

ROBERTSON HOLLINGSWORTH & FLYNN

ATTORNEYS AT LAW

WELLS FARGO CENTER

177 MEETING STREET, SUITE 300

CHARLESTON, SOUTH CAROLINA 29401

(843) 723-6470 • Fax (843) 853-9045

Dunn D. Hollingsworth
R. Patrick Flynn
Theodore L. Manos
Paul R. Rahn
Robert J. Cardillo (SC, IL, MI)
Michael E. Wright
Christopher M. Ramsey (SC, GA)

Claron A. Robertson
Of Counsel

April 14, 2015

RECEIVED

APR 30 2015

SC Court of Appeals

Via U.S. Mail and E-Mail

V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Shipwatch v. Carolina Concrete; Appellate Case No. 2014-002766
Mendondo v. Carolina Concrete; Appellate Case No. 2014-002765

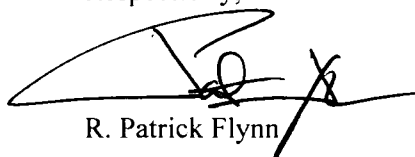
Dear Ms. Allen:

Thank you for your letter dated April 10, 2015 in the above referenced matters, in which you provided the deadline for filing a Return to the motions by Respondents Acrocrete, Inc. and Glasstec, Inc. The Appellants' Returns to these motions were served and deposited in the U.S. Mail for filing on Friday, April 10, 2015.

You also requested that Appellants provide a copy of the formal order referenced in the order of Judge Dennis dated October 27, 2014. Please be advised that there was no formal order entered by Judge Dennis, as discussed in the Initial Briefs of Appellants. I have attached a copy of the Transcript of Hearing dated October 27, 2014, along with the Form 4 Order which was filed on October 30, 2014, which were also discussed in the Initial Briefs of the Appellants and which will be included in the Record on Appeal.

If you have any questions or require any additional information, please do not hesitate to contact me. With best regards, I remain,

Respectfully,


R. Patrick Flynn

CC: All counsel of record by E-mail only

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3) Case No. 2012-CP-10-3857
4) 2012-CP-10-3858
5)
6 SHIPWATCH CONDOMINIUM ASSOCIATION,)
7 INC., et al,)
8)
9 Plaintiff,)
10 vs.) Transcript of Record
11)
12 CAROLINA CONCRETE SYSTEMS, ET AL,)
13)
14 Defendant.)
15)
16) DATE: October 27, 2014
17)

18 B E F O R E:

19 The Honorable Judge R. Markley Dennis, Jr.

20

A P P E A R A N C E:

21

Patrick R. Flynn and and Christopher M. Ramsey
For the Plaintiff

22

23

David Starr Cobb
For the Defendant, Carolina Concrete Systems

24

25

26

27

Karen V. Andersen, RMR, CRR, CSR
Circuit Court Reporter

28

29

30

31

32

33

34

RECEIVED

APR 30 2015

SC Court of Appeals

1 THE COURT: Two motions for summary judgment.

2 MR. FLYNN: Well, I think one in each case.

3 THE COURT: Before you identify yourselves, all
4 memorandum filed in conjunction with this motion are
5 incorporated fully for the purposes of review. And each of
6 you may rely on the memos as submitted. Thank you very much.
7 Appreciate it.

8 All right. If you would identify yourselves.

9 MR. COBB: Good morning, Your Honor. I'm David
10 Cobb. I'm here on behalf of Carolina Concrete Systems, which
11 is the defendant, one of the defendants in both the Shipwatch
12 and the Mendiondo lawsuits. It is our motion for summary
13 judgment. We are doing it based on the statute of
14 limitations. I'll probably be about two minutes to explain
15 the motion.

16 THE COURT: Sure. Take your time.

17 MR. COBB: This is a condo project at Wild Dunes in
18 Isle of Palms. The lawsuit was filed against Carolina
19 Concrete Systems and various subcontractors in June of 2012.
20 The project was built in 1985. And none of these defendants
21 in this lawsuit had anything to do with the original
22 construction of the buildings.

