THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

Oscar Mendiondo..... .....Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,.....Defendants,

Of Which Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,.....are Respondents.

INITIAL BRIEF OF RESPONDENTS SISNROY ENGINEERING, LLC AND ROBERT G. SISNROY, INDIVIDUALLY

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STATEMENT OF THE CASE[1]

This matter comes before this Court from an appeal of a grant of partial summary judgment in the Charleston County Court of Common Pleas in favor of Carolina Concrete Systems, Inc. ("Carolina Concrete") based on the statute of limitations. Appellant Oscar Mendiondo initiated this lawsuit by Summons and Complaint filed June 13, 2012 against Carolina Concrete and others, including Sisnroy Engineering, LLC and Robert Sisnroy (collectively hereinafter "Sisnroy" or "these Respondents"), alleging damages arising from alleged defects in construction performed at the Shipwatch at Wild Dunes condominium complex, located on the Isle of Palms, South Carolina ("Shipwatch" or "Shipwatch Project"). A companion case was filed against the same parties on behalf of the Shipwatch Condominium Association. Sisnroy responded to Appellant's Complaint, generally denying any fault or liability as to it and asserting various affirmative defenses, including that Appellant's claims were barred by operation of the applicable statute of limitations.

Shipwatch is located in the gated community of Wild Dunes and consists of four buildings, containing a total of one hundred and four units that overlook the ocean. The original construction of Shipwatch was completed during the mid-1980s. Like many of the other Defendants, Sisnroy did not participate in the original construction at Shipwatch. Appellant alleges that Sisnroy, however, was involved in various repair and renovation work performed at Shipwatch between the years 2002 and 2011, for which Carolina Concrete served as the general contractor.

[1] Disclosure: Undersigned counsel shares, in large part, the approach to this appeal taken by Respondents BASF Corporation and First Exteriors, LLC and, as such, has borrowed from their Initial Briefs submitted to this Court. This Disclosure is intended solely to attribute and direct proper credit for the work done by counsel for BASF Corporation and First Exteriors, LLC.

Carolina Concrete filed a motion for summary judgment on September 12, 2014 on the basis that Appellant's claims were barred by the applicable statute of limitations. Sisnroy filed a similar Motion for Summary Judgment as to all claims against Sisnroy on September 29, 2014. Carolina Concrete's motion was heard on October 27, 2014 by Judge Dennis. At the hearing, counsel for Carolina Concrete presented argument in support of its motion for summary judgment and counsel for Appellant presented argument in opposition. (Hrg. Transcript p.2, line 1- p. 7, line 12).

Sisnroy's Motion for Summary Judgment has not been heard and is currently stayed pending this appeal. The trial court granted Carolina Concrete's motion in part, ruling orally at the hearing that any claims by Appellant for defects related to construction occurring before 2010 were barred. The trial court issued a form order, dated October 27, 2014 and filed October 30, 2014, noting that Carolina Concrete's Motion for Summary Judgment was granted in part and that a formal order was to follow. On November 11, 2014, prior to a formal order being submitted for the court's review, Appellant moved the trial court to reconsider its ruling. By order dated November 24, 2014 and filed December 1, 2014 the trial court denied Appellant's Motion for Reconsideration.

Appellant filed his Notice of Appeal on December 30, 2014. That Notice was amended on January 8, 2015 to remove as Respondents certain parties who had not appeared in the case. Nonetheless, virtually all Defendants remain captioned as Respondents in this matter, notwithstanding the fact that this appeal arises solely from Carolina Concrete's Motion for Summary Judgment.[2] Appellant argues that the trial

[2] Sisnroy was not a party to the motion by Carolina Concrete leading to the Order on appeal and had no opportunity to present evidence or make arguments during the hearing in the trial court. Consequently, out

court erred by failing to apply the proper standard when considering a motion for summary judgment, by failing to appropriately apply the discovery rule, and by failing to apply the doctrine of equitable tolling of the statute of limitations.

ARGUMENT

I. The Trial Court Correctly Found That the Statute of Limitations Began Running on Certain of Appellant's Claims More Than Three Years Before Appellant Initiated its Lawsuit Against Respondents.

Standard of Review

In reviewing the grant of a summary judgment motion, the appellate court applies "the same standard which governs the trial court under Rule 56(c), SCRCP: 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.'" Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319 (2001) (quoting Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537 (1991)); Rule 56(c), SCRCP.

