent to allow the Plaintiffs' to Restore this case to the Beaufort County General Docket as provided by Rule 40(J), S.C.R.C.P. Also, this case will be assigned a new case number. The old case number was; 09-CP-07-4538

IT IS SO ORDERED.

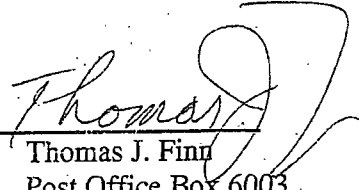


Honorable Carmen Mullen
Presiding Judge
Fourteenth Judicial Circuit

This 24 day of March, 2011.
Beaufort, South Carolina 29901.

WE CONSENT:

FINN LAW FIRM

BY: 

Thomas J. Finn
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555 phone
(843)682-3558 fax
Attorney for Plaintiff, Tad Segars

MURPHY & GRANTLAND

BY: 

Charles Blackburn
Post Office Box 6648
Columbia, S.C. 29260
(803) 454-1208
(803) 782-4140
Attorney for Ocean Estate Builders, Inc., and
Ed Flynn, individually

SUBCONTRACTOR ROSTER

Instructions: Fill in the information in each column. All license numbers must be current. This form is required before the inspection for permanent service. A specialty contractor's license is not needed for commercial work.

Permit # B9800467

Owner name: Tad Seagers General contractor: Ocean Estate Builders
Job location: Lot #29, Singleton Beach Date: 12-27-99

TRADE	CONTRACTOR	HBI BUSINESS LICENSE #	SPECIALTY CONTR LICENSE #
Electrician	Tamie Lantz	90049	
Plumber	All American	19912	
HVAC	A.R.S	94494	
Roofer	YAKO Coats	91964	5031951
Foundation	Jaguar Development	819993669	5018000
Masonry	Jaguar Development	819993669	5018000
Steel	N/A	N/A	N/A
Vinyl/aluminum siding	N/A	N/A	N/A
Stucco	Alberta Gracela	8199681	5018181
Insulation	LTH Insulation	90679	5000128
Sheet rock/drywall	Ocean Estate Builders	995656	N/A
Carpentry- framing	Ocean Estate Builders	995656	N/A
Carpentry -interior trim	Ocean Estate Builders	995656	N/A
Cabinets	Ocean Estate Builders	995656	N/A
Painting	Ocean Estate Builders	995656	N/A
Iron railings	N/A	N/A	N/A
Wallpaper	N/A	N/A	N/A
Tile work	Stone Works	93969	5030197
Equipment	N/A	N/A	N/A
Elevator	Elevator Lift	99081	501800
Factory fireplace	LTH Insulation	90679	
Glass	N/A	N/A	
Sprinkler (Bldg)	N/A	N/A	N/A
Sprinkler (yard)	N/A	N/A	N/A
Alarm system	Hilton Head Sec	93968	8A0067
Gas	Federal Gas	93855	N/A

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-07-2700

TAD SEGARS,)
Plaintiff,)

Vs.)

SECOND AMENDED COMPLAINT
(Jury Trial Demanded)

OCEAN ESTATE BUILDERS,)
INC and ED FLYNN, individually,)
JELD WEN WINDOWS &)
DOORS and ESPY LUMBER)
COMPANY, INC.)

Defendants.)

11 OCT 13 PM 2:38
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Tad Segars is citizen and resident of the State of South Carolina, and own real property in Beaufort County, South Carolina.
2. Defendant, Ocean Estate Builders, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and which is or was, authorized to do business in South Carolina and was the corporate entity which was responsible for constructing the residence at 87 Singleton Beach Road, on Hilton Head Island, South Carolina.
3. Defendant, Ed Flynn, held a general contractors license issued by the state of South Carolina and acted as the General Contractor supervising the construction of the 87 Singleton Beach Residence.

4. Defendant, Jeld Wen Windows & Doors, is a corporation organized and existing under the laws of one of the fifty states and manufactured the windows which were installed at the residence located at 87 Singleton Beach Road, Hilton Head Island, S.C.

5. Defendant, Espy Lumber Company, Inc., supplied the Jeld Wen Windows and Doors, for the 87 Singleton Beach Residence.

6. The 87 Singleton Beach Residence was built in 2000 and a certificate of occupancy was issued on, June 22, 2000. Upon information and belief, the problems or defects are a result of defective construction.

7. The defects in construction complained of include but are not limited to:

A. Improper roofing installation thereby allowing water infiltration and decay of structural components;

B. Improper and/or incomplete roof flashing;

C. Improper roofing and flashing thereby allowing water infiltration and decay of structural components;

D. Improper installation of the siding and failure of the siding;

E. Improper installation and failure of structural systems;

F. Improper and lack of proper caulking;

8. As a direct and proximate result and consequence of the numerous construction defects and problems, the Plaintiffs have and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of the residence.

FOR A FIRST CAUSE OF ACTION
(Negligence Ocean Estate Builders)

9. Plaintiffs incorporate into this cause of action the allegations of paragraph 1-8 above as if repeated verbatim herein.

10. Defendant Ocean Estate Builders, as general contractor for the subject residence owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

11. The deficiencies and defects which exist at the 87 Singleton Beach Residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ocean Estate Builders, in one or more of the following particulars:

A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction.

B. In failing to properly supervise the subcontractors and/or other trades in order to insure 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 insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications, owed a duty to Plaintiffs to exercise that degree of skill

necessary to select an architect and contractor and oversee the project and otherwise deliver the building free of construction defects and which were designed and built in conformity with customary and ordinary standards of the building and construction industry.

12. As a direct and proximate result and consequence of the negligence and/or gross negligence of the general contractor, Plaintiff has suffered injuries and damages in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SECOND CAUSE OF ACTION
(Negligence Ed Flynn)

13. Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-12 above as if repeated verbatim herein.

14. Defendant, Ed Flynn, holder of a South Carolina general contractors license owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the building free of construction defects which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

15. The deficiencies and defects which exist at the Segars residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ed Flynn, in one or more of the particulars.

A. In failing to properly construct the building by deviating from the plans, and specifications and by failing to employ practices and methods of construction, conforming with accepted industry standards; and/or using defective materials, and/or

installing materials not in accordance with the plans and specifications or in violation of the manufacturer's instructions.

B. In failing to properly supervise the contractors and/or other trades in order to insure that all work proceeded in accordance with the plans specifications and also in conformity with the customary and ordinary standards of the construction industry;

C. In accepting or selecting non-conforming or defective materials;

D. In accepting and performing deficient and/or defective workmanship and/or materials, without proper inspection to insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacture's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications.

16. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Ed Flynn, the Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranties/Ed Flynn)

17. The Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-16 above as if repeated verbatim.

18. Defendant, Ed Flynn, breached its express and implied warranties in the following particulars, that include but are not limited to:

A. Failing to properly construct the residence at 87 Singleton Beach Residence, by deviating from the plans, and specifications, and/or failing to employ practices and methods of construction, conforming to the customary and ordinary standards of the construction industry; in using and supplying defective materials; installing materials in violation of manufacture's instructions; or in performing work which violated applicable building codes.

B. Failing to properly supervise employees, agents and subcontractors to assure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards.

C. Accepting defective and/or non-conforming materials and/or labor.

D. Providing deficient and/or defective workmanship and/or materials, without proper inspection to assure that the work was correct, and in conformity with customary and ordinary standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. Failing to adequately seal the exterior of the building such as to allow water to infiltrate the interior of the building.

19. As a direct and proximate result and consequence of the Defendant, Ed Flynn's breach of its express and implied warranties, the Plaintiffs have suffered injuries in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the residence.

FOR A FOURTH CAUSE OF ACTION
(Negligence/Espy Lumber Company)

20. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-19 above as if fully repeated verbatim herein.

21. The windows and doors at the Segars residence are defective in that they allow moisture inside, causing damage to the framing and structural components of the residence. The windows and doors were not installed and/or completed in accordance with applicable architectural plans, specifications and recommendations.

22. Espy Lumber Company, Inc., provided the windows and/or installed the windows and doors at the Segars Residence.

23. Espy Lumber Company, Inc., owed a duty to the Plaintiff to exercise that degree of skill necessary to install the windows and doors free of defects and installed in conformity with the customary and ordinary standards of the building and construction industry. The deficiencies and defects which exist at the Segars residence are the proximate and direct result of the negligence and/or gross negligence of Espy Lumber Company, Inc.

24. As a direct and proximate result and consequence of the negligence and/or gross negligence of Espy, Plaintiff has suffered injuries and damages in an amount equal to extraordinary maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A FIFTH CAUSE OF ACTION
(Breach of Express and Implied Warranties/Espy)
(Lumber Company, Inc.)

25. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-24 above as if repeated verbatim herein.

26. The Defendant, Espy Lumber Company, Inc., expressly and impliedly warranted that their installation of the windows at the residence would be of the highest quality and conformance with the generally accepted standards of the

construction industry. Espy Lumber Company, Inc., further expressly warranted and impliedly warranted that the installation on the Plaintiffs' residence was suitable and fit for the use in the construction and free from defects at the 87 Singleton Beach Residence.

27. The installation as provided by Espy Lumber Company, Inc.'s Breach of its warranties by installing the windows with severe structural and water intrusion problems. Plaintiff is entitled to such actual damages as this Court deems appropriate.

FOR A SIXTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability/Jeld)
(Wen Windows and Doors)

28. Plaintiff repeats and reiterates each and every allegations set forth in paragraphs 1-27 above as if fully repeated verbatim herein.

29. Jeld Wen Windows & Doors, impliedly warranted that its windows were fit for the ordinary purpose for which they were used.

30. This warranty of merchantability was breached in that the Jeld-Wen Windows & Doors, at the residence failed allowing water to infiltrate the residence and cause damage to the residence.

31. The Plaintiff has suffered damage as a result of Jeld-Wen's Breach of the Implied Warranty of Merchantability.

32. Jeld-Wen Windows & Doors, therefore is liable to the Plaintiff for the Breach of the Implied Warranty of Merchantability as set forth in S.C. Code Section 36-2-314.

FOR A SEVENTH CAUSE OF ACTION

(Negligent Misrepresentation failure to Warn/Jeld-Wen)
(Windows & Doors)

33. Plaintiff repeats and reiterates each and every allegation set forth in

Paragraphs 1-32 above as if fully repeated verbatim herein.

34. Jeld Wen Windows & Doors, made misrepresentations concerning the ability of its windows to prevent intrusion of water into the residence.

35. Jeld Wen Windows & Doors, had a pecuniary interest in making these statements, and in the use and installation of the windows.

36. Jeld Wen Windows & Doors, breached that duty by failing to exercise due care in making representations to purchasers.

37. Purchasers justifiably relied upon the representation by Jeld Wen in purchasing, using, or installing the Jeld Wen Windows & Doors.

38. Plaintiff has suffered and will suffer pecuniary loss as a result of the reliance on the Jeld Wen representations by having to install new exterior or sliding and repair water damage which resulted from the window failure.

FOR AN EIGHTH CAUSE OF ACTION
(Negligence/ Jeld Wen Windows & Doors)

39. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-38 above as if fully repeated verbatim herein.

40. Defendant, Jeld Wen Windows & Doors, negligently manufactured, and marketed the windows which were installed at the subject residence;

A. The product's design is defective in that it fails to provide a sufficient barrier against the inevitable intrusion of water into the system;

B. The product's design is unfit for nature's harsh elements and is incompatible with current standards of the industry for design, construction and maintenance;

C. The products were defectively designed, wherein they failed to take into account the penetration of water through openings, joints or seals as a result of kinetic energy, surface tension, capillary action, or wind-induced pressure difference;

D. The product's were defectively designed and manufactured in that it is impossible to keep a building free from water exposure and the Jeld Wen Windows & Doors were not designed to handle water penetration of the exterior surface causing water to collect in the interior of the exterior walls of the Plaintiffs' residence.

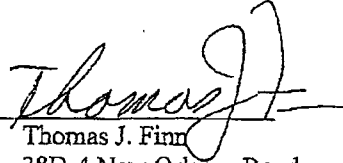
41. The above referenced products were expected and did in fact reach the Plaintiff without substantial change in the condition in which they were marketed, sold, and used in the fashion that Jeld Wen intended them to be used.

42. Due to the negligence, recklessness, and willfulness, of Jeld-Wen Windows and Doors, which caused the unreasonable damage dangerous and defective condition of the products, the Plaintiff has suffered and will continue to suffer damage to the residence including, but not limited to, replacement of the Jeld Wen Windows & Doors, loss of appreciation, deterioration of the residence, and constant need for upkeep and maintenance.

WHEREFORE, Plaintiff's pray for judgment against the Defendant for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, PC.

By:



Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555
Attorney for Plaintiff, Tad Segars

Hilton Head Island, South Carolina
This 26th day of September, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 11-CP-07-02700

TAD SEGARS,

PLAINTIFFS,

vs.

**OCEAN ESTATE BUILDERS, INC.'S
THIRD PARTY SUMMONS**

OCEAN ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, JELD WEN
WINDOWS & DOORS AND ESPY LUMBER
COMPANY, INC.

DEFENDANTS.

OCEAN ESTATE BUILDERS, INC.,

THIRD PARTY PLAINTIFF

vs.

ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTON AND TEOFILLO LEZCANO,
INDIVIDUALLY AND D/B/A ADVANCED
ROOFING, INC. A/K/A YUKO
CONSTRUCTION, JAGUAR MASONRY,
INC., AND ALBERTO GARCIA STUCCO,

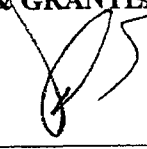
THIRD PARTY DEFENDANTS.

TO: THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Third-Party Complaint upon the subscribers at 4406-B Forest Drive, Post Office Box 6648, Columbia, South Carolina 29260 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, Third-Party Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,

MURPHY & GRANTLAND, P.A.



Charles G. Blackburn, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, SC 29260
cblackburn@murphygrantland.com

**Attorneys for Defendant and Third-Party
Plaintiff Ocean Estate Builders, Inc. and Ed
Flynn, Individually**

Columbia, South Carolina
November 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

PLAINTIFFS,

vs.

OCEAN ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, JELD WEN
WINDOWS & DOORS AND ESPY LUMBER
COMPANY, INC.

DEFENDANTS.

OCEAN ESTATE BUILDERS, INC.,

THIRD PARTY PLAINTIFF

vs.

ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTON AND TEOFILO LEZCANO,
INDIVIDUALLY AND D/B/A ADVANCED
ROOFING, INC. A/K/A YUKO
CONSTRUCTION, JAGUAR MASONRY,
INC., AND ALBERTO GARCIA STUCCO,

THIRD PARTY DEFENDANTS.

TO: THIRD PARTY DEFENDANTS ABOVE NAMED:

The Defendant Ocean Estate Builders, Inc., ("Ocean Estate") herein files its Third-Party Complaint, and would respectfully show as follows:

1. Ocean Estate Builders, Inc. is a corporation organized and existing under the laws of the State of South Carolina and doing business in the State of South Carolina.
2. Upon information and belief, Third Party Defendant Jaguar Masonry, Inc. is a company organized under the laws of South Carolina, and doing business in the State of South Carolina.
3. Upon information and belief, Third Party Defendant Advanced Roofing Inc. a/k/a Yuko Construction and Teofilo Lezcano Individually and d/b/a Advanced Roofing, Inc. a/k/a

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 11-CP-07-02700

**OCEAN ESTATE BUILDERS, INC.'S
THIRD PARTY COMPLAINT**

Yuko Construction (collectively referred to as "Advanced") is a company organized under the laws of South Carolina, and doing business in the State of South Carolina and individually operated by Teofilo Lezcano.

4. Upon information and belief, Third Party Defendant Albert Garcia Stucco is a company organized under the laws of South Carolina, and doing business in the State of South Carolina.

5. Ocean Estate entered into a contract with Jaguar Masonry, Inc. to perform masonry work during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate.

6. Ocean Estate entered into a contract with Advanced to perform roofing work during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate.

7. Ocean Estate entered into a contract with Alberto Garcia Stucco to perform masonry/stucco work during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate.

8. Plaintiff has alleged in his Second Amended Complaint, defects which have resulted from among other things improper and/or incomplete flashing; improper flashing thereby allowing water infiltration and decay of structural components; Improper installation of the siding and failure of the siding; improper installation and failure of structural systems; and improper and lack of proper caulking, some of which the above-named Third-Party Defendants performed.

9. Ocean Estate has denied the allegations of the Plaintiff's Second Amended Complaint (a copy of which is attached hereto as Exhibit A), but to the extent that they are true, the above-named Third-Party Defendants are liable in both contract and equity to Ocean Estate for any damages asserted and recovered by the Plaintiffs in the pending action.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

10. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

11. To the extent, if any, that Ocean Estate is liable to the Plaintiff in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence and/or representations of the Third-Party Defendants, which has damaged Ocean Estate as Ocean Estate has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending this action.

12. To the extent, if any, that the work of the Third-Party Defendants was defective or deficient in design, engineering, materials, installation, installation instructions, and/or were not merchantable for its particular purposes, such defects and deficiencies would be the result of the breach of the express and implied contractual obligations and warranties of the Third-Party Defendants, damaging Ocean Estate by virtue of its being subjected to liability and having incurred consequential damages in having to expend attorneys' fees and costs in defending this action.

13. Ocean Estate is entitled to full indemnification by contract and equity from the Third-Party Defendants for any liability Ocean Estate is found to have to the Plaintiff in this action, and Ocean Estate would be entitled to damages for the Third-Party Defendants' negligence as afore described and for the Third-Party Defendants' breach of their implied and express warranties, entitling Ocean Estate to recover from the Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)

14. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

15. The Third-Party Defendants expressly implied and warranted to Plaintiff and Ocean Estate that all work performed by them would be performed in a careful, diligent and workmanlike manner, that any materials and/or services designed, supplied or sold by the Third-Party Defendants for use during construction of Plaintiff's residence would be merchantable and fit for their intended or specific purpose.

16. The Third-Party Defendants breached their implied and/or express warranties of merchantability, workmanlike service and/or fitness for a particular intended purpose in the construction performed on Plaintiff's house.

17. As a result of these breaches of warranties, Ocean Estate has incurred damages in the amount of any money that it may be adjudged to owe the Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this matter.

18. Upon information and belief, Ocean Estate is entitled to judgment against the Third-Party Defendants in the amount of any monies it may be adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation, defense and settlement of this claim.

FOR A THIRD CAUSE OF ACTION
(Negligence)

19. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

20. The Third-Party Defendants were negligent, careless, and reckless in the installation design, supervision, construction, inspection or supplying of the work or materials outlined above and incorporated into the construction work performed at the Plaintiff's house as

alleged in the Plaintiff's Second Amended Complaint, a copy of which is attached hereto as Exhibit A.

21. As a direct and proximate result of such negligence, carelessness and recklessness, Ocean Estate has been damaged in the amount of any monies it may be adjudged to owe the Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

22. Upon information and belief, Ocean Estate is entitled to judgment for actual damages, collectively or individually against the Third-Party Defendants in the amount of any monies it may be adjudged to owe the Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, as well as the fees and costs incurred in the investigation, defense and settlement of this claim.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

23. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

24. The Third-Party Defendants contracted with Ocean Estate that all work performed by them would be performed in a careful, diligent and workmanlike manner, that any materials and/or services designed, supplied or sold by them for use during construction work performed on the Plaintiff's house would be merchantable and fit for their intended or specific purposes.

25. The Third-Party Defendants breached their contracts with Ocean Estate in the construction work performed on the Plaintiff's house as set forth in the Plaintiff's Second Amended Complaint.

