

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

NOV 02 2015

SC Court of Appeals

R. Markley Dennis, Circuit Judge

Appellate Case No. 2015-001644

Circuit Court Case No. 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.; Glasgow, 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.; Glasgow, 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 the Respondents.

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

Of Which Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; Glasgow, 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 the Respondents.

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INITIAL BRIEF & DESIGNATION OF MATTER OF RESPONDENT GLASGOW  
ROOFING, INC.

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INC.

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**STATEMENT OF ISSUES ON APPEAL**

I. DID THE TRIAL COURT PROPERLY DETERMINE THAT THE STATUTE OF LIMITATIONS BARRED CERTAIN OF APPELLANTS' CLAIMS AGAINST RESPONDENTS?

II. ARE THE APPELLANTS' CLAIMS AGAINST GLASGOW ROOFING, INC. BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS?

## STATEMENT OF THE CASE

This is a construction defects lawsuit involving the Shipwatch condominiums (hereinafter "Project") located on Isle of Palms, South Carolina. The Project was originally constructed in the 1980's. Glasgow Roofing, Inc. (hereinafter referred to as "Glasgow") served as a roofing repair contractor pursuant to contracts entered into in both 2003 and 2004. Carolina Concrete Systems, Inc. (hereinafter "Carolina Concrete") served as the general contractor during repairs and renovations on the Project.

Appellant Shipwatch Condominium Association filed the underlying Complaint on June 13, 2012 against Carolina Concrete, Glasgow, and other entities involved in the renovations and property repairs. (ROA\_\_\_\_\_, Shipwatch Condominium Association Summons and Complaint). A companion case was filed against the same parties on behalf of the individual condominium owners by Oscar Mendiondo as class representative. (ROA\_\_\_\_\_, Mendiondo Summons & Complaint). With the exception of additional facts set forth below, Glasgow joins in, adopts and incorporates as its own the briefs of Respondents EFCO, WCJ, First Exteriors, LLC and GlassTec, Inc. Although Glasgow does not agree that it is a proper Respondent in this matter—as it was not a party to Carolina Concrete Systems, Inc.'s motion and was not provided an opportunity to present evidence or argue its position during the hearing—it is nevertheless providing an Initial Brief out of an abundance of caution. Glasgow has filed its own Motion for Summary Judgment that has not yet been heard by the Court below. Nevertheless, relying on the case of *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000), Glasgow is entitled to set forth additional sustaining grounds of the trial court's granting of partial summary judgment as to certain causes of action against Carolina Concrete Systems, Inc. (hereinafter referred to as "CCS").

On September 12, 2014, Carolina Concrete filed a motion for summary judgment based

on the statute of limitations against Appellant. (ROA\_\_\_\_, Carolina Concrete's Motion for Summary Judgment). A memorandum in support of this motion with attached exhibits was filed on October 27, 2014. (ROA\_\_\_\_, Carolina Concrete's Memorandum in Support of Motion for Summary Judgment and attached exhibits). Appellants also filed a memorandum in opposition to Carolina Concrete's motion for summary judgment with attached exhibits. (ROA\_\_\_\_, Appellant's Memorandum in Opposition to Carolina Concrete's Motion for Summary Judgment and attached exhibits). A hearing was held by the trial court on Carolina Concrete's motion for summary judgment on October 27, 2014. At the hearing, counsel for Carolina Concrete presented argument in support of its motion for summary judgment and counsel for Appellants presented argument in opposition. (ROA\_\_\_\_, Hrg. Transcript p.2, line 1 — p. 7, line 12).

The trial court issued an oral order granting Carolina Concrete partial summary judgment based on the statute of limitations for any work performed at the Project prior to 2010. (ROA\_\_\_\_, Hrg. Transcript p.6, lines 20 - 22). The trial court signed a Form 4 Order granting Carolina Concrete partial summary judgment, which was tiled on October 30, 2014. (ROA\_\_\_\_, Order granting Carolina Concrete Partial Summary Judgment). On November 11, 2014, prior to Carolina Concrete's submission of a proposed formal order granting them partial summary judgment, Appellants filed a motion for reconsideration of the Order granting Carolina Concrete Partial Summary Judgment. (ROA\_\_\_\_, Appellants' Motion for Reconsideration). Appellants subsequently filed a Supplemental Response in Opposition to Carolina Concrete's Motion for Summary judgment and Memorandum in Support of their Motion for Reconsideration and Rehearing. (ROA\_\_\_\_, Appellants' Supplemental Response in Opposition to Carolina Concrete's Motion for Summary Judgment and Memorandum in Support of their Motion for Reconsideration and Rehearing). On December 1, 2014, the Court issued an Order denying Appellants' Motion for Reconsideration.

(ROA\_\_\_\_\_; Order denying Motion for Reconsideration).

