

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

RIVERGATE HOMEOWNERS' )  
ASSOCIATION, )

Plaintiff, )

vs. )

CHUCK'S CONSTRUCTION, INC. )  
(SEE FORM CAPTION IN PLEADINGS )  
FOR COMPLETE CAPTION), )

Defendants. )

Civil Action No. 2010-CP-26-03901

**ORDER GRANTING SUMMARY )  
JUDGMENT TO DEFENDANT )  
CHUCK'S CONSTRUCTION CO., INC. )**

HORRY COUNTY  
14 MAR 13 AM 9:41  
CLERK OF COURT  
MELANIE GIBBS-WARD

THIS MATTER came before me on January 17, 2014 pursuant to the Motion for Summary Judgment filed by Chuck's Construction, Inc. ("Chuck's") against Plaintiff, Rivergate Homeowners Association. Chuck's also joined in the contemporaneous motion for summary judgment filed by co-defendant AB Consulting Engineers and adopted the arguments presented by AB's counsel.

This case arises out of allegations by Rivergate Homeowners Association (collectively "Plaintiffs") that certain construction defects have caused them to suffer both actual and consequential damages. Specifically, Plaintiff alleges that Chuck's (along with various other parties) was negligent in the construction of the Rivergate development. In its Complaint against Chuck's, the Plaintiff asserts causes of action for Negligence, Breach of Express Warranties, Breach of Implied Warranties and Unfair Trade Practices.

Having carefully considered all of the arguments of counsel raised at the hearings on January 17, 2014, the various Memoranda of Law filed by the various parties, and all of the cases and other documents submitted in this matter, the Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW.

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**SC Court of Appeals**

## FINDINGS OF FACT

### *A. Chuck's Scope of Work at Rivergate*

Defendant WW&LB ("WW&LB") hired Chuck's to perform work at the Rivergate project as detailed in a contract dated February 24, 2000. Pursuant to the contract, Chuck's was to complete numerous tasks, including all demolition, road improvements, installation of storm water drainage and sanitary sewer, and driveway improvements. However, prior to completing its scope of work, Chuck's left the project in late 2000 due to a dispute with WW&LB. As a result, the work Chuck's actually performed was limited to the following: General site preparation (excavation and rough grading), road prep for the first 800 feet of Rivergate Lane and the first two streets, and installation of drainage components on streets G and H. Chuck's also subcontracted with Asphalt Pavement and Maintenance of Myrtle Beach to pave the roads Chuck's had prepped and with Steven's Construction to install the water and sewer system. There are no allegations of any construction defects with the water and sewer system. Plaintiff alleges deficiencies in Chuck's work arising from the rough grading, drainage and paving of the streets.

### *B. Plaintiff's Notice of Defective Conditions at Rivergate*

The Rivergate project was developed in phases over a nearly five-year period (certificates of occupancy show dates from March 8, 2001 to December 5, 2005). Multiple Rivergate homeowners began noticing issues with the project as early as May of 2005. At that time, the issues included the following: standing water in the streets due to improper drainage, standing water in yards, cracking of driveways, and excessive erosion. Exhibit A at 19 – 20 (deposition of

Jim Dunn describing first HOA meeting and complaints made by homeowners). As a result, the homeowners formed an HOA Ad Hoc Committee in May of 2005 to notify the HOA of these problems and to propose improvements. Id. at 187 - 89. Mr. Jim Dunn, Chairman of the Ad Hoc Committee, testified that the Ad Hoc Committee contemplated hiring an engineer in 2005 to investigate the drainage issues at Rivergate. Id. at 213. All of the Ad Hoc Committee's concerns about drainage were presented to the manager of the HOA, Wayne Windermann, in 2005. Id. at 228-229. In addition, the Ad Hoc Committee encouraged multiple homeowners to file complaints with the South Carolina Department of Labor, Licensing and Regulation in 2005 against the developer for issues involving drainage and roads. Exhibit B (Division of Legal Services Office of Investigation and Enforcement Complaint form of Ms. Susann Hutt and Mr. Eddie H. Medlin describing drainage and road issues). The HOA Ad Hoc Committee requested copies of these complaints. Exhibit A at 240 - 244 (deposition of Jim Dunn). Plaintiffs commenced this action on June 13, 2008. However, Plaintiffs did not assert any claim against Chuck's until April 28, 2010.