26. As a result of these breaches of contract, Ocean Estate has incurred damages in the amount of any monies that it may be adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

27. The Third-Party Defendants are contractually liable to Ocean Estate pursuant to the subcontracts between the Third-Party Defendants and Ocean Estate. Accordingly, Ocean Estate is entitled to judgment against the Third-Party Defendants in the amount of any monies it may be adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost and fees incurred in the investigation, defense and settlement of this claim.

WHEREFORE, Ocean Estate prays for a judgment on its third-party claims against the Third-Party Defendants as set forth herein and for such other and further relief as this Court deems just and proper. The Third-Party Plaintiff also re-alleges the prayer for relief set forth in its Answer to Plaintiff's Second Amended Complaint as fully as if set forth herein verbatim. Ocean Estate demands a trial by jury on all triable issues.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



Charles G. Blackburn, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
**Attorneys for Ocean Estate Builders, Inc. and Ed
Flynn, Individually**

Columbia, South Carolina

11/1, 2011

EXHIBIT "A"

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-07-2700

TAD SEGARS,

Plaintiff

Vs.

OCEAN ESTATE BUILDERS,
INC., and ED FLYNN, individually,
JELD WEN WINDOWS &
DOORS, and ESPY LUMBER
COMPANY, INC.
Defendants.

SECOND AMENDED SUMMONS
(Jury Trial Demanded)

11 OCT 13 PM 2:38
CLERK OF COURT
BEAUFORT COUNTY, S.C.

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 the said Complaint on the subscriber at this office, 38D-4 New Orleans Road, Post Office Box 6003, Hilton Head Island, South Carolina 29938, within (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.

FINN LAW FIRM, PC.

By: _____
Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
Attorney for Plaintiff, Tad Segars

Hilton Head Island, South Carolina
This _____ day of September, 2011.

and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SECOND CAUSE OF ACTION
(Negligence Ed Flynn)

11. Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-10 above as if repeated verbatim herein.

12. Defendant, Ed Flynn, holder of a South Carolina general contractors license owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the building free of construction defects which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

13. The deficiencies and defects which exist at the Segars residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ed Flynn, in one or more of the particulars.

A. In failing to properly construct the building by deviating from the plans, and specifications and by failing to employ practices and methods of construction, conforming with accepted industry standards; and/or using defective materials, and/or installing materials not in accordance with the plans and specifications or in violation of the manufacturer's instructions.

B. In failing to properly supervise the contractors and/or other trades in order to insure that all work proceeded in accordance with the plans specifications and also in conformity with the customary and ordinary standards of the construction industry;

C. In accepting or selecting non-conforming or defective materials;

D. In accepting and performing deficient and/or defective workmanship and/or materials, without proper inspection to insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacture's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications.

14. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Ed Flynn, the Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranties/Ed Flynn)

15. The Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-14 above as if repeated verbatim.

16. Defendant, Ed Flynn, breached its express and implied warranties in the following particulars, that include but are not limited to:

A. Failing to properly construct the residence at 87 Singleton Beach Residence, by deviating from the plans, and specifications, and/or failing to employ practices and methods of construction, conforming to the customary and ordinary standards of the construction industry; in using and supplying defective materials; installing materials in violation of manufacture's instructions; or in performing work which violated applicable building codes.

B. Failing to properly supervise employees, agents and subcontractors to assure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards.

C. Accepting defective and/or non-conforming materials and/or labor.

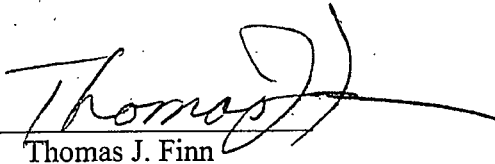
D. Providing deficient and/or defective workmanship and/or materials, without proper inspection to assure that the work was correct, and in conformity with customary and ordinary standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. Failing to adequately seal the exterior of the building such as to allow water to infiltrate the interior of the building.

17. As a direct and proximate result and consequence of the Defendant, Ed Flynn's breach of its express and implied warranties, the Plaintiffs have suffered injuries in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the residence.

WHEREFORE, Plaintiff's pray for judgment against the Defendant for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, PC.

By: 

Thomas J. Finn

38D-4 New Orleans Road

Post Office Box 6003

Hilton Head Island, S.C. 29938

(843)682-3555

Hilton Head Island, South Carolina

This 9th day of March, 2010.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

PLAINTIFF,

vs.

OCEAN ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, JELD WEN
WINDOWS & DOORS, AND ESPY LUMBER
COMPANY, INC.,

DEFENDANTS.

OCEAN ESTATE BUILDERS, INC.,

THIRD PARTY PLAINTIFF

vs.

ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTON AND TEOFILLO LEZCANO,
INDIVIDUALLY AND D/B/A ADVANCED
ROOFING, INC. A/K/A YUKO
CONSTRUCTION, JAGUAR MASONRY,
INC., AND ALBERTO GARCIA STUCCO,

THIRD PARTY DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 11-CP-07-02700

**CONSENT ORDER TO AMEND
THIRD PARTY COMPLAINT
OF OCEAN ESTATE BUILDERS, INC.**

IT APPEARING TO THE COURT, upon motion by counsel for Ocean Estate Builders, Inc. that the Third Party Plaintiff wishes to file an Amended Third Party Complaint against Third Party Defendants Albert Clay, D/B/A CMC Steel Works, Inc. and Plaster Homes Company, Inc. d/b/a Juan's Stucco, and it further appearing to the Court that counsel for the Third Party Defendants have been consulted and consents to asserting such Amended Complaint, and it further appearing to the Court that all parties have consented to the filing of an Amended Third Party Complaint by Third Party Plaintiff, Ocean Estate Builders, Inc., and that no party will suffer prejudice by the filing of the Amended Third Party Complaint,

ORDERED, AJUDGED and DECREED that the Third Party Plaintiff Ocean Estate Builders, Inc., be and hereby are permitted to file an Amended Third Party Complaint in this action.

IT IS SO ORDERED.

Presiding Judge of the Fourteenth Judicial
Circuit
Beaufort County, South Carolina

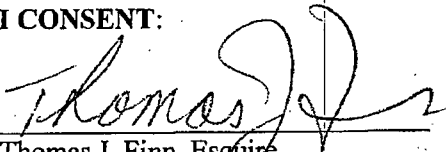
Dated this _____ day of February, 2012.

I SO MOVE:



Charles G. Blackburn, Esquire
Murphy Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206
Attorneys for Third Party Plaintiff

I CONSENT:



Thomas J. Finn, Esquire
Finn Law Firm, P.C.
P.O. Box 6003
Hilton Head Island, SC 29938-6003
Attorney for Plaintiff

Not in this case

Ian W. Freeman, Esquire
Pratt-Thomas Walker, P.A.
16 Charlotte Street
Post Office Drawer 22247
Charleston, SC 29413
Attorneys for Albert Clay d/b/a CMC Steel Works, Inc.



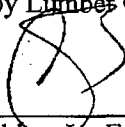
with permission

Steven A. Meckler, Esquire
Shumaker Loop & Kendrick, LLP
128 S. Tryon Street, Suite 1800
Charlotte, NC 28202
Attorney for Jeld-Wen Windows & Doors



with permission

Stephen P. Hughes, Esquire
William T. Young III, Esquire
Howell Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901
Attorney for Espy Lumber Company, Inc.



with permission

William W. Watkins, Jr., Esquire
Wall Templeton & Haldrup, P.A.
Post Office Box 1200
Charleston, South Carolina 29402
Attorney for Espy Lumber Company, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

PLAINTIFFS,

vs.

OCEAN ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, JELD WEN
WINDOWS & DOORS AND ESPY LUMBER
COMPANY, INC.

DEFENDANTS.

OCEAN ESTATE BUILDERS, INC.,

THIRD PARTY PLAINTIFF

vs.

ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTON AND TEOFILO LEZCANO,
INDIVIDUALLY AND D/B/A ADVANCED
ROOFING, INC. A/K/A YUKO
CONSTRUCTION, JAGUAR MASONRY,
INC., AND ALBERTO GARCIA STUCCO,
CMC CONSTRUCTION COMPANY, INC.,

THIRD PARTY DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 11-CP-07-02700

**OCEAN ESTATE BUILDERS, INC.'S
AMENDED THIRD PARTY SUMMONS**

2012 JUN 11 PM 1:42
CLERK OF COURT
BEAUFORT COUNTY, S.C.

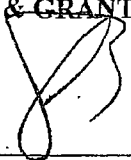
TO: THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Third-Party Complaint upon the subscribers at 4406-B Forest Drive, Post Office Box 6648, Columbia, South Carolina 29260 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid,

Third-Party Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,

MURPHY & GRANTLAND, P.A.



Charles G. Blackburn, Esquire
Murphy & Grantland, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, SC 29260
cblackburn@murphygrantland.com

**Attorneys for Defendant and Third-Party
Plaintiff Ocean Estate Builders, Inc. and Ed
Flynn, Individually**

Columbia, South Carolina
6/8, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

PLAINTIFFS,

vs.

OCEAN ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, JELD WEN
WINDOWS & DOORS AND ESPY LUMBER
COMPANY, INC.

DEFENDANTS.

OCEAN ESTATE BUILDERS, INC.,

THIRD PARTY PLAINTIFF

vs.

ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTION AND TEOFILO LEZCANO,
INDIVIDUALLY AND D/B/A ADVANCED
ROOFING, INC. A/K/A YUKO
CONSTRUCTION, JAGUAR MASONRY,
INC., AND ALBERTO GARCIA STUCCO,
CMC CONSTRUCTION COMPANY, INC.

THIRD PARTY DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 11-CP-07-02700

OCEAN ESTATE BUILDERS, INC.'S
AMENDED THIRD PARTY COMPLAINT

2012 JUN 11 PM 1:42
CLERK OF COURT

TO: THIRD PARTY DEFENDANTS ABOVE NAMED:

The Defendant Ocean Estate Builders, Inc., ("Ocean Estate") herein files its Amended Third-Party Complaint, and would respectfully show as follows:

1. Ocean Estate Builders, Inc. is a corporation organized and existing under the laws of the State of South Carolina and doing business in the State of South Carolina.
2. Upon information and belief, Third Party Defendant Jaguar Masonry, Inc. is a company organized under the laws of South Carolina, and doing business in the State of South Carolina.

3. Upon information and belief, Third Party Defendant Advanced Roofing Inc. a/k/a Yuko Construction and Teofilo Lezcano Individually and d/b/a Advanced Roofing, Inc. a/k/a Yuko Construction (collectively referred to as "Advanced") is a company organized under the laws of South Carolina, and doing business in the State of South Carolina and individually operated by Teofilo Lezcano.

4. Upon information and belief, Third Party Defendant Albert Garcia Stucco is a company organized under the laws of South Carolina, and doing business in the State of South Carolina.

5. Upon information and belief, CMC Construction Company, Inc. ("CMC") is a corporation organized under the laws of South Carolina, and doing business in the State of South Carolina.

6. Ocean Estate entered into a contract with Jaguar Masonry, Inc. to perform masonry work during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate.

7. Ocean Estate entered into a contract with Advanced to perform roofing work during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate.

8. Ocean Estate entered into a contract with Alberto Garcia Stucco to perform masonry/stucco work during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate.

9. Ocean Estate entered into a contract with CMC to perform framing work including setting and placement of the windows and doors during construction of the Plaintiff's house, the subject of the suit filed against Ocean Estate

10. Plaintiff has alleged in his Second Amended Complaint, defects which have resulted from among other things improper and/or incomplete flashing; improper flashing

thereby allowing water infiltration and decay of structural components; Improper installation of the siding and failure of the siding; improper installation and failure of structural systems; and improper and lack of proper caulking, some of which the above-named Third-Party Defendants performed.

11. Ocean Estate has denied the allegations of the Plaintiff's Second Amended Complaint (a copy of which is attached hereto as Exhibit A), but to the extent that they are true, the above-named Third-Party Defendants are liable in both contract and equity to Ocean Estate for any damages asserted and recovered by the Plaintiffs in the pending action.

FOR A FIRST CAUSE OF ACTION
(Indemnity)

12. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

13. To the extent, if any, that Ocean Estate is liable to the Plaintiff in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence and/or representations of the Third-Party Defendants, which has damaged Ocean Estate as Ocean Estate has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending this action.

14. To the extent, if any, that the work of the Third-Party Defendants was defective or deficient in design, engineering, materials, installation, installation instructions, and/or were not merchantable for its particular purposes, such defects and deficiencies would be the result of the breach of the express and implied contractual obligations and warranties of the Third-Party Defendants, damaging Ocean Estate by virtue of its being subjected to liability and having incurred consequential damages in having to expend attorneys' fees and costs in defending this action.

15. Ocean Estate is entitled to full indemnification by contract and equity from the Third-Party Defendants for any liability Ocean Estate is found to have to the Plaintiff in this action, and Ocean Estate would be entitled to damages for the Third-Party Defendants' negligence as afore described and for the Third-Party Defendants' breach of their implied and express warranties, entitling Ocean Estate to recover from the Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)

16. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

17. The Third-Party Defendants expressly implied and warranted to Plaintiff and Ocean Estate that all work performed by them would be performed in a careful, diligent and workmanlike manner, that any materials and/or services designed, supplied or sold by the Third-Party Defendants for use during construction of Plaintiff's residence would be merchantable and fit for their intended or specific purpose.

18. The Third-Party Defendants breached their implied and/or express warranties of merchantability, workmanlike service and/or fitness for a particular intended purpose in the construction performed on Plaintiff's house.

19. As a result of these breaches of warranties, Ocean Estate has incurred damages in the amount of any money that it may be adjudged to owe the Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this matter.

20. Upon information and belief, Ocean Estate is entitled to judgment against the Third-Party Defendants in the amount of any monies it may be adjudged to owe Plaintiff, or

which it pays Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation, defense and settlement of this claim.

FOR A THIRD CAUSE OF ACTION
(Negligence)

21. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

22. The Third-Party Defendants were negligent, careless, and reckless in the installation design, supervision, construction, inspection or supplying of the work or materials outlined above and incorporated into the construction work performed at the Plaintiff's house as alleged in the Plaintiff's Second Amended Complaint, a copy of which is attached hereto as Exhibit A.

23. As a direct and proximate result of such negligence, carelessness and recklessness, Ocean Estate has been damaged in the amount of any monies it may be adjudged to owe the Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

24. Upon information and belief, Ocean Estate is entitled to judgment for actual damages, collectively or individually against the Third-Party Defendants in the amount of any monies it may be adjudged to owe the Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, as well as the fees and costs incurred in the investigation, defense and settlement of this claim.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

25. Ocean Estate incorporates into this cause of action the allegations in the above paragraphs of the Third-Party Complaint as fully as if repeated herein verbatim.

26. The Third-Party Defendants contracted with Ocean Estate that all work performed by them would be performed in a careful, diligent and workmanlike manner, that any materials and/or services designed, supplied or sold by them for use during construction work performed on the Plaintiff's house would be merchantable and fit for their intended or specific purposes.

27. The Third-Party Defendants breached their contracts with Ocean Estate in the construction work performed on the Plaintiff's house as set forth in the Plaintiff's Second Amended Complaint.

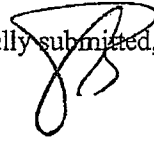
28. As a result of these breaches of contract, Ocean Estate has incurred damages in the amount of any monies that it may be adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

29. The Third-Party Defendants are contractually liable to Ocean Estate pursuant to the subcontracts between the Third-Party Defendants and Ocean Estate. Accordingly, Ocean Estate is entitled to judgment against the Third-Party Defendants in the amount of any monies it may be adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost and fees incurred in the investigation, defense and settlement of this claim.

WHEREFORE, Ocean Estate prays for a judgment on its third-party claims against the Third-Party Defendants as set forth herein and for such other and further relief as this Court deems just and proper. The Third-Party Plaintiff also re-alleges the prayer for relief set forth in its Answer to Plaintiff's Second Amended Complaint as fully as if set forth herein verbatim. Ocean Estate demands a trial by jury on all triable issues.

Signature page on following page

Respectfully submitted,



Charles G. Blackburn, Esquire
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260
**Attorneys for Ocean Estate Builders, Inc. and Ed
Flynn, Individually**

Columbia, South Carolina
6/8, 2012

LAW OFFICES
CARLOCK COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

J. PATRICK NORRIS

**40 CALHOUN STREET, SUITE 400
CHARLESTON, SC 29401-3531**

ATLANTA OFFICE
191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303
404.522.8220

DIRECT DIAL NUMBER
843.266.8219

TELEPHONE 843.727.0307

E-MAIL ADDRESS
pnorris@carlockcopeland.com

www.carlockcopeland.com

Reply to Charleston Office

FACSIMILE
843.727.2995

November 2, 2012

VIA U.S. MAIL

Jerri Ann Roseneau, Clerk
Circuit Court of Beaufort County
Post Office Box 1128
Beaufort, SC 29901

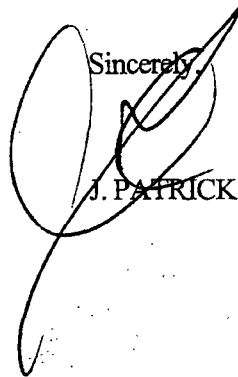
Re: Segars v. Ocean Estate Builders, Inc. v. CMC Construction Company, Inc.
C/A No.: 2011-CP-07-2700
CCS No.: 3526-46542

Dear Ms. Roseneau:

Enclosed for filing, please find an original and one copy of Defendant CMC Construction Company, Inc.'s Answer to Amended Third-Party Complaint regarding the above-referenced matter. Please file the original and return the file-stamped copy to this office in the enclosed, self-addressed, stamped envelope.

By copy of this correspondence to all counsel of record, I am serving them with the same. If you have any questions or concerns, please do not hesitate to contact me. With kind regards, I am

Sincerely,



J. PATRICK NORRIS

JPN:ddg
Enclosures
cc: All Counsel of Record

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2700

)

)

)

i

) **CMC CONSTRUCTION COMPANY, INC.'S**
) **ANSWER TO AMENDED THIRD PARTY**
) **COMPLAINT.**

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FOR A FIRST DEFENSE

As to those damages which Defendant Ocean Estate alleges to have been directly or proximately caused by CMC (which CMC denies), but for which Plaintiff has alleged Defendant Ocean Estate to be liable, those damages were wholly or partly caused by the sole or contributory acts or omissions of Defendant Ocean Estate, such that Defendant Ocean Estate has no right of legal or equitable indemnification as against CMC.

FOR A SECOND DEFENSE

Any injuries or damages which Defendant Ocean Estate may have incurred were due and caused by the negligence or other act or omission of some other party other than CMC, and, as a result, there can be no recovery as against CMC.

FOR A THIRD DEFENSE

The work and services provided by CMC, were, at all times applicable to the subject project, in conformity with the standard of care for that time.

FOR A FOURTH DEFENSE

Defendant Ocean Estate's claims against CMC are or may be barred by the doctrines of waiver, estoppel, and/or laches.

FOR A FIFTH DEFENSE

Defendant Ocean Estate's claims are or may be barred by the statute of limitations and/or statute of repose.

FOR A SIXTH DEFENSE

Defendant Ocean Estate fails to state a claim upon which relief can be granted.

FOR A SEVENTH DEFENSE

Defendant Ocean Estate's claims are or may be barred by the failure to mitigate any alleged damages.

FOR AN EIGHTH DEFENSE

Defendant Ocean Estate lacks clean hands by virtue of its own negligence and therefore is not entitled to indemnity from CMC.

FOR A NINTH DEFENSE

Any claims alleged by Defendant Ocean Estate for breach of warranty should be barred to the extent that Defendant Ocean Estate failed to give proper notice of any alleged breach of any warranty.

