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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
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SC Court of Appeals

R. Markley Dennis, Circuit Judge

Appellate Case No. 2015-001644

Circuit Court Case No. 2012-CP-10-3857 and 2012-CP-10-3858

Shipwatch Condominium Association, Inc., Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonnebom, 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, Gary Freeman, individually; Defendants,

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

Oscar Mendiondo, Individually and as a representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, Appellants,

v.

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

Of which Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec,

Inc.; Spectech, Inc.; Sonnebom, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, EFCO Corp.; W.C. Johnston Architectural Inc.; Gary Freeman, individually; are the Respondents.

ACROCRETE, INC.'S MOTION TO
DISMISS APPEAL AS TO ACROCRETE, INC.

Pursuant to Rule 240, SCACR, Acrocrete, Inc. ("Acrocrete") moves to dismiss this appeal as to it on the ground that it has been improperly named a party to this appeal. As explained below, Acrocrete had no involvement in the order being appealed, and the order does not involve Appellant's claims against Acrocrete. Accordingly, Acrocrete is not a proper respondent because it is not an adverse party on appeal.

Background

Appellant has appealed an order granting partial summary judgment based on the statute of limitations to defendant Carolina Concrete Systems, Inc only. ("Carolina Concrete"). Acrocrete had no involvement in that order or in the motion leading to it. Carolina Concrete filed the motion alone. Neither Acrocrete nor any other defendant joined in the motion. At the hearing on the motion, only Appellant and Carolina Concrete presented any arguments or evidence to the circuit court. Significantly, Acrocrete has filed its own motion for complete summary judgment on Appellant's claims against it. *See generally* Exhibit 1, Mot. For Summ. J. and Mem. in Supp. of Summ. J.¹ Although Acrocrete's motion is also based on the statute of limitations, the arguments in its motion do not mirror Carolina Concrete's motion or the circuit court's order. Acrocrete has requested that the circuit court hear its own motion for summary

¹ Identical motions and supporting memoranda were filed in each of the two underlying circuit court cases which have been consolidated on appeal.

judgment, but the circuit court has stayed proceedings below pending appeal.²

The order being appealed grants relief only to Carolina Concrete. It grants no relief to Acrocrete. It does not address any of Appellant's claims against Acrocrete or any of Acrocrete's summary-judgment arguments. The order discusses Appellant's claims against Carolina Concrete in terms of particular types of alleged defects. Thus, to explain why the order does not affect it, Acrocrete will first explain its role in this construction defect lawsuit.

Acrocrete formerly manufactured a building exterior cladding product called Direct Applied Exterior Finish System (often referred to as "DEFS").³ (Mem. in Supp. of Summ. J. p. 2). In 2002 and 2003, Acrocrete-manufactured DEFS was installed on some of Appellant's condominiums. (Order on Appeal at pp. 2, 3). Acrocrete did not install the product. In August 2008, an engineer hired by Appellant provided Appellant a report that included allegations that the DEFS product was failing and not in compliance with the warranty. (*Id.* pp. 2-3 & its Exhibit A p. 4). Appellant is now suing Acrocrete for alleged failure of the DEFS.

The order being appealed does not address any alleged defects in the DEFS product. Although the order mentions DEFS in one substantive section, the reference is incidental. The circuit court referred to DEFS only in the course of describing Appellant's claim involving metal framing that is located behind the panels of DEFS and next to some windows and doors. (*See* Order pp. 10-12). The court held Appellant's claim for that specific issue is time-barred. (*See id.* pp. 10-12, 13). At the end of its order, the court listed all the claims it was striking. (*See id.* pp. 13-14). Notably, the list does not include any claim associated with Acrocrete or DEFS.

² This is the second appeal of the order granting Carolina Concrete partial summary judgment. Appellant first appealed on December 30, 2014, before the circuit court had issued its written order. This Court dismissed that appeal in its entirety. *See* Order dated July 2, 2015 in Appellate Case No. 2014-002766.

³ Acrocrete sold all its product lines, including DEFS, to BASF Corp. in July 2005. BASF Corp. is a defendant in this lawsuit with regard to later-applied DEFS.

Moreover, the order relates only to Appellant's claims against Carolina Concrete. Other than the caption, Acrocrete's name appears nowhere in the order. In contrast, the court focuses on Carolina Concrete, describing its work at the project and noting Appellant served process upon it. (*See* Order pp. 2-3, 5). Tellingly, the court began its discussion of almost every time-barred claim—including the one for the metal framing behind the DEFS—by stating that Appellant had asked Carolina Concrete to pay for the alleged defect in question. (*See id.* pp. 6, 7, 8, 9, 10). Thus, even assuming the order could reasonably be interpreted as ruling on anything involving DEFS, the order cannot be interpreted as providing any relief to Acrocrete on any issue.

Argument

Rule 202(a), SCACR, provides that the “adverse party” is the respondent. Ostensibly, Rule 202(a) simply sets the formal names for the parties to the appeal. However, its adversity criterion is the touchstone for deciding who the proper parties to an appeal are. Adversity in an appeal is not the same thing as general adversity in the case. The fact that two parties are on opposite sides of the “v” in the circuit court does not necessarily make them adversaries on appeal. Rather, to be an adverse party on appeal, one must have a direct stake in issues and order in the appeal.

The South Carolina Supreme Court's opinion in *McGill v. Moore* demonstrates this rule. In that case, McGill contracted with eight people to buy their interests in a piece of land. 381 S.C. 179, 183, 672 S.E.2d 571, 573 (2009). When three of them failed to close on their contracts, McGill sued them for specific performance. 381 S.C. at 184, 672 S.E.2d at 574. The defendants filed a partition counterclaim. *Id.* The master in equity allowed several other owners to intervene in the partition claim, and he also appointed a guardian ad litem to represent any unknown minors and incompetent persons who might be affected in the partition claim. *Id.*

Ultimately, without reaching the partition issue, the master ruled against McGill on his specific performance claims. *See id.*

McGill appealed that ruling but did not serve the notice of appeal on the guardian. 381 S.C. at 184 n.2, 672 S.E.2d at 574 n.2. Both the guardian and the defendants moved to dismiss appeal. They contended that the guardian, as the representative of McGill's adversaries in the partition counterclaim, was a respondent. Accordingly, they argued, the Supreme Court lacked jurisdiction because McGill had failed to serve all respondents, as Appellate Court Rule 203(b)(1) requires.⁴ *See id.* The Supreme Court rejected that argument. It explained that because the appeal did not involve the partition claim, the guardian was "not an 'adverse party' in th[e] appeal and not a 'respondent.'" *Id.* Thus, McGill did not have to serve her with a copy of the notice. *Id.*

Like the guardian in *McGill*, Acrocrete has no stake in the order being appealed or the issues involved in the order. Accordingly, it is not adverse to Appellant in this appeal, which means it is not a respondent. The only material difference between *McGill* and this case is that in the former, the appellant's opponents below were trying to get an appeal completely dismissed on jurisdictional grounds. Here, Acrocrete is not trying to deprive Appellant of its appeal. Acrocrete merely asks to not be required to participate in the appeal of an order that does not apply to it and that results from proceedings in which it did not participate.

Simply put, Acrocrete is not an "adverse party" here because it has received no relief below, let alone relief that would aggrieve Appellant. *See* Rule 201(b), SCACR.

⁴ Specifically, the defendants and the guardian argued that under the Appellate Court Rules, all the parties who oppose the appellant in the case are respondents on appeal. *See* Br. of Respt's in *McGill v. Moore*, 2007 WL 4592812, at *8 (Nov. 6, 2007); Br. of Guardian Ad Litem-Attorney in *McGill v. Moore*, 2007 WL 4592813, at *10 (Nov. 5, 2007).

Conclusion

In light of the foregoing, Acrocrete respectfully requests that the appeal be dismissed as to it and that its designation as a respondent be stricken from the caption.

Respectfully submitted, this 28 day of September 2015.

WOMBLE CARYLE SANDRIDGE & RICE, LLP



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ATTORNEYS FOR ACROCRETE, INC.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 SHIPWATCH CONDOMINIUM ASSN., INC.)
)
 Plaintiff)
 v.)
)
 CAROLINA CONCRETE SYSTEMS, INC., et)
 al.,)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-cp-10-3857

**MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET**



Plaintiff's Attorney: R. Patrick Flynn Robertson Hollingsworth & Flynn 177 Meeting Street, Suite 300 Charleston, SC 29401 Phone: (843) 723-6470 Email: rpff@roblaw.net	Defendant's Attorney: Gregory L. Horton Womble Carlyle Sandridge & Rice 5 Exchange Street Charleston, SC 29401 phone: (843) 722-3400 email: ghorton@wcsr.com
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
 Nature of Motion: Motion for Summary Judgment
 Estimated Time Needed: 15 min Court Reporter Needed: YES/ NO

SECTION II: Motion Type
 Written motion attached –
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.
[Signature] October ____, 2014
 Signature of Attorney for Plaintiff / Defendants Date submitted

SECTION III: Motion Fee
 PAID – AMOUNT \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____
 JUDGE _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION
 Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: _____
 CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No. 2012-CP-10- 3857

Shipwatch Condominium Association, Inc.)
)
Plaintiff,)

vs.)

Carolina Concrete Systems, Inc.; Sisroy)
Engineering, LLC; Robert G. Sisroy,)
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.)

**ACROCRETE, INC.'S MOTION FOR
SUMMARY JUDGMENT**

Sisroy Engineering, LLC and Robert G.)
Sisroy, individually,)
Third-Party Plaintiffs,)

vs.)

Shipwatch Condominium Association,)
Defendant.)

