

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Rivergate Homeowners')
Association,)
)
Plaintiff,)

vs.)

WW&LB Development Company, LLC,)
RWG, Inc., Aiello Associates,)
Daniels Engineering, Inc.,)
Rivergate Homeowners')
Association, Rivergate)
Homeowners' Association Board)
of Directors, Wayne Winderman,)
individually, Salvatrice Foran,)
individually, Gerald Foran,)
individually, Marcos Soares,)
Construction, William C. DeSouza,)
individually, James Eason,)
individually and d/b/a James)
Eason & Company, D&D Cleaning)
and Construction, Inc., Joel's)
Framing, Joe Freza, Aroldo)
Garcia, Joaquin Geraldo Zeferino)
individually and d/b/a Zeferino)
Framing, Leo Trombley, Judy)
Schultz, J&D Interior Design,)
Jose Dasmerces d/b/a J.P.)
Construction, Scott Chandler)
d/b/a Coastal Custom Windows)
& Doors, R&D Construction,)
Nicasio Ramirez Zunigo, Walchir)
Morais, Marco Trebbi,)
Blankenship Roofing, Inc., DLJ)
Construction, L.L.C., Dewayne)
Bates, The Bates Group, LLC,)
Bridges Construction Co.,)
Brewer Construction, Inc.,)
Speedy Concrete, REB-FEL, Inc.,)
Mark Mychajluk, Eric Jazwinski,)
Southern Framing Corporation,)
AB Consulting Engineers, Inc.,)
WWI Development Company, LLC,)
Michael Dawson Construction,)
Inc., Asphalt Paving &)
Maintenance Co., Inc., and)
Chuck's Construction Co., Inc.,)
Right Way Group, Inc., Stevens)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-26-03901

RECEIVED
FEB 09 2015
SC Court of Appeals

ORDER GRANTING SUMMARY JUDGMENT
IN FAVOR OF SPEEDY CONCRETE
(SPEEDEE CONCRETE, INC.)

FILED
HORRY COUNTY
2014 MAY 12 PM 2:22
MELANIE HUGGINS-WARD
CLERK OF COURT

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Construction Co., Inc.,)
Geometrics, Inc., Eric Yazwinski)
Law Engineering, Inc., D & M)
Builders, Inc., Hill)
Construction Company, Bonnie)
Stone a/k/a Bonny Stone, DJL)
Construction Co., LLP, Adrian)
Mondragon, individually and dba)
Mondragon Construction, Inc.,)
and Glen Causey,)

Defendants.)

Chuck's Construction Co., Inc.)

Third-Party Plaintiff)

v.)

Vereen Concrete Co., Inc. and)
Asphalt Pavement Maintenance of)
Myrtle Beach, Inc.)

Third-Party Defendants)

Date of hearing:
Hearing Judge:
Attorney for the Plaintiff:
Attorney for Speedee Concrete:

January 17, 2014
The Honorable Clifton Newman
Stacy Stanley
G. Michael Smith

THIS MATTER CAME BEFORE ME pursuant to the Defendant Speedee Concrete's Motion for Summary Judgment in the above-captioned matter. Based upon argument of counsel, evidence presented by counsel and a review of the applicable law in this case, I find and conclude that Speedee Concrete, Inc. is entitled to summary judgment in this case.

FINDINGS OF FACT

Speedee Concrete was one of the concrete subcontractors on this project. They were responsible for building pads, sidewalks

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and driveways. Work was performed at the project by Speedee from 2004 to 2007.

Based upon the argument of Plaintiff's counsel, the most significant issue pertaining to Speedee Concrete is the degree of slope of the driveways. Speedee's argument is uncontroverted that the slope of the driveways has been consistent since construction and that owners knew or should have known of the slope issue when they purchased their property. The scope of the slope issue is confirmed by testimony of Owner Representative Jim Dunn.