FOR A TENTH DEFENSE

Ocean Estate's claims are or may be barred by the Economic Loss Rule.

FOR AN ELEVENTH DEFENSE

Defendant Ocean Estate's contribution claims are not ripe and thus should be dismissed.

FOR A TWELFTH DEFENSE

CMC has not had an opportunity to conduct sufficient investigation or to engage in adequate discovery regarding the circumstances of Defendant Ocean Estate's allegations. CMC intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Defendant Ocean Estate as alleged in its Cross-Claims, and gives notice of its intent to assert any further affirmative defense as its information-

gathering process may indicate is supported by fact and law. CMC reserves the right to amend this Reply and assert such defenses.

FOR A THIRTEENTH DEFENSE

Responding to the individually numbered paragraphs of Defendant Ocean Estate's Amended Third Party Complaint, CMC alleges as follows:

1. Any and all allegations contained in Defendant Ocean Estate's Amended Third Party Complaint which are not specifically admitted herein are denied.

2. In response to Paragraphs 1 through 4, CMC lacks information or knowledge to admit or deny the allegations in these Paragraphs, and therefore, denies the same and demands strict proof thereof.

3. In response to Paragraph 5, CMC admits only that it was a South Carolina-organized entity and performed work in South Carolina. CMC denies all other allegations in this Paragraph and demands strict proof thereof.

4. In response to Paragraphs 6 through 8, CMC lacks information or knowledge to admit or deny the allegations in these Paragraphs, and therefore, denies the same and demands strict proof thereof.

5. In response to Paragraph 9, CMC admits so much of this Paragraph as alleges that CMC entered into an agreement to perform framing work on the property that is the subject of this litigation. CMC craves reference to the terms of its agreement and denies all allegations in this Paragraph inconsistent therewith. CMC specifically denies that it set or placed doors during construction.

6. In response to Paragraph 10, CMC craves reference to the Plaintiff's Second Amended Complaint as to the Plaintiff's particular allegations. Further responding, CMC admits only that it performed work in accordance with and pursuant to its agreement with the general contractor. CMC craves reference to the terms of its agreement and denies all allegations in this Paragraph inconsistent therewith. CMC lacks information or knowledge to admit or deny the allegations in this Paragraph directed to other parties, and therefore, denies the same and demands strict proof thereof. Further responding, to the extent that the allegations in this Paragraph may be interpreted to state or imply liability on behalf of CMC, those allegations are denied and CMC demands strict proof thereof.

7. In response to Paragraph 11, as to Ocean Estate's responses to the allegations of Plaintiff's Second Amended Complaint, CMC craves reference to Ocean Estate's Answer(s). Further responding, CMC denies the allegations directed to it in this Paragraph and demands strict proof thereof. CMC lacks information or knowledge to admit or deny the allegations in this Paragraph directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

8. In response to Paragraph 12, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

9. In response to Paragraphs 13 through 15, CMC denies the allegations directed to it in these Paragraphs and demands strict proof thereof. CMC lacks information or knowledge to admit or deny the allegations in these Paragraphs directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

10. In response to Paragraph 16, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

11. In response to Paragraph 17, CMC admits only those warranties required by law, if any, and denies the remaining allegations contained in this Paragraph and demands strict proof thereof. CMC lacks information or knowledge to admit or deny the allegations in this Paragraph directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

12. In response to Paragraphs 18 through 20, CMC denies the allegations directed to it in these Paragraphs and demands strict proof thereof. CMC lacks information or knowledge to admit or deny the allegations in these Paragraphs directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

13. In response to Paragraph 21, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

14. In response to Paragraphs 22 through 24, CMC denies the allegations directed to it in these Paragraphs and demands strict proof thereof. CMC lacks information or knowledge to admit or deny the allegations in these Paragraphs directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

15. In response to Paragraph 25, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

16. In response to Paragraph 26, CMC craves reference to the terms of its agreement and denies all allegations in this Paragraph inconsistent therewith. CMC lacks information or

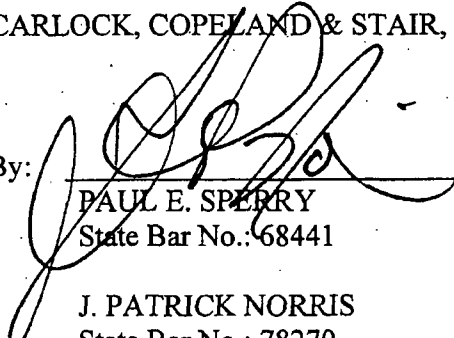
knowledge to admit or deny the allegations in this Paragraph directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

17. In response to Paragraphs 27 through 29, CMC denies the allegations directed to it in these Paragraphs and demands strict proof thereof. CMC lacks information or knowledge to admit or deny the allegations in these Paragraphs directed to other Third Party Defendants, and therefore, denies the same and demands strict proof thereof.

WHEREFORE, having fully responded to the allegations of Defendant Ocean Estate's Amended Third Party Complaint, CMC prays for judgment in favor of CMC, for costs associated with defending these claims, and for any such further relief as this Court may find just and proper.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

PAUL E. SPERRY
State Bar No.: 68441

J. PATRICK NORRIS
State Bar No.: 78270

Attorneys for CMC Construction Company, Inc.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS

IN THE COURT OF COMMON PLEAS
14TH JUDICIAL CIRCUIT

CASE NO.: 11-CP-07-2700

13 FEB 12 PM 4:31

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Plaintiff,)
CLERK OF COURT)
CLERK OF COURT)
CLERK OF COURT)OCEAN ESTATE BUILDERS and ED)
FLYNN, individually)

Defendant.)

Plaintiff's Attorney:

THOMAS J. FINN, Bar No. 66534

Address:

POST OFFICE BOX 6003, HILTON HEAD
ISLAND, SC 29938

Phone: (843)682-3555 Fax (843)682-3558

E-mail: finlaw@hargray.com Other: _____

Defendant's Attorney:

Charles Blackburn, William Watkins, J. Patrick
Norris, , Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
- ☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

2-8-2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-07-2700

TAD SEGARS,

Plaintiff,

Vs.

OCEAN ESTATE BUILDERS,)
INC., ED FLYNN, individually,)
DAVID GARCIA, d/b/a YINET)
PLASTERING, INC., ADVANCED)
ROOFING, INC., a/k/a YUKO)
CONSTRUCTION, INC., and)
TEOFILO LEZCANO, individually)
And d/b/a ADVANCED ROOFING,)
INC., a/k/a YUKO)
CONSTRUCTION, INC., and)
CMC CONSTRUCTION)
COMPANY, INC.)
Defendants.)

CONSENT ORDER TO
AMEND COMPLAINT

13 FEB 12 PM 4:31
CLERK OF COURT
S.C.

The below signed parties hereby consent to allow the Plaintiffs to amend this Complaint to include; David Garcia, d/b/a Yinet Plastering, Inc., and to bring allegations against; Advanced Roofing, Inc., a/k/a Yuko Construction, Inc., and Teofilo Lezcano, individually and d/b/a Advanced Roofing, Inc., a/k/a Yuko Construction, Inc., and CMC Construction Company, Inc.

IT IS SO ORDERED.

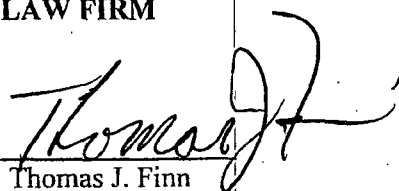


Honorable Carmen Mullen
Presiding Judge
Fourteenth Judicial Circuit

This 1 day of January, 2013
Beaufort, South Carolina 29901.

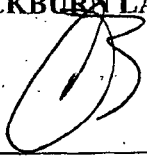
WE CONSENT:

FINN LAW FIRM

BY: 

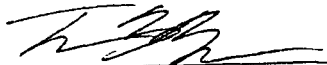
Thomas J. Finn
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555 phone
(843)682-3558 fax
Attorney for Plaintiff, Tad Segars

THE BLACKBURN LAW FIRM

BY: 

Charles Blackburn
1933 York Drive
Columbia, SC 29204
(803)920-8726
Cgblack4@gmail.com
Attorney for Defendants, Ed Flynn &
Ocean Estate Builders, Inc.

WALL TEMPLETON & HALDRUP, P.A.

 with permission

William W. Watkins, Jr.
Post Office Box 1200
Charleston, SC 29402
(843)329-9500
Trev.watkins@walltempleton.com
Attorney for Defendant, Espy Lumber
Company, Inc.

CARLOCK COPELAND & STAIR, LLP

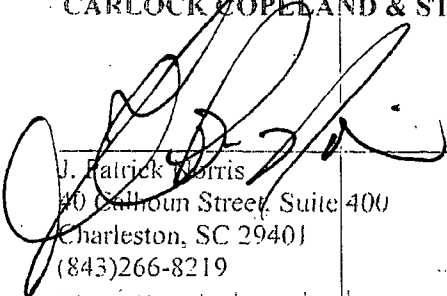
J. Patrick Norris
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843)266-8219
jnorris@carlockcopeland.com
CMC Construction

WALL TEMPLETON & HALDRUP, P.A.

William W. Watkins, Jr.
Post Office Box 1200
Charleston, SC 29402
(843)329-9500

Tex. Watkins@walltempleton.com
Attorney for Defendant, Espy Lumber
Company, Inc.

CARLOCK COPELAND & STAIR, LLP



J. Patrick Morris
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843)266-8219

patrick@carlockcopeland.com
CMC Construction

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TAD SEGARS,

Plaintiff,

Vs.

OCEAN ESTATE BUILDERS,
INC., ED FLYNN, individually,
DAVID GARCIA, d/b/a YINET
PLASTERING, INC., ADVANCED
ROOFING, INC., and TEOFILLO
LEZCANO, individually and
d/b/a ADVANCED ROOFING,
INC., a/k/a YUKO
CONSTRUCTION, INC., CMC
CONSTRUCTION COMPANY,
INC., and JAGUAR MASONRY,
INC.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-3788

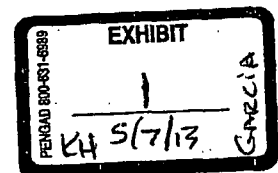
SECOND AMENDED
SUMMONS
(Jury Trial Demanded)

13 FEB 12 PM 4:08
CLERK OF COURT
JUDICIAL CIRCUIT
SOUTH CAROLINA

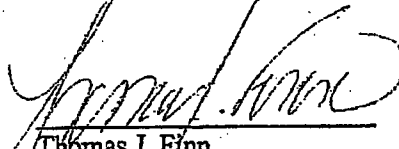
YOU ARE HEREBY SUMMONED and required to answer the Second Amended

Complaint in this action, a copy of which is herewith served upon you, and to serve a
copy of your Answer to the said Complaint on the subscriber at this office, 38D-4 New
Orleans Road, Post Office Box 6003, Hilton Head Island, South Carolina 29938, within
(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.**



FINN LAW FIRM, PC



Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
Attorney for Plaintiff

Hilton Head Island, South Carolina
This 21 day of February, 2013.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-07-2700

TAD SEGARS,)

Plaintiff,)

Vs.)

SECOND AMENDED COMPLAINT
(Jury Trial Demanded)

OCEAN ESTATE BUILDERS,)
INC., ED FLYNN, individually,)
DAVID GARCIA, d/b/a YINET)
PLASTERING, INC, ADVANCED)
ROOFING, INC., a/k/a YUKO)
CONSTRUCTION, INC., and)
TEOFILO LEZCANO, individually)
And d/b/a ADVANCED ROOFING,)
INC., a/k/a YUKO)
CONSTRUCTION, INC.,)
CMC CONSTRUCTION)
COMPANY, INC., and JAGUAR)
MASONRY, INC.)
Defendants.)

The Plaintiff complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Tad Segars is citizen and resident of the State of South Carolina, and own real property in Beaufort County, South Carolina.
2. Defendant, Ocean Estate Builders, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and which is or was, authorized to do business in South Carolina and was the corporate entity which was responsible for constructing the residence at 87 Singleton Beach Road, on Hilton Head Island, South Carolina.

3. Defendant, Ed Flynn, held a general contractors license issued by the state of South Carolina and acted as the General Contractor supervising the construction of the 87 Singleton Beach Residence.

4. Defendant, David Garcia d/b/a Yinet Plastering, Inc., is upon information and belief organized and existing under the laws of one of the fifty states and which is, or was, authorized to do business in South Carolina and was the corporate entity which was responsible for furnishing labor, materials, tools, equipment taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain stucco work to be incorporated into/installed at the Residence.

5. Defendant, Jaguar Masonry, Inc., is upon information and belief organized and existing under the laws of one of the fifty states and which is, or was, authorized to do business in South Carolina and was the corporate entity which was responsible for furnishing labor, materials, tools, equipment taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain stucco work to be incorporated into/installed at the Residence.

6. Defendant, Advanced Roofing, inc., a/k/a Yuko Construction, Inc., and Teofilo Lezcano, Individually, and d/b/a Advanced Roofing, inc., a/k/a Yuko Construction, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and was the subcontractor that installed the roof at the residence located at 87 Singleton Beach, Hilton Head Island, South Carolina.

7. Defendant, CMC Construction Company, Inc., is upon information and belief organized and existing under the laws of one of the fifty states which is, or was, authorized to do business in South Carolina and was the corporate entity which was

responsible for furnishing labor, materials, tools, equipment, taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain framing to be incorporated into/installed at the residence.

8. The 87 Singleton Beach Residence was built in 2000 and a certificate of occupancy was issued on, June 22, 2000. Upon information and belief, the problems or defects are a result of defective construction.

9. The defects in construction complained of include but are not limited to:

- A. Improper roofing installation thereby allowing water infiltration and decay of structural components;

- B. Improper and/or incomplete roof flashing;

- C. Improper roofing and flashing thereby allowing water infiltration and decay of structural components;

- D. Improper installation of the siding and failure of the siding;

- E. Improper installation and failure of structural systems;

- F. Improper and lack of proper caulking;

10. As a direct and proximate result and consequence of the numerous construction defects and problems, the Plaintiffs have and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of the residence.

FOR A FIRST CAUSE OF ACTION
(Negligence Ocean Estate Builders)

11. Plaintiffs incorporate into this cause of action the allegations of paragraph 1-10 above as if repeated verbatim herein.

12. Defendant Ocean Estate Builders, as general contractor for the subject residence owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

The deficiencies and defects which exist at the 87 Singleton Beach Residence are the proximate and direct result of the negligence and/or gross negligence of Defendant Ocean Estate Builders, in one or more of the following particulars:

A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction.

B. In failing to properly supervise the subcontractors and/or other trades in order to insure 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 insure that the work was in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications, owed a duty to Plaintiffs to exercise that degree of skill necessary to select an architect and contractor and oversee the project and otherwise deliver the building free of construction defects and which were designed and built in

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

14. As a direct and proximate result and consequence of the negligence and/or gross negligence of the general contractor, Plaintiff has suffered injuries and damages in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SECOND CAUSE OF ACTION
(Negligence Ed Flynn)

15. Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-14 above as if repeated verbatim herein.

16. Defendant, Ed Flynn, holder of a South Carolina general contractors license owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the building free of construction defects which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

17. The deficiencies and defects which exist at the Segars residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ed Flynn, in one or more of the particulars.

A. In failing to properly construct the building by deviating from the plans, and specifications and by failing to employ practices and methods of construction, conforming with accepted industry standards; and/or using defective materials, and/or installing materials not in accordance with the plans and specifications or in violation of the manufacturer's instructions.

B. In failing to properly supervise the contractors and/or other trades in order to insure that all work proceeded in accordance with the plans specifications and also in conformity with the customary and ordinary standards of the construction industry;

C. In accepting or selecting non-conforming or defective materials;

D. In accepting and performing deficient and/or defective workmanship and/or materials, without proper inspection to insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacture's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications.

18. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Ed Flynn, the Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranties/Ed Flynn).

19. The Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-18 above as if repeated verbatim.

20. Defendant, Ed Flynn, breached its express and implied warranties in the following particulars, that include but are not limited to:

A. Failing to properly construct the residence at 87 Singleton Beach Residence, by deviating from the plans, and specifications, and/or failing to employ

practices and methods of construction, conforming to the customary and ordinary standards of the construction industry; in using and supplying defective materials; installing materials in violation of manufacture's instructions; or in performing work which violated applicable building codes.

B. Failing to properly supervise employees, agents and subcontractors to assure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards.

C. Accepting defective and/or non-conforming materials and/or labor.

D. Providing deficient and/or defective workmanship and/or materials, without proper inspection to assure that the work was correct, and in conformity with customary and ordinary standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. Failing to adequately seal the exterior of the building such as to allow water to infiltrate the interior of the building.

21. As a direct and proximate result and consequence of the Defendant, Ed Flynn's Breach of It's Express and Implied Warranties, the Plaintiff has suffered injuries in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the residence.

FOR A FOURTH CAUSE OF ACTION
(Negligence/ David Garcia d/b/a Yinet Plastering, Inc.)

22. Plaintiff repeats and reiterates each and every allegation set forth in Paragraphs 1-21 above as if fully repeated verbatim herein.

23. Defendant, David Garcia d/b/a Yinet Plastering, Inc., was under a duty to use due care in the performance of the referenced tasks and to perform those task in a manner commensurate with industry standards and in compliance with all applicable building codes.

24. Defendant, David Garcia d/b/a Yinet Plastering, Inc., breached its contract and was negligent, careless, reckless, willful and wanton in failing to properly carry out its task and failing to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturers instructions or guidelines or was violative of applicable building codes.

25. As a direct and proximate result of the breach of contract and negligence of David Garcia d/b/a Yinet Plastering, Inc., Plaintiff has suffered injuries and damages in an amount equal to extraordinary repair, maintenance, and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A FIFTH CAUSE OF ACTION

(Negligence Advanced Roofing, Inc., a/k/a Yuko Construction)
(and Teofilo Lezcano, individually and d/b/a Advanced)
(Roofing, Inc., a/k/a Yuko Construction)

26. The Plaintiff incorporates into this cause of action the allegations of paragraphs 1-25 above as if repeated verbatim herein.

27. Plaintiff alleges that the roof system is defective in that it allows water to penetrate the roof causing damage to the framing and interior of the residence. Plaintiff claims the roof was not installed or completed in accordance with applicable architectural

plans and specifications. Defendant Yuko Construction a/k/a Advanced Roofing, Inc., supplied the materials for the roof and applied the roof to the exterior of the residence.

28. Defendant, Yuko Construction, a/k/a Advanced Roofing, Inc., owed a duty to the Plaintiff to exercise that degree of skill necessary to apply the roof system free of defects and such roof system built in conformity with the customary and ordinary standards of the building and construction industry. The deficiencies and defects which exist at 87 Singleton Beach Residence are the proximate and direct result of the negligence and/or gross negligence of Yuko Construction a/k/a Advanced Roofing, Inc.

29. Defendant, Yuko Construction a/k/a Advanced Roofing, Inc., roofer of the subject residence owed a duty to the Plaintiff to exercise that degree of skill necessary to properly install a roof at the project and otherwise deliver the building free of construction defects and which were designed and built in conformity with the customary and ordinary standards of the construction industry.

30. As a direct and proximate result and consequence of the negligence and/or gross negligence of Yuko Construction, Advanced Roofing, Inc., the Plaintiff has suffered injuries and damages in an amount equal to extraordinary repair, maintenance and construction cost required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SIXTH CAUSE OF ACTION
AGAINST CMC CONSTRUCTION COMPANY, INC.

31. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-30 above as if fully repeated verbatim herein.

32. CMC Construction Company, Inc., was under a duty to use due care in the performance of the referenced tasks and to perform those task in a manner commensurate with industry standards and in compliance with all applicable building codes.