BY: [Signature] 2012 OCT 23 11:03 AM

TO PLAINTIFF AND ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that as soon as counsel may be heard, Defendant Acrocrete, Inc. ("Acrocrete") will move for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that Plaintiff's claims are barred by the

applicable statute of limitations. In this regard, pursuant to South Carolina Code 15-3-530 and South Carolina case law interpreting it, Plaintiff had three years to commence a civil action from the date he “knew or reasonably should have known” of the alleged problem, and Plaintiff failed to do so. This motion shall be supported by any memorandum of law or affidavit filed by Acrocrete in advance of the hearing on this motion, by the pleadings and papers already on file, by the discovery in this case, including deposition testimony, and by the argument of counsel.

WOMBLE CARYLE SANDRIDGE & RICE, LLP



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Ryan D. Gilsenan (SC Bar No. 74756)
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October 23, 2014
Charleston, South Carolina

ATTORNEYS FOR DEFENDANT
ACROCRETE, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2014, I served a copy of the within *Defendant Acrocrete, Inc.'s Motion for Summary Judgment* to all Counsel of Record in the within entitled matter by sending a true copy of the same via U.S. mail, postage prepaid:

<p>R. Patrick Flynn, Esquire Robertson Hollingsworth & Flynn LLC 177 Meeting Street, Suite 300 Charleston, SC 29401 ATTORNEYS FOR THE PLAINTIFF</p>	<p>David S. Cobb, Esquire Jennie Smith, Esquire Turner Padgett Graham & Laney, PA P.O. Box 22129 Charleston, SC 29401 ATTORNEYS FOR THE DEFENDANTS CAROLINA CONCRETE SYSTEMS, INC.</p>
<p>Erin D. Dean, Esquire Stacey P. Canaday, Esquire Tupper, Grimsley & Dean, P.A. P.O. Box 2055 Beaufort, SC 29901-2055 ATTORNEYS FOR THE DEFENDANT GLASSTEC, INC.</p>	<p>R. Britton Kelly, Esquire Rosen, Rosen & Hagood P.O. Box 893 Charleston, SC 29402 ATTORNEYS FOR THE DEFENDANT EFCO CORP.</p>
<p>David A. Root, Esquire Kernodle Root & Coleman P.O. Box 13897 Charleston, SC 29422-3897 ATTORNEYS FOR THE DEFENDANT BASF CORP.</p>	<p>K. Michael Barfield, Esquire Barnwell Whaley Patterson & Helms P.O. Drawer H Charleston, SC 29402 ATTORNEYS FOR THE DEFENDANTS GARY FREEMAN ARCHITECT, INC. AND GARY FREEMAN, INDIVIDUALLY</p>
<p>R. Britton Kelly Esquire Rosen, Rosen & Hagood, LLC 151 Meeting St., Suite 400 Charleston SC 29401 ATTORNEYS FOR THE DEFENDANT W.C. JOHNSTON ARCHITECTURAL SALES, INC.</p>	<p>Samia Nettles, Esquire Richardson Plowden & Robinson, P.A. 40 Calhoun Street, Suite 220 Charleston, SC 29401 ATTORNEYS FOR THE DEFENDANTS GLASGOW ROOFING</p>
<p>Paul Sperry, Esquire Tyler P. Winton, Esquire Carlock, Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 ATTORNEYS FOR THE DEFENDANTS SISNROY ENGINEERING, LLC AND ROBERT G. SISNROY, INDIVIDUALLY</p>	<p>Amanda R. Maybank, Esquire Marshall A. Earhart, Esquire Jason A. Daigle, Esquire Maybank Law Firm, LLC P.O. Box 12579 Charleston, SC 29422 ATTORNEYS FOR THE DEFENDANT CHARLESTON GLASS COMPANY, INC.</p>
<p>James H. Elliott, Jr., Esquire Richardson Plowden & Robinson, P.A. 40 Calhoun Street, Suite 220 Charleston, SC 29401</p>	<p align="center">AND</p> <p>J.J. Anderson, Esquire Danielle Wegener, Esquire Anderson, Reynolds & Stephens, LLC 37 ½ Broad Street Charleston, SC 29401</p> <p align="center">ATTORNEYS FOR THE DEFENDANTS FIRST EXTERIORS, LLC</p>

WOMBLE CARLYLE SANDRIDGE & RICE LLP



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) Case No. 2012-CP-10- 3857

Shipwatch Condominium Association, Inc.
Plaintiff,

vs.

Carolina Concrete Systems, Inc.; Sisroy
Engineering, LLC; Robert G. Sisroy,
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.

Sisroy Engineering, LLC and Robert G.
Sisroy, individually,
Third-Party Plaintiffs,

vs.

Shipwatch Condominium Association,
Third-Party Defendant.

FILED
2015 JAN 14 AM 11:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**ACCROCRETE INC.'S
MEMORANDUM IN SUPPORT
OF ITS MOTION
FOR SUMMARY JUDGMENT**

Defendant Acrocrete, Inc. ("Acrocrete") submits this memorandum of law in support of the motion for summary judgment it filed on October 23, 2014. As set forth more fully below, Acrocrete is entitled to summary judgment as to Plaintiff's claims, pursuant to the S.C. CODE

ANN. § 15-3-530, 15-3-535 and the South Carolina common law interpreting that code section, because Plaintiff waited longer than three years to commence a civil action against Acrocrete from the date it “knew or reasonably should have known” of the alleged problem from which its claims arise.

I. RELEVANT FACTS

This is a case of alleged construction defects involving the Shipwatch beachfront condominium project at Wild Dunes, on the Isle of Palms in Charleston County, South Carolina (“Shipwatch” or the “project”). The project comprises four separate, 5-storey, multi-family residential buildings that include 104 separate and individually owned condominium units. The buildings were originally constructed between 1984 and 1986. The original exterior cladding on the buildings was an Exterior Insulation Finishing System (“EIFS”). Plaintiff has undertaken numerous repairs to the Shipwatch buildings over the last 25 years, including following Hurricane Hugo.

In 2002 and 2003, Plaintiff replaced certain portions of the EIFS cladding with a product called Direct Applied Exterior Finish System, or “DEFS”, which was then manufactured by Defendant Acrocrete.¹ Roughly between the years 2002 and 2010, the Plaintiff engaged an engineer, Defendant Robert Sisroy, P.E., to consult on various issues with the Shipwatch buildings relating to water ingress and other issues, and to recommend repairs. Among other things, Sisroy issued a report to Plaintiff dated August 23, 2008 in which identified several alleged “failures” of the DEFS cladding on the Shipwatch Buildings (the “Sisroy Report”). Specifically, Sisroy opined that

¹ On July 25, 2005, Acrocrete sold its entire product line, including DEFS, to Defendant BASF, under the terms of an Asset Purchase Agreement of the same date.

conditions he observed were "indicative of DEFS failure not in accordance with warrantee requirements." (See Sisroy Report, at pp. 5-7, a true and accurate copy is attached hereto as Exhibit "A").

On January 26, 2009, Plaintiff's General Manager, Linda Jernigan, sent a letter to Plaintiff's general contractor for building repairs, Defendant Carolina Concrete Systems, Inc. (The "Jernigan Letter", a true and accurate copy of which is attached hereto as Exhibit "B"). Referring to the Sisroy Report of August 23, 2008, the Jernigan Letter describes the alleged DEFS failure as follows:

As indicated in the Direct Applied Exterior Finish System (DEFS) Failure Section of the investigation report dated August 23, 2008, observations revealed that the DEFS cladding is failing in the form of blisters at numerous locations on the Shipwatch building claddings. Additionally, cracking and efflorescence are occurring at several stair towers indicating failure of the plaster stucco at these locations. Additional cladding unacceptable conditions are also identified in the report. Overall, the cladding conditions are indicative of failure of the DEFS system as well as failure of the parged stucco on stair towers.

Exhibit "B".

Plaintiff alleges failure of the DEFS in the above-captioned lawsuit against Acrocrete filed on June 13, 2012, three years and ten months after the Sisroy Report placed Plaintiff on *actual* notice of the alleged DEFS failure, and three years and five months after the Jernigan Letter expressed the Plaintiff's position that the DEFS had failed. As set forth below, the three-year statute of limitations had long since run by the time the Plaintiff filed the lawsuit against Acrocrete, and summary judgment in favor of Acrocrete is appropriate.

II. SUMMARY JUDGMENT STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment “shall be rendered forthwith when 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 judgment as a matter of law.” S.C.R.C.P. 56(c); *see also Media Gen. Communications, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 527 (2010).

When a defendant establishes entitlement to judgment as a matter of law, the Court must grant summary judgment unless the plaintiff comes forward with other evidence giving rise to genuine issues of fact. *Humana Hospital-Bayside v. Lightle*, 305 S.C. 214, 407 S.E.2d 637, 638 (1991). The plaintiff’s “response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him.” *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 311, 411 S.E.2d 672 (Ct. App. 1992).

However, “a court ‘cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be *reasonably possible* under the facts.’” *Bloom v. Ravoira*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000)(quoting *Hopson v. Clary*, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996)(emphasis added)). “It is not sufficient that [the plaintiff] create an inference [that] is not reasonable or an issue of fact that is not genuine.” *Priest v. Brown*, 302 S.C. 405, 408, 396 S.E.2d 638, 639 (Ct. App. 1990). Likewise, the court is not “required to single out some one morsel of evidence. . . to create an issue of fact that is not genuine.” *Englert, Inc. v. Netherlands Ins. Co.*, 433 S.E.2d 871, 873 (Ct. App. 1993)(quoting *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)).