23 Carolina Concrete Systems started around 2003 doing
24 various what we refer to as piecemeal repairs at various
25 parts of the buildings, all with contracts through the HOA.

1 The lawsuit that the plaintiffs filed in 2012 seeks
2 to recover costs and damages associated with the original
3 EIFS system applied to the building, sliding glass doors,
4 windows, of which were originally installed in the buildings
5 in 1995, and also for some other issues, such as failed and
6 peeling ceiling paint on balconies and some other things.
7 Those are damages that the plaintiffs seek to recover for in
8 this lawsuit.

9 And the reason why the statute of limitations
10 applies in this case, and clearly, three-quarters of what we
11 handed to you this morning as part of our summary judgment
12 motions, are various homeowner minutes and deposition
13 excerpts from two of the board members and from the regime
14 manager, Linda Jernigan.

15 Ms. Jernigan was at Shipwatch before Hugo left, but
16 came back in 2005, so has been there since 2005. The board
17 members, who we included as part of our package, include
18 Ernie Schawe, I think it's S-c-h-a-w-e, and also Ernie
19 Trombino, T-r-o-m-b-i-n-o. Those gentlemen and Ms. Jernigan
20 and the HOA minutes, which are 2006, 2007, and 2008, clearly
21 identify that the plaintiffs knew about problems with the
22 synthetic stucco, with the EIFS well before 2009.

23 In fact, probably the most telling piece of exhibit
24 is in September of 2008, Ms. Jernigan goes to the board
25 saying that she has a contract, an estimate for \$2.3 million

1 to do various repairs of the project, 1.8 million of which is
2 for the removal of the remaining parts of this synthetic
3 stucco off the buildings.

4 The 2003, 2004, 2005, moving forward, repairs that
5 Carolina Concrete Systems performed included removing some of
6 the EIFS off of some of the buildings, but not all of them.
7 The 2008 contract that Ms. Jernigan presented to the board
8 was for the removal of the remaining parts of the synthetic
9 stucco off of the buildings.

10 There are also -- in 2003, 2004, 2005, the HOA
11 implemented a program to remove somewhere in the neighborhood
12 of 5 to 15 sliding glass doors and some periodic windows
13 because of various leaks. And they have Bob Sisnroy out
14 there in 2006/2007 time frame as well. Mr. Sisnroy provided
15 them with reports showing them that they had problems with
16 the leaking sliding glass doors, and problems with leaking
17 windows at this project in 2006/2007. And, again, that is
18 the damage that they are including as part of this lawsuit.

19 Now, Carolina Concrete Systems also did work out
20 there in 2010 and so forth. If the claim is just going to be
21 related to that work, then I think they survive summary
22 judgment as to those claims. But as far as the work and cost
23 associated with removing things that they clearly knew about
24 in 2005, 2006, 2007 and 2008, that's what we are trying to
25 sever from this lawsuit. And that includes the sliding glass

1 doors, the windows, and the cost associated with removing the
2 synthetic stucco. Thank you.

3 MR. FLYNN: Your Honor, I have a couple of --

4 THE COURT: I don't need all of this. This is
5 summary judgment, isn't it?

6 MR. FLYNN: It is, Your Honor. Actually, one of the
7 things I will do is --

8 THE COURT: It's not going to influence me. Maybe
9 it will influence you. If it makes you feel better, put it
10 up.

11 MR. FLYNN: Yes, sir. Your Honor, I'm not sure
12 exactly what --

13 THE COURT: Well, why don't you start by telling me
14 how in the world you get any action for damages done for work
15 in 2005?

16 MR. FLYNN: Your Honor, because this has nothing to
17 do with the original artificial stucco.

18 THE COURT: Tell me about 2005.

19 MR. FLYNN: 2005, Your Honor, this was one project.
20 This began in 2002 and it ended in 2011.

21 THE COURT: Well, what I'm asking you for is the
22 work that was done and mistakes that you are claiming was
23 done -- were done in 2005.