33. CMC Construction Company, Inc., was negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing to employ practices and methods of framing and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturers instructions or guidelines or was violative of applicable building codes.

34. As a direct and proximate result of the breach of contract and negligence of CMC Construction Company, Inc., Plaintiff has suffered injuries and damages in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A SEVENTH CAUSE OF ACTION
(Negligence Jaguar Masonry, Inc.)

35. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-34 above as if fully repeated verbatim herein.

36. Defendant, Jaguar Masonry, Inc., was under a duty to use due care in the performance of the referenced tasks and to perform those tasks in a manner commensurate with industry standards an in compliance with all applicable building codes.

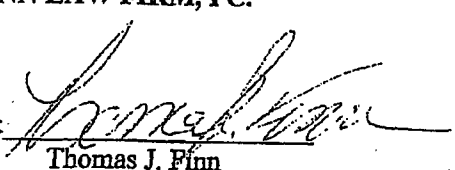
37. Defendant, Jaguar Masonry, Inc., breached its contract and was negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing

to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturers instructions or guidelines or was violative of applicable building codes.

38. As a direct and proximate result of the breach of contract and negligence of Jaguar Masonry, Inc., Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, Plaintiff's pray for judgment against the Defendant for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, PC.

By: 

Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555

Hilton Head Island, South Carolina
This 2 day of February, 2013.

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2700

) CASE NO.: 2011-CP-07-2700

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CMC CONSTRUCTION COMPANY, INC.'S
ANSWER TO SECOND AMENDED
COMPLAINT

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FOR A THIRD DEFENSE

Some or all of the Plaintiff's claims are or may be barred by the doctrines of waiver, laches, and/or estoppel.

FOR A FOURTH DEFENSE

Some or all of the Plaintiff's claims are or may be the result of the acts and/or omissions of some party or parties other than CMC, with a result that the Plaintiff cannot recover from CMC.

FOR A FIFTH DEFENSE

Some or all of the Plaintiff's claims are or may be barred by the Plaintiff's failure to mitigate any damages.

FOR A SIXTH DEFENSE

Any claims alleged by the Plaintiff for breach of warranty should be barred to the extent that the Plaintiff failed to give proper notice of any alleged breach of any warranty.

FOR A SEVENTH DEFENSE

The work and services provided by CMC were at all times applicable to the subject project in conformity with the industry standards for that time.

FOR AN EIGHTH DEFENSE

Any award of punitive damages for the Plaintiff would violate constitutional safeguards provided to CMC by the United States and South Carolina Constitutions.

FOR A NINTH DEFENSE

The Plaintiff may not have a contract or may not be in privity with CMC.

FOR A TENTH DEFENSE

The allegations of the Complaint fail to state a claim for which any prejudgment interest may be granted.

FOR AN ELEVENTH DEFENSE

Some or all of the Plaintiff's claims are or may be barred, or in the alternative, reduced to the extent of comparative negligence of the Plaintiff.

FOR A TWELFTH DEFENSE

Plaintiff's tort claim(s) are or may be barred by the economic loss rule.

FOR A THIRTEENTH DEFENSE

CMC has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of the Plaintiff's allegations. CMC intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiff as alleged in the Complaint, and gives notice of its intent to assert any further affirmative defense that its information-gathering process may indicate is supported by fact and law. CMC reserves the right to amend this Answer and assert such defenses.

FOR A FOURTEENTH DEFENSE

Each allegation of the Complaint not specifically admitted is denied. CMC responds to the individually numbered paragraphs of the Complaint as follows:

1. In response to Paragraphs 1 through 6, CMC lacks information or knowledge to admit or deny the allegations contained in these Paragraphs, and therefore, denies the same and demands strict proof thereof.

2. In response to Paragraph 7, CMC admits only that CMC was organized and existed under the laws of one of the fifty states and was authorized to do business in South Carolina. CMC further admits, upon information and belief, only that it performed designated framing work during original construction of the residence located at 6 Collier Court, Hilton Head Island, South Carolina pursuant to CMC's agreement with the general contractor. CMC denies all allegations in this Paragraph inconsistent with its agreement with the general contractor.

3. In response to Paragraph 8, upon information and belief, CMC admits so much of this Paragraph as alleges that the 87 Singleton Beach residence was built in the 2000 time frame. CMC lacks information or knowledge to admit or deny the remaining allegations contained in this Paragraph, and therefore, denies the same and demands strict proof thereof. CMC specifically denies that it was responsible for any "defective construction" and demands strict proof thereof.

4. In response to Paragraphs 9 and 10, the allegations in these Paragraphs, including all sub-parts, are denied and CMC demands strict proof thereof.

5. In response to Paragraph 11, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

6. In response to Paragraphs 12 through 14, these Paragraphs contain allegations against parties other than CMC to which no response is required from CMC. To the extent that these allegations state or imply liability on the part of CMC, the allegations are denied and CMC demands strict proof thereof.

7. In response to Paragraph 15, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

8. In response to Paragraphs 16 through 18, these Paragraphs contain allegations against parties other than CMC to which no response is required from CMC. To the extent that these allegations state or imply liability on the part of CMC, the allegations are denied and CMC demands strict proof thereof.

9. In response to Paragraph 19, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

10. In response to Paragraphs 20 and 21, these Paragraphs contain allegations against parties other than CMC to which no response is required from CMC. To the extent that these allegations state or imply liability on the part of CMC, the allegations are denied and CMC demands strict proof thereof.

11. In response to Paragraph 22, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

12. In response to Paragraphs 23 through 25, these Paragraphs contain allegations against parties other than CMC to which no response is required from CMC. To the extent that

these allegations state or imply liability on the part of CMC, the allegations are denied and CMC demands strict proof thereof.

13. In response to Paragraph 26, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

14. In response to Paragraphs 27 through 30, these Paragraphs contain allegations against parties other than CMC to which no response is required from CMC. To the extent that these allegations state or imply liability on the part of CMC, the allegations are denied and CMC demands strict proof thereof.

15. In response to Paragraph 31, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

16. In response to Paragraph 32, CMC admits only those duties required by law, if any, and denies the remaining allegations contained in this Paragraph and demands strict proof thereof. CMC specifically denies that it breached any duty.

17. In response to Paragraphs 33 and 34, CMC denies the allegations in these Paragraphs and demands strict proof thereof.

18. In response to Paragraph 35, CMC reasserts its answers to the previous Paragraphs as if set forth verbatim herein.

19. In response to Paragraphs 36 through 38, these Paragraphs contain allegations against parties other than CMC to which no response is required from CMC. To the

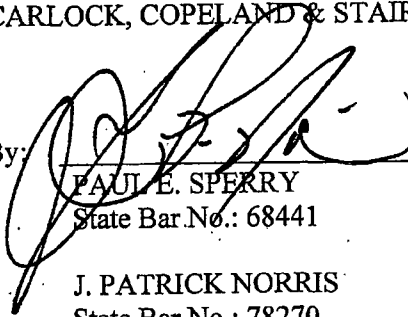
extent that the allegations in these Paragraphs state or imply liability on the part of CMC, the allegations are denied and CMC demands strict proof thereof.

20. In response to the Paragraph beginning "WHEREFORE," CMC denies that Plaintiffs are entitled to any relief requested in this Paragraph or any other relief as against CMC.

WHEREFORE, having fully responded to the allegations of the Complaint, CMC prays for judgment in favor of CMC, for costs associated with defending this action, and for any such further relief as this Court may find just and proper.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

PAUL E. SPERRY
State Bar No.: 68441

J. PATRICK NORRIS
State Bar No.: 78270

Attorneys for Defendant CMC Construction
Company, Inc.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

Defendants.

CERTIFICATE OF SERVICE

0102

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER: 11-CP-07-02700.

TAD SEGARS

PLAINTIFF(S)

OCEAN STATE BUILDERS, INC.

THIRD PARTY PLAINTIFF)

VS

AFFIDAVIT OF SERVICE

ADVANCED ROOFING, INC., a/k/a YUKO

CONSTRUCTION AND TEOFILO LEZCANO

INDIVIDUALLY AND ADVANCED ROOFING, INC)

a/k/a YUKO CONSTRUCTION, JAGUAR

MASONRY, INC., AND ALBERETO GARCIA

STUCCO, CMC CONSTRUCTION COMPANY, INC.)

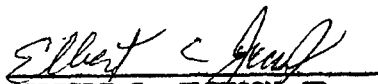
DEFENDANT(S)

PERSONALLY APPEARED BEFORE ME THE UNDERSIGNED ELBERT C. JACKSON JR. WHO
BEING FIRST DULY SWORN, SAYS THAT HE SERVED A COPY OF THE: THIRD PARTY
SUMMONS / THIRD PARTY COMPLAINT

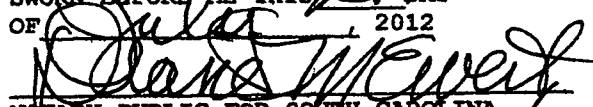
UPON CMC CONSTRUCTION COMPANY, INC. PLACE SERVED 127 SEAPINES DR HILTON
HEAD, SC.

ON THE 24th DAY OF JULY 2012 AT 8:30 (PM)

(X) BY DELIVERING THEM AND TO AND LEAVING WITH ALBERT CLAY AN OFFICER
OF THE CORPORATE DEFENDANT OR THE REGISTERED AGENT OR ATTORNEY FOR THE
DEFENDANT WHO WAS AUTHORISED BY LAW TO RECEIVE SERVICE OF THE PROCESS.


ELBERT C. JACKSON JR.

SWORN BEFORE ME THIS 25th DAY
OF July 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 10/31/2021

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT,

) IN THE COURT OF COMMON PLEAS

) CASE NUMBER _____

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

TAD SEGARS,)

v.)

OCEAN ESTATES BUILDERS,)
INC., ED FLYNN, individually,)
DAVID GARCIA, d/b/a YINET)
PLASTERING, INC.,)
ADVANCED ROOFING, Inc.,)
a/k/a YUKO COMSTRUCTION)
INC., CMC CONSTRUCTION,)
INC., and JAGUAR MASONRY,)
INC.,)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-3788

AFFIDAVIT OF
KELLIE SEGARS

2013 AUG 30 PM 3:08
CLERK OF COURT
BEAUFORT COUNTY, S.C.

COMES NOW Kellie Segars, who being duly sworn deposes and says the following :

1. I am a citizen and resident of Beaufort County South Carolina and I am over the age of eighteen.
2. My husband and I live at 87 Singleton Beach Road. The above captioned lawsuit contains allegations that our residence suffers from various construction deficiencies which allow water infiltration and have caused damage. A Certificate of Occupancy was issued on the house on June 22, 2000.
3. At various times in the course of the case our attorney's office asked if we had documents relating to the construction of our residence. I personally searched for documents pertaining to the construction of our home. Since almost ten years had passed, I was not able to find anything that pertained to the home. This was not unusual since my husband and I routinely destroy documents after retaining them for five years.

4. In latter part of 2011, I was cleaning the attic of our home and found boxes which seemed to contain documents relating to the construction of our home. I went through all the boxes and compiled any documents relating to the construction of our home. In approximately February of 2012, I brought all the documents to my attorneys' office. Until I accidentally found these documents, I had no idea they were in my attic for over ten years.

FURTHER AFFIANT SAYETH NOT

Kellie Segars
Kellie Segars

Sworn to before me this 30th day of August, 2013

[Signature]
Notary Public for South Carolina

My Commission Expires 4-27-21

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

☐ Plaintiff,

vs.

OCEAN-ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, DAVID GARCIA,
D/B/A YINET PLASTERING, INC., ADVANCED
ROOFING, INC., AND TEOFILO LEZCANO,
INDIVIDALLY AND D/B/A ADVANCED
ROOFING, INC., A/K/A YUKO CONSTRUCTION,
INC., CMC CONSTRUCTION COMPANY, INC.,
AND JAGUAR MASONRY,

■ Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-2700

MOTION INFORMATION & COVER SHEET

13 APR 12 PM 3:18
JEREL ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

(check box above indicating submitting party)

Name, S.C. Bar no. and address of Plaintiff's attorneys Thomas J. Finn, Esq. Finn Law Firm, PC Post Office Box 6003 Hilton Head Island, SC 29938 T: 843-682-3555 F: 843-682-3558		Name, S.C. Bar no. and address of Defendant's attorneys J. Patrick Norris (SC Bar No.: 78270) Carlock, Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 T: 843-727-0307 F: 843-727-2995	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment		Court Reporter Needed: Yes	
Estimated Time Needed: 30 minutes			
SECTION II: Motion Type			
☐ Written motion attached ☐ Form Motion			
Signature of Attorney for Defendant		Date submitted: 4/11/13	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-2700

) CASE NO.: 2011-CP-07-2700

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**DEFENDANT CMC CONSTRUCTION
COMPANY, INC.'S MOTION FOR
SUMMARY JUDGMENT**

OCEAN ESTATE BUILDERS, INC., AND)
ED FLYNN, INDIVIDUALLY, DAVID)
GARCIA, D/B/A YINET PLASTERING,)
INC., ADVANCED ROOFING, INC., AND)
TEOFILO LEZCANO, INDIVIDALLY)
AND D/B/A ADVANCED ROOFING,)
INC., A/K/A YUKO CONSTRUCTION,)
INC. CMC CONSTRUCTION COMPANY,))
INC. AND JAGUAR MASONRY,)

Defendants.

PLEASE TAKE NOTICE that the Defendant CMC Construction Company, Inc. (hereinafter "CMC") by and through its undersigned attorneys, hereby moves before this Court for an Order granting summary judgment in favor of CMC as to all causes of action asserted by the Plaintiff on grounds that Plaintiff's claims against CMC are time-barred.

CMC was allegedly a framing subcontractor for construction of the home at issue. Under the applicable statute of limitations (S.C. Code § 15-3-530), Plaintiff had a three-year window in which to bring a claim against CMC from the point Plaintiff knew or should have known he had a claim. Under our discovery rule, "the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citation omitted).

The exercise of reasonable diligence means that the injured party "must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). "Reasonable diligence is intrinsically tied to the issue of notice." Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 356, 559 S.E.2d 327, 336 (Ct. App. 2001). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." 321 S.C. at 364, 468 S.E.2d at 647 (citing Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), *overruled on other grounds by* Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995)).

"The test of whether a person should have known the operative facts is objective, rather than subjective." Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997)(citation omitted). Our courts have consistently held that "the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer." Wiggins v. Edwards 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994)(emphasis added). On discovery of an injury, "the statute of limitations begins to run for all claims based on that injury." Id. (citing Tollison v. B & J Mach. Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993))(emphasis added). Indeed, as our case law clearly illustrates, "South Carolina's statute of limitations requires 'very little to start the clock.'" Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404 (4th Cir. 1994)).

The evidence clearly shows that Plaintiff knew or should have known he had a claim against CMC more than three years prior to suing CMC. This action was initially filed on September 23, 2009. In that original Complaint (attached hereto as Exhibit "A"), Plaintiff sued the general contractor for numerous "defects in construction," including "[i]mproper installation and failure of structural systems." (Compl. ¶ 4.) Plaintiff alleged in that Complaint that "water infiltration" had led to "decay of structural components." Id. In that original Complaint, Plaintiff sought damages for "repairs and reconstruction of the residence." (Compl. ¶ 5.)

Plaintiff dismissed the case pursuant to Rule 40(j), SCRCP on or about October 19, 2010. The case was subsequently restored in or about October 2011. CMC did not consent to the Rule 40(j) dismissal, and is therefore not subject to any tolling of the statute of limitations arising therefrom. Plaintiff did not name CMC as a Defendant until the filing of his Third Amended Complaint (attached hereto as Exhibit "B," and erroneously captioned as "Second Amended Complaint") on February 12, 2013—more than three years after the filing of the original Complaint in 2009. In his Third Amended Complaint, Plaintiff alleges the exact same injuries and damages as were set forth in the original 2009 Complaint. (See Third Am. Compl. ¶¶ 9, 10.)

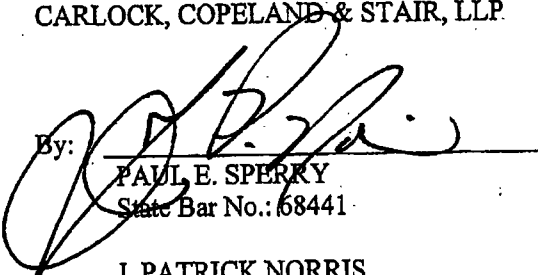
Because Plaintiff failed to timely bring his claim against CMC within the applicable statute of limitations period, CMC is entitled to judgment as a matter of law. Accordingly, CMC seeks an Order from this Court granting it summary judgment as to all of Plaintiff's claims.

This Motion is based upon Rule 56, SCRCP; the pleadings; discovery; evidence of record; applicable case law; deposition testimony; and any memorandum in support of this Motion to be submitted to the Court under separate filing.

[signature page to follow]

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

PAUL E. SPERRY
State Bar No.: 68441

J. PATRICK NORRIS
State Bar No.: 78270

Attorneys for Defendant CMC Construction
Company, Inc.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

0112

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 09-CP-07-04538

TAD SEGARS,)
Plaintiff,)
Vs.)
OCEAN ESTATE BUILDERS,)
INC.)
Defendant.)

COMPLAINT
(Jury Trial Demanded)

2009 SEP 23 PM 3:46
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

The Plaintiff complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Tad Segars is citizen and resident of the State of South Carolina, and own real property in Beaufort County, South Carolina.
2. Defendant, Ocean Estate Builders, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and which is or was, authorized to do business in South Carolina and was the corporate entity which was responsible for constructing the residence at 87 Singleton Beach Road, on Hilton Head Island, South Carolina.
3. The 87 Singleton Beach Residence was built in 2000 and a certificate of occupancy was issued on, June 22, 2000. Upon information and belief, the problems or defects are a result of defective construction.
4. The defects in construction complained of include but are not limited to:
 - A. Improper roofing installation thereby allowing water infiltration and decay of structural components;



- B. Improper and/or incomplete roof flashing;
- C. Improper roofing and flashing thereby allowing water infiltration and decay of structural components;
- D. Improper installation of the siding and failure of the siding;
- E. Improper installation and failure of structural systems;
- F. Improper and lack of proper caulking;

5. As a direct and proximate result and consequence of the numerous construction defects and problems, the Plaintiffs have and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of the residence.

FOR A FIRST CAUSE OF ACTION
(Negligence Ocean Estate Builders)

6. Plaintiffs incorporate into this cause of action the allegations of paragraph 1-5 above as if repeated verbatim herein.

7. Defendant Ocean Estate Builders, as general contractor for the subject residence owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

8. The deficiencies and defects which exist at the 87 Singleton Beach Residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ocean Estate Builders, in one or more of the following particulars:

- A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction.

B. In failing to properly supervise the subcontractors and/or other trades in order to insure 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 insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications, owed a duty to Plaintiffs to exercise that degree of skill necessary to select an architect and contractor and oversee the project and otherwise deliver the building free of construction defects and which were designed and built in conformity with customary and ordinary standards of the building and construction industry.

9. As a direct and proximate result and consequence of the negligence and/or gross negligence of the general contractor, Plaintiff has suffered injuries and damages in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, Plaintiff's pray for judgment against the Defendant for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, PC.

By: 

Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555

Hilton Head Island, South Carolina
This 22nd day of September, 2009.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TAD SEGARS,

Plaintiff,

Vs.

OCEAN ESTATE BUILDERS,
INC., ED FLYNN, individually,
DAVID GARCIA, d/b/a YINET
PLASTERING, INC., ADVANCED
ROOFING, INC., a/k/a YUKO
CONSTRUCTION, INC., and
TEOFILO LEZCANO, individually
And d/b/a ADVANCED ROOFING,
INC., a/k/a YUKO
CONSTRUCTION, INC.,
CMC CONSTRUCTION
COMPANY, INC., and JAGUAR
MASONRY, INC.
Defendants.

