ROBERTSON HOLLINGSWORTH & FLYNN, LLC
ATTORNEYS AT LAW

177 MEETING STREET, SUITE 300
CHARLESTON, SOUTH CAROLINA 29401
(843) 723-6470 • Fax (843) 853-9045
Email: info@roblaw.net
www.rhflawfirm.com

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)
S. Wallace Carnwath, III (SC, NC)

Claron A. Robertson
Of Counsel

August 17, 2015

Via Facsimile (803-734-1839) and U.S. Mail
The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Shipwatch v. Carolina Concrete; Appellate Case No. 2015-001644

Dear Ms. Kitchings:

Thank you for your letter dated August 14, 2015 in the above referenced matter, in which you discussed the deadline for ordering the hearing transcript, and provided instructions if the transcript had not yet been ordered. Please be advised that the transcript was previously ordered and received by the Appellants. I have attached a copy of this transcript of the Summary Judgment hearing dated October 27, 2014, upon which this appeal is based.

The above-referenced appeal follows two previous appeals in the same underlying cases, Appellate Case numbers 2014-002765 and 002766. Those two previous appeals were dismissed on July 2, 2015 in order to allow the lower court to enter a written order in those underlying matters. A single written order was filed for both of those matters in the lower court on July 28, 2015, and notices of appeal were filed in both of the underlying matters on July 28, 2015.

For your reference I have also attached a copy of the lower court's written order filed on July 28, 2015. Additionally, by your separate letter dated August 14, 2015, the notices of appeal for the two underlying companion cases were consolidated into one appeal, which is numbered 2015-001644.

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

Enclosures
cc w/encl.: All counsel of Record (via e-mail only)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Docket No.: 2012-CP-10-3857
Shipwatch Condominium Association, Inc.	)	
Plaintiff,	)	
v.	)	**ORDER GRANTING DEFENDANT CAROLINA CONCRETE SYSTEMS, INC. PARTIAL SUMMARY JUDGMENT**
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, 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.	)	
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Docket No.: 2012-CP-10-3858
Oscar Mendiondo individually and as representative of a class similarly situated Owners of Condominium Units in the Horizontal Property Regime known as Shipwatch Condominiums	)	
Plaintiffs,	)	
v.	)	
Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G.	)	

Sisnroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, 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.

This matter came before the Court on Defendant Carolina Concrete Systems, Inc.'s ("CCS") summary judgment motion based on the statute of limitations. As discussed in this order the court grants partial summary judgment. This Order does not dismiss the entire litigation and allows Plaintiffs to continue the lawsuit for claims concerning work not barred by the statute of limitations.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012. The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the defendants in this litigation had any involvement with the original construction.

From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some (but not all) of the original EIFS (Exterior Insulation Finish System) cladding with a Durock Wall System ("DEFS"); removal of some (but not all) original windows and sliding glass doors at certain locations on the endwalls, ocean-side, and street-side elevations; reframing of chimneys; and recoating of certain balcony and corridor decks. CCS' contracts with Plaintiffs included:

November 5, 2002: Contract for chimney repairs, waterproofing repairs, corridor/balcony repairs, and traffic coatings;

September 22, 2003: Contract for re-sloping of balconies, window and door repairs, removal of EIFS and replacement with Durock Stucco System on endwalls and fourth and fifth floor streetside, removal and replacement of stucco at stairwell and elevator towers, repairs to privacy walls and chimneys; and

December 19, 2008: Contract for removal and replacement of 16 EFCO doors in specified units.

The work took place primarily between 2002-2005 and 2008-2011.

STANDARD FOR STATUTE OF LIMITATIONS

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she 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." Id. "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury.

Likewise, the inability of the plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic

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Contracting Corp., South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994).

In Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App, 2005), the Court wrote:

> Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs." The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, "statutes of limitations provide potential defendants with certainty that after a period of time, they will not be hailed [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights." Statutes of limitations are, indeed, fundamental to our judicial system.

Id., 363 S.C. at 175-176, 609 S.E.2d at 552 (citations omitted).

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), *aff'd*, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

> Statutes 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. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. . . .

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City of N. Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 2004) (internal citations omitted).

DISCUSSION

The applicable statute of limitations is three years.[1] CCS does not dispute that any work performed after the applicable date for statute of limitations purposes should not be included with this order; CCS challenges, however, certain claims based on notice to Plaintiffs that implicates the statute of limitations. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar those claims because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation.

A. THE UNDISPUTED TESTIMONY FROM PLAINTIFFS' BOARD MEMBERS AND REGIME MANAGER IS THAT PLAINTIFFS KNEW ABOUT MANY OF THE ISSUES THEY ASSERT IN THIS LITIGATION WELL BEFORE ANY THREE-YEAR PERIOD INVOLVING THE STATUTE OF LIMITATIONS

Plaintiffs clearly knew about various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). In fact, many of the damages claimed in this lawsuit were recommended to Plaintiffs for replacement in 2008 by Plaintiff's regime manager because of water intrusion or

[1] S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act.

other damage. In addition, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew about water intrusion problems into the buildings in 2003. Deposition of Arnie Schaewe, page 35, lines 9-19. Further, Schaewe testified Plaintiffs had leakage problems at various locations including the end walls, oceanside sliding glass doors, and bay windows when CCS began work in 2002-2003. Id., page 35, line 9-page 37, line 22.