Generally a cause of action accrues and the statute of limitations begins to run the moment a duty owed is breached; however, the "discovery rule" found in S.C. Code §15-3-535 provides for a delayed triggering of the statute of limitations. Under the discovery rule, actions "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." Id. Thus, the dispositive question in this case, and the one evaluated by the trial court, is when Appellant knew, or should have known, of the defects complained of in this litigation.

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of an abundance of caution, Sisnroy is filing this Brief only to the extent necessary to protect the record and ensure no findings by this Court adversely affect these Respondents.

The buildings at Shipwatch were originally constructed in the mid-1980s and were clad with an exterior insulation and finish system (commonly referred to as "EIFS" or "synthetic stucco"). Between the years 2002 and 2012 Carolina Concrete served as the general contractor for various renovations and repairs at Shipwatch, including removing and replacing certain areas of EIFS with a direct applied exterior finish system, or "DEFS." Repairs and renovations performed by Carolina Concrete, its subcontractors and material suppliers, included resloping balconies, repairing windows and doors, removing and replacing EIFS, and coating balcony and corridor decks. Appellant's Response in Opposition to Carolina Concrete Systems, Inc.'s Motion for Summary Judgment, Exhibit D. Carolina Concrete later oversaw the removal and replacement of additional areas of EIFS, as well as sliding glass door repairs and other miscellaneous projects at Shipwatch.

Appellant contends that he did not know of any actionable deficiencies in the work orchestrated by Carolina Concrete until its present engineers and retained experts for the purpose of this litigation, SKA Consulting Engineers, Inc. ("SKA") issued building evaluation reports in 2012 and documented a number of alleged construction deficiencies. Sisnroy, in addition to other Respondents, has and continues to take the position that potential problems with Carolina Concrete's repair and renovation work were brought to the attention of Appellant much earlier than June 13, 2009, and that Appellant could have easily retained any number of firms like SKA to evaluate the work and involvement of the Respondents to fully uncover the alleged deficiencies - more than three years before initiating this litigation in June of 2012.

The following are simply a few examples of evidence and factual support clearly

demonstrating that Appellant was on notice of a host of potential problems with the work and materials provided by Carolina Concrete and others prior to June 13, 2009:

1. Sisnroy, who served as a consulting engineer for Shipwatch, noted on July 10, 2006 in an Engineer Report entitled "Water Intrusions at Shipwatch: Glass Doors" that was prepared for the general manager of Shipwatch and delivered to the Board of the Shipwatch Homeowners Association, that "chronic water intrusion is occurring adjacent to the sliding glass door (SGD) installations. . . ." and included photos of the same. Carolina Concrete Systems, Inc.'s Memorandum in Support of Motion for Summary Judgment, Exhibit 4.
2. Appellant's property manager, Linda Jernigan, confirmed that Shipwatch had been experiencing problems with leaking at sliding glass doors since 2005. Deposition of Linda Jernigan, page 219, lines 8 - 23. Id.
3. Ms. Jernigan testified to receiving information from Mr. Bob Wiggins of Carolina Concrete in 2007 that leaks continued to be a problem at sliding glass doors where new DEFS had been installed. Deposition of Linda Jernigan, page 114, line 7 - page 115, line 4. Appellant's Response in Opposition to Carolina Concrete Systems, Inc.'s Motion for Summary Judgment, Exhibit A. Ms. Jernigan confirmed that these same issues were present in Carolina Concrete's 2011 inspection. Deposition of Linda Jernigan, page 115, line 12 - page 116, line 6. Id.
4. The Shipwatch Building Committee Report of January 20, 2007 noted chronic leaking at certain doors and that they were attempting to determine if the leakage was from the doors themselves or from other sources. Carolina Concrete Systems, Inc.'s Memorandum in Support of Motion for Summary Judgment,

Exhibit 6.

5. Carolina Concrete's inspection report of May 9, 2007 notes that "leaks continue to be a problem at and around the old sliding glass doors" and that the leakage is causing damage to the new metal stud walls with the DEFS system installed by Carolina Concrete. Carolina Concrete Systems, Inc.'s Memorandum in Support of Motion for Summary Judgment, Exhibit 7.

6. Carolina Concrete's inspection report of May 9, 2007 also noted cracks in the stucco. Id.

7. Ms. Jernigan recommended to the Shipwatch Board of directors that the decks needed to be recoated in 2008, and that sliding glass doors needed to be replaced. Deposition of Linda Jernigan, page 329, lines 8 - 25. Appellant's Response in Opposition to Carolina Concrete Systems, Inc.'s Motion for Summary Judgment and Carolina Concrete Systems, Inc.'s Memorandum in Support of Motion for Summary Judgment, Deposition of Jernigan, page 330 line 2 - page 333 line 13.