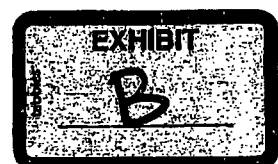
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-07-2700

SECOND AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
FEB 12 PM 4:06
CLERK
S.C.

The Plaintiff complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Tad Segars is citizen and resident of the State of South Carolina, and own real property in Beaufort County, South Carolina.
2. Defendant, Ocean Estate Builders, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and which is or was, authorized to do business in South Carolina and was the corporate entity which was responsible for constructing the residence at 87 Singleton Beach Road, on Hilton Head Island, South Carolina.



3. Defendant, Ed Flynn, held a general contractors license issued by the state of South Carolina and acted as the General Contractor supervising the construction of the 87 Singleton Beach Residence.

4. Defendant, David Garcia d/b/a Yinet Plastering, Inc., is upon information and belief organized and existing under the laws of one of the fifty states and which is, or was, authorized to do business in South Carolina and was the corporate entity which was responsible for furnishing labor, materials, tools, equipment taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain stucco work to be incorporated into/installed at the Residence.

5. Defendant, Jaguar Masonry, Inc., is upon information and belief organized and existing under the laws of one of the fifty states and which is, or was, authorized to do business in South Carolina and was the corporate entity which was responsible for furnishing labor, materials, tools, equipment taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain stucco work to be incorporated into/installed at the Residence.

6. Defendant, Advanced Roofing, inc., a/k/a Yuko Construction, Inc., and Teofilo Lezcano, Individually, and d/b/a Advanced Roofing, inc., a/k/a Yuko Construction, Inc., is upon information and belief a corporation organized and existing under the laws of one of the fifty states and was the subcontractor that installed the roof at the residence located at 87 Singleton Beach, Hilton Head Island, South Carolina.

7. Defendant, CMC Construction Company, Inc., is upon information and belief organized and existing under the laws of one of the fifty states which is, or was, authorized to do business in South Carolina and was the corporate entity which was

responsible for furnishing labor, materials, tools, equipment, taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain framing to be incorporated into/installed at the residence.

8. The 87 Singleton Beach Residence was built in 2000 and a certificate of occupancy was issued on, June 22, 2000. Upon information and belief, the problems or defects are a result of defective construction.

9. The defects in construction complained of include but are not limited to:

- A. Improper roofing installation thereby allowing water infiltration and decay of structural components;

- B. Improper and/or incomplete roof flashing;

- C. Improper roofing and flashing thereby allowing water infiltration and decay of structural components;

- D. Improper installation of the siding and failure of the siding;

- E. Improper installation and failure of structural systems;

- F. Improper and lack of proper caulking;

10. As a direct and proximate result and consequence of the numerous construction defects and problems, the Plaintiffs have and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of the residence.

FOR A FIRST CAUSE OF ACTION
(Negligence Ocean Estate Builders)

11. Plaintiffs incorporate into this cause of action the allegations of paragraph 1-10 above as if repeated verbatim herein.

12. Defendant Ocean Estate Builders, as general contractor for the subject residence owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

The deficiencies and defects which exist at the 87 Singleton Beach are the proximate and direct result of the negligence and/or gross negligence of Defendant Ocean Estate Builders, in one or more of the following particulars:

A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction.

B. In failing to properly supervise the subcontractors and/or other trades in order to insure 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 materials, without proper inspection to insure that the work was in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications, owed a duty to Plaintiffs to exercise that degree of skill necessary to select an architect and contractor and oversee the project and otherwise deliver the building free of construction defects and which were designed and built in

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

14. As a direct and proximate result and consequence of the negligence and/or gross negligence of the general contractor, Plaintiff has suffered injuries and damages in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SECOND CAUSE OF ACTION
(Negligence Ed Flynn)

15. Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-14 above as if repeated verbatim herein.

16. Defendant, Ed Flynn, holder of a South Carolina general contractors license owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the building free of construction defects which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

17. The deficiencies and defects which exist at the Segars residence are the proximate and direct result of the negligence and/or gross negligence of Defendant, Ed Flynn, in one or more of the particulars.

A. In failing to properly construct the building by deviating from the plans, and specifications and by failing to employ practices and methods of construction, conforming with accepted industry standards; and/or using defective materials, and/or installing materials not in accordance with the plans and specifications or in violation of the manufacturer's instructions.

B. In failing to properly supervise the contractors and/or other trades in order to insure that all work proceeded in accordance with the plans specifications and also in conformity with the customary and ordinary standards of the construction industry;

C. In accepting or selecting non-conforming or defective materials;

D. In accepting and performing deficient and/or defective workmanship and/or materials, without proper inspection to insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacture's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications.

18. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendant, Ed Flynn, the Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranties/Ed Flynn).

19. The Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-18 above as if repeated verbatim.

20. Defendant, Ed Flynn, breached its express and implied warranties in the following particulars, that include but are not limited to:

A. Failing to properly construct the residence at 87 Singleton Beach Residence, by deviating from the plans, and specifications, and/or failing to employ

practices and methods of construction, conforming to the customary and ordinary standards of the construction industry; in using and supplying defective materials; installing materials in violation of manufacture's instructions; or in performing work which violated applicable building codes.

B. Failing to properly supervise employees, agents and subcontractors to assure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards.

C. Accepting defective and/or non-conforming materials and/or labor.

D. Providing deficient and/or defective workmanship and/or materials, without proper inspection to assure that the work was correct, and in conformity with customary and ordinary standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. Failing to adequately seal the exterior of the building such as to allow water to infiltrate the interior of the building.

21. As a direct and proximate result and consequence of the Defendant, Ed Flynn's Breach of It's Express and Implied Warranties, the Plaintiff has suffered injuries in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the residence.

FOR A FOURTH CAUSE OF ACTION
(Negligence/ David Garcia d/b/a Yinet Plastering, Inc.)

22. Plaintiff repeats and reiterates each and every allegation set forth in Paragraphs 1-21 above as if fully repeated verbatim herein.

23. Defendant, David Garcia d/b/a Yinot Plastering, Inc., was under a duty to use due care in the performance of the referenced tasks and to perform those task in a manner commensurate with industry standards and in compliance with all applicable building codes.

24. Defendant, David Garcia d/b/a Yinot Plastering, Inc., breached its contract and was negligent, careless, reckless, willful and wanton in failing to properly carry out its task and failing to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturers instructions or guidelines or was violative of applicable building codes.

25. As a direct and proximate result of the breach of contract and negligence of David Garcia d/b/a Yinot Plastering, Inc., Plaintiff has suffered injuries and damages in an amount equal to extraordinary repair, maintenance, and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A FIFTH CAUSE OF ACTION

(Negligence Advanced Roofing, Inc., a/k/a Yuko Construction)
(and Teofilo Lezcano, individually and d/b/a Advanced)
(Roofing, Inc., a/k/a Yuko Construction)

26. The Plaintiff incorporates into this cause of action the allegations of paragraphs 1-25 above as if repeated verbatim herein.

27. Plaintiff alleges that the roof system is defective in that it allows water to penetrate the roof causing damage to the framing and interior of the residence. Plaintiff claims the roof was not installed or completed in accordance with applicable architectural

plans and specifications. Defendant Yuko Construction a/k/a Advanced Roofing, Inc., supplied the materials for the roof and applied the roof to the exterior of the residence.

28. Defendant, Yuko Construction, a/k/a Advanced Roofing, Inc., owed a duty to the Plaintiff to exercise that degree of skill necessary to apply the roof system free of defects and such roof system built in conformity with the customary and ordinary standards of the building and construction industry. The deficiencies and defects which exist at 87 Singleton Beach Residence are the proximate and direct result of the negligence and/or gross negligence of Yuko Construction a/k/a Advanced Roofing, Inc.

29. Defendant, Yuko Construction a/k/a Advanced Roofing, Inc., roofer of the subject residence owed a duty to the Plaintiff to exercise that degree of skill necessary to properly install a roof at the project and otherwise deliver the building free of construction defects and which were designed and built in conformity with the customary and ordinary standards of the construction industry.

30. As a direct and proximate result and consequence of the negligence and/or gross negligence of Yuko Construction, Advanced Roofing, Inc., the Plaintiff has suffered injuries and damages in an amount equal to extraordinary repair, maintenance and construction cost required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SIXTH CAUSE OF ACTION
AGAINST CMC CONSTRUCTION COMPANY, INC.

31. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-30 above as if fully repeated verbatim herein.

32. CMC Construction Company, Inc., was under a duty to use due care in the performance of the referenced tasks and to perform those task in a manner commensurate with industry standards and in compliance with all applicable building codes.

33. CMC Construction Company, Inc., was negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing to employ practices and methods of framing and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturers instructions or guidelines or was violative of applicable building codes.

34. As a direct and proximate result of the breach of contract and negligence of CMC Construction Company, Inc., Plaintiff has suffered injuries and damages in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A SEVENTH CAUSE OF ACTION
(Negligence Jaguar Masonry, Inc.)

35. Plaintiff repeats and reiterates each and every allegation set forth in paragraphs 1-34 above as if fully repeated verbatim herein.

36. Defendant, Jaguar Masonry, Inc., was under a duty to use due care in the performance of the referenced tasks and to perform those tasks in a manner commensurate with industry standards an in compliance with all applicable building codes.

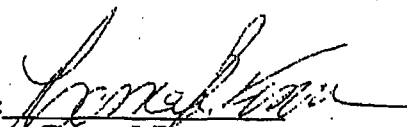
37. Defendant, Jaguar Masonry, Inc., breached its contract and was negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing

to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturers instructions or guidelines or was violative of applicable building codes.

38. As a direct and proximate result of the breach of contract and negligence of Jaguar Masonry, Inc., Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, Plaintiff's pray for judgment against the Defendant for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, PC.

By: 

Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555

Hilton Head Island, South Carolina
This 02 day of February, 2013.

* * * COMMUNICATION RESULT REPORT (AUG. 28. 2013 5:07PM) * * *

FAX HEADER 1:
FAX HEADER 2:TRANSMITTED/STORED : AUG. 28. 2013 4:36PM
FILE MODE OPTION

ADDRESS

RESULT

PAGE

4449 MEMORY TX

8436823558
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OK0/25
25/25REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION

LAW OFFICES

CARLOCK, COPELAND, SEMLER & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

134 MEETING STREET, SUITE 600
CHARLESTON, SC 29401-3001
TELEPHONE (843) 727-0307
www.carlockcopeland.com**FACSIMILE COVER SHEET****DELIVER TO:**Caroline Scrantom
Law Clerk to the Honorable Carmen T. Mullen**FAX NO.**

1-843-522-8362

TELEPHONE NO.**FROM:**Ashley Booth
Paralegal to J. Patrick Norris**DATE:**

8/28/2013

DIRECT DIAL:

843-329-8368

CLIENT-MATTER:

3526-46542

FAX NO.:

843-727-2995

SUBJECT:Segars v. CMC, et al
2011-CF-07-2700

Total number of pages including cover: 25

cc: Thomas J. Finn, Esq. (843-682-3558)

Jason Scott Luck, Esq. (843-722-6781)

Charles Blackburn, Esq. (cgbblack4@gmail.com)

Operator: ddg

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LAW OFFICES

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CHARLESTON, SC 29401-3001

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FACSIMILE COVER SHEET

DELIVER TO:

Caroline Scramom
Law Clerk to the Honorable Carmen T. Mullen

FAX NO.

1-843-522-8362

TELEPHONE NO.

FROM:

Ashley Booth
Paralegal to J. Patrick Norris

DATE:

8/28/2013

DIRECT DIAL:

843-329-8358

CLIENT-MATTER:

3526-46542

FAX NO.:

843-727-2995

SUBJECT:

Segars v. CMC, et al
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Total number of pages including cover: 25

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

TAD SEGARS,

☐

Plaintiff,

vs.

OCEAN ESTATE BUILDERS, INC., AND ED
FLYNN, INDIVIDUALLY, DAVID GARCIA,
D/B/A YINET PLASTERING, INC., ADVANCED
ROOFING, INC., AND TEOFILLO LEZCANO,
INDIVIDUALLY AND D/B/A ADVANCED
ROOFING, INC., A/K/A YUKO CONSTRUCTION,
INC., CMC CONSTRUCTION COMPANY, INC.
AND JAGUAR MASONRY,

☐

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-2700

MOTION INFORMATION & COVER SHEET

(check box above indicating submitting party)

Name, S.C. Bar no. and address of Plaintiff's attorneys Thomas J. Finn, Esq. Finn Law Firm, PC Post Office Box 6003 Hilton Head Island, SC 29938 T: 843-682-3555 F: 843-682-3558		Name, S.C. Bar no. and address of Defendant's attorneys J. Patrick Norris (SC Bar No.: 78270) Carlock, Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 T: 843-727-0307 F: 843-727-2995	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Summary Judgment		Court Reporter Needed: Yes	
Estimated Time Needed: 30 minutes			
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion			
Signature of Attorney for Defendant		Date submitted: 8/16/13	
SECTION III: Motion Fee			
☒ PAID AMOUNT: \$25.00			
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	

CLERK'S VERIFICATION	
Collected by: _____ (print name)	<u>DATE FILED</u>
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED - AMOUNT DUE: _____	

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2700

) CASE NO.: 2011-CP-07-2700

)

)

)

1)

1

1

Finally, the contribution crossclaim fails as a matter of law because it is not ripe.

LEGAL AUTHORITY

Ocean Estate purports to bring four crossclaims against CMC: Negligence, Breach of Warranty, Breach of Contract, and Indemnity/Contribution. The first three crossclaims for Negligence, Breach of Warranty, and Breach of Contract are merely disguised indemnity claims,

and should be dismissed as a matter of law. Although these three crossclaims purport to be for "independent" causes of action, the crossclaims are inextricably linked to what happens in this lawsuit. Simply stated, the crossclaims would not exist absent Ocean Estate being sued by Plaintiff. In these crossclaims, Ocean Estate does not seek any independent damages for personal injury or property damage. Accordingly, these are textbook claims for indemnity and cannot be realistically interpreted as anything but.

This issue arose in U.S. Fidelity & Guaranty Co. v. Patriot's Point Development Authority, 788 F. Supp. 880 (D.S.C. 1992). In that case, the non-settling defendants argued that they had "independent claims" against a settling co-defendant apart from indemnification and contribution. The court disagreed, holding that the claims were "nothing more than claims for indemnity" because **they would not exist** "without plaintiff suing the non-settling defendants." Id. At 881, n.1. Similarly, in S.C. National Bank v. Stone, 749 F. Supp. 1419 (D.S.C. 1990), the court noted that cross-claims against the settling defendants for breach of contract, negligence, and fraud were "nothing more than claims for contribution or indemnification with a slight change in wording" and that **"a rose by any other name is still a rose."** Id. at 1433 (emphasis added).

As to the crossclaim for indemnity, it must be dismissed as a matter of law because Ocean Estate is, at best, a joint tortfeasor and/or shares some fault for Plaintiff's alleged damages. "Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999). "A right to indemnity may arise by contract . . . or by operation of law as a matter of equity between the first and second party." Id. "[I]f one person is compelled to pay damages because of negligence imputed to him as the result of a tort committed by another he may maintain an action over for

indemnity against the person whose wrong has thus been imputed to him, but this is subject to the proviso that **no personal negligence of his own had joined in causing the injury.**" First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 442-43, 445 S.E. 2d 446, 448 (1994)(citations omitted)(emphasis added).

There is no contractual indemnity provision at issue here; thus, Ocean Estate's "indemnity" crossclaim must proceed under the theory of "equitable" indemnity. To recover on an equitable indemnification cause of action, the party seeking indemnification must prove: (1) the indemnitor was liable for causing the plaintiffs' damages; (2) the indemnitee was exonerated from any liability for plaintiffs' damages; and (3) the indemnitee suffered damages as a result of the plaintiffs' claims against it, which were eventually proven to be the fault of the indemnitor. See Fowler v. Hunter, 388 S.C. 355, 363, 697 S.E.2d 531, 535 (2010); Vermeer, 336 S.C. at 63, 518 S.E.2d at 307. Our courts have held that the "most important requirement" for equitable indemnity is that the party seeking indemnity be without fault. See Vermeer, 336 S.C. at 63, 518 S.E.2d at 307. Here, because the evidence shows that Ocean Estate, as the general contractor, is at least partially "at-fault," Ocean Estate is clearly not entitled to indemnity from CMC. Accordingly, CMC is entitled to summary judgment on the crossclaim for indemnity.

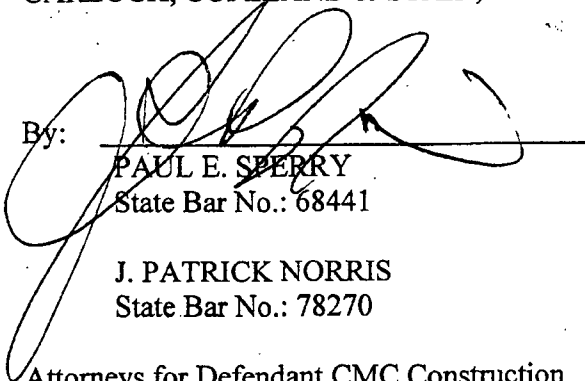
Finally, as to the crossclaim for "Contribution," that claim is not ripe because Ocean Estate has not paid anything to Plaintiff. See First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 444, 445 S.E.2d 446, 448 (holding that "the right to contribution does not arise prior to payment"). Accordingly, CMC is entitled to summary judgment as to Ocean Estate's crossclaim for contribution.

Because there are no genuine issues of material fact with respect to these issues, CMC is entitled to judgment as a matter of law as to Ocean Estate's crossclaims as set forth above. This Motion is based upon Rule 56, SCRCP; the pleadings, discovery and evidence in this case;

applicable case law; and any memorandum of law in support of this Motion to be submitted to the Court under separate filing.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

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State Bar No.: 68441

J. PATRICK NORRIS
State Bar No.: 78270

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Company, Inc.

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0137

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-02700

TAD SEGARS

PLAINTIFF

VERSUS

SEPTEMBER 4, 2013

TRANSCRIPT OF HEARING

BEAUFORT, SOUTH CAROLINA

OCEAN ESTATE BUILDERS, INC.;
ED FLYNN, INDIVIDUALLY; DAVID
GARCIA D/B/A YINET PLASTERING,
INC.; ADVANCED ROOFING, INC.
AND TEOFILLO LEZCANO, INDIVIDUALLY
AND D/B/A ADVANCED ROOFING, INC.,
A/K/A YUKO CONSTRUCTION, INC.;
CMC CONSTRUCTION COMPANY, INC.;
AND JAGUAR MASONRY, INC.

ORIGINAL

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

A P P E A R A N C E S

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Telephone 843-266-8219

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 10:07 A.M.

2 BY THE COURT:

3 THE COURT: Thank you all. Please be seated. Good
4 morning. Wanda, are you all set up?

5 COURT REPORTER: Yes.

6 THE COURT: All right. Let's go. This is CMC's
7 motion. I will tell you, I appreciate the Defendants'
8 brief. I have read it.