III. STATUTE OF LIMITATIONS

The South Carolina Code provides that “[c]ivil actions may only be commenced within the periods prescribed in [Title 15] after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.” S.C. CODE ANN. § 15-3-20(A). The “civil action is commenced when the summons and complaint are filed with the clerk of court....” *Id.* at § 15-3-20(B). In South Carolina, “an action upon a contract, obligation, or liability, express or implied,” must be commenced within three years of accrual. *Id.* at § 15-3-530. The Plaintiff commenced its civil action against Acrocrete by filing the summons and complaint with the clerk of court on June 13, 2012, three years and ten months after the Sisroy Report placed the Plaintiff on notice of the condition over which the Plaintiff has sued, and three years and five months after the Jernigan Letter described the same problem.

Statutes of limitation “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.

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

Generally, the statute of limitations starts to run when the “cause of action shall have accrued.” S.C. CODE ANN. § 15-3-20; *see also Bar 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 (italics added). Construing the meaning of “reasonable diligence” standard required by the statute, the South Carolina Supreme Court observed:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. **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) (emphasis added). Furthermore, the “failure 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, 170 (1994).

The South Carolina Supreme Court case of *Dean v. Ruscon Corporation*, 321 S.C. 360, 468 S.E.2d 645 (1996), is particularly on point. In *Dean*, the Court determined when a plaintiff was on constructive notice of a claim in the context of a construction defect case. In 1984, the *Dean* plaintiff noticed a fine crack in the façade of her building which

she suspected was related to pile driving activity performed by Ruscon at a nearby construction site. Several months later, the plaintiff noticed that the original crack had worsened and that a second crack had appeared in another location. In 1991, the plaintiff learned that her building was no longer structurally sound, at which time she sued Ruscon, the contractor she believed to be at fault. The trial court determined that the statute of limitations had run, and the South Carolina Supreme Court affirmed, holding that "because Dean had *notice* in November 1984 that she may have [had] a cause of action against Ruscon, there [wa]s no need to toll the statute of limitations beyond that date." *Dean*, 321 S.C. at 366, 468 S.E.2d at 647. In addition, the Court held that "Dean's subsequent failure to act with reasonable diligence in pursuing such claim [wa]s no reason to toll the statute of limitations until such time as further damage evolved." *Id.* The Court found it "immaterial" that the plaintiff had failed to "comprehend[] that the original crack would expand causing the building to ultimately buckle...." *Id.*; *see also Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998)(affirming summary judgment in favor of defendant as to plaintiff's water intrusion claim based on statute of limitations where termite inspection report noting moisture in crawl space was issued to plaintiff over 3 years prior to lawsuit).

IV. ARGUMENT

Acrocrete is entitled to summary judgment on the Plaintiff's claims against it because the statute of limitations for such claims in South Carolina is three years, and the Plaintiff waited at least three years and ten months from the time it knew or should have known of the alleged DEFS failure until it commenced the action by filing the within lawsuit. As shown at pp.5-7 of Exhibit "A", the Sisroy Report to Plaintiff placed Plaintiff on notice of the alleged DEFS

failure on August 23, 2008. Under *Snell*, 278 S.E.2d at 334, “[t]he 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.” Further, as shown by the Jernigan Letter (Exhibit “B”), Plaintiff’s general manager sent a letter on January 26, 2009 that expressly described the alleged DEFS failure to the Plaintiff’s general contractor for building repairs.

The statute of limitations to commence a civil action for such a claim is three years, no more and no less. S.C. CODE ANN. § 15-3-530. “Statutes of limitations are not simply technicalities.” *City of N. Myrtle Beach*, 599 S.E.2d at 465. “On the contrary, they have long been respected as fundamental to a well-ordered judicial system.” *Id.* Because the Plaintiff “had notice in [August 2008 and January 2009] that [it] may have [had] a cause of action against [Acrocrete], there is no need to toll the statute of limitations beyond that date.” *Dean*, 321 S.C. at 366, 468 S.E.2d at 647. It also clear that a “failure of the injured party to comprehend the full extent of the damages . . . is immaterial.” *Wiggins*, 442 S.E.2d at 170. Thus, “there is no genuine issue as to any material fact,” on the dates of the Plaintiff’s actual notice of the claim, and of the date on which the Plaintiff commenced the civil action, more than three years later. S.C.R.C.P. 56(c). Accordingly, Acrocrete “is entitled to judgment as a matter of law.” *Id.*

[Signature page follows].

WOMBLE CARYLE SANDRIDGE & RICE, LLP



Gregory L. Horton (SC Bar No. 11343)
Adriane Malanos Belton (SC Bar No. 71994)
Ryan D. Gilsean (SC Bar No. 74756)
5 Exchange Street
Charleston, SC 29401
Main: (843) 722-3400; Fax.: (843) 723-7398

January 14, 2015

Charleston, South Carolina

*ATTORNEYS FOR DEFENDANT
ACROCRETE, INC.*

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2015, I served a copy of the within *Defendant Acrocrete, Inc.'s Memorandum in Support of Motion for Summary Judgment* to all Counsel of Record in the within entitled matter by sending a true copy of the same via U.S. mail, postage prepaid:

R. Patrick Flynn, Esquire Robertson Hollingsworth & Flynn LLC 177 Meeting Street, Suite 300 Charleston, SC 29401 ATTORNEYS FOR THE PLAINTIFF	David S. Cobb, Esquire Jennie Smith, Esquire Turner Padget Graham & Laney, PA P.O. Box 22129 Charleston, SC 29401 ATTORNEYS FOR THE DEFENDANTS CAROLINA CONCRETE SYSTEMS, INC.
Erin D. Dean, Esquire Stacey P. Canaday, Esquire Tupper, Grimsley & Dean, P.A. P.O. Box 2055 Beaufort, SC 29901-2055 ATTORNEYS FOR THE DEFENDANT GLASSTEC, INC.	R. Britton Kelly, Esquire Rosen, Rosen & Hagood P.O. Box 893 Charleston, SC 29402 ATTORNEYS FOR THE DEFENDANT EFCO CORP.
David A. Root, Esquire Kernodle Root & Coleman P.O. Box 13897 Charleston, SC 29422-3897 ATTORNEYS FOR THE DEFENDANT BASF CORP.	K. Michael Barfield, Esquire Barnwell Whaley Patterson & Helms P.O. Drawer H Charleston, SC 29402 ATTORNEYS FOR THE DEFENDANTS GARY FREEMAN ARCHITECT, INC. AND GARY FREEMAN, INDIVIDUALLY

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

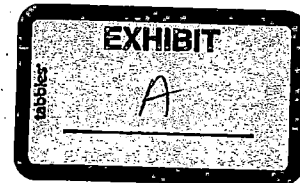
<p>R. Britton Kelly Esquire Rosen, Rosen & Hagood, LLC 151 Meeting St., Suite 400 Charleston SC 29401 ATTORNEYS FOR THE DEFENDANT W.C. JOHNSTON ARCHITECTURAL SALES, INC.</p>	<p>Samia Nettles, Esquire Richardson Plowden & Robinson, P.A. 40 Calhoun Street, Suite 220 Charleston, SC 29401 ATTORNEYS FOR THE DEFENDANTS GLASGOW ROOFING</p>
<p>Paul Sperry, Esquire Tyler P. Winton, Esquire Carlock, Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 ATTORNEYS FOR THE DEFENDANTS SISNROY ENGINEERING, LLC AND ROBERT G. SISNROY, INDIVIDUALLY</p>	<p>Amanda R. Maybank, Esquire Marshall A. Earhart, Esquire Jason A. Daigle, Esquire Maybank Law Firm, LLC P.O. Box 12579 Charleston, SC 29422 ATTORNEYS FOR THE DEFENDANT CHARLESTON GLASS COMPANY, INC.</p>
<p>James H. Elliott, Jr., Esquire Richardson Plowden & Robinson, P.A. 40 Calhoun Street, Suite 220 Charleston, SC 29401</p> <p style="text-align: center;"><u>AND</u></p> <p>J.J. Anderson, Esquire Danielle Wegener, Esquire Anderson, Reynolds & Stephens, LLC 37 ½ Broad Street Charleston, SC 29401</p> <p style="text-align: center;">ATTORNEYS FOR THE DEFENDANTS FIRST EXTERIORS, LLC</p>	

WOMBLE CARLYLE SANDRIDGE & RICE LLP



**ROOF FLASHING INSTALLATION DEFICIENCIES AND
EXTERIOR CLADDING FAILURE INVESTIGATION**
Shipwatch Condominiums

Prepared for:
Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime



Prepared by:
Robert G. Sisroy, P.E.

August 23, 2008

SISROY ENGINEERING L.L.C.

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SISROY ENGINEERING LLC

P. O. Box 12806

Charleston, South Carolina 29422

(843) 795-0450

(843) 795-0307 Fax

August 23, 2008
2008-023

Linda Jernigan, General Manager
Shipwatch Horizontal Property Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

RE: Roof Flashing Installation Deficiencies and Exterior Cladding Failure
Investigation
Shipwatch Condominiums

Dear Ms. Jernigan,

As requested, a limited investigation of roof flashing deficiencies and exterior cladding failure has been accomplished. The purpose of the investigation was to determine the extent of flashing deficiencies at the sloped roof terminations at the end walls in Buildings A through D. The purpose was also to determine the extent of failure of the exterior cladding on the buildings particularly at the end walls and balcony end walls and partitions. Lack of proper flashings installed in such a manner to prevent moisture entering the wall through intersections with the roof plane is in violation of the International Building Code (IBC). Additionally, failure of the exterior cladding resulting in conditions allowing water intrusion is in violation of IBC requirements and cladding manufacturer's installation requirements. The following report delineates deficiencies in the respective material installations and provides recommendations for remediation.