## CONCLUSIONS OF LAW

### *A. Summary Judgment Standard*

A motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. An adverse party may not rest upon the mere allegations of his pleadings in opposing a motion for summary judgment. Instead, the party must set forth

specific facts, admissible in evidence, showing there is a genuine issue for trial. Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988) (citing Rule 56(e), SCRPC).

“In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment.” Bruce v. Durney, 341 S.C. 563, 566, 534 S.E.2d 720, 722 (Ct. App. 2000) (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)). However, “[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651, 655 (Ct. App. 1994).

#### *B. The Statute of Limitations*

The statute of limitations applicable to this matter is three years. S.C. Code Ann. § 15-30530(5) (three year statute for negligence claims); S.C. Code Ann. § 15-3-530(1) (three year statute for express or implied warranty claims); S.C. Code Ann. § 39-5-150 (three year statute for Unfair Trade Practices Act claims). Thus, on their face, Plaintiff’s claims against Chuck’s appear to be untimely, as they were asserted nearly five years after alleged deficiencies in Chuck’s work first appeared at Rivergate. However, Plaintiff relies on South Carolina’s “discovery rule” to contend that the statute did not begin to run in 2005 because it did not know the scope of the deficiencies until it received a full report from its expert, Kimley-Horn, in June, 2010. The Court disagrees.

“Under the discovery rule, the three-year statute of limitations clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence

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that a cause of action arises from the wrongful conduct.” Holly Woods Ass’n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011) (quoting Martin v. Companion Healthcare Corp. 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004)). Importantly, it is not necessary for a party to know the full extent of its alleged damages; it is sufficient for the party to be put on notice of such facts as would lead a person of common knowledge and experience to conclude that some claim may exist. Hedgepath v. AT&T, 348 S.C. 340, 355-356, 559 S.E.2d 327, 336 (S.C. Ct. App. 2001)(quoting Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996)).

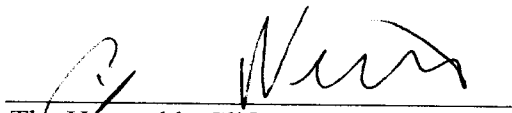
Here, Plaintiff knew of water and drainage problems at Rivergate nearly five years before suit was brought against Chuck’s. While Plaintiff may not have known the cause-in-fact of the problems, such as obstruction of drainage structures or improper elevation of outfall ditches and catch basins, the HOA was nonetheless on sufficient notice to conclude that its rights had been potentially infringed. A reasonable person of common experience would have little trouble concluding that conditions such as standing water, erosion, and cracking of pavement touch upon the scope of work undertaken by Chuck’s in 2000. Because Plaintiff was on notice of these facts in 2005, it was under a duty to act promptly in protecting its interests. “Statutes of limitations are not simply technicalities.” Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009) (quoting Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). Rather, they “embody important public policy considerations in that they stimulate activity, punish negligence and promote repose by giving security and stability to human affairs.” Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund, 389 S.C. 422, 428 699 S.E.2d 687, 690 (2010).

**CONCLUSION**

This Court concludes that there is no genuine issue of material fact regarding Plaintiff's notice of potential claims against Chuck's as early as May, 2005. Plaintiff failed to timely file this action until April 2010, rendering the claims time-barred by the applicable three-year statutes of limitation.

As a result, I HEREBY GRANT Defendant Chuck's Motion for Summary Judgment, and Chuck's is dismissed as a Defendant in this case, with prejudice.

IT IS SO ORDERED.