9 MR. FINN: I just got yours, so.

10 THE COURT: Whenever you all are ready. Motion for
11 summary judgment.

12 MR. NORRIS: Was there a brief from --

13 THE COURT: They just handed me one.

14 MR. NORRIS: Thank you.

15 THE COURT: We're getting it at the same time.

16 MR. NORRIS: All right. I need to take a look at
17 that. Your Honor, good morning.

18 THE COURT: Good morning.

19 MR. NORRIS: My name is Patrick Norris. I represent
20 a company called CMC Construction Company. And CMC is a
21 framing subcontractor in the Hilton Head area. You've
22 probably seen them in other cases. There's probably, --

23 THE COURT: Know them well.

24 MR. NORRIS: -- I think, a dozen or so cases on your
25 docket right now involving this same cast of characters.

1 As you probably know from the pleadings and from the
2 brief, this is a construction defect action involving a
3 house in the Singleton Beach Subdivision. Again, two
4 dozen, probably, lawsuits over the years involving houses
5 in that area, a lot of which brought by Mr. Finn.

6 My motion today is a motion for summary judgment.
7 It is about as cut and dry as you can get, and about as
8 simple an argument as I can make. The original complaint
9 was filed in September of 2009 against Ocean Estate
10 Builders by Mr. Tad Segars. The case goes along, goes
11 along, goes along, and then three-and-a-half years later,
12 my client is brought in, in the third amended complaint
13 as a defendant, in February, 2013.

14 The statute of limitations provides a three-year
15 window, as you know, for a negligence action. My client
16 is not -- from when plaintiff knew, or should have known,
17 he had a claim. At the very latest, plaintiff knew, or
18 should have known, he had a claim when he filed a
19 construction defect action for water infiltration.
20 Listed several issues in the original complaint,
21 including improper insulation and failure of structural
22 systems. That's the original complaint.

23 THE COURT: Right.

24 MR. NORRIS: An identical list of deficiencies in
25 the third amended complaint in 2013, three-and-a-half

1 years later. The three-year window is there to impose
2 reasonable diligence requirement on the plaintiff, and
3 also, to protect the defendant from protracted fear of
4 litigation. And I would submit to the Court that three-
5 and-a-half years is too -- it's too late; that three
6 years is the window. Plaintiff had three years to bring
7 the claim against my client. Failed to do so. And
8 therefore, my client's entitled to summary judgment.

9 I did want to be clear with Mr. Segars. I deposed
10 him a week ago in Mr. Finn's office, and I did file it
11 this morning. We just got copies of the transcripts of
12 he and his wife, Kelly Segars, who's not a plaintiff. I
13 asked Mr. Segars -- we went through the original
14 complaint. And I said:

15 I want to know what the deficiencies
16 were when you filed the complaint in
17 September of 2009, or when your lawyer
18 filed it on your behalf. You told me
19 water infiltration, wood rot, and concern
20 with the windows. Is there anything else?

21 Answer:

22 I don't think I can add anything.

23 Question:

24 Under 'E' there, 'Improper Installation
25 and Failure of Structural Systems,' what

1 does that mean? Is that framing issues?

2 Answer:

3 It would relate to framing issues, yes.

4 My client was the framer. Plaintiff knew, or should
5 have known, he had a claim in September of 2009. That
6 claim was not brought until February of 2013. And I
7 would submit to the Court that that's a violation of the
8 statute of limitations. The case was 40(j'd) at one
9 point. We were not involved. As I said in my brief, we
10 did not consent to a 40(j). It cannot be subject to any
11 tolling arguments that would arise therefrom as to CMC
12 Construction.

13 That's, essentially, my argument, in a nutshell.
14 And I probably went longer than I should have on that
15 point, because it's a pretty -- it's a very simple
16 argument. But I got an affidavit from Mr. Finn on Friday
17 afternoon. And I assume you have a copy of the
18 affidavit. If you don't, we can --

19 THE COURT: I do not, unless it's in this packet
20 that you just gave me. Is it one of the exhibits?

21 MR. NORRIS: May I approach, your Honor?

22 THE COURT: Sure.

23 MR. FINN: Exhibit 11, your Honor.

24 THE COURT: Okay. I'm seeing where she said she
25 found, actually, some of the documents related to

1 construction, and that they were in 2012.

2 MR. NORRIS: Right, your Honor. And that -- I saw
3 that in there, as well. And what it seems to me -- and
4 I'm not sure. I'll let plaintiff's counsel address that.
5 But it seems to me that the argument that's going to be
6 made to try to counter our motion is that, somehow, they
7 didn't know the identity of the framer, or CMC
8 Construction, or the identify of the subcontractors,
9 because, perhaps, it wasn't in the Beaufort -- the Town
10 subcontractor roster.

11 THE COURT: You mean the Town of Hilton Head?

12 MR. NORRIS: Town of Hilton Head. Excuse me.
13 That's correct. And clearly, I mean, the law in South
14 Carolina is, as I said in my brief, that the focus is the
15 date of the injury, not the discovery of the identity of
16 the wrongdoer. So, I think it makes no difference when
17 she found the documents. She didn't find them -- they
18 were in her house. But putting that aside, plenty of
19 time goes by where they can reasonably find that out. I
20 mean, Ocean Estate Builders has lawyers in the case. You
21 could depose their client. You can subpoena bank
22 records. You could send discovery requests, request to
23 admit. Any number of ways to find that information. She
24 did have it in her possession, and I would add, in her
25 attic. But I do think that's sort of a red herring to

1 this case -- to this argument, because the focus is on
2 the date of the injury, knew or should have known he had
3 a claim September 2009. If they subsequently found
4 documents after that, that's all well and good, but it
5 doesn't have anything -- the identity of the wrongdoer is
6 not the focus of when the clock starts running.

7 THE COURT: Okay. Mr. Finn.

8 MR. FINN: Thank you, your Honor. Your Honor, I've
9 passed up a brief in support of our position. Judge, as
10 you know, I represent the plaintiff in this case. Judge,
11 I'd like to walk through. It's certainly true that our
12 initial complaint was filed in September of 2009. I draw
13 the Court's attention to Tab 2 of our brief. And Tab 2
14 is what the Town of Hilton Head Building Department
15 provided my office, with respect to a request for the
16 construction documents in the Segars' case.

17 The only information available at the Town of Hilton
18 Head in 2009 was that Ocean Estate Builders built the
19 Segars' residence. That's it. That's what I had. We
20 filed the complaint based upon that.

21 THE COURT: When did you depose Ed Flynn in this
22 case?

23 MR. FINN: I have not deposed Ed Flynn, your Honor.
24 And there's a pretty simple reason for that. As this
25 Court may know, I've brought numerous cases in the

1 Singleton Beach area. Mr. Blackburn has been Ed Flynn's
2 counsel, not only on these cases, but going back to the
3 '90s, with EIFS cases and Help-You-Build. Now, based
4 upon that, Charles and I knew what we had to try to do.

5 THE COURT: Right.

6 MR. FINN: And that was get everybody we could in
7 the case. Numerous discussions with Charles that Ed
8 didn't -- Ed didn't remember.

9 THE COURT: Well, let me ask you this. Other than
10 CMC, I recall there being two potential framers out in
11 Singleton Beach, and CMC was one of the two. Who was the
12 other one?

13 MR. BLACKBURN: L&J, your Honor.

14 THE COURT: Okay. And did you name them at any
15 point mistakenly, or? Because those are the only two
16 characters -- and I hate to say characters -- but they're
17 the only two that Edward Flynn ever used when he built
18 under Ocean Estate or Help-You-Build.

19 MR. BLACKBURN: Your Honor, it's Mr. Finn's. And
20 the reason I'm here, I brought the third-party claim
21 against my third-party defendants, Mr. Norris and Mr.
22 Luck.

23 THE COURT: Okay.

24 MR. BLACKBURN: And when they -- when Tom amended to
25 bring them in directly, --

1 THE COURT: Right.

2 MR. BLACKBURN: -- I had, by rule, dropped my third-
3 party cross-claim against them.

4 THE COURT: Okay.

5 MR. BLACKBURN: So, that's why I'm sitting here as
6 the third-party plaintiff.

7 THE COURT: Okay.

8 MR. BLACKBURN: But the subcontractor with this I've
9 got -- I believe Mr. Finn has his documents -- showed
10 Ocean Estate was the framer. Okay. Yeah. And then, --

11 THE COURT: Okay. But we all in this room know -- I
12 mean, I hate to say this, having done this, as well -- we
13 all know in this room that Ed Flynn doesn't swing a
14 hammer, and that Ocean Estate is nothing.

15 MR. BLACKBURN: Yeah, I know, your Honor.

16 THE COURT: And Help-You-Build, quite frankly, for
17 that matter, is nothing, too. But anyway, we all know
18 that. We all know he uses the same group of people to
19 build, and he varied on a couple of these, but on all
20 those homes out in Singleton Beach.

21 MR. BLACKBURN: And I agree, your Honor. But in
22 another case he brought, a house he built for his wife --

23 THE COURT: That's the one on Singleton Beach.

24 MR. NORRIS: Well, no, that is -- it's on Collier
25 Court. It's -- I believe it's 10 Collier Court. She

1 sold houses, short sale. So, she's not the plaintiff
2 anymore. But Ed either self-performed or had somebody
3 else do the framing in that case. And like, in this
4 case, I was actually wondering when Mr. Finn would
5 realized that Ocean Estate was the framer, because if I
6 look at that subcontractor list, I'm thinking they did
7 the framing. There's another here on our subcontractor
8 list, too, is this Alberto Garcia.

9 THE COURT: Are you telling me that you did the
10 framing?

11 MR. BLACKBURN: Ocean Estate. He's got Ocean Estate
12 down there. So, at that time -- I mean, yeah, you know,
13 your Honor, we know that CMC did most of them, if not all
14 of them. But I did have one case that we mediated in Mr.
15 Mullen's office, Mullen/Wiley's office, where the
16 plaintiff lived right next door, and she had L&J Framing
17 in there. And that's probably the only one I'm familiar
18 with, other than when Ed said he self-performed. Now,
19 you know --

20 THE COURT: And just so I'm correct, L&J Framing, is
21 that part of the company that is his wife's and another
22 person's?

23 MR. BLACKBURN: L&J --

24 THE COURT: I'm going back a long way, because
25 there's another -- and I don't know if it's a development

1 company or what it is, but his wife and someone had a
2 business.

3 MR. BLACKBURN: I think you're thinking about D&N
4 Enterprises.

5 THE COURT: Yes. Thank you. Okay. Okay. I'm
6 sorry.

7 MR. BLACKBURN: That's okay. But L&J is the only
8 one I'm familiar. But Alberto Garcia is listed on the
9 subcontractor list as stucco applicator. And now, we
10 have Mr. Young's client in Yinet Plastering. I named
11 Alberto Garcia as a third-party defendant, too. David
12 Cobb came in to represent them. And he said, wait a
13 minute; you got the wrong guy; we didn't do it. And he
14 knows Antonio Rodriguez, David Garcia, all these, you
15 know, Spanish. And I've been -- David Garcia and
16 Rodriguez Stucco, like Mr. Finn said, in the early '90s
17 cases I was defending in the early 2000s, and it turns
18 out, David Garcia is the applicator, and Yinet
19 Plastering, he did business as them. So, there are some
20 issues with that.

21 THE COURT: Okay.

22 MR. BLACKBURN: And again, I'm sitting here as a
23 third-party plaintiff.

24 THE COURT: Is this one of the later houses that was
25 built or one of the earlier houses?

1 MR. BLACKBURN: Earlier.

2 MR. FINN: One of the earlier.

3 THE COURT: Okay. So, I assumed with Mr. Tad Segars
4 being a realtor, and I know he had another piece of
5 property out there, if not more than that, but. Okay.
6 Okay.

7 MR. BLACKBURN: And Tad -- your Honor, that's a good
8 point, because this, the Segars' case, was one of the
9 first five Mr. Flynn [sic] filed. So, at that time, I
10 had not had Ocean Estate case for 2009. And see, Mr.
11 Flynn [sic] filed Segars, Vingelin, Seyler, and
12 Hallquist.

13 MR. FINN: Finn.

14 MR. BLACKBURN: Mr. Finn. I'm sorry. Sorry.

15 THE COURT: And we can talk through this, you all,
16 but I do have a concern. I don't see how the statute
17 hasn't run. So, help me out. Help me out how it hasn't.
18 Because -- and we have this problem -- we have this
19 problem in all these cases. And I understand that the
20 subcontract was, particularly back in '09, with the Town
21 -- but we've also found that the subcontractor lists,
22 half the time, are wrong, with the Town, as well.

23 MR. FINN: That's right.

24 THE COURT: So, that's the other issue. So, explain
25 to me how -- how do we get past the three-year statute of

1 limitations? I mean, we all know what the rule is. I
2 mean, I don't need to sit here and talk about *Dean versus*
3 *Ruscon* with any of you.

4 MR. FINN: Right.

5 THE COURT: We all know it well. So, my question
6 is, you knew that there was a problem; it was a stucco
7 case; we knew that there was -- there always is a
8 structural problem. And I will say, I understand the
9 language they put in the complaint. It's as standard as
10 it comes. We all know that. I guarantee you every one
11 of Mr. Flynn's complaints says exactly -- or Mr. Finn's
12 -- says exactly that. So, my question is, how do we get
13 past this?

14 MR. BLACKBURN: Well, let me raise this, your Honor.
15 When they filed the 2009 complaint, the Segars' house was
16 C.O.'d June 22, 2000.

17 THE COURT: Okay.

18 MR. BLACKBURN: At that time, Zurich insured Ocean
19 Estate Builders, in 2000/2001.

20 THE COURT: Got it.

21 MR. BLACKBURN: The carrier that's defending Ocean
22 Estates now is -- it was Risk Management. Okay. Now
23 it's Tri-Star. They bought them.

24 THE COURT: Okay.

25 MR. BLACKBURN: They're at Catalina.

1 THE COURT: Okay.

2 MR. BLACKBURN: They denied defense when I turned it
3 over to them for about a year. That's why he had to
4 40(j) it. So, you know, it was a year until -- until Tom
5 -- see, Tom filed the second amended complaint, naming Ed
6 individually. Because Zurich was saying, hey, we didn't
7 insure Ocean Estate Builders, Inc.; we insured Ocean
8 Estate Builders and Ed Flynn. So, Tom, look, to get
9 Zurich involved, you've got to name Ed personally, and
10 Zurich still denied it. If I had a copy of the policy,
11 they had a prior work exclusion.

12 So then, Tri-Star got involved; they finally picked
13 up a defense. So, a year later, you know, we're in the
14 case. I'm getting paid to defend Ocean Estate. So then,
15 we started going -- we didn't really do any discovery
16 during the one year, when we had the case removed from
17 the roster, other than trying to get insurance in.

18 So, and then, and during the course of the evolution
19 of the case, like yesterday, you know, Ed told me, hey,
20 Advanced did the waterproofing. So then, when we're
21 taking Segars' deposition last week, sure enough, in the
22 documents she found, there was Advanced letterhead,
23 saying they did the waterproofing. So, it's got an
24 evolution, you know, of who was doing what, especially
25 the applicator. I mean, we need Alberto Garcia, based on

1 that.

2 THE COURT: CMC is the framer, correct?

3 MR. NORRIS: Correct.

4 THE COURT: Okay.

5 MR. BLACKBURN: And the framer -- and the framing
6 contract -- you're right. The list said Ocean Estate.
7 You're correct. You know, CMC did probably 95 percent of
8 them. They had one -- L&J did one house. He said he did
9 -- he self-performed his wife's house, and evidently,
10 this house. So.

11 But my concern, your Honor, is, what does it do to
12 me when I've brought a third-party complaint that was
13 within the time, that now, has, by rule, had to be
14 consumed with cross-claims, which I've agreed to dismiss?
15 But that -- and yesterday when Mr. Luck wasn't satisfied
16 with my stipulation, and he wanted a Form 4 denying it,
17 I've agreed to dismiss my cross-claims against Mr. Luck's
18 client. I've agreed to dismiss my cross-claims against
19 Mr. Norris' client, with prejudice. So, you know, my --
20 my complaints -- that would essentially leave my -- my
21 client in the case.

22 And by the way, his carrier now is telling me
23 they're probably going to withdraw defense. And I had
24 asked them last week, do you mind if I come to this
25 hearing, because it will be in the best interests of the

1 insured.

2 THE COURT: Okay.

3 MR. BLACKBURN: And they never told me one way or
4 the other. We're also trying to mediate the case. They
5 won't give me a date to mediate the case. So, we're
6 trying to do that. And see, right now, if my carrier
7 withdraws defense, Ed Flynn, I mean --

8 THE COURT: Yeah.

9 MR. BLACKBURN: -- he's out there.

10 THE COURT: Okay. Is this another Tom Carlson case?

11 MR. FINN: It is, your Honor.

12 THE COURT: Okay. It's just going to make it that
13 much harder, I think, to mediate, as well.

14 MR. BLACKBURN: And Carlson didn't get out there
15 until, I think, July, to do some destructive testing.

16 MR. FINN: June.

17 MR. BLACKBURN: Somewhere?

18 THE COURT: Yes. Of this year?

19 MR. FINN: Yes, your Honor. But we had a different
20 -- different expert do some cuts earlier on.

21 THE COURT: Do the Segars still own this house? Is
22 it still their home?

23 MR. FINN: Yes, your Honor.

24 THE COURT: Okay. Okay.

25 MR. FINN: And Tom was able to do his report.

1 THE COURT: Okay.

2 MR. FINN: But Judge, if you just -- if you would
3 look at Tab 8, that is -- I don't know if you came across
4 it, or anything -- that is the sub-roster, your Honor.
5 The sub-roster was produced by the Town of Hilton Head,
6 to Charles, after Charles, on September 28, 2010, had
7 subpoenaed the records. Well, I already requested the
8 records from the Town, and I got what limited things you
9 see in Tab 2.

10 But eventually, in October, if you look at Tab 7,
11 that's when -- I'm sorry, your Honor -- Tab 6, Charles
12 produced the sub-roster to me in October. Now, that sub-
13 roster says the roof was Yuko Construction. That's one
14 of the names for Advanced Roofing, Teofilo Lezcano, Yuko
15 Construction. So, by October of 2010, that's when the
16 sub-roster came out. Stucco's Alberto Garcia, okay.
17 Judge, your Honor, this stucco applicator, we figured out
18 -- and Kelly Segars, around the time of Kelly Segars'
19 deposition, someone prompted her saying, oh, did Garcia
20 do the stucco? She said, I know David, David Garcia.
21 Well, David Garcia owned a company called Yinet
22 Plastering. No one ever -- no one ever heard of that,
23 Judge.

24 THE COURT: Right.

25 MR. FINN: Okay. So, the thing -- Alberto Garcia

1 Stucco, that was one of Ed Flynn's go-to guys, as well.

2 THE COURT: Right.

3 MR. FINN: So, the question on, let's say, the
4 stucco, Judge, we sued Alberto Garcia. Charles brought
5 him in. I believe I brought him in on a -- on one of my
6 amended complaints to try to bring him. He had nothing
7 to do with it. He has the same last name, but virtually
8 nothing to do with this case. And of course, Carpentry
9 Framing, Ocean Estate Builders. That's the information
10 available in October of 2010 from the best source, the
11 Town of Hilton Head Island.

12 THE COURT: Okay. Let's talk about the
13 practicalities of this. So, if CMC is out, what does
14 that do, since he's released his cross-claims?

15 MR. NORRIS: Well, your Honor, that would mean that
16 CMC's out of the case, as they should be.

17 THE COURT: Completely.

18 MR. BLACKBURN: Unless you took Mr. Luck's point
19 yesterday where my stipulation of dismissal has a no
20 merit, because he wanted a form order, in addition to the
21 stipulation. I believe the stipulation I filed a month
22 ago, with Mr. Luck's time, was sufficient. I don't
23 believe the form order is necessary. I believe that I
24 released them with their claims, because they were direct
25 defendants.