DESCRIPTION

Shipwatch Condominium complex consists of four five-story buildings, A through D, with parking under the buildings at grade level. The rear of the buildings face the ocean in a south orientation. Balconies and walkways are at the rear and front of the buildings respectively with stairwells and elevator towers at the front or north face of the buildings. There is a steep hip or mansard metal roof above the third floor elevation at each end of the building where there is a vertical three-story wall. The fifth floor wall terminates above the end metal roof. The exterior cladding is primarily a direct applied exterior finished system (DEFS). This installation is comprised of cement board fastened to stud framing with mesh and polymer based finish on the face of the based coated cement board. The metal roofs and DEFS were part of a remediation project installed concurrently in approximately 2003. (See Photo 1 for representative configurations) It should be noted that consistent with time frame of building construction, the buildings are identified in order of construction, Buildings A & B being built first and Buildings C & D

last. As a result there are variations in configuration particularly at the roofs above the third floor at the end walls. Buildings A & B were constructed with an inside corner at the termination of the roof. (See Photo 2) Buildings C & D were constructed with a continuous in plane wall at the termination at the roof. (See Photo 3)

BACKGROUND

As part of remediation and repair of the Shipwatch Condominiums, clay tiled roofing was removed and replaced with standing seam metal panel roofing. Concurrent with this, the bulk of the EIFS exterior cladding was replaced with DEFS over the majority of the building exterior. These projects were permitted in February 2003 for metal roofing and November 2003 for DEFS; therefore the applicable building code was the International Building Code (IBC) 2000. At several locations, the DEFS stucco was integrated with the standing seam metal panel roof. Following installation of the DEFS exterior cladding and the standing seam metal roofs, the flat roofs on the primary area of the building were replaced with built up roofing.

OBSERVATIONS

As indicated previously, the limited investigation focused on the metal roof termination conditions at the DEFS clad walls. Additionally, the investigation also focused on the performance of the DEFS at several locations on the buildings. The following items delineate the results of the observations with regard to deficiencies in either the installation of the roofing and flashings or the DEFS exterior cladding installation.

Standing Seam Roof Termination Flashing Deficiencies

- I. Limited observations of all four buildings were performed with regard to the sloped roof terminations at each end of the building. Based on availability and access, some observations were made from a lift and others were performed from the ground level. As mentioned previously, Building A & Building B construction at sloped third floor roof terminations include inside corners requiring the roof to jog from the inside corner to the outside to accomplish drainage at the roof/wall termination as illustrated in photograph 2.
 1. Observations of the third floor roof termination at the east and west ends of Building A revealed that the flashings, which wrap around the corner are overlapped by the DEFS stucco. (See Photo 4) There is no evidence of a kick out or water dam flashing to ensure water does not infiltrate behind stucco surfaces. The existing condition promotes water intrusion behind the stucco in violation of IBC Section 1405.3. This condition is also in violation of IBC Roof Assemblies and Roof Top Structure Section 1503.2 which requires that flashing shall be installed in such a manner as to prevent moisture entering the wall at intersections with the roof plane. Note in photograph 4 that there is no mechanism other than caulk to stop water from running behind the stucco at the vertical flashing/stucco

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interface. A similar condition was observed at the west elevation at the stucco flashing intersection where the stucco overlaps the vertical wall corner flashing with no evidence of a kick out to ensure water intrusion does not occur behind the stucco and contaminate the wall. These conditions are not in accordance with contract requirements. (See Photo 5)

- II. Observations of the sloped roof terminations at the third floor roof of Building B revealed that a fabricated corner flashing was installed wrapping around the corner on the face of the stucco. However, the top of the flashing is simply sealed with caulk with no counter flashing promoting a water intrusion condition. Counter flashing was required by the contract. (See Photo 6) Also note in photograph 7 that no kick out or water dam flashing was installed thus directing water onto the face of the stucco and the control joint below promoting water intrusion conditions in the adjacent wall as described by the Commercial Building Consultant's report of January 31, 2008. The absence of kickout flashing is in violation of original contract requirements.
- III. Observations of the third floor sloped roof terminations at the east and west ends of Building C revealed evidence of kick out flashings at both ends of the building.
 1. Although there was evidence of kick out or water dam flashing at the east end third floor roof termination, observations revealed no evidence of counter flashing to ensure moisture does not enter the system as required by the contract. Observations revealed evidence that the stucco and flashing intersection was heavily caulked which was not the proper configuration to ensure prevention of moisture entering the wall at the flashing joint. (See Photo 8) Water intrusion can occur at the upper portion of the flashing since no counter flashing or overlap of the stucco was observed.
 2. Observations of the west elevation also indicated evidence of a kick out configuration; however, the flashing installation adjacent to the kick out is an improper configuration as illustrated in photograph 9. There is no counter flashing and it appears the flashing is simply an extension of the metal roof vertical panel flashing with heavy amounts of caulk to seal it to the wall. This configuration is not in accordance with contract requirements for kickout flashing and industry standard of care for flashing installations adjacent to stucco. This configuration is not in accordance with Code requirements since the flashing is not installed in such a manner as to prevent moisture entering the wall without massive amounts of caulk at the flashing and stucco interface.
- IV. Observations of the third floor sloped roof terminations at Building D revealed different configurations at each end of the building.
 1. Observations at the east end of the building revealed an improper sloped roof termination configuration such that the standing seam roof/wall flashing was

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overlapped by the stucco at the vertical face with no evidence of a kick out to ensure water intrusion did not occur behind the overlapped stucco. Also note that there was no counter flashing and that the intersection was simply caulked which promotes a water intrusion condition. This configuration is not in accordance with contract requirements that specified counter flashing and kickout flashing. (See Photo 10)

2. Observations of the third floor sloped roof termination at the west end of Building D revealed a different flashing configuration. Observations revealed that the metal panel roof/wall intersection flashing was extended onto the face of the stucco panel. However, the counter flashing terminated prior to termination of the panel roof flashing. (See Photo 11) The extension flashing was then simply sealed to the wall with caulk without counter flashing and kickout flashings thus promoting water intrusion when the caulk fails. Similar to the other installations with the exception of Building C, water is directed to drain onto the face of the stucco and the control joint directly below further promoting water intrusion. The installation and drainage condition is in violation of the contract requirements.

- V. In general, observations revealed that the third floor sloped roof termination flashings on all of the buildings are installed improperly at the roof termination and stucco interface promoting water intrusion in violation of the Code. According to the Commercial Building Consultant's report, there is evidence of water intrusion adjacent to this area at these building locations. Roofing and flashing which is not installed in a manner to prevent moisture from entering the wall is in violation of roofing contract and IBC requirements. However, observations revealed evidence of kick out flashing having been installed at the sloped roof terminations on Building C.

Direct Applied Exterior Finish System (DEFS) Failure

- I. Observations at numerous building locations on several elevations primarily, but not limited to, Buildings A & C revealed evidence of blistering of the DEFS lamina off of the concrete board substrate. Observations indicate that the lamina has failed to bond and has pulled away from the board in the form of a blister in the surface finish. Photograph 12 documents a blister condition in the third floor level at the west end of Building C. Photographs 13 and 14 document blistering at the west end, fourth floor balcony sidewall of Building C. As indicated, currently the observations indicate but are not limited to the blistering condition on Buildings A & C, but predominately on Building C. Further and more detailed observations are required on other building elevations to inventory all the blistering failure conditions. This condition is indicative of DEFS failure not in accordance with warrantee requirements.
- II. Observations of the masonry walls and Portland Cement Plaster Stucco installations at the stair towers on all Shipwatch buildings revealed evidence of

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cracking in the parged plaster stucco installation at Buildings A, C & D. The heaviest cracking was primarily observed at the west stair tower of Building A. Observations revealed heavy efflorescence emanating from cracking under the polymer based finish coat as illustrated in photographs 15 & 16.

1. Observations at Buildings C & D also revealed evidence of efflorescence in the stair towers at both ends of Building C and evidence of cracking in the west stair tower of Building D. Similarly these conditions were based on a limited visual survey and additional cracking may be evident upon closer observation at additional stair tower locations in other buildings.

- III. Observations of the west elevation of Building B revealed evidence of raised joint lines in the field of the wall in the area of the first three floors. The panel lines are evident at ends and edges of the cement board panels. This condition is unsightly and not in accordance with industry standards of care for installation of the DEFS stucco system.

CONCLUSION

Observations revealed evidence of improper installation of flashings at third floor roof/wall intersections such that they are not in accordance with IBC requirements and industry standard of care to prevent moisture from entering the wall. Moreover, the installations are not in accordance with contract requirements for flashing at the third floor roof/wall stucco cladding intersections. According to the report provided by Commercial Building Consultants dated January 31, 2008, there was evidence of water intrusion at each location adjacent to the sloped roof termination flashings at all of the buildings. This condition is also in violation of IBC requirements. Consequently, all flashing installations must be remediated with counter flashing and kick out installations to ensure water intrusion does not occur in the stucco exterior cladding adjacent to the metal roof terminations and wall intersections.

Observations of DEFS and stucco installations at several building locations revealed evidence of failure of the DEFS system as well as failure of the parged stucco on masonry block. Consequently, it will be necessary to repair all failed stucco applications in accordance with manufacturer's installation requirements and warranty requirements.

RECOMMENDED REPAIR

- I. As discussed previously, there is evidence of improper installation of all roof termination flashings at the third floor roof terminations at each end of each of Buildings A through D at the metal roof and stucco clad wall intersections. Improperly installed flashings must be remediated to include proper counter flashings and kick out flashings properly integrated with the DEFS stucco system as required by the original contract. All termination flashings must be properly placed with welded kick out configurations similar to the installations at the metal-sloped roof terminations adjacent to chimney chases at the fifth floor level

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on all buildings. Considering the evidence of improper installation resulting in water intrusion, the remediation and proper installation of the sloped roof termination flashing is a warranty issue, which should be accomplished by the metal roofing installation contractor. Proper repair and replacement of the DEFS stucco system will be the responsibility of the stucco contractor.