Counsel for Speedee contends that the grade level concrete driveways are limited common elements under the Master Deed. Limited common elements in the Master Deed are defined as follows:

Limited common elements as to the term is used herein shall mean and comprise the following: (A) attic space, if any, and grade level concrete driveways, patios, or stoops...

Section IV of the Master Deed, Page 4.

The Master Deed also provides that it is the responsibility of the owner to take care of the maintenance and repair of the limited common elements. The owner is also responsible for any damages caused by the limited common areas. Section XXII of the Master Deed declares as follows:

Every owner must perform promptly all maintenance and repair work within his unit and of all limited common elements to which such unit has exclusive use which, if omitted, would affect the condominium in its entirety or any part belonging to other owners, and shall be

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expressly responsible for the damages and liability which his failure to do so may engender (emphasis added).

Speedee Concrete advised the developer/general contractor of the project, WW&LB Development, Inc., through its representative Wayne Winderman, that the driveways were too steep. This conversation took place in the presence of owner representative Jim Dunn. The following excerpt is pertinent from Mr. Jim Dunn's deposition:

- Q. But there is no question but that Speedee's representative told Mr. Winderman in your presence that the driveways were too steep and that he had told Wayne Winderman that before construction?
- A. Yes. That kind of gets Speedee off the hook, but the truth is still the truth.
- Q. Yes sir. Do you recall when that conversation was?
- A. Probably 2004, 2005.

Because each individual unit owner is charged under the Master Deed with the responsibility for their own driveways, any litigation pertaining to damages caused by those driveways should have been commenced by or brought against the unit owners. To date, no individual owner has filed litigation against Speedee Concrete nor has the Homeowner's Association brought suit for damages caused by the slope of the graded driveways (as limited common areas) against any homeowner other than the developer. Speedee Concrete was not named in the Homeowners Association's lawsuit until the filing of the Second Amended Summons and Complaint on April 28, 2010. The filing of the Homeowner's Complaint was more than three years after the last work on the project by Speedee. However, as

reflected in the Master Deed, the Homeowner's Association does not have the duty to repair or maintain the driveways.

In addition to the slope of the driveways, the Plaintiff has referenced the existence of some cracks in the concrete work performed by Speedee Concrete. However, there were no presentations of any expert testimony nor other evidence which indicates Speedee Concrete failed to conform to industry standards in the application of its concrete at the Rivergate project (other than the slope of the graded drives). When asked about concrete cracking, the Plaintiff's expert testified as follows:

- Q. Have you ever seen concrete that didn't crack over its lifetime?
- A. There's no such thing. There are cracks in concrete that you can see and there are cracks—there are cracks in concrete that you cannot see, but there's no such thing as concrete with no cracks.

(Wilkie Deposition, Page 252). (See Exhibit D).

Some of the potential cracking issues are in the concrete pads of the buildings. However, there is no evidence of concrete pad cracking that falls outside industry standards or tolerances. Mr. Wilkie had not even attempted to investigate the issue as of the date of his deposition in August, 2013. (Wilkie Deposition, Pages 250-252). (See Exhibit D). Conversely, Speedee's expert, Mike Parker, and Chuck's Construction's expert, James Michael Wooten, both testified there were no deficiencies in Speedee's concrete work. (Parker Deposition, Pages 48, 54-55 and 113-114).

(See Exhibit F). (Wooten Deposition, Pages 144-146). (See Exhibit G).

Finally, based on the evidence presented by the Plaintiff at the hearing, the Plaintiff's experts assert 3,200 square yards of concrete will be needed for the repairs to the common areas. (See Exhibit D). When asked how much of the 3,200 square yards of concrete was to alleviate the slope issues, Mr. J. Drew Wilkie, Plaintiff's expert, indicated that none of that 3,200 square yards of concrete was allocated to alleviating the slope issue. (Wilkie Deposition, Page 291). (See Exhibit E). Mr. Wilkie further testified that the 3,200 square yards of concrete was to be used to repair consequential damages for work that would take place on the streets. (Wilkie Deposition, Pages 254, 255). (See Exhibit E). Accordingly, none of the Plaintiff's repair estimate has any funds designated for repair of any alleged deficient work of Speedee Concrete.