8. Commercial Building Consultants ("CBC"), Limited Property Assessment Report prepared for Appellant and dated January 30, 2008, noted that recent capital improvements consisted of replacement of large portions of EIFS with "dura-rock." It also noted that there were moisture issues at each building end, at the lower termination edge, where the wall cladding was missing an appropriate termination edge. The report went on to note that the parapet walls were poorly adhered at time of installation, that the lower edge of the sheet metal mansard roofs were missing kickout flashing, and that there was moisture penetration. Appellant's Supplemental Response in Opposition to Carolina Concrete System,

Inc.'s Motion for Summary Judgment, and Memorandum in Support of its Motion for Rehearing and Reconsideration. Pages CCS 1110 – 1116.

9. As Appellant's consulting engineer, Sisnroy published an Engineering Report entitled "Roof Flashing Installation Deficiencies and Exterior Cladding Failure Investigation" on August 23, 2008. Id. Pages CCS 1353 – 1359. In that report, Sisnroy found that the DEFS applied by Carolina Concrete was integrated with the metal roof without proper flashings in certain areas, which was leading to moisture intrusion. Additionally, Sisnroy found improperly sealed flashing at certain corners on the face of the stucco and improper caulking. Sisnroy also discovered and reported raised joint lines in the field of the DEFS cladding at the ends and edges of the cement panel boards. Sisnroy also found failed and blistering DEFS lamina. In summary, Sisnroy clearly concluded that there were several occasions of construction deficiencies as well as instances of failed parged stucco and failed DEFS.

10. Further, what apparently led to the SKA investigation and report was that Shipwatch had been performing piecemeal upgrades (and repairs), and before starting a new phase of the project the board president wanted to ensure they were doing everything right. Deposition of Linda Jernigan, page 27, lines 5 - 23. Appellant's Response in Opposition to Carolina Concrete Systems, Inc.'s Motion for Summary Judgment, Exhibit A.

Each of the foregoing examples are particularly important because they establish knowledge on behalf of Shipwatch of several of the same issues reported by SKA in its April 5, 2012 report, which Appellant regards as having provided it notice of the alleged

defects that lead to this lawsuit. Among other items, the April 5, 2012 SKA report noted water infiltration around windows and doors, improperly installed DEFS, cracks in DEFS, and failure of the DEFS lamina.

Thus, contrary to Appellant's assertion that he was first put on notice of the issues giving rise to this litigation in 2012, it is clear that it knew or should have known of these issues by 2008, at the latest. Therefore, the statute of limitations began running prior to June 13, 2009, more than three years prior to the filing of Plaintiff's First Complaint. Despite repeated knowledge of construction issues with the Project, Appellant elected not to investigate the extent of the problems or to remove and replace all of the failed building components at the time they were informed of the same. Appellant delayed filing suit until June 13, 2012 - five years and 11 months after Sisnroy issued his Engineering Report to Appellant identifying occurrences of chronic water intrusion at Shipwatch.

While this has the effect of barring certain of Appellant's claims against certain parties, it is necessary to bear in mind that "[s]tatutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (internal citations omitted). "Statutes of limitations are, indeed, fundamental to our judicial system." Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009) (internal citations omitted) (internal quotation marks omitted).

The applicable statute of limitations for Appellant's causes of action against Respondents is three (3) years. See S.C. Code Ann. § 15-3-530. The courts of South Carolina have adopted the "discovery rule" to determine when the statute of limitations begins to run. S.C. Code Ann. § 15-3-535. The discovery rule applies to construction defect cases. See Brown v. Sandwood Development Corp., 277 S.C. 581, 583, 291 S.E.2d 375, 376 (1982). "Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence that a cause of action exists for the wrongful conduct." True v. Monteith, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). See also Dean v. Ruscon Corp.,321 S.C. 360, 468 S.E.2d 645(1996); Barr v. City of Rock Hill, 330 S.C. 640, 644-645, 500 S.E.2d 157, 160 (Ct. App. 1998). "Furthermore, the statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to act with some promptness." Kelly v. Logan, Jolley Smith, L.L.P, 383 S.C. 626, 633, 682 S.E.2d 1, 4 (2009). "A party has constructive notice if the party knows of 'facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right ... has been invaded or that some claim against another party might exist." Barr, 330 S.C. at 645, 500 S.E.2d at 160 citing Graniteville Co. v. IH Servs., Inc., 316 S.C. 146, 148, 447 S.E.2d 226, 228 (Ct.App.1994) (quoting Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)). "Failure of the injured party to comprehend the full extent of damages, however, is immaterial." Id. citing Dean, 321 S.C. 360, 468 S.E.2d 645; Dillon County Sch. Dist. v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App,1985); Kelly, 383 S.C. at 635. "The date on which discovery should have been made is an objective, not

subjective, question." Id. citing Kreutner v. David, 320 S.C. 283, 285-86, 465 S.E.2d 88, 90 (1995).