1 THE COURT: The problem is, I don't think it's fair
2 for you to get out on a cross-claim on a technicality,
3 based on the plaintiffs. And I guess -- I guess you
4 should have done your own due diligence, as well, because
5 you are the general contractor, and it's your
6 subcontractor. And again, the problem I have with this
7 is that, we all know Ocean Estate Builders doesn't do
8 anything. I mean, we all understand that. And when I
9 say we, I hate to say it, but --

10 MR. BLACKBURN: Yeah, your Honor, --

11 THE COURT: -- we all understand this. We've been
12 doing this for a long time. And so, let me ask you.
13 Would it have been possible, Mr. Finn, for you to name
14 just a roofer by, you know, John Doe Roofing Company?
15 Could you have done that? Could you have thrown that out
16 and done it by publication? And that way, if you finally
17 found out who it was, we could then do a, you know, an
18 amendment, and it would relate back; and then, you'd have
19 a better argument? And I've always wondered why we don't
20 do that, or why -- I shouldn't say we -- but why everyone
21 doesn't do that in construction cases, just to cover
22 their rear end. Because we all know there's -- we all
23 know there's a framer on these. I mean, the house is
24 standing on its own now. So, I just wondered if that
25 would be a possibility to do in cases, just to cover

1 yourselves. Because it happens all the time, as you
2 know, that you go three and four years into this, and
3 you're deposing, you know, some guy who's a translator,
4 and it turns out he's isn't the applicator, and he says,
5 I didn't do that; that was -- that was, you know,
6 whoever. So.

7 MR. BLACKBURN: Well, see, your Honor, I object to
8 that. When I got -- during that time that year, I was
9 more concerned about getting paid, getting my client's
10 coverage to kick in, you know.

11 THE COURT: Not getting you paid, but literally, Mr.
12 Flynn being covered. Okay.

13 MR. BLACKBURN: Defendant, right.

14 THE COURT: Just so we're clear.

15 MR. BLACKBURN: And if you look at the time line, I
16 mean, I -- we restore the case in October and early, you
17 know, late November of '11. I thought my third-party
18 complaint November 3rd -- as a matter of fact, I filed an
19 order to file a third-party complaint within the time the
20 case was removed, right --

21 THE COURT: So, the whole reason this case was
22 40(j'd), though, was because you were worried about
23 coverage issues. And obviously, you wanted insurance
24 coverage, in this case.

25 MR. FINN: Yes, your Honor. And if we look at --

1 Charles' first responsive pleading wasn't until --

2 MR. BLACKBURN: March 12, 2010.

3 THE COURT: Okay.

4 MR. FINN: So, we had to wait. He was trying to get
5 his house in order, and I was waiting, because, you know,
6 holding him in default or trying to do something like
7 that is not going to help me in the long run. So, --

8 THE COURT: How many of these cases do you have,
9 Tom, against Ocean Estate, out on Singleton Beach?

10 MR. BLACKBURN: Right now we've got seven.

11 THE COURT: Seven? Okay.

12 MR. BLACKBURN: But we've had as many as 12. We
13 settled most of them, your Honor. We settled all of
14 them. None of them have gone to trial.

15 THE COURT: Okay.

16 MR. NORRIS: And your Honor, I don't know how many
17 of those cases have CMC Construction, but I've personally
18 been involved in at least six or seven, if not more --

19 MR. BLACKBURN: Most of them.

20 MR. NORRIS: -- of these cases for CMC Construction,
21 who is a sub of Ocean Estate. What I'm hearing, if I
22 may, is a lot of arguments about the practicality of it,
23 the insurance coverage issues that Ocean Estate had. I
24 mean, the bottom line is, he may have different arguments
25 as to the stucco guy who they named, who they meant to

1 name, or the roofer, but as to CMC Construction, there is
2 no question. I mean, the law is what it is -- the date
3 of the injury, knew or should have known.

4 THE COURT: I understand. You don't need to repeat
5 the law.

6 MR. NORRIS: Right.

7 THE COURT: We all know what it is.

8 MR. NORRIS: And I'm not going to. But if they -- a
9 discovery of the box of documents has any bearing on
10 anything, that's February 2012. He sent me in February
11 2013.

12 THE COURT: I know. Okay.

13 MR. BLACKBURN: My time line -- Tom filed the
14 amended complaint March 12, 2010. I filed my answer to
15 the amended complaint. I didn't file an answer to the
16 complaint. I filed mine September 10, 2010.

17 THE COURT: Do you have a copy of your stipulation?
18 What did we do yesterday in your other case? Did you
19 file a stipulation of dismissal in this case?

20 MR. BLACKBURN: Oh, yeah. Yeah.

21 THE COURT: Give me a copy of that.

22 MR. NORRIS: Your Honor, let me say something with
23 regard to that.

24 THE COURT: Yes.

25 MR. NORRIS: I filed a motion for summary judgment

1 as to Mr. Blackburn's client for the cross-claims, and he
2 agreed to -- and this was two months ago -- and he agreed
3 to dismiss his cross-claims.

4 MR. BLACKBURN: Yeah.

5 MR. LUCK: Same here, your Honor. And by the way,
6 I'm here for Advanced Roofing again.

7 THE COURT: Okay. You're here for -- okay.

8 MR. LUCK: And our motion's identical to theirs.
9 So, it's -- I don't need to get up and beat a dead horse.
10 So, what he says will --

11 MR. BLACKBURN: Well, that's the thing. I agreed to
12 stipulate. I don't have any problem with that. I agree.
13 I thought that was fine. And I still think it's fine.
14 But my problem is, now, when they raise the issue about
15 three years -- and I did that after I knew they were
16 going to do that. But I had to -- I had to, by rule,
17 drop my third-party claims, and agreed to dismiss them,
18 because my cross-claims -- honestly, your Honor, if I
19 file a third-party complaint, I expected them do the same
20 thing that they're doing on my cross-claim, because my
21 third cross-claims are ground in equitable indemnity.

22 THE COURT: Right.

23 MR. BLACKBURN: They're no good.

24 THE COURT: Right.

25 MR. BLACKBURN: So, they could do the same thing.

1 That's why I dismissed the cross-claims. I do the same
2 thing in myself. Because they're grounded in equitable
3 indemnity. So, I have no problem. As a matter of fact,
4 yesterday, I had no problem leaving that stipulation that
5 I signed in black where it was. I didn't think a form
6 order was necessary. But Mr. Luck, if he wants a form
7 order to back up my filed stipulation dismissal, like I
8 did in this case, with both him and Mr. Norris, that's
9 fine with me. I'm not trying to get out of that, your
10 Honor.

11 THE COURT: Okay.

12 MR. BLACKBURN: I'm perfectly agreeing that I've
13 dropped my claims against them.

14 THE COURT: Okay. So, as to your guy, the same
15 thing, as far as timing is concerned. When was he
16 brought in. Is he brought in on a third complaint, as
17 well.

18 MR. LUCK: Yes. Yes, your Honor, third -- third
19 amended complaint.

20 MR. BLACKBURN: Well, he was brought --

21 THE COURT: And your guy is the roofer?

22 MR. LUCK: Roofer, and there will be some
23 allegations he's the waterproofer. Yes.

24 THE COURT: And he was the waterproofer, too.

25 MR. LUCK: According to the Plaintiff.

1 MR. BLACKBURN: Well, the plaintiff's documents,
2 your Honor, last week, had one Advanced Roofing on the
3 letterhead -- waterproofer. I don't know how much
4 clearer you can be to describe the scope of work on
5 somebody's own letterhead, to the plaintiff, saying
6 waterproofer.

7 THE COURT: Right. But he's saying he's not
8 waterproofing. Okay.

9 MR. BLACKBURN: Yeah, he's still saying it. Yeah.
10 So, that's --

11 THE COURT: And I'm going to assume that -- and it's
12 not fair to assume -- but I'm going to assume that that's
13 a huge problem is the failure with the decks?

14 MR. BLACKBURN: Absolutely.

15 THE COURT: I mean, that, in fact, was one of the
16 main problems about that entire -- sorry. I know I'm
17 speaking here. And I can only go off standing on Dean
18 Laurich's old deck, and literally, I have, like, a 300-
19 pound guy get on it with me, and I was, like, two steps
20 backwards, because I was sure it was coming down.

21 MR. BLACKBURN: Yeah, and we've seen --

22 THE COURT: So.

23 MR. BLACKBURN: We've seen the damage to the
24 Laurich's.

25 THE COURT: Yes.

1 MR. BLACKBURN: Your typical damage, your Honor.

2 THE COURT: Okay.

3 MR. BLACKBURN: It's mostly in the front. And the
4 rear, if they had boards in the back.

5 THE COURT: Okay.

6 MR. BLACKBURN: And if they have boards in the
7 front.

8 THE COURT: Okay.

9 MR. BLACKBURN: I mean, this case I've got right
10 now, sheets. You can look across the streets and see
11 Dean Laurich's house. It's 5 Collier Court. And they --
12 the stucco looked good on the front, but they stripped it
13 off. The whole front, from third floor to the ground
14 floor, the sheeting was rotten, because of waterproofing.

15 THE COURT: Has it been fixed? Has Segars' house
16 been fixed?

17 MR. FINN: No, your Honor.

18 THE COURT: No. Okay. Okay. So, anything else you
19 need to tell me, as far as your time line? No.

20 MR. LUCK: No. No, your Honor. It's pretty well
21 set out by Mr. Norris and whatever else has been
22 submitted to the Court.

23 THE COURT: Anything else, Mr. Finn? In all
24 fairness, I'm going to read your brief from one side to
25 the other and every last one of your exhibits, because I

1 didn't have an opportunity to have it ahead of time,
2 although requested. But I want to read everything and
3 see if there's anything. But, okay.

4 MR. FINN: Your Honor, I would just -- I would just
5 point out that --

6 THE COURT: Yes.

7 MR. FINN: -- as you mentioned, you know, in theory,
8 maybe you bring a John Doe action. But out in the real
9 world, --

10 THE COURT: Right.

11 MR. FINN: -- looking up these documents, they're
12 not there. We went to a deposition, and Kelly Segars had
13 said she stumbled across some documents up in her attic
14 that were in storage. Those documents, they were, you
15 know -- we didn't have those. And even after we had the
16 documents, it took some experienced people to kind of
17 piece together who we're dealing with. I mean,
18 essentially, the Segars are going to be -- possibly could
19 be blamed, because CMC never went down to the Town and
20 said, wait a second, Ocean Estate is listed as a framer.
21 So, where's the responsibility? Would I have not brought
22 an action against the responsible parties if they were on
23 the documents that the Town of Hilton Head requires
24 general contractors and subcontractors to complete?

25 THE COURT: You and I both know that, that is an

1 argument that does not win. So, we've been there before.
2 My problem is, is that, this is not new to either Ed
3 Flynn. And it's just unfortunate, because it should have
4 been able to be found out, and should have been done in a
5 timely manner.

6 MR. BLACKBURN: Your Honor, may I make one point?

7 THE COURT: Yes.

8 MR. BLACKBURN: That, you know, Mr. Segars testified
9 last week he was going to build the house by himself.
10 Okay. He was going to serve as his own contractor. He
11 paid my client \$15,000.00 to build a \$600,000.00 house.
12 And I asked Mr. Segars, I said, do you really expect that
13 he was going to serve as a general contractor -- in
14 deposition testimony -- for \$15,000.00? Assume all the
15 liability? Mr. Segars told Mr. Norris, well, I didn't
16 expect him to be there every day. Well, he told me, he
17 said, no, I --

18 THE COURT: That doesn't help Mr. Finn's client in
19 any way. I mean, obviously.

20 MR. BLACKBURN: No, not Mr. Finn's client in any
21 way. But, you know, he is still claiming I'm general
22 contractor. He says Ocean Estate was contractor. And
23 it's on the building permit application. It's on the
24 C.O.

25 THE COURT: Has Flynn decided to take that

1 responsibility for \$15,000.00, you know? Other ones I've
2 seen he does it for 50, and really, it doesn't he --
3 Hope-You-Build, but.

4 MR. LUCK: But one thing, he did not select all the
5 contractors. Not all of them. He told Mr. Segars he
6 suggested some people.

7 THE COURT: Okay.

8 MR. LUCK: I don't want to mis-characterize
9 testimony. But yeah, Ed would say, hey, use Advanced;
10 use whoever; CMC; or Alberto Garcia. And I've never
11 heard of Yinet Plaster in any of these cases. Any of
12 them.

13 THE COURT: Okay. But none of this helps Tad
14 Segars, because, if he was the one who was choosing the
15 subcontractor --

16 MR. BLACKBURN: Some of them.

17 THE COURT: -- he should have known who he used, and
18 should have been able to tell Mr. Finn that.

19 MR. BLACKBURN: Some of them.

20 MR. FINN: Judge, I think the deposition testimony
21 states that any of the subs that were used were suggested
22 by Ed Flynn.

23 THE COURT: Obviously.

24 MR. FINN: Tad doesn't --

25 THE COURT: He's a realtor, you know? He's a

1 realtor.

2 MR. BLACKBURN: And that's a long time ago. I mean,
3 the house was started in '99, so. I don't know, your
4 Honor.

5 THE COURT: Okay. Well, Mr. Finn, I am going to go
6 through and read every last thing that you briefed.

7 MR. FINN: Thank you, your Honor.

8 THE COURT: And I'm going to let you know as soon as
9 I get through with that. Okay?

10 MR. NORRIS: Thank you.

11 MR. LUCK: Thank you.

12 THE COURT: I appreciate it.

13 MR. BLACKBURN: And I also agree with two of these
14 motions to separate when Ocean Estate Builders' come up,
15 I'm going to take your advice and talk to Jamie, and say,
16 hey, do we have --

17 THE COURT: Please talk to Jamie and Caroline. If
18 they're coming up on a regular non-jury roster like this,
19 talk to Jamie. But if it happens to be something that I
20 can do, again, for all of you, call me. And again, I
21 would hate to have to hear it twice, but I'm happy to
22 consolidate it all.

23 MR. BLACKBURN: I appreciate it. Thank you. One
24 thing too, Judge, at issue --

25 THE COURT: Yes.

1 MR. BLACKBURN: -- to put on the record. This case
2 is up for trial. It's Number 2 on the October 7th.

3 THE COURT: This is your next one in line? And I
4 was thinking about it after yesterday. Do you really
5 think we can have the other one ready by November, that
6 you were ready for -- that you were on the September 23?
7 What was yesterday's case? I don't --

8 MR. FINN: That was Black.

9 THE COURT: Black. Okay.

10 MR. FINN: That was ambitious, your Honor, but.

11 THE COURT: And that's what I thought, too. First
12 of all, we're in September. We're talking, really, two
13 months.

14 MR. FINN: Right.

15 THE COURT: I just think -- I think we need to have
16 -- let's just do a status conference. I think we need to
17 go ahead and set your cases. And I think what I want you
18 to do is, I want you to go through them, and you kind of
19 tell me, realistically, based on -- because you know who
20 you're going to -- which expert you're going to use or
21 you're going to replace. Let's sit down and
22 realistically go through them. I don't want you so
23 jammed that you're miserable. And again, it's all going
24 to be based on whoever, you know, you use and what their
25 availability is. And if you're using the same person for

1 all of them, I think it's going to be that much more of a
2 problem.

3 So, I mean, I think from what you told me yesterday,
4 it sounds like you have a good plan of how to handle it,
5 but we just need to make sure that there is time to do
6 what we need to do. And again, I don't want everybody
7 miserable, again. So I think what we'll do is this --
8 and I hate to tell you, the last time we did a group
9 conference call, Carmen set it up from your office, and
10 she botched it all up. So, what I think, I'm going to
11 let -- I think I'm going to let Caroline do it. And what
12 I suggest we do, if you all are fine with this, because
13 so many of you all have overlapping cases, is that we'll
14 just do them over about, you know, an hour or two-hour
15 period. We'll set them all. And I'm going to need a
16 case list from you, Tom, --

17 MR. FINN: Yes, your Honor.

18 THE COURT: -- that lists all the ones that have Tom
19 Carlson in it. And then, you're going to have to give me
20 the lawyers' names on each one of them, every lawyer
21 that's involved. And we'll just block off two hours.
22 We'll just knock them out. Even though we don't have a
23 roster for January on, my idea would be just to say let's
24 shoot for this month, and we'll kind of, from there, you
25 know, once we deal with the roster, go from there. And

1 that way, you know, you all will know what you're working
2 towards, so, you know, everyone won't be miserable.
3 Okay?

4 MR. BLACKBURN: Should we attend by telephone or?

5 THE COURT: Yes, we can do it by telephone, yes. I
6 don't need to make you guys drive. So, we'll just go
7 ahead. You give me the list, --

8 MR. FINN: Yes, your Honor.

9 THE COURT: -- and we'll deal with it that way. And
10 Caroline will set them up, and we'll just do conference
11 calls, and people can just call in, and we'll just take
12 care of it that way.

13 MR. BLACKBURN: So, we'll get protection from
14 October 7th for number 2 for Segars in this case?

15 THE COURT: Well, how many do you need protection
16 on? It's not going to be called. You guys -- you don't
17 have an expert. They haven't had a chance to depose
18 anybody, and no one's done any testing, and there's been
19 no report. Not that it's required. But yes, I think you
20 all are fine. And the first one, again, if you want me
21 to take you off of that November 11th, I need the guys on
22 the other side, I need the rest of them. But as long as
23 -- who else do we have besides you and you on the Black
24 case?

25 MR. NORRIS: We're in that case, your Honor.

1 THE COURT: You're in it?

2 MR. NORRIS: Robin was here for us.

3 THE COURT: Do any of you oppose not going forward
4 on November 11th? I mean, are you okay?

5 MR. NORRIS: Oh, absolutely. We've got a date
6 certain in Charleston that day, anyway.

7 THE COURT: Well, that makes better sense, then.
8 So, I think we just need to get on the phone calls. I'm
9 going to take you off for that, and let's just look at a
10 realistic calendar. I know you all have a lot of work,
11 you know, still to do.

12 MR. NORRIS: Thank you, Judge.

13 THE COURT: But hopefully, we'll get it -- knock it
14 out. And I think, maybe, after the first couple, it'll
15 make it easier, and then you can get them resolved.
16 Okay?

17 MR. NORRIS: Thank you, your Honor.

18 MR. FINN: Thank you.

19 BLACKBURN: Thank you, your Honor.

20 THE COURT: Thank you. Okay.

ENDING 10:40 A.M.