- II. All areas of failed blistering lamina on the DEFS stucco system must be repaired in accordance with manufacturer's repair requirements. All repaired areas must match adjacent areas in color and contrast following the repair of the failed lamina areas. Currently, areas of failure were observed but not limited to Buildings A & C; however, all buildings must be visually inventoried and observed where necessary to ensure no other lamina failures are occurring. All failures of the DEFS lamina must be fully repaired.
- III. Several areas of cracked, parged stucco on stair towers were observed. Numerous locations are exhibiting efflorescence indicative of water intrusion behind the parged stucco consistent with failure of the stucco system. As a minimum, these conditions are occurring but are not limited to Buildings A, C & D, therefore, all areas of cracked and failed parged stucco must be properly repaired in accordance with manufacturer's installation requirements. As a minimum, cracked and failed parged stucco must be removed and replaced with properly installed plaster stucco with proper finish coat application.
- IV. It is recommended that the panel line condition on the west elevation of Building B be remediated at the time of DEFS repair. Other building end elevations should be observed for similar conditions and repaired as necessary.

This report is based on available information at the time of development of the report. If additional information becomes available which has a bearing on conclusions then an addendum will be provided. Representative photographs are enclosed. Additional photographs on file may document additional improper conditions. If you have any questions concerning this report, please call me.

Sincerely,

Robert G. Sisnroy
Robert G. Sisnroy, P.E. 8/20/08

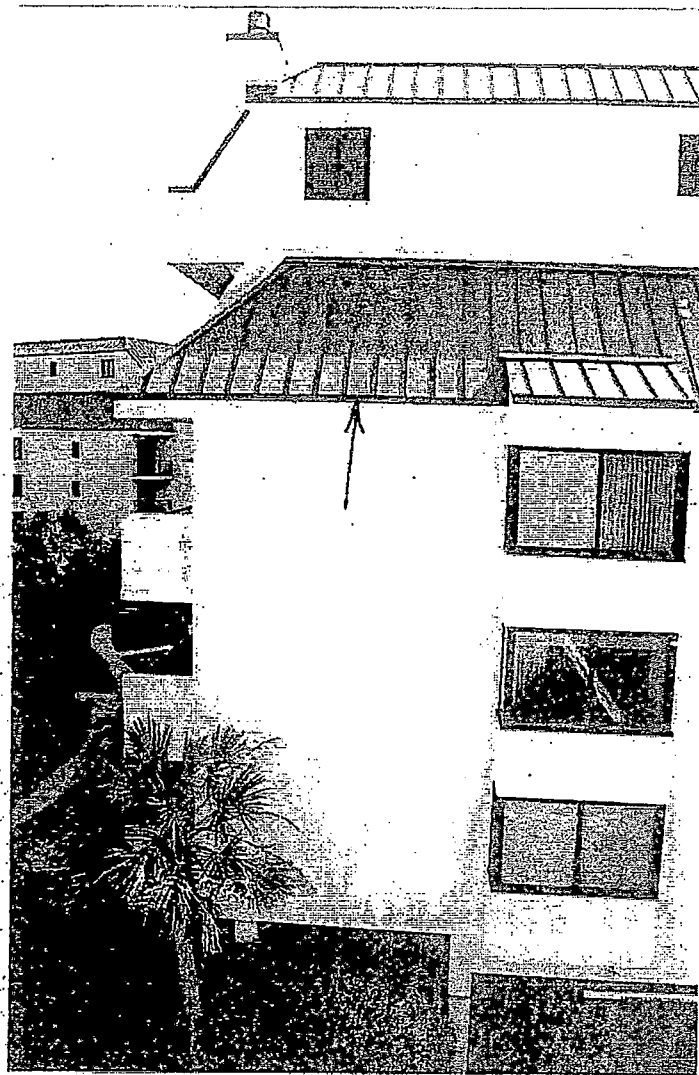


Photo 1: Representative configurations

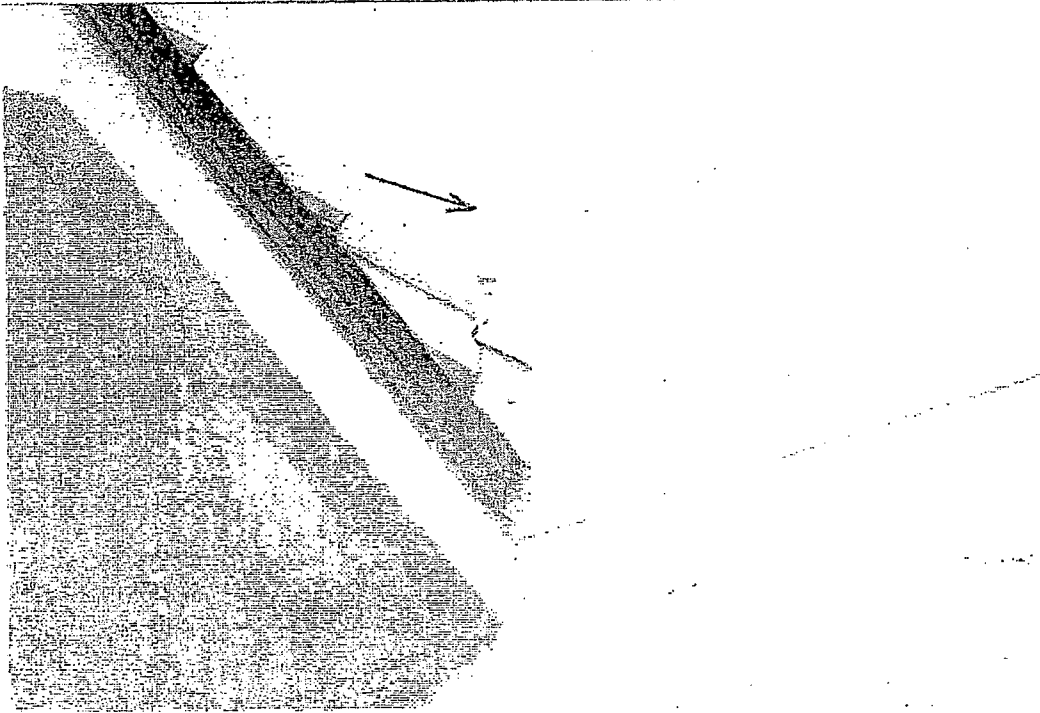


Photo 2: Buildings A & B were constructed with an inside corner at the termination of the roof.



Photo 3: Buildings C & D were constructed with a continuous in plane wall at the termination at the roof.

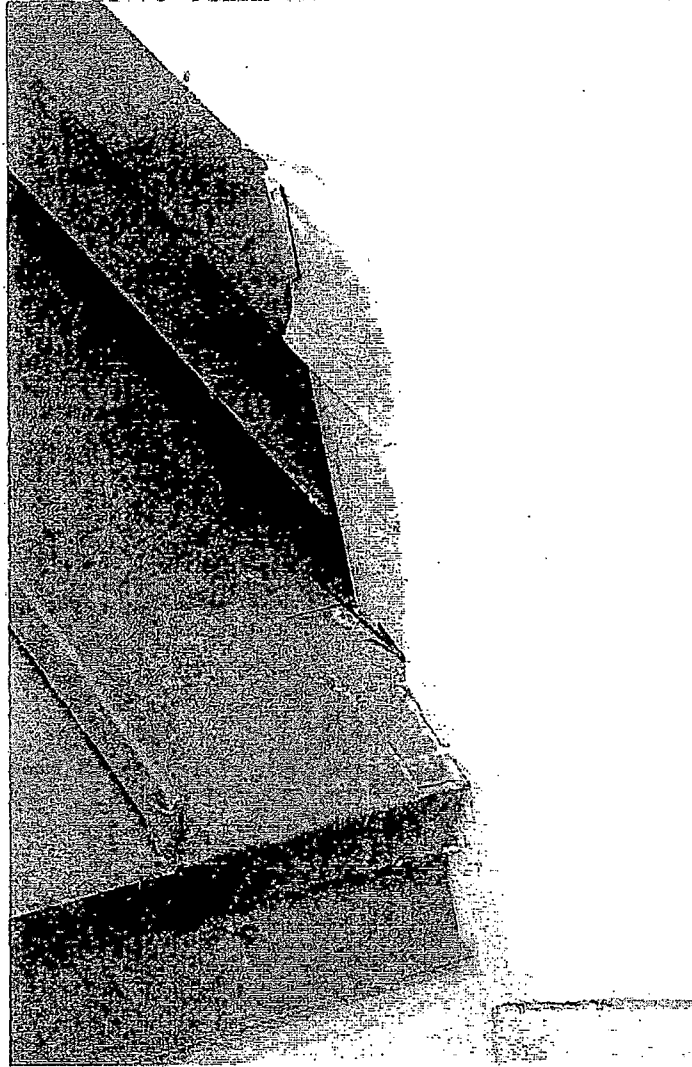


Photo 4: Observations of the third floor roof termination at the east and west ends of Building A revealed that the flashings, which wrap around the corner are overlapped by the DEFS stucco. Note that there is no mechanism other than caulk to stop water from running behind the stucco at the flashing/stucco interface.