The case of Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996), provides further guidance in this matter. Ms. Dean owned a building located on King Street in downtown Charleston. She initiated a lawsuit against Ruscon Corporation in April of 1991. Dean alleged that Ruscon's pile driving work at a nearby construction site caused structural damage to her building. The trial court directed verdict for Ruscon, finding the action barred by the statute of limitations. The Court of Appeals reversed, finding that there was a question of fact regarding whether Dean was reasonably diligent in determining whether damage to her building was attributable to Ruscon. The South Carolina Supreme Court reversed the ruling of the Court of Appeals, finding the action barred by the statute of limitations.

Dean had purchased the subject building in September of 1984. At the time of purchase Dean noticed no cracks in the building's façade, and it was inspected and found to be structurally sound. Ruscon performed pile driving during October and November of 1984 at a nearby construction site, and in early November of 1984 Dean observed a fine three foot long crack on the corner of the building and believed it was caused by Ruscon's pile driving. Dean quickly hired an expert to investigate, and gauges were placed on the crack to monitor any changes. During the summer of 1985 Ruscon resumed pile driving nearby, and Dean noticed the crack had enlarged, that there was additional damage around the crack, and that an additional crack had manifested on the opposite side of the building.

In agreeing with the circuit court that Dean brought the lawsuit outside of the

statute of limitations, the Supreme Court reasoned that Ms. Dean knew, by her own admission, that she may have had a claim for damage against someone in 1984. Thus, the Supreme Court found that Dean had notice of an injury in 1984, that she failed to act with reasonable diligence in pursuing recourse for the injury, and that her lack of knowledge of the extent of the injury was immaterial. Id. at 365, 366.

Likewise, in this matter the record is replete with evidence that Appellant knew or should have known of the deficiencies in work overseen by Carolina Concrete well before 2009. As demonstrated by the materials outlined above, Appellant was on notice of potential problems as early as 2005, and certainly reminded of the same and notified of additional deficiencies in 2007 and 2008. It must be remembered that "the discovery rule does not require actual notice of anything, or knowledge of the full extent of the damage." Ashley River Indus., Inc. v. Mobil Oil Corp., 135 F. Supp. 2d 733, 743 (D.S.C. 2000) aff'd, 245 F.3d 849 (4th Cir. 2001) (citing Dean v. Ruscon Corp. 468 S.E.2d at 467). Moreover, "[i]t requires a party to act promptly to investigate the existence of a claim where 'the facts and circumstances' indicate that a claim 'might exist.'" Id. Because Appellate was aware of numerous deficiencies and related issues prior to June 13, 2009, the statute of limitations began running in relation to Appellant's claims well in advance of three years prior to Plaintiff commencing this litigation against Sisnroy and other parties.

Appellant acknowledges in his Initial Brief and through testimony of Shipwatch homeowners an awareness of construction issues with the EIFS and sliding glass doors. (Appellant's Brief p. 10; Depo. of Fred Trombino p. 37, line 24 - p. 38, line 17; Depo. of Arnie Schaewe p. 78, lines 1-19; Depo. of Linda Jernigan taken on July 15, 2014, p. 219,

lines 8-23). Despite its awareness, Appellant failed to investigate these issues and others further to determine the extent of the damage. Appellant waited until January 2012 to engage the services of SKA to further investigate Shipwatch. As such, Appellant has failed to act with reasonable diligence to determine the extent of the problems with the Shipwatch and allowed the statute of limitations to expire.

II. The Trial Court Properly Applied 56(c), SCRCP Granting Summary Judgment in Favor of Respondent Carolina Concrete Services, Inc. ("CCS"), Based on the Statute of Limitations, in Light of the Doctrine of Equitable Tolling.

Rule 56(c) of the South Carolina Rules of Civil Procedure provides, "The judgment sought shall be rendered forthwith 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), SCRCP.