CONCLUSIONS OF LAW

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. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009); Rule 56 (c), SCRCP. 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 non-moving party. Id. It is undisputed

that the individual unit owners had three years after discovery of the excessive slopes of the driveways within which to bring suit. SC Code Ann. §15-3-530 (1976, as amended).

The Master Deed confirms Rivergate Homeowner's Association does not have standing to bring a lawsuit on behalf of the individual unit owners for the limited common elements. A horizontal property regime has standing to bring an action for construction defects in common elements that it has the duty to maintain. See Queen's Grant Villas Horizontal Property Regime I-V v. Daniel International Corporation, et. al., 286 S.C. 555, 335 S.E.2d 365 (1985). Since it is the unit owners' responsibility to maintain the graded concrete driveways, they cannot avail themselves of the protections of equitable tolling and equitable estoppel because there was no evidence that the owners were precluded in some extraordinary way from exercising their own rights in regard to the graded drives as limited common areas. See Hooper v. Ebenezer Senior Services and Rehabilitation Center, 377 S.C. 217, 659 S.E.2d 213 (SC App. 2008).

In light of the foregoing, this Court concludes that no claim by the Plaintiff can stand against Speedee Concrete. The Plaintiff has not shown that Speedee performed any substandard work in any part of the common areas of the project maintained by the Homeowner's Association. Further, the Plaintiff has not shown any damages from any of the work performed by Speedee Concrete in any

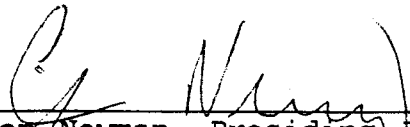
of the common areas that are not directly attributable to the slope issue (for which the Homeowner's Association has no standing to bring and for which the unit owners are responsible). Except for the slope issue, cracking of the concrete is the only other alleged deficiency that was referenced by the Plaintiff. However, as the Plaintiff's expert testified, and as our Supreme Court acknowledged in Dean v. Ruscon, 321 S.C. 360, 468 S.E.2d 645 (1996), it is normal for concrete to crack. In all of the causes of action alleged against Speedee Concrete, damages is a fundamental element the Plaintiff must prove to prevail on those causes of action. Without proof of damages against Speedee Concrete, no cause of action against Speedee can survive.

Based upon the findings of fact and conclusions of law in this case, it is

ORDERED that Speedee Concrete is entitled to summary judgment; and it is

FURTHER ORDERED that the Complaint against Speedee Concrete by Rivergate Homeowner's Association shall be dismissed with prejudice and forever ended; and it is

SO ORDERED.



Clifton Newman, Presiding Judge of
the Fifteenth Judicial Circuit

Columbia
Conway, South Carolina
March 7, 2014
Moy



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

Post Office Box 516
Kingstree, SC 29556-0516
Phone: (843) 355-9321
Fax: (843) 355-9301
cnewmanj@scccourts.org

May 7, 2014

Dear Ms. Huggins-Ward:

Enclosed for filing is the original signed Order Granting Summary Judgment in Favor of Speedy Concrete in Rivergate Homeowners' Association v. WW&LB Development Company, et al (2010-CP-26-03901). Please also ensure service of the Order on all parties.

Should you require any additional information, please do not hesitate to contact our Office.

Sincerely,

Simone R. Martin
Law Clerk to The Honorable Clifton Newman
Third Judicial Circuit
Post Office Box 516
Kingstree, SC 29556-0516
cnewmanlc@scccourts.org
Office: (843) 355-9321 Ext: 7302
Fax: 843-355-1576

Enclosure

FILED
HURRY COUNTY
2014 MAY 12 PM 2:22
MELANIE HUGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
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COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-26-03901

Rivergate Homeowners')
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Plaintiff,)
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vs.)
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WW&LB Development Company, LLC,)
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individually and d/b/a James)
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and Construction, Inc., Joel's)
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WWI Development Company, LLC,)
Michael Dawson Construction,)
Inc., Asphalt Paving &)
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CERTIFICATE OF SERVICE

Construction Co., Inc.,)
Geometrics, Inc., Eric Yazwinski)
Law Engineering, Inc., D & M)
Builders, Inc., Hill)
Construction Company, Bonnie)
Stone a/k/a Bonny Stone, DJL)
Construction Co., LLP, Adrian)
Mondragon, individually and dba)
Mondragon Construction, Inc.,)
and Glen Causey,)

Defendants.)