Accordingly, the statute of limitations bars the following claims:

Originally-installed EIFS (Exterior Insulation Finish System):

In this litigation, Plaintiffs demanded CCS pay for the costs of removing the remaining EIFS on the exterior of the buildings and replacing the exterior cladding on the buildings, even though CCS never installed the EIFS and Plaintiffs knew about damage and water intrusion associated with EIFS by the mid-2000s. For example, Plaintiffs' former board member Fred Trombino testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. Deposition of Fred Trombino, page 37, line 24-page 38, line 6. Specifically, Trombino said the board knew that water tended to get trapped behind EIFS, which caused the metal studs to rot and fail. Id. page 38, lines 11-17. However, the board elected not to further inspect the buildings at that time because it had decided to remove the EIFS cladding. Id. page 38, lines 18-25.

The regime manager (Linda Jernigan), whom Plaintiffs have employed since 2005, testified she told Plaintiffs in September 2008 that she had obtained a contract to remove and replace the originally-installed EIFS off of all buildings at a projected cost of $1,800,000 (or approximately $423,060 per building). Deposition of Linda Jernigan, page 330, line 2-page 331, line 18. The September 2008 HOA Board Minutes also detailed that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional

problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. Id., page 333, line 14-page 335, line 10.

Originally-installed sliding glass doors:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed sliding glass doors and replacing those doors with modern versions, even though CCS never installed the original sliding glass doors and Plaintiffs knew about damage and water intrusion associated with leaking sliding glass doors by the mid-2000s. Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the oceanside sliding glass doors when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Deposition of Jernigan, page 332, line 15-page 333, line 13. Jernigan testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005. Id., page 219, lines 8-18; page 230, lines 9-12.

Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. Trombino, page 132, line 22-page 133, line 14. Beginning in 2006, the Board replaced a certain number of leaking sliding glass doors (approximately 10-15 per year) based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6.

In addition, HOA Board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass doors, including the fifth floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2; and Shipwatch Board of Director Meeting,

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September 16-17, 2005, page 2. In 2006, the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs using caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 (Exhibit 3).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb.

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2. However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2.

The September 13, 2008 HOA Board meeting minutes stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over $10,000 per door as they are not stock doors and must be custom made – the cost is for taking off the old door, replacing and shim the door to fit, plus caulking."

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Originally-installed windows:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed windows and replacing them with enhanced windows, even though CCS never installed those windows and Plaintiffs knew about damage and water intrusion associated with leaking windows by the mid-2000s. As discussed, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the original bay windows when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. Jernigan noted leaking bay windows in 2007. Deposition of Jernigan, page 307, lines 12-21.

Deck coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior deck coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2008. For example, in September 2008, Jernigan recommended Plaintiffs remove and replace the deck coatings. Deposition of Jernigan, page 332, line 15-page 333, line 13. The September 2008 HOA Board meeting minutes stated, "[t]he Board previously passed on coating the decks because we needed to have money to do other projects . . . and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to point buildings will have to be closed and decks completely redone." Id. The minutes reflected Jernigan "highly recommended" this work. Id. The minutes further reflected the Board's acknowledgment in 2008 that the balcony deck recoating, along with the recommended EIFS replacement and sliding glass door replacement, "were items that either were 'on-going' or [had] been held back from years previous." Id.

Balcony ceiling coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the balcony ceiling coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2005. For example, Trombino testified that the breezeway ceilings had "peeling" issues since he started on the board in 2005. Deposition of Trombino, page 43, line 17-page 44, line 2. Schaewe testified that Plaintiffs only "spot repaired" the ceilings from 2002-2013 and that he did not know why Plaintiffs did not make any wholesale repair to the balcony ceiling coatings. Deposition of Schaewe, page 19, lines 2-23.

Handrails

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior handrails throughout the complex even though CCS did not install the original handrails and Plaintiffs knew about damage associated with deteriorated handrails by 2008. For example, in September 2007 and September 2008, the HOA Board meeting minutes discussed the continued need to sand and repaint the railings. The Board decided to remove the repairs to the handrails from the budget "in lieu of more important items." On September 13, 2008, the Board meeting minutes note the decision that the Board "will again delay painting of the railings."

Moreover, Trombino testified CCS is not responsible for the cost of new handrails. Deposition of Trombino, page 44, lines 8-12. Schaewe also testified CCS should not be held responsible for the cost to remove and replace the handrails. Deposition of Schaewe, page 59, line 25-page 60, line15.

Metal Framing/DEFS

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing metal framing at the buildings even though CCS notified Plaintiffs about damaged metal framing and Plaintiffs elected not to make repairs. The contract

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documents showed CCS and its subcontractors removed the original EIFS and replaced it with Durock/DEFS at certain locations on the buildings in two phases (from November 2002-December 2003 and September 2003-May 2004). Schaewe testified that during the removal of the original EIFS cladding in 2003-2004, Plaintiffs knew about rusted studs on the oceanside and endwalls of all four buildings, particularly behind originally-installed EIFS adjacent to originally-installed sliding glass door and windows. Deposition of Schaewe, page 37, lines 1-9.

