

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2011CP4604552

Fairway Townes Owners Association Inc	NVR Inc  Lake Builders Inc  McGee Brothers Company Inc Alpha Omega Construction Group Inc James Thompson	Stonecutt LLC  Hans Construction Company Inc Howe & Simpson Contracting LLC MI Windows And Doors Inc
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

**ORDER INFORMATION**

**ORDER**

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

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

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

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

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

**RECEIVED**

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may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/ John C Hayes III  
Circuit Court Judge

2049  
Judge Code

5/29/2014  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on May 29, 2014, and a copy mailed first class or placed in the appropriate attorney's box on May 29, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

*David Hamilton*

Court Reporter

David Hamilton - Clerk of Court

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

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

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF YORK )  
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 FAIRWAY TOWNES OWNERS' )  
 ASSOCIATION, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 NVR, INC., et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 SIXTENTH JUDICIAL CIRCUIT  
 Civil Action No.: 2011-CP-46-04552

ORDER

FILED-RECEIVED  
 2014 MAY 29 2AM 10:55  
 DAVID HAMILTON  
 C.C.P. & G.S.  
 YORK COUNTY, SC

Let no act be done at haphazard, nor otherwise than according to the finished rules that govern its kind. Meditations iv 2; Marcus Arrelius (121-180).

The undersigned issued an Order in this matter granting MI Windows and Doors, Inc's (MIWD) Motion for Summary Judgment. Upon reconsideration the undersigned issued an Order denying MIWD's Motion for Summary Judgment. The extension of time related to the Court's Scheduling Order set forth in the latter Order was improvidently granted. A party cannot use a Rule 59(3) motion to present an issue that could have been raised prior to the judgment but was not. Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009). *See also* Crary v. Djebelli, 321 S.C. 38, 467 S.E.2d 128 (Ct. App. 1995).

This Court was in error in considering Plaintiff's motion in the alternative for an extension of the time periods set forth in the Scheduling Order. This is true even though postured as a motion in the alternative because the sole matter addressed in the Order sought to be reconsidered was MIWD's motion for summary judgment. As stated in the initial Order, the Court had to, and did, look at the posture of the parties as established pursuant to the Scheduling Order.



While the Court in the initial Order cited Bryson v. Bryson, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008), a revisit to Bryson convinces the Court that neither a Bryson nor Jumper v. Hawkins, 348 S.C. 142, 558 S.E.2d 911 (Ct. App. 2001) analysis is proper here. The issue here is not exclusion of a witness, but rather whether or not, looking at the posture of the parties as of October 1, 2013, coupled with the subsequent deposition of Plaintiff's now tendered expert, MIWD is entitled to summary judgment.


In the vernacular, in ruling on the alternative motion, the Court put the cart before the horse and that option does not exist under the South Carolina Rules of Civil Procedure and controlling case law.

Therefore, MIWD's Motion to Reconsider the Court's Order of April 16, 2014, is granted. The Order of April 16, 2014 is set aside and the Court's Order of February 18, 2014 is the controlling Order in this case.

MIWD's Motion for summary Judgment is granted for the reasons set forth in the February 18, 2014 Order.

IT IS SO ORDERED.

May 27<sup>th</sup>, 2014  
York, South Carolina

  
John C. Hayes, III  
Presiding Judge #2