

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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NOV 12 2015

SC Court of Appeals

Case No.: 2012-CP-10-3857 and 2012-CP-10-3858

Appellate Case No.: 2015-001644

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.; 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 Defendants,

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

and

Oscar Mendiondo, individually and as 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.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually; Defendants,

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

individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; and Gary Freeman, individually; are Respondents.

APPELLANTS' REPLY BRIEF

R. Patrick Flynn
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Attorneys for Appellants

In its Initial Brief filed on September 25, 2015, Respondent Carolina Concrete Systems, Inc. (“CCS”) asserts that Appellants are seeking damages for defects during the original construction of Shipwatch in the 1980's. Respondent CCS's Initial Brief at 2-3. However, as indicated in Appellants' Initial Brief filed on August 27, 2015, Appellants did not sue any parties involved in the original design and construction of Shipwatch in the 1980's, and Appellants do not allege that the Respondents performed any of that original construction or design work in the 1980's.

Instead, Appellants brought the underlying action against CCS and the other Respondents for defects, deficiencies, and damages relating to the repairs and renovation work that CCS and the other Respondents performed from 2002-2012. In its Initial Brief, CCS contends that the Appellants' damages were not caused by deficiencies in the 2002-2012 repair work, but instead relate to defects in the original 1980's construction. Of course, that is a question of causation for the jury, and is not an appropriate basis for summary judgment as it represents a genuine issue of material fact. Further, the causation argument asserted by CCS certainly does not support its contention that there is no genuine issue of material fact relating to when the statute of limitations began to run on repairs performed by CCS and the other Respondents.

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

performed by CCS and the other Respondents. Those issues were not known until Appellants' consulting engineer SKA issued its reports in 2012, and the underlying lawsuit was filed within 120 days after that report.

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

Respondent CCS's position is inconsistent with the discovery rule as set forth in Appellant's Initial Brief. Initial Brief of Appellant, at pp. 16-19; see also *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996). The lower court erred in finding that there was no genuine issue of material fact regarding CCS's statute of limitations defense, and the lower court's order granting partial summary judgment to the Respondents must be reversed, with instructions to allow the Appellants' claims to be submitted to the jury.

Briefs from Other Respondents

In the interest of brevity, Appellants hereby consolidate the reply to the Response Briefs submitted by Respondents other than CCS, which was addressed above. The arguments asserted in the briefs of these other Respondents fall into two categories: (1) arguments in support of the grant of partial summary judgment in favor of CCS; and (2) arguments in support of summary judgment in favor of the filing Respondent. As to the former, Appellants have already responded to those

arguments in their Initial Brief and this Reply Brief above. As to the latter, no response is necessary because these arguments were not presented to, nor were their motions heard by, the trial court. For example, Respondents EFCO Corp. and W.C. Johnston Architectural Sales, Inc. submitted a Response Brief in support of their own Motion for Summary Judgment. The trial court has not heard those motions; has not ruled on the arguments presented in the EFCO/W.C. Johnston Response Briefs; nor has it considered the exhibits referenced in their Motion and Response Brief. Thus, it would be improper for the Court of Appeals to review the EFCO/W.C. Johnston Motion for Summary Judgment or its exhibits absent a ruling from the trial court. Likewise, the trial court has not ruled on any motion for summary judgment filed by any Respondent other than CCS. Therefore, their efforts to argue their respective motions for summary judgment in this Court for the first time are not permissible in this appeal.

Respondent First Exteriors, LLC further asserts in its Response Brief that there is an issue regarding the preservation of issues for review. That Respondent fails to recognize, however, that Appellants have indeed raised all issues in this appeal to the trial court, and the trial court ruled upon the issues set forth in Appellants' multiple submissions, as follows: (1) Response in Opposition to CCS Motion for Summary Judgment, filed on October 27, 2014; (2) Oral argument and exhibits offered in opposition to summary judgment on October 27, 2014; (3) Supplemental Response in Opposition to CCS Motion for Summary Judgment and Memorandum in Support of Plaintiffs' Motion for Rehearing and Reconsideration, filed on November 21, 2014.

For the foregoing reasons, Appellants respectfully request that this Court reverse the lower court's Order granting Partial Summary Judgment to Respondent CCS, with instructions to have the Appellants' claims in the underlying lawsuits be submitted to the jury for determination.

Respectfully Submitted,

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By:


R. Patrick Flynn

Attorneys for Appellants

Charleston, South Carolina

November 9, 2015

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CERTIFICATE OF SERVICE

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SC Court of Appeals

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

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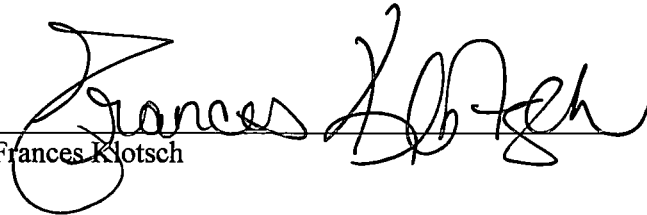
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Frances Klotsch

November 9, 2015
Charleston, South Carolina

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Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

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

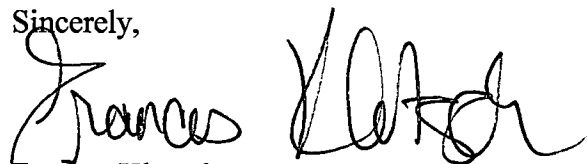
Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Appellants' Reply Brief and one original and six (6) copies of Appellants' Return to Glasgow Roofing's Motion to Dismiss Appeal in the above-referenced matter. By copy of this letter, I am serving the same upon all counsel of record.

I have also enclosed a self-addressed, postage-paid envelope and request that you return one file stamped copy to me at your convenience.

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

Sincerely,



Frances Klotsch

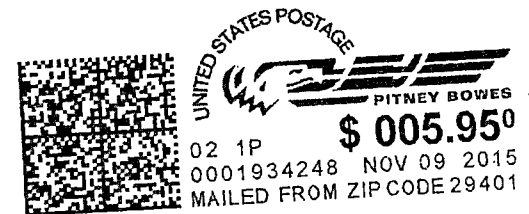
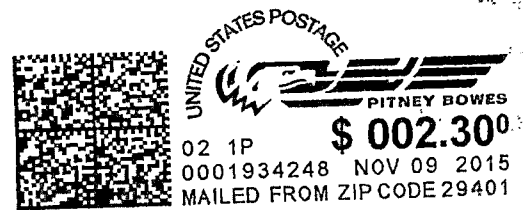
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RPF/fak
Enclosures

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