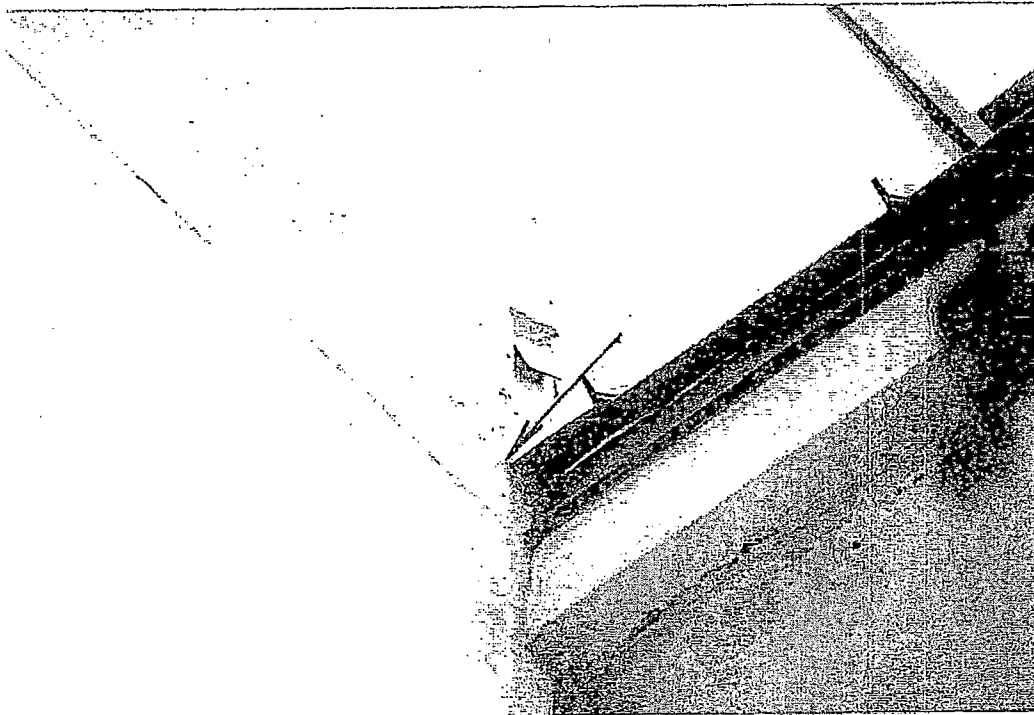


Photo 5: A similar condition was observed at the west elevation at the stucco flashing intersection where the stucco overlaps the vertical wall corner flashing with no evidence of a kick out to ensure water intrusion does not occur behind the stucco and contaminate the wall.

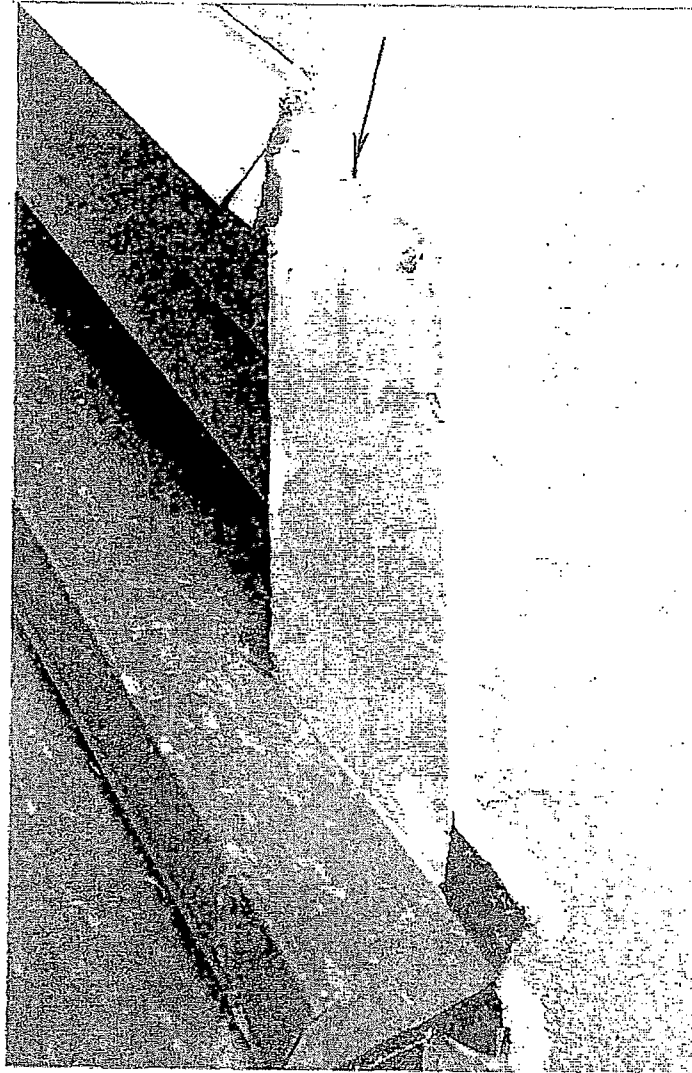


Photo 6: The top of the flashing is simply sealed with caulk with no counter flashing promoting a water intrusion condition. Counter flashing was required by the contract.



Photo 7: Note that no kick out or water dam flashing was installed thus directing water onto the face of the stucco and the control joint below promoting water intrusion conditions in the adjacent wall as described by the Commercial Building Consultant's report of January 31, 2008. The absence of kickout flashing is in violation of original contract requirements.

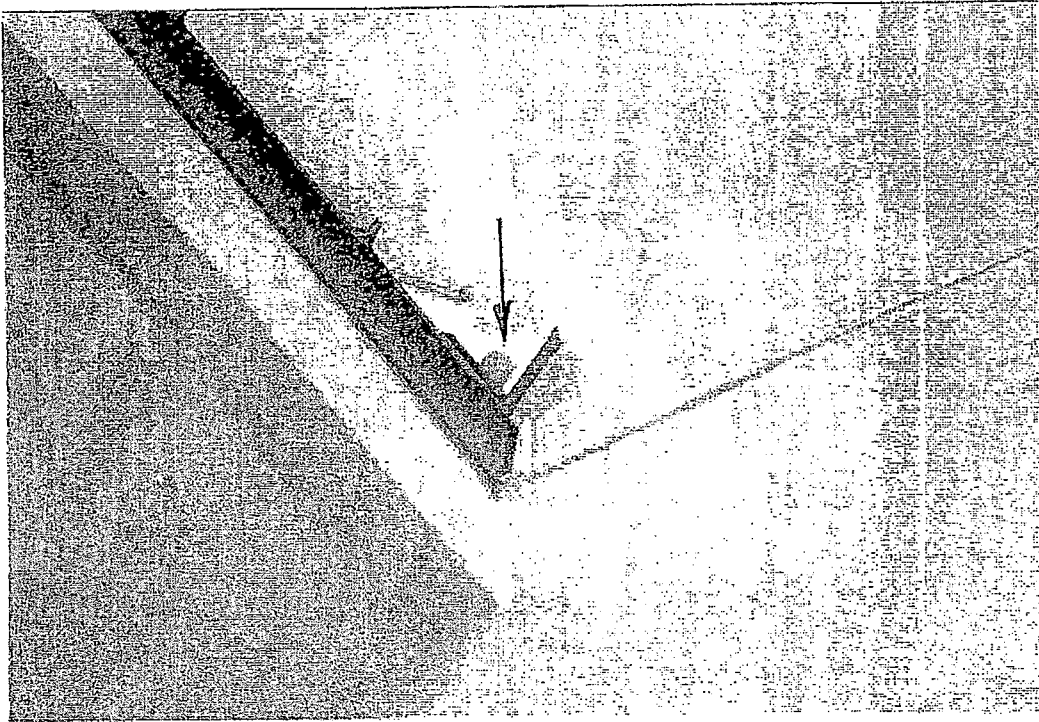


Photo 8: Although there was evidence of kickout or water dam flashing at the east end third floor termination, observations revealed no evidence of counter flashing to ensure moisture does not enter the system as required by the contract. Observations revealed evidence that the stucco and flashing intersection was heavily caulked that was not the proper configuration to ensure prevention of moisture entering at the wall at the flashing joint.

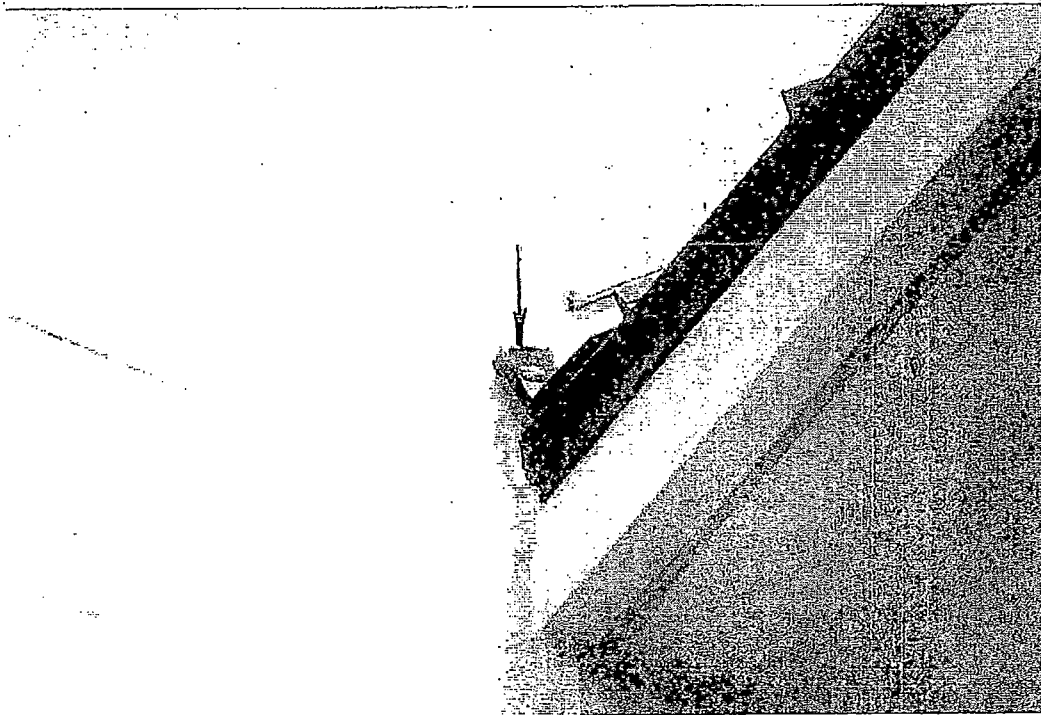


Photo 9: Observations of the west elevation also indicated evidence of a kickout configuration; however, the flashing installation adjacent to the kickout is an improper configuration. There is no counter flashing and it appears the flashing is simply an extension of the metal roof vertical panel flashing with heavy amounts of caulk to seal it to the wall.