"A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony, however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Regional Medical Center, 36 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

Appellant contends that the trial court failed to apply the proper standard for considering a motion for summary judgment by disregarding the existence of an issue of material fact as to when the Appellant discovered its legal claim against Respondents. This argument lacks merit. Appellant and Respondent Carolina Concrete both filed memoranda in support of their respective positions regarding Carolina Concrete's motion

for summary judgment. At the hearing, Judge Dennis stated, "all memorandum filed in conjunction with this motion are incorporated fully for the purposes of review. And each of you may rely on the memos as submitted." (Hrg. Transcript p. 2, lines 4 - 6). The memorandum and exhibits which were filed by Appellant and handed up to the trial court were taken into consideration in the Court's ruling on Carolina Concrete's motion for summary judgment. (Hrg. Transcript p. 2, lines 4 - 6). Additionally, Appellant filed a supplemental response to Carolina Concrete's motion for summary judgment and memorandum in support of its motion for reconsideration. (Supplemental Response to Carolina Concrete's Motion for Summary Judgment and Memorandum in Support of Motion for Reconsideration). All of the documents within this paragraph were taken into consideration by the trial court in its rulings.

III. The Statute of Limitations Was Not Equitably Tolled as to Appellant's Claims Against Respondents' Sisnroy Engineering, LLC and Robert Sisnroy, Individually.

"In South Carolina, a defendant may be estopped from claiming the statute of limitations as a defense if some conduct or representation by the defendant has induced the plaintiff to delay in filing suit." Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001) (citations omitted).

Dillon Cnty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, S.E.2d 555 (Ct. App. 1985)[3] is instructive on this issue. In Dillon the County School District brought suit seeking recovery for losses resulting from allegedly defective roofing materials and work. The circuit court granted summary judgment to all

[3] Overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995).

defendants based on the statute of limitations, but the South Carolina Court of Appeals reversed in part, finding that there was an issue of fact as to whether numerous attempts to repair the roof, coupled with assurances that the roofing problems would be corrected, tolled the statute as to certain defendants.

The School District contracted with Dargan to construct a building for Dillon County High School in 1970. Work began the same year, including the completion of the roof. Other parties involved in construction included G.M.K. as the project architect, Johnson and King as engineers, Bonitz and Lewis as roofing installers, Grace as roofing material supplier, and Celotex as manufacturer of the roofing. As it turns out, the roof began to leak immediately, and leaks became a chronic problem. G.M.K., Dargan, and Lewis made numerous attempts to correct the roof issues, making certain assurances that the problem would be resolved to the School District's satisfaction. The Court of Appeals agreed with the trial court that the School District knew, or should have known by 1972 that it had an actionable problem stemming from the roof's construction. The Court of Appeals, however, determined that the actions of G.M.K., Dargan, and Lewis presented a jury question as to whether the statute of limitations was equitably tolled as to them. The Court reasoned that "[a] defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when the delay that otherwise would give operation to the statute has been induced by the defendant's conduct." Id. at 218 (citations omitted). The Court stated that the "conduct may involve either inducing the plaintiff to believe that an amicable adjustment of the claim will be made without suit or inducing the plaintiff in some other way to forbear exercising his right to sue." Id.

Importantly, the Court of Appeals noted that though "the circuit court erred in granting G.M.K., Dargan, and Lewis summary judgment, the record contains no evidence that either Bonitz, King, Celotex or Grace somehow induced the School District within the limitations period to delay bringing its action." Id. at 220. Similarly, in this case there is no evidence that Sisnroy induced Appellant in any way to delay bringing suit against Sisnroy or any other party in this action. Whether some action by Carolina Concrete tolled the running of the statute of limitations is irrelevant as to Sisnroy's position and involvement at the Shipwatch Project. However, Appellant has advanced no evidence of Sisnroy performing, or failing to perform, anything that would prevent the statute of limitations from running relative to Sisnroy. Sisnroy did nothing to lull Appellant into a "false sense of security." Id. at 219. As such, the statute of limitations was never tolled as to any claims Appellant may have against Sisnroy.

CONCLUSION

Appellant had knowledge, more than three years prior to his commencing this litigation and filing its claims against Sisnroy that he may have a claim against some person or persons for injuries occasioned by construction deficiencies at Shipwatch. The statute of limitations began running prior to June 13, 2009 based on the evidence referenced herein, and Appellant has presented no countervailing evidence that Sisnroy did anything upon which this Court could premise a finding that the statute of limitations was tolled as to Sisnroy. Therefore, Sisnroy respectfully requests that this Court make no findings inconsistent with those facts and affirm the decision of the trial court.

Respectfully submitted,

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