CERTIFICATE OF REPORTER

SEPTEMBER 4, 2013 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing September 4, 2013 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date in the case of Tad Segars versus Ocean Estate Builders, Incorporated, et al, Beaufort County, Court of Common Pleas, Case Number 2011-CP-07-02700; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature November 4, 2013.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

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\$ \$15,000.00- 31:11,14 32:1 \$600,000.00- 31:11 & &- 3:7 '09- 15:20 '11- 23:17 '90S- 11:3 14:16 '99- 33:3 'E'- 7:24 'IMPROPER- 7:24 1 10- 12:25 25:16 100- 2:26 10:07- 5:1 10:40- 37:21 11- 8:23 11TH- 36:21 37:4 12- 24:2,12 25:14 127- 2:26 14TH- 1:3 1933- 2:38 2 2- 10:13 20:9 34:2 36:14 2000- 16:16 2000/2001- 16:19 2000S- 14:17 2009- 6:9 7:17 8:5 10:3,12,18 15:10 16:15 2010- 20:6,15 21:10 24:2 25:14,16 2011CP0702700- 1:6 38:13 2012- 9:1 25:10 2013- 1:19 6:13,25 8:6 25:11 38:2,9,21 22- 16:16 23- 34:6 28- 20:6 29204- 2:39 29401- 2:27 294013531- 3:9 299386003- 2:14	3 300- 28:18 38- 2:12 3RD- 23:18 4 4- 1:19 18:16 38:2,9,21 40- 3:8 400- 3:8 40J- 8:10 17:4 40J'D- 8:8 23:22 5 5- 29:11 50- 32:2 6 6- 20:11 6003- 2:13 7 7- 20:10 7TH- 34:2 36:14 8 8- 20:3 8039208726- 2:40 8432668219- 3:10 8436823555- 2:15 8437226777- 2:28 9 95- 18:7 A A/K/A- 1:33 2:22 ABLE- 19:25 31:4 32:18 ACCORDING- 27:25 ACCURATE- 38:10,19 ACROSS- 20:3 29:10 30:13 ACTION- 6:2,15,19 30:8,22 ADD- 7:22 9:24 ADDITION- 21:20 ADDRESS- 9:4 ADMIT- 9:23 ADMITTED- 4:27 38:14 ADVANCED- 1:30,32 2:21 17:20,22 20:14 26:6 28:2	32:9 ADVICE- 33:15 AFFIDAVIT- 8:16,18 AFFIXED- 38:20 AFTERNOON- 8:17 AGAINST- 6:9 7:7 11:21 12:3 18:17,18 24:9 27:13 30:22 AGREE- 12:21 26:12 33:13 AGREED- 18:14,17,18 26:2,11,17 AGREEING- 27:12 AHEAD- 30:1 34:17 36:7 AL- 38:12 ALBERTO- 13:8 14:8,11 17:25 20:16,25 21:4 32:10 ALLEGATIONS- 27:23 AMBITIOUS- 34:10 AMENDED- 6:12,25 11:24 17:5 21:6 25:14,15 27:19 AMENDMENT- 22:18 ANDAHALF- 7:5 ANTONIO- 14:14 ANYMORE- 13:2 ANYWAY- 12:17 37:6 APPEARANCES2- 4:8 APPLICATION- 31:23 APPLICATOR- 14:9,18 17:25 20:17 23:4 APPRECIATE- 5:7 33:12,23 APPROACH- 8:21 AREA- 5:21 6:5 11:1 ARGUMENT- 6:8 8:13,16 9:5 10:1 22:19 31:1 ARGUMENTS- 8:11 24:22,24 ARISE- 8:11 ASSUMED- 15:3 ATTACHMENTS- 4:16 ATTEND- 36:4 ATTENTION- 10:13	ATTIC- 9:25 30:13 AUTHORIZED- 38:18 AVAILABILITY- 34:25 AVAILABLE- 10:17 21:10 B BACK- 11:2 13:24 15:20 22:18 27:7 29:4 BACKWARDS- 28:20 BANK- 9:21 BASED- 10:20 11:3 17:25 22:3 34:19,24 BEACH- 6:3 11:1,11 12:20,23 24:9 BEARING- 25:9 BEAT- 26:9 BEAUFORT- 1:4,23 9:9 38:5,12 BLACK- 27:5 34:8,9 36:23 BLACKBURN- 2:36,37 11:1,13,19,24 12:2,5,8,15,21 13:11,23 14:3,7,22 15:1,7,14 16:14,18,21,25 17:2 18:5 19:3,9,14,17 21:18 22:10 23:7,13,15 24:2,10,12,19 25:13,20 26:4,11,23,25 27:12,20 28:1,9,14,21,23 29:1,3,6,9 BLACKBURN'S- 26:1 BLAMED- 30:19 BLOCK- 35:21 BOARDS- 29:4,6 BOTCHED- 35:10 BOTH- 27:8 30:25 BOTTOM- 24:24 BOUGHT- 16:23 BOX- 2:13 25:9 BRIEF- 5:8,12 6:2 8:9 9:14 10:9,13 29:24 BRIEFED- 33:6
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) THE FOURTEENTH JUDICIAL CIRCUIT
13 SEP 13 PM 3:59) CASE NO.: 2011-CP-07-2700

TAD SEGARS,

Plaintiff,

JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

vs.

OCEAN ESTATE BUILDERS, INC., ED
FLYNN, INDIVIDUALLY, DAVID
GARCIA D/B/A YINET PLASTERING,
INC., ADVANCED ROOFING, INC.,
TEOFILO LEZCANO, INDIVIDALLY
AND D/B/A ADVANCED ROOFING,
INC., A/K/A YUKO CONSTRUCTION,
INC., CMC CONSTRUCTION
COMPANY, INC. AND JAGUAR
MASONRY,

Defendants.

ORDER GRANTING DEFENDANT CMC
CONSTRUCTION COMPANY, INC., AND
ADVANCED ROOFING, INC., TEOFILO
LEZCANO, INDIVIDUALLY AND D/B/A
ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTION, INC.'S MOTIONS FOR
SUMMARY JUDGMENT

This lawsuit is a construction defect action regarding a single-family residence located at 87 Singleton Beach Road in Hilton Head, South Carolina. On September 4, 2013, this Court heard oral argument from counsel regarding Defendant CMC Construction Company, Inc.'s ("CMC") Motion for Summary Judgment, as well as Defendants Advanced Roofing, Inc.'s, Teofil Lezcano's, individually and d/b/a Advanced Roofing, Inc. a/k/a Yuko Construction, Inc. (collectively "Advanced") Motion for Summary Judgment as to Plaintiff's claims. Based on the reasoning set forth herein and a review of the record, this Court hereby grants CMC's and Advanced's Motions.

Findings of Fact

Plaintiff alleges that CMC was a framing subcontractor and Advanced was a roofing and waterproofing subcontractor for construction of the residence at issue in this litigation. In his original Complaint, filed on September 23, 2009, Plaintiff sued the general contractor for numerous "defects in construction," including "[i]mproper roofing installation", "[i]mproper

and/or incomplete roof flashing”, “[i]mproper roofing and flashing...allowing water infiltration”, and “[i]mproper installation and failure of structural systems.” (Compl. ¶ 4.) Plaintiff alleged in his original Complaint that “water infiltration” had led to “decay of structural components.” (Compl. ¶ 4.) Also in that original Complaint, Plaintiff sought damages for “repairs and reconstruction of the residence.” (Compl. ¶ 5.)

Plaintiff did not name CMC or Advanced as Defendants until the filing of his Third Amended Complaint (erroneously captioned as “Second Amended Complaint”) on February 12, 2013—more than three years after the filing of the original Complaint in 2009. In that Third Amended Complaint, Plaintiff alleged the exact same injuries and damages as were set forth in the original 2009 Complaint.¹ (Third Am. Compl. ¶¶ 9, 10.)

Legal Authority

The statute of limitations is designed “to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights” and “to protect potential defendants from protracted fear of litigation.” Logan v. Cherokee Landscaping and Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) (quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). “A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (citing Rule 56(c), SCRCP). “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.” Hansson v. Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007) (citation omitted).

¹ Defendants Ocean Estate Builders, Inc. and Ed Flynn had also asserted third-party claims and/or cross-claims against CMC and Advanced, but those claims have been dismissed with prejudice by agreement of the parties.

South Carolina applies a three year statute of limitations for civil claims. S.C. Code § 15-3-530. Additionally, South Carolina follows the discovery rule, which states that "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, 363, 468 S.E.2d 645, 647 (1996) (citation omitted). Under the discovery rule, "[t]he 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." Id. The exercise of reasonable diligence means that the injured party "must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Id. at 364, 468 S.E.2d at 647 (citing Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), *overruled on other grounds by* Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995)).

"The test of whether a person should have known the operative facts is objective, rather than subjective." Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (citation omitted). Our courts have consistently held that "the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer." Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (emphasis added). On discovery of an injury, "the statute of limitations begins to run for all claims based on that injury." Id. (citing Tollison v. B & J Mach. Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993)) (emphasis added). "South Carolina's statute of limitations requires 'very little to start the clock.'" Maheer v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404 (4th Cir. 1994)).

Conclusions of Law

Under the applicable statute of limitations and the discovery rule, Plaintiff had a three year window in which to bring claims against CMC and Advanced from the point Plaintiff knew or should have known he had a claim. Plaintiff filed his actions against CMC and Advanced on February 12, 2013—over three years after filing his original Complaint for construction defects. Taking the evidence in the light most favorable to the Plaintiff, this Court finds that the Plaintiff clearly knew—or in the exercise of reasonable diligence should have known—of a claim against CMC or Advanced at the very latest at the time Plaintiff filed his original Complaint. The statute of limitations was triggered at that point. Accordingly, this Court must find that Plaintiff is barred from pursuing claims against CMC or Advanced pursuant to the applicable statute of limitations. This Court concludes that there is no genuine issue as to any material fact and CMC and Advanced are entitled to judgment as a matter of law as to all of Plaintiff's claims.

WHEREFORE, this Court hereby grants CMC's Motion for Summary Judgment and Advanced's Motion for Summary Judgment and dismisses all of Plaintiff's claims against CMC and Advanced with prejudice.

IT IS SO ORDERED!

Dated: 9-11-13
Beaufort, South Carolina



Carmen T. Mullen
Fourteenth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen

Case No.: 2011-CP-07-2700

TAD SEGARS, Appellant,

v.

OCEAN ESTATES BUILDERS, INC.,
ED FLYNN, INDIVIDUALLY, DAVID
GARCIA D/B/A/ YINET PLASTERING, INC.,
ADVANCED ROOFING, INC., TEOFILO
LEZCANO, INDIVIDUALLY AND D/B/A/
ADVANCED ROOFING, INC., A/K/A YUKO
CONSTRUCTION COMPANY, INC., CMC
CONSTRUCTION COMPANY, INC., AND
JAGUAR MASONRY,

Of which

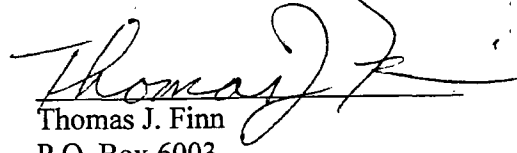
ADVANCED ROOFING, INC., TEOFILO
LEZCANO, INDIVIDUALLY AND D/B/A/
ADVANCED ROOFING, INC., A/K/A
YUKO CONSTRUCTION COMPANY, INC.,
CMC CONSTRUCTION, INC.,

Respondents

NOTICE OF APPEAL

Tad Segars appeals the order of the Honorable Carmen T. Mullen dated September 11, 2013. Appellant received written notice of entry of this Order October 9, 2013.

November 5, 2013


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen

Case No.: 2011-CP-07-2700

TAD SEGARS, Appellant,
v.

OCEAN ESTATES BUILDERS, INC.,
ED FLYNN, INDIVIDUALLY, DAVID
GARCIA D/B/A/ YINET PLASTERING, INC.,
ADVANCED ROOFING, INC., TEOFILO
LEZCANO, INDIVIDUALLY AND D/B/A/
ADVANCED ROOFING, INC., A/K/A YUKO
CONSTRUCTION COMPANY, INC., CMC
CONSTRUCTION COMPANY, INC., AND
JAGUAR MASONRY,

Of which

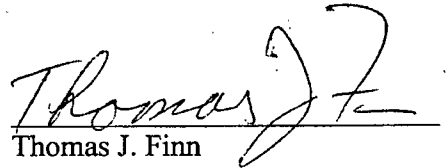
ADVANCED ROOFING, INC., TEOFILO
LEZCANO, INDIVIDUALLY AND D/B/A/
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YUKO CONSTRUCTION COMPANY, INC.,
CMC CONSTRUCTION, INC.,

Respondents

PROOF OF SERVICE

I CERTIFY THAT I HAVE SERVED THE Notice of Appeal on Advanced Roofing, Inc., Teofilo Lezcano, Individually and d/b/a Advanced Roofing, Inc., a/k/a Yuko Construction Company, Inc., and CMC Construction by depositing a copy of it in the United States Mail, postage prepaid, on November 5, 2013 addresses to their attorney of record, John P. Seibels, Jr., Jason Scott Luck and J. Patrick Norris at their offices at the addresses listed below.

November 5, 2013


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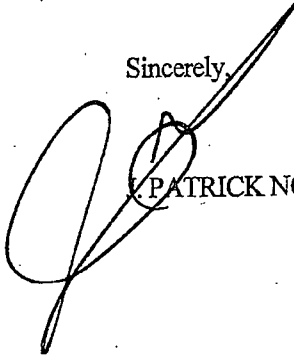
Re: Segars v. Ocean Estate Builders, Inc.
C/A No.: 2011-CP-07-2700
CCS No.: 3526-46542

Dear Counsel:

Enclosed for service upon you, please find a copy of the Court's September 11, 2013 Order granting the Motions for Summary Judgment of Defendants CMC Construction Company, Inc. and Advanced Roofing, Inc., Teofilo Lezcano, Individually and d/b/a Advanced Roofing, Inc. a/k/a Yuko Construction, Inc.

With kind regards, I am

Sincerely,



J. PATRICK NORRIS

JPN:ddg

Enclosures

cc: All Counsel of Record

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

TAD SEGARS,

Plaintiff,

vs.

OCEAN ESTATE BUILDERS, INC., ED
FLYNN, INDIVIDUALLY, DAVID
GARCIA D/B/A YINET PLASTERING,
INC., ADVANCED ROOFING, INC.,
TEOFILO LEZCANO, INDIVIDUALLY
AND D/B/A ADVANCED ROOFING,
INC., A/K/A YUKO CONSTRUCTION,
INC., CMC CONSTRUCTION
COMPANY, INC. AND JAGUAR
MASONRY,

Defendants.

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2700

13 SEP 13 PM 3:59
JERRY T. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ORDER GRANTING DEFENDANT CMC
CONSTRUCTION COMPANY, INC., AND
ADVANCED ROOFING, INC., TEOFILO
LEZCANO, INDIVIDUALLY AND D/B/A
ADVANCED ROOFING, INC. A/K/A YUKO
CONSTRUCTION, INC.'S MOTIONS FOR
SUMMARY JUDGMENT

This lawsuit is a construction defect action regarding a single-family residence located at 87 Singleton Beach Road in Hilton Head, South Carolina. On September 4, 2013, this Court heard oral argument from counsel regarding Defendant CMC Construction Company, Inc.'s ("CMC") Motion for Summary Judgment, as well as Defendants Advanced Roofing, Inc.'s, Teofil Lezcano's, individually and d/b/a Advanced Roofing, Inc. a/k/a Yuko Construction, Inc. (collectively "Advanced") Motion for Summary Judgment as to Plaintiff's claims. Based on the reasoning set forth herein and a review of the record, this Court hereby grants CMC's and Advanced's Motions.

Findings of Fact

Plaintiff alleges that CMC was a framing subcontractor and Advanced was a roofing and waterproofing subcontractor for construction of the residence at issue in this litigation. In his original Complaint, filed on September 23, 2009, Plaintiff sued the general contractor for numerous "defects in construction," including "[i]mproper roofing installation", "[i]mproper

and/or incomplete roof flashing”, “[i]mproper roofing and flashing...allowing water infiltration”, and “[i]mproper installation and failure of structural systems.” (Compl. ¶ 4.) Plaintiff alleged in his original Complaint that “water infiltration” had led to “decay of structural components.” (Compl. ¶ 4.) Also in that original Complaint, Plaintiff sought damages for “repairs and reconstruction of the residence.” (Compl. ¶ 5.)

Plaintiff did not name CMC or Advanced as Defendants until the filing of his Third Amended Complaint (erroneously captioned as “Second Amended Complaint”) on February 12, 2013—more than three years after the filing of the original Complaint in 2009. In that Third Amended Complaint, Plaintiff alleged the exact same injuries and damages as were set forth in the original 2009 Complaint.¹ (Third Am. Compl. ¶¶ 9, 10.)

Legal Authority

The statute of limitations is designed “to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights” and “to protect potential defendants from protracted fear of litigation.” Logan v. Cherokee Landscaping and Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) (quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996)). “A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Town of Summerville v. City of N. Charleston, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008) (citing Rule 56(c), SCRPC). “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.” Hansson v. Scalise Builders of S.C., 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007) (citation omitted).

¹ Defendants Ocean Estate Builders, Inc. and Ed Flynn had also asserted third-party claims and/or cross-claims against CMC and Advanced, but those claims have been dismissed with prejudice by agreement of the parties.

South Carolina applies a three year statute of limitations for civil claims. S.C. Code § 15-3-530. Additionally, South Carolina follows the discovery rule, which states that "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, 363, 468 S.E.2d 645, 647 (1996) (citation omitted). Under the discovery rule, "[t]he 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." Id. The exercise of reasonable diligence means that the injured party "must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). "[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial." Id. at 364, 468 S.E.2d at 647 (citing Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), *overruled on other grounds by* Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995)).

"The test of whether a person should have known the operative facts is objective, rather than subjective." Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (citation omitted). Our courts have consistently held that "the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer." Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (emphasis added). On discovery of an injury, "the statute of limitations begins to run for all claims based on that injury." Id. (citing Tollison v. B & J Mach. Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993)) (emphasis added). "South Carolina's statute of limitations requires 'very little to start the clock.'" Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404 (4th Cir. 1994)).

Conclusions of Law

Under the applicable statute of limitations and the discovery rule, Plaintiff had a three year window in which to bring claims against CMC and Advanced from the point Plaintiff knew or should have known he had a claim. Plaintiff filed his actions against CMC and Advanced on February 12, 2013—over three years after filing his original Complaint for construction defects. Taking the evidence in the light most favorable to the Plaintiff, this Court finds that the Plaintiff clearly knew—or in the exercise of reasonable diligence should have known—of a claim against CMC or Advanced at the very latest at the time Plaintiff filed his original Complaint. The statute of limitations was triggered at that point. Accordingly, this Court must find that Plaintiff is barred from pursuing claims against CMC or Advanced pursuant to the applicable statute of limitations. This Court concludes that there is no genuine issue as to any material fact and CMC and Advanced are entitled to judgment as a matter of law as to all of Plaintiff's claims.

WHEREFORE, this Court hereby grants CMC's Motion for Summary Judgment and Advanced's Motion for Summary Judgment and dismisses all of Plaintiff's claims against CMC and Advanced with prejudice.

IT IS SO ORDERED!



Carmen T. Mullen
Fourteenth Judicial Circuit

Dated: 9-11-13
Beaufort, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen

Case No.: 2011-CP-07-2700

TAD SEGARS, Appellant,

v.

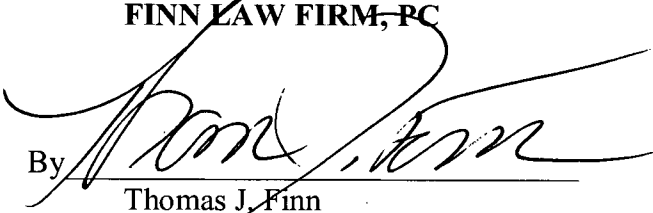
CMC CONSTRUCTION
COMPANY, INC.,

Respondent

CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Record on Appeal contains all material Proposed to be included by any of the parties and not any other material.

FINN LAW FIRM, PC

By 

Thomas J. Finn
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Attorney for the Appellant

May 7, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen

Case No.: 2011-CP-07-2700

TAD SEGARS,

Appellant,

v.

CMC CONSTRUCTION COMPANY, INC.

Respondent

PROOF OF SERVICE

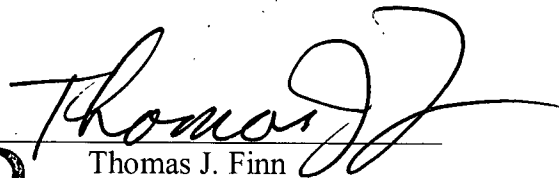
I CERTIFY THAT I HAVE SERVED THE three copies of the Record on Appeal on Respondent CMC Construction Company, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on May 9, 2014 addressed to their attorney of record, J. Patrick Norris at their offices at the addresses listed below.

May 9, 2014.

RECEIVED

MAY 12 2014

SC Court of Appeals



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