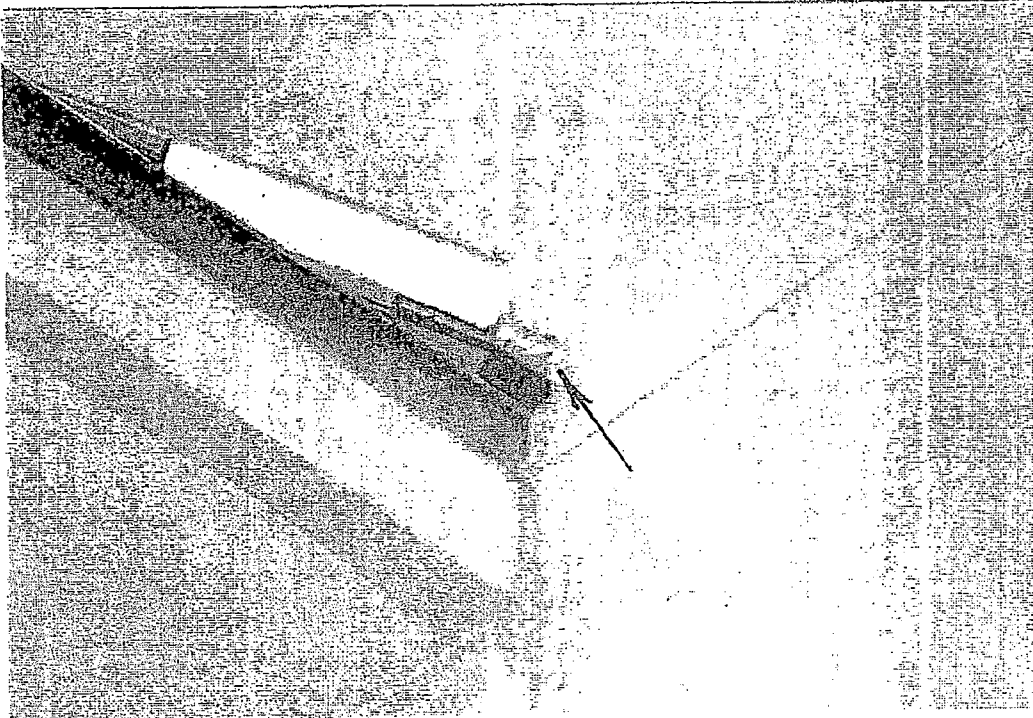


Photo 10: Observations at the east end Building D revealed an improper sloped roof termination configuration such that the standing seam roof/wall flashing was overlapped by the stucco with no evidence of a kick out to ensure water intrusion did not occur behind the overlapped stucco. Also note that there was no counter flashing and that the intersection was simply caulked which promotes a water intrusion condition. This configuration is in violation of IBC Section 1503.2.

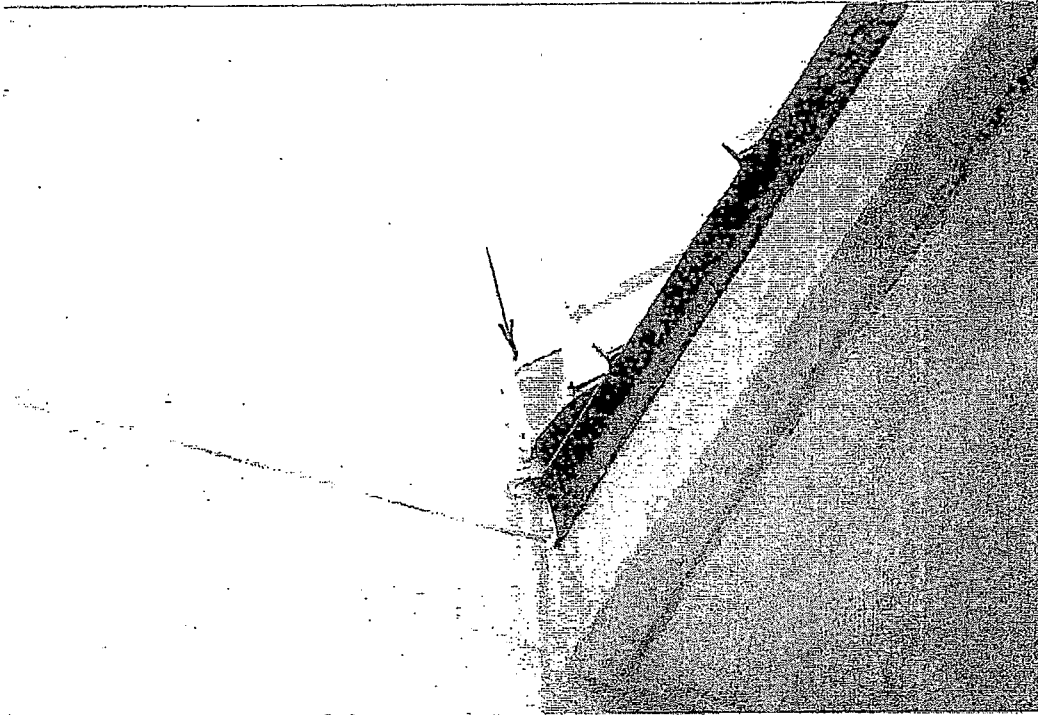


Photo 11: Observations of the third floor sloped roof termination at the west end of Building D revealed a different flashing configuration. Observations revealed that the metal panel roof/wall intersection flashing was extended onto the face of the stucco panel. However, the counter flashing terminated prior to termination of the panel roof flashing.

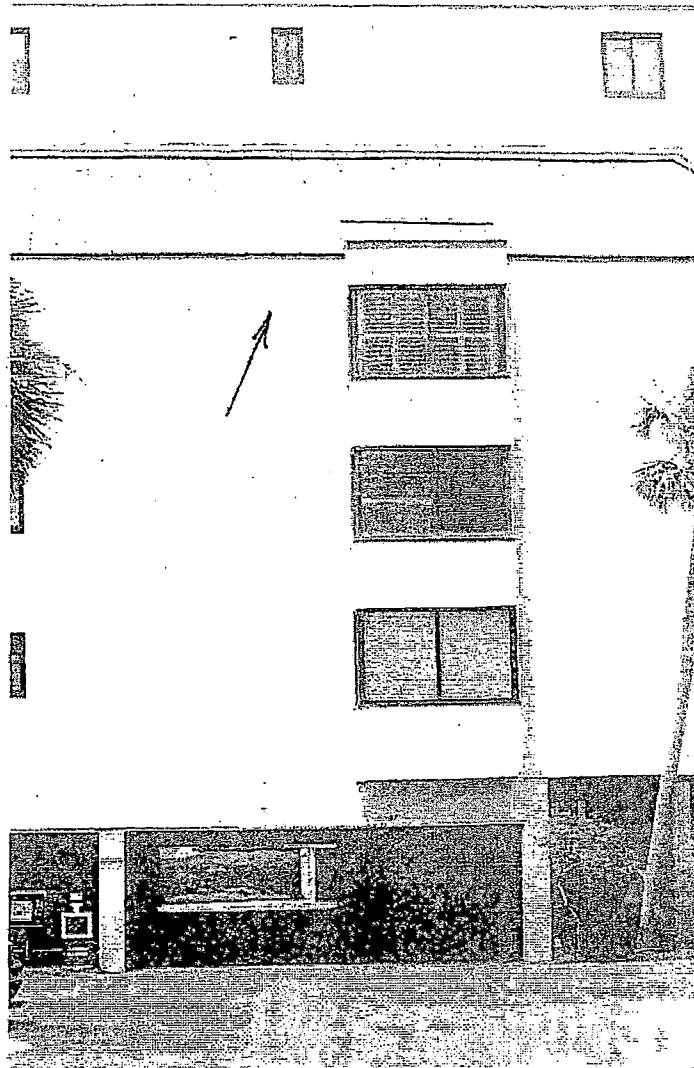


Photo 12: Blister condition in the third floor level at the west end of Building C.