  
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The Honorable Clifton Newman  
Circuit Court Judge

March 10, 2014  
Horry County, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

RIVERGATE HOMEOWNERS' )  
ASSOCIATION, )

Civil Action No. 2010-CP-26-03901

Plaintiff, )

vs. )

CHUCK'S CONSTRUCTION, INC. )  
(SEE FORM CAPTION IN PLEADINGS )  
FOR COMPLETE CAPTION), )

**ORDER DENYING PLAINTIFF'S )  
MOTION FOR RECONSIDERATION )  
OF ORDER GRANTING CHUCK'S )  
CONSTRUCTION, INC.'S MOTION )  
FOR SUMMARY JUDGMENT )**

Defendants. )

FILED  
MAR 10 2014  
11:56

THIS MATTER came before me pursuant to the Motion for Reconsideration filed on April 4, 2014 by Plaintiff, Rivergate Homeowners Association. Plaintiff sought reconsideration of the Order Granting Summary Judgment on behalf of Chuck's Construction filed March 10, 2014. For the reasons set forth below, Plaintiff's request is denied.

A motion for reconsideration is appropriate when a party believes the court has misunderstood, failed to fully consider, or failed to rule on an argument or issue. Elam v. S.C. DOT, 361 S.C. 9, 24 (2004)

Here, the Plaintiffs have not raised any fact or presented any authority which suggests that this Court misapprehended the issues before it at the January 17, 2014 Motion for Summary Judgment. To the contrary, it remains clear that Plaintiffs claims are barred by the applicable statutes of limitation. A three-year statute of limitations applies to each of Plaintiffs' causes of action. S.C. Code Ann. § 15-3-530 (providing that a negligence cause of action, or one for "any injury to the person or rights of another" must be brought "[w]ithin three years."); S.C. Code Ann. § 15-3-530(1) (breach of an express or implied warranty or "an action upon contract,

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obligation, or liability, express or implied," must be brought within three years); S.C. Code Ann. § 39-5-150 (claim under the Unfair Trade Practices Act may not be brought "more than three years after discovery of the unlawful conduct.").

South Carolina courts "have adopted the 'discovery rule' in determining when a cause of action accrues." Dillon County School District Number Two vs. Lewis Sheet Metal Works, 286 S.C. 207, 215, 332 S.E.2d 555, 559 overruled on other grounds by Atlas Food Systems and Services, Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp., 319 S.C. 319 S.C. 556, 462 S.E.2d 858 (1995) (quoting Brown v. Sandwood Development Corp., 277 S.C. 581, 291 S.E.2d 375 (1982); Campus Sweater v. M.B. Kahn, 515 F.Supp. 64 (D.S.C. 1979), aff'd, 644 F.2d 877 (4<sup>th</sup> Cir. 1981); Gattis v. Chavez, 413 F.Supp. 33 (D.S.C. 1976).

"Under the discovery rule, the three-year statute of limitations clock starts ticking on 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." Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011) (quoting Martin v. Companion Healthcare Corp. 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004)).

As set forth in more particularity in this Court's Order Granting Summary Judgment, Plaintiffs were aware of multiple alleged issues with the Project as early as May of 2005. It was at this time that Plaintiffs formed an Ad Hoc Committee to help the HOA address multiple issues with the project as evidenced by the sworn testimony of record. Several of those alleged issues included work performed or subcontracted by Chucks that dealt with the roads, grading and drainage. Plaintiffs did not bring suit against Chuck's until April 28, 2010, which is almost five years after they first discovered these issues. Plaintiffs should have brought suit against Chucks at the latest by May of 2008.

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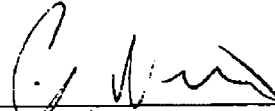
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**CONCLUSION**

For the foregoing reasons, the Motion to Reconsider of Plaintiff Rivergate Homeowner's Association is DENIED.

AND IT IS SO ORDERED.



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Clifton Newman  
Presiding Judge

December 9, 2014

Columbia, South Carolina