Appellants filed Notices of Appeal in each case on December 30, 2014, appealing the Order granting summary judgment in part to Carolina Concrete. (ROA\_\_\_\_\_, Shipwatch Condominium Association Notice of Appeal, Mendiondo Notice of Appeal). Appellants filed Amended Notices of Appeal on January 8, 2015. (ROA\_\_\_\_\_, Shipwatch Condominium Association Amended Notice of Appeal, Mendiondo Amended Notice of Appeal).

On July 2, 2015, the Court of Appeals dismissed the appeals on the grounds that the order from which the appeals were taken was not a final judgment upon which an appeal may be taken because the trial court's Corm order stated that a formal order was to follow. (ROA\_\_\_\_\_, Order Dismissing Appeal). The Court of Appeals issued a Remittitur on July 2, 2015. (ROA\_\_\_\_\_, Remittitur).

Following the cases being remitted to the trial court, the trial court conducted a status conference regarding the cases on July 27, 2015 after which it entered a formal order granting partial summary judgment to Carolina Concrete. (ROA\_\_\_\_\_, Order Granting Carolina Concrete Partial Summary Judgment). Without filing any motion for reconsideration of the trial court's formal order granting Carolina Concrete partial summary judgment, Appellants filed a Notice of Appeal on July 28, 2015. (ROA\_\_\_\_\_, Shipwatch. Condominium Association Notice of Appeal dated July 28, 2015; ROA\_\_\_\_\_, Mendiondo Notice of Appeal dated July 28, 2015). Although the order from which this appeal stems grants partial summary judgment to only Carolina Concrete, the Appellants identified all defendants as Respondents to the appeal. The Court of Appeals consolidated the appeals in the above-captioned cases on August 14, 2015. (ROA\_\_\_\_\_, Correspondence from Court of Appeals dated August 14, 2015). Appellants filed their initial brief on August 27, 2015.

## FACTS

In 2003 and 2004, Glasgow entered into contractual agreements with Shipwatch Condominium Association (hereinafter referred to as "Shipwatch"), for various roof repair work upon the property, which included re-roofing the sloped tile roofs and the flat/low-sloped roofs on each of the four buildings. (ROA \_\_\_\_\_; Glasgow contracts attached). During this time period, Glasgow provided this re-roofing work under their contractual agreements. (ROA \_\_\_\_\_)

In 2002, CCS acted as the general contractor for various projects at Shipwatch, which included window and door repair in 2003 and 2004 (ROA; Application and Certification for Payment dated April 25, 2004). Robert Sisroy, an engineer hired by the Appellants to inspect the Shipwatch property, provided various inspections and related reports concerning conditions at the Project. A 2008 report of Robert Sisroy identified the scope of re-roofing work conducted in 2003 and 2004 and reported to the Appellants that there are numerous deficiencies in the standing seam metal roof, including defects with: flashing details at the intersection with the DEFS stucco, lack of kick out or water dam flashing at the intersection with DEFS stucco, fabricated corner flashing; heavy caulking of flashings, and termination of the metal roof. (ROA \_\_\_\_\_) Further, a 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. (ROA \_\_\_\_\_) These items identified by Robert Sisroy are now at issue in the present litigation and are likely alleged to concern the scope of work of Glasgow.

## ARGUMENT

In addition to the arguments asserted herein, Glasgow incorporates by reference those arguments sustaining the grant of Summary Judgment to CCS set forth by the remaining Respondents in their respective briefs, to the extent all are applicable to the position of Glasgow. Glasgow asserts that the grant of partial summary judgment as to CCS should be affirmed on the grounds that the Appellant failed to file suit within the applicable statute of limitations. Though the Court below properly recited the facts, the conclusions drawn therefrom should have been broader, such that any/all causes of action arising on or before 2009 would be eliminated from the suit, not just specific elements of construction.

### I. PARTIAL SUMMARY JUDGMENT WAS PROPERLY GRANTED BASED UPON THE LAPSE OF THE APPLICABLE STATUTE OF LIMITATIONS

The trial court below properly and appropriately applied the applicable statute of limitations and discovery rule in granting CCS partial summary judgment.

### II. THE APPELLANTS' CLAIMS AGAINST GLASGOW, INC. ARE BARRED BY THE APPLICABLE 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. In order to determine when the cause of action accrues, South Carolina has adopted the "discovery rule" which provides that "the statute begins to run from the date the injury resulting from the wrongful conduct is either discovered or may be discovered by the exercise of reasonable diligence." *Dillon School District Number Two v. Lewis Sheet Metal Works*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985). An owner can be put on notice that some claim might exist when the owner observes a construction defect and retains a consultant. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996) (holding that the statute of limitations began to run when the owner observed a building

crack and retained a consultant). "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 "[f]ailure of the injured party to comprehend the full extent of damages ... is immaterial." *Wiggins v. Edwards*, 314 S.C. 126, 442 S.E.2d 169, 170 (1994).

The Court below, in its Order, acknowledged knowledge of the alleged roofing-related deficiencies:

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."

(ROA\_\_\_\_\_, Order Granting Defendant Carolina Concrete Systems, Inc. Partial Summary Judgment, filed July 28, 2015)

S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to plaintiffs' claims