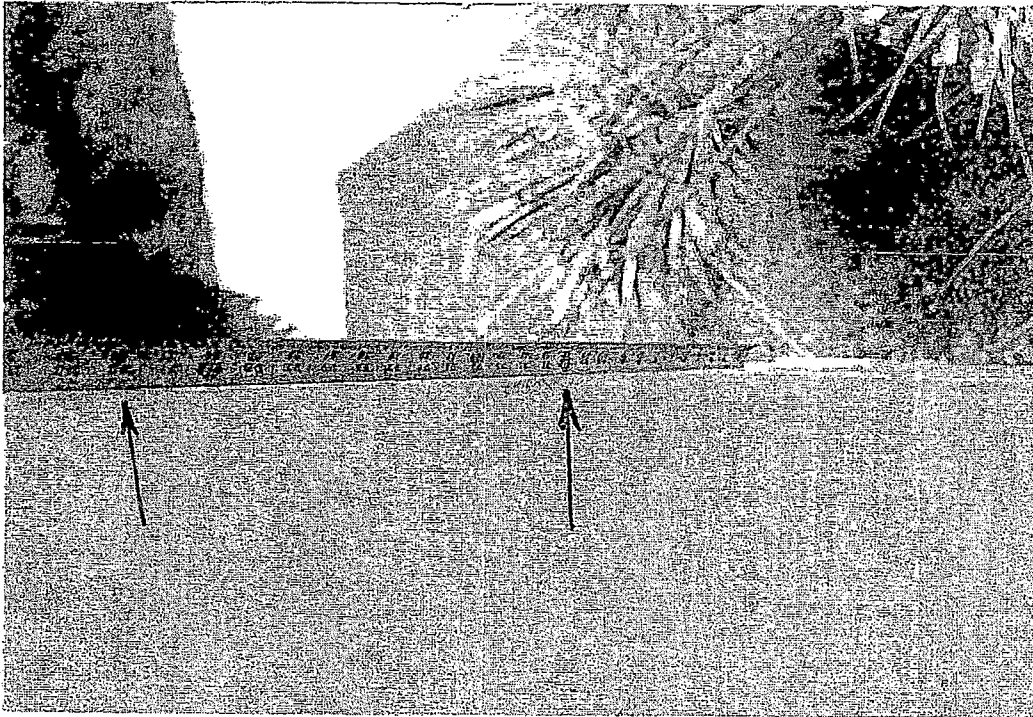


Photo 13: Blistering at the west end fourth floor balcony sidewall of Building C.

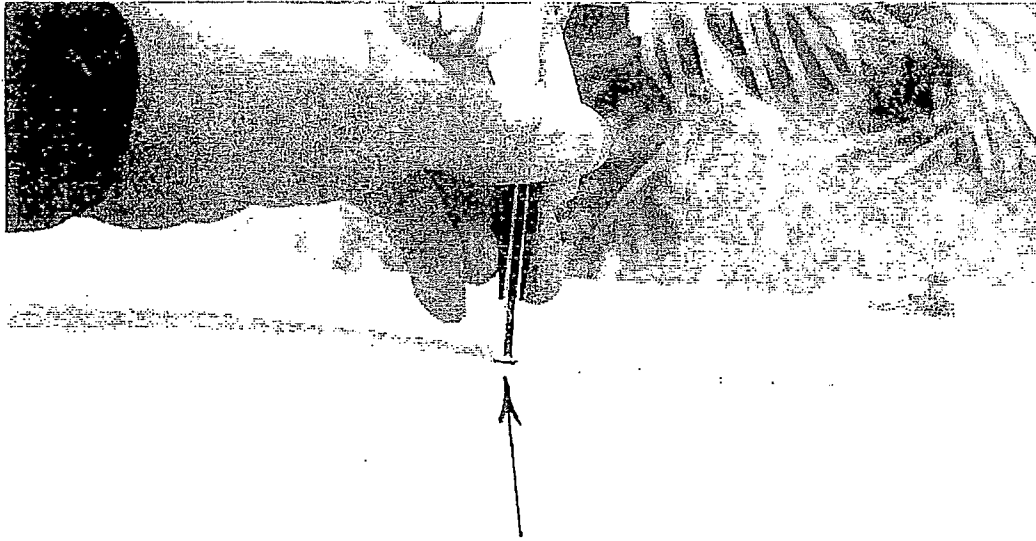


Photo 14: Blistering at the west end fourth floor balcony sidewall of Building C.

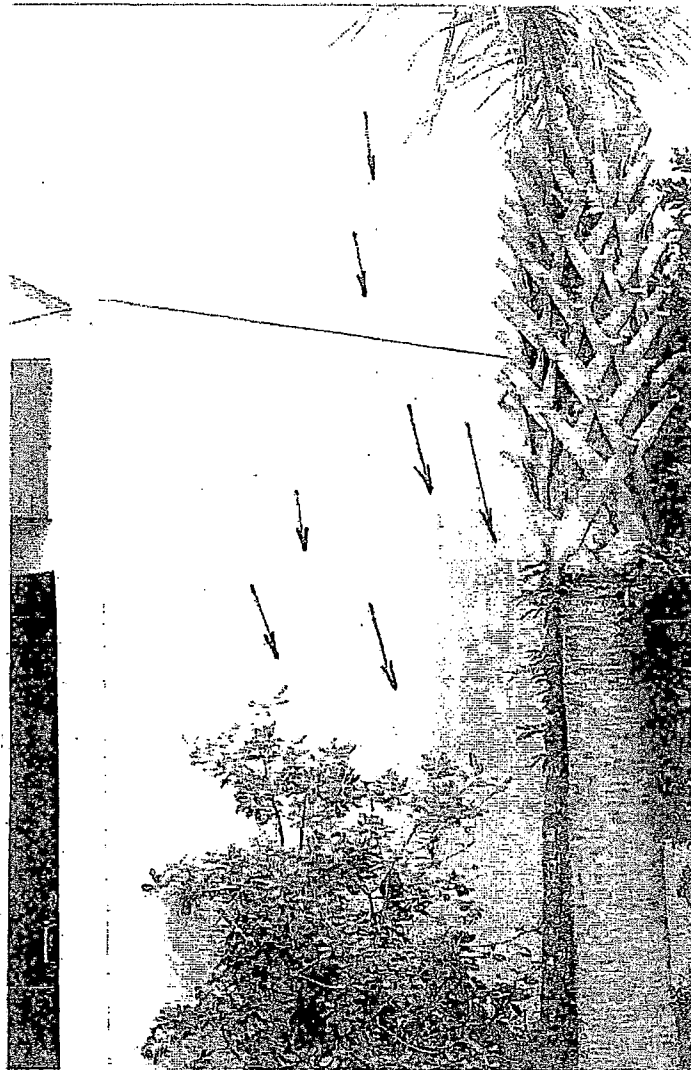


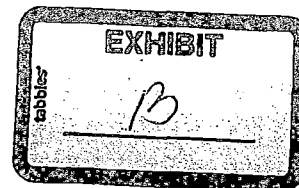
Photo 15: Observations revealed heavy efflorescence emanating from cracking under the polymer based finish coat.



Photo 16: Observations revealed heavy efflorescence emanating from cracking under the polymer based finish coat.

Shipwatch

AT WILD DUNES



January 26, 2009

Mr. Bob Wiggins
Carolina Concrete Systems Inc.
P. O. Box 13149
Charleston, South Carolina 29422


RE: DEFS Cladding Failure and Parged Stucco Failure
Shipwatch Condominiums

Dear Bob,

As indicated in the Direct Applied Exterior Finish System (DEFS) Failure Section of the investigation report dated August 23, 2008, observations revealed that the DEFS cladding is failing in the form of blisters at numerous locations on the Shipwatch building claddings. Additionally, cracking and efflorescence are occurring at several stair towers indicating failure of the plaster stucco at these locations. Additional cladding unacceptable conditions are also identified in the report. Overall, the cladding conditions are indicative of failure of the DEFS system as well as failure of the parged stucco on stair towers.

Consequently, Shipwatch Horizontal Property Regime requests that Carolina Concrete Systems Inc. repair the failed claddings in accordance with manufacturer's installation requirements and warranty requirements. Please contact me to make arrangements to accomplish this work as soon as possible.

Yours Sincerely,
SHIPWATCH HOA


Linda Jernigan
General Manager

CC: Bob Sisroy, Sisroy Engineering ✓

7600 Palmetto Drive, Isle of Palms, South Carolina 29451 843-886-5267

Sisroy 00174
2254-45006

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Judge

Appellate Case No. 2015-001644

Circuit Court Case No. 2012-CP-10-3857 and 2012-CP-10-3858

Shipwatch Condominium Association, Inc., Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonnebom, 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, Gary Freeman, individually; Defendants,

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

Oscar Mendiondo, Individually and as a representative of a class of similarly situated owners of condominium units in the horizontal property regime known as Shipwatch Condominiums, Appellants,

v.

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

Of which Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec,

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SEP 30 2015

SC Court of Appeals

Inc.; Spectech, Inc.; Sonnebom, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, EFCO Corp.; W.C. Johnston Architectural Inc.; Gary Freeman, individually; are the Respondents.

PROOF OF SERVICE

I certify that I have served Respondents Acrocrete, Inc.'s *Motion to Dismiss Appeal* by depositing a copy in the U.S. mail, postage paid, on September 28, 2015, addressed to counsel of record as set forth below:

Attorney for Plaintiff:

R. Patrick Flynn, Esq.
Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, SC 29401

Attorneys for First Exteriors LLC:

J.J. Anderson, Esq.
Danielle Wegener, Esq.
Anderson, Reynolds & Stephens, LLC
37 2 Broad St.
Charleston, SC 29401

And

James H Elliott, Jr., Esq.
Richardson Plowden & Robinson, PA
40 Calhoun Street, Suite 220
Charleston, SC 29401

Attorney for Robert G Sisroy and Sisroy Engineering LLC:

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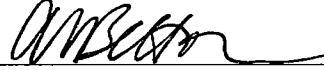
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September 28, 2015

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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

Dear Ms. Kitchings:

With regard to the above referenced matter, please find enclosed the original and 7 copies of Acrocrete, Inc.'s Motion to Dismiss Appeal as to Acrocrete, Inc., the proof of service, and a check in the amount of \$25.00 to cover the filing fee. Please date stamp the copy and return it to us in the self-addressed, stamped envelope which is also enclosed.

Thank you for your assistance.

Sincerely,



Adriane Malanos Belton

AMB/mmm
Enclosures
cc: All counsel of record

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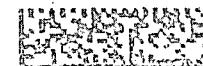
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