Between 2005-2007, the board learned that water tended to get behind EIFS and then rotted the studs and caused failure. Deposition of Trombino, page 38, lines 11-17. Trombino testified the board did not elect to hire someone to inspect the buildings at that point because [the board] had already decided to remove the EIFS and replace the studs. Id. page 38, lines 18-25. Significantly, on May 9, 2007, CCS reported to Jernigan, "Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project [in 2003-2004]." Carolina Concrete Systems, Inc. "Inspection Report" dated May 9, 2007, item 14.

On September 6, 2007 CCS issued a proposal for the removal and replacement of the fourth and fifth floor oceanside balcony sliding glass doors. Importantly, the proposal stated the proposed replacement did not include any repair to the metal studs that support the doors or the new installed wall studs, "for we do not know the extent of any damage ... the doors have been leaking since the new [Durock] wall system was installed ... and has allowed water to enter the wall ... and damaged the metal studs in the wall." Carolina Concrete Systems, Inc. Proposal dated September 6, 2007.

On February 5, 2009, CCS again notified Plaintiffs: "Leaks continue to be a problem at and around the old sliding glass doors on the beachfront and golf course side of the buildings. We have repeatedly shown [Jernigan] and numerous board members that these doors are leaking and I am sure there is damage that is

occurring in the new metal stud walls with the Durock system that was installed during 2003/2004. We are in the process of replacing 17 doors and I recommend the remaining old doors be removed and replaced." Carolina Concrete Systems, Inc. "Building Inspection Report" dated February 5, 2009, page 2.

Lack of kickout flashing or drip edge flashing:

On May 22, 2009, Plaintiffs' engineering experts in this litigation (Sutton-Kennerly & Associates, Inc. or "SKA") issued a "Proposal for Engineering Cost Estimate and Design" for the project "... to conduct a cost estimate of the recommended repairs from the Property Assessment and Report by Commercial Building Consultants, dated January 31, 2008 and design details for recommended kickout flashings, drip edge flashing and installation of new EFCO sliding glass doors." SKA's May 22, 2009 proposal reflected Plaintiffs' knowledge based on the January 31, 2008 "Limited Property Assessment Report" about "[o]ther moisture problems [including] lack of a drip edge flashing along the ends of the buildings, and the lack of a kick-out flashing at the transition between the sloped metal roof of the existing stair wells and the exterior facade."

B. THE EVIDENCE MIRRORED OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

In Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996), Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally

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sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations expired.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause Dean had notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date." (emphasis in original). Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. In addition, HOA board meeting minutes clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement.

CONCLUSION

For these reasons, the Court grants partial summary judgment and strikes the claims associated with (a) EIFS; (b) originally-installed sliding glass doors; (c) originally-installed windows; (d) deck coatings; (e) balcony ceiling coatings; (f) handrails; (g) metal framing behind originally-installed EIFS and adjacent to originally-installed sliding glass doors and windows; and (h) lack of kickout flashing

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or drip edge flashing from Plaintiffs' claims in this litigation. See Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). The litigation continues for the remaining issues.

Charleston, South Carolina
July 27, 2015

Judge R. Markley Dennis, Jr.

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STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2012-CP-10-3857
) 2012-CP-10-3858
)
SHIPWATCH CONDOMINIUM ASSOCIATION,)
INC., et al,)
)
Plaintiff,)
)
vs.) Transcript of Record
)
CAROLINA CONCRETE SYSTEMS, ET AL,)
)
Defendant.)
) DATE: October 27, 2014

B E F O R E:

The Honorable Judge R. Markley Dennis, Jr.

A P P E A R A N C E:

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

David Starr Cobb
For the Defendant, Carolina Concrete Systems

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

THE COURT: Two motions for summary judgment.

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

THE COURT: Before you identify yourselves, 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. Thank you very much. Appreciate it.

All right. If you would identify yourselves.

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

THE COURT: Sure. Take your time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Tell me about 2005.

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

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

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

THE COURT: That's your position?

MR. FLYNN: It is, Your Honor.

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

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

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

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

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

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

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

MR. FLYNN: Thank you, Your Honor.

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

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

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

MR. RAMSEY: Chris Ramsey also on behalf Shipwatch.

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

MR. FLYNN: Yes, Your Honor.

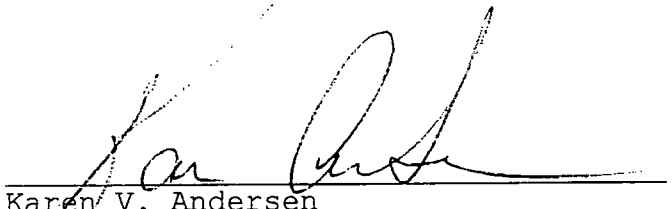
(End of transcript.)

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