Chuck's Construction Co., Inc.)

Third-Party Plaintiff)

v.)

Vereen Concrete Co., Inc. and)
Asphalt Pavement Maintenance of)
Myrtle Beach, Inc.)

Third-Party Defendants)

I, Sarah Corbett, an employee for Thompson &
Henry, P.A., attorneys for the Defendant Speedy Concrete
(Speedee Concrete, Inc.) in the above-captioned action and/or
actions, certify that I have this 3rd day of June, 2014 emailed
a copy and/or copies of the following:

**Order Granting Summary Judgment in favor of
Defendant Speedy Concrete**

to the undersigned at his/her address(es) of record, as follows:

Stacy L. Stanley, Esquire
Stanley Law Firm
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Attorney for Chuck's Construction

Stephanie Holmes Burton, Esq.
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Attorneys for AB Consulting Engineers, Inc.

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Michael J. O'Sullivan, Esquire
Richardson Plowden
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dbaxter@richardsonplowden.com
Attorney for WW&LB Development



Sarah Corbett

Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Rivergate Homeowners')
Association,)
)
Plaintiff,)

vs.)

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IN THE COURT OF COMMON PLEAS)
FIFTEENTH JUDICIAL CIRCUIT)
CASE NO: 2010-CP-26-03901)

ORDER DENYING PLAINTIFF'S MOTIONS
FOR RECONSIDERATION
(SPEEDEE CONCRETE, INC.)

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COURT CLERK

11/7

Construction Co., Inc.,)
Geometrics, Inc., Eric Yazwinski)
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Chuck's Construction Co., Inc.)

Third-Party Plaintiff)

v.)

Vereen Concrete Co., Inc. and)
Asphalt Pavement Maintenance of)
Myrtle Beach, Inc.)

Third-Party Defendants)

Date of hearing:

Hearing Judge:

Attorney for the Plaintiff:

Attorney for Speedee Concrete:

September 8, 2014

The Honorable Clifton Newman

Stacy Stanley

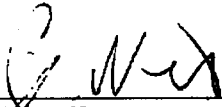
G. Michael Smith

THIS MATTER CAME BEFORE ME pursuant to the Plaintiff's Motion for Reconsideration regarding the Order Granting Summary Judgment in favor of Speedee Concrete in the above-captioned matter. Based upon argument of counsel, evidence and memorandum presented by counsel and a review of the applicable law in this case, I find and conclude that Speedee Concrete, Inc. is entitled to summary judgment and the Motion for Reconsideration should be denied.

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Based upon the foregoing, it is ORDERED that the Motion for Reconsideration of this Court's Order Granting Summary Judgment in favor of Speedee Concrete, Inc. is DENIED.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

Columbia, South Carolina
December 8, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-26-03901

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CERTIFICATE OF SERVICE

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 Chuck's Construction Co., Inc.)
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 Myrtle Beach, Inc.)
)
 Third-Party Defendants)

)

I, Tenna Turman, an employee for Thompson & Henry, P.A., attorneys for the Defendant Speedy Concrete (Speedee Concrete, Inc.) in the above-captioned action and/or actions, certify that I have this 13 day of January, 2015 emailed a copy and/or copies of the following:

Order Denying Plaintiff's Motion for Reconsideration


to the undersigned at his/her address(es) of record, as follows:

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Attorney for WW&LB Development


Tenna Turman

Conway, South Carolina

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SC Court of Appeals