24 MR. FLYNN: Your Honor, we had no idea that there
25 were problems.

1 THE COURT: That's your position?

2 MR. FLYNN: It is, Your Honor.

3 THE COURT: And notwithstanding Mr. Sisnroy's
4 report?

5 MR. FLYNN: Well, Your Honor, they corrected any
6 defects which were associated --

7 THE COURT: So there's no cause of action for
8 anything in 2005?

9 MR. FLYNN: Well, they corrected it as far as what
10 Mr. Sisnroy pointed out. But, Your Honor, in 2011, they were
11 getting ready to do the final stage of all of these repairs.
12 And they were all over the buildings all of the time, this
13 being the defendant, Carolina Concrete Systems. And, Your
14 Honor, I've got documentation in my brief --

15 THE COURT: Mr. Flynn, look, you are arguing the
16 same thing he just said. They are seeking action. They are
17 seeking to recover for work done after 2010. Fine. I've got
18 no gripe.

19 MR. FLYNN: Your Honor, what he's saying is that --

20 THE COURT: Well, I'm helping him. Granted. You
21 are entitled to sue him for anything you can relate to things
22 that he did in 2010. Okay? Thank you, sir.

23 MR. FLYNN: Thank you, Your Honor.

24 THE COURT: Prepare the order. Thank you.
25 Appreciate it.

1 And, Mr. Flynn, for the record, if you will give me
2 the name -- your name and party you are representing, please.

3 MR. FLYNN: Yes, sir. It's Patrick Flynn. I
4 represent the plaintiffs, Oscar Mendiondo class action and
5 Shipwatch Homeowners Association.

6 MR. RAMSEY: Chris Ramsey also on behalf
7 Shipwatch.

8 THE COURT: Appreciate it. Mr. Flynn, I didn't mean
9 to cut you off with that, but it seemed to be more than
10 something. When I started hearing you, really focused on
11 that. Thank you very much.

12 MR. FLYNN: Yes, Your Honor.

13 (End of transcript.)

14

15

16

17

18

19

20

21

22

23

24

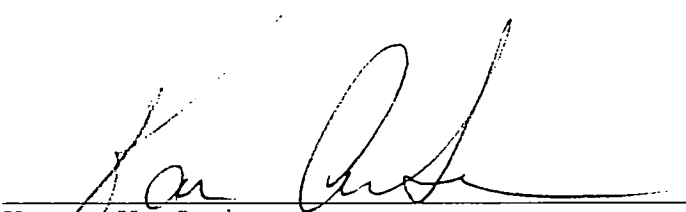
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 30th day of October, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-3857

Shipwatch Condominium Association Inc

Carolina Concrete Systems Inc, et al

2014 OCT 30 PM 1:55

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

BY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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: Defendant's Motion for Summary Judgment, filed on 9/15/2014, is GRANTED IN PART; Formal order to follow

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

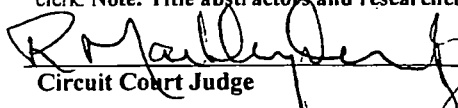
INFORMATION FOR THE JUDGMENT INDEX

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		\$
		\$
		\$

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


Circuit Court Judge

2060

Judge Code

10/27/2014

Date

RECEIVED

APR 30 2015

SC Court of Appeals

RECEIVED

Page 1 APR 30 2015

SC Court of Appeals

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-3858

Oscar Mendiando, et al

Carolina Concrete Systems Inc, et al

2014 OCT 30 PM 1:55

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

BY

2

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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: Defendant's Motion for Summary Judgment, filed on 9/15/2014, is GRANTED IN PART; Formal order to follow

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

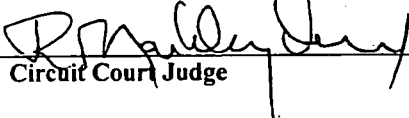
INFORMATION FOR THE JUDGMENT INDEX

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		\$
		\$
		\$

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


Circuit Court Judge

2060
Judge Code

10/27/2014
Date

RECEIVED

APR 30 2015