

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 17 2015
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3857

Appellate Case No. 2014-002766

Shipwatch Condominium Association, Inc.,Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlasTec, 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 Whom Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlasTec, 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.

APPELLANT'S FINAL REPLY BRIEF

R. Patrick Flynn
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In its Initial Brief filed on April 2, 2015¹, Respondent Carolina Concrete Systems, Inc. (“CCS”) asserts that Appellant is seeking damages for defects during the original construction of the Shipwatch condominiums in the 1980's. Respondent CCS's Initial Brief at 2-3. However, as indicated in its Initial Brief filed on March 2, 2015, Appellant did not sue any parties involved in the original design and construction of Shipwatch in the 1980's, and Appellant does not allege that the Respondents performed any of that original construction or design work in the 1980's.

Instead, Appellant brought the underlying action against CCS and the other Respondents for defects, deficiencies, and damages relating to the repairs and renovation work that CCS and the other Respondents performed from 2002-2012. In its Initial Brief, CCS contends that the 2013-2015 repairs to the Project were not necessitated by the 2002-2012 repair work, but instead relate to defects in the original 1980's construction. Of course, that is a question of causation for the jury, is not an appropriate basis for summary judgment, and does not provide support for the statute of limitations argument asserted by CCS and the other Respondents.

Specifically, CCS argues that Appellant knew about water intrusion and alleged construction defects more than three years before commencing this litigation. Id. at 3. A plain reading of the minutes and other documentation offered by CCS shows that Appellant was aware of the aged and failing condition of the original 1980's construction. Id. Indeed, knowledge of those issues were the reason why CCS and the other Respondents were hired to perform repairs at Shipwatch from 2002-2012. Knowledge of the aged and failing condition of the 1980's original construction elements cannot be the basis for notice of defects and deficiencies in the repairs performed by CCS and the

¹ Respondent's brief was filed on April 2, 2015 but a copy of the brief was not received by Appellant until April 15, 2015. This Reply Brief is being submitted within 10 days after receipt.

other Respondents. Those issues were not known until Appellant's consulting engineer SKA issued its report on April 5, 2012, and the underlying lawsuit was filed within 90 days after that report.


Respondent CCS is essentially arguing that a claimant who takes action to correct issues with aged and failing original construction would have only three years from that action to bring a lawsuit against any contractor who subsequently performs defective repairs. Carried to its logical conclusion, Respondent CCS would have the Court conclude that a claimant's Statute of Limitations could run as to a repair contractor before that repair contractor has even performed work, and certainly before a claimant knew or reasonably should have known of defects in the repair contractor's work.

Respondent CCS's position is inconsistent with the discovery rule as set forth in Appellant's Initial Brief. Initial Brief of Appellant, at pp. 11-12. There is simply no basis upon which to conclude that summary judgment was appropriate for any part of CCS's defenses to this defect claim, and certainly no basis for the partial summary judgment granted by the lower court as to the statute of limitations.

For the foregoing reasons, the lower court's order granting partial summary judgment to the Respondents must be reversed, with instructions to allow the Appellant's claims to be submitted to the jury.

Respectfully Submitted,

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By: 

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Charleston, South Carolina
June 15, 2015

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Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Which Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
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individually, are..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.



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June 15, 2015

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individually, are,

..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have served parties in this action with a copy of the document(s) via U.S. Mail and Electronic mail as follows:

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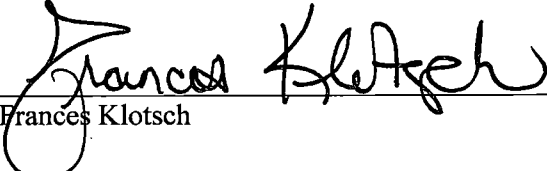
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Clerk of Court
Attn: Diane Greene
1015 Sumter Street
Columbia, South Carolina 29201

Re: Shipwatch Condominium Association, Inc. vs. Carolina Concrete Systems, et al
Appellate Court No. 2014-002766

Dear Ms. Greene:

I enclose herewith for filing the unbound original and fifteen (15) copies of the following documents in the above referenced matter:


- Final Brief of Appellant
- Final Reply Brief and of Appellant

I have also enclosed for filing fifteen (15) copies of the Record on Appeal, and the Certificate of Counsel.

By copy of this letter, I am serving the same upon all counsel of record.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



Frances Klotsch
Legal Assistant to R. Patrick Flynn

RPF/fak
Enclosures

cc: All Counsel of Record (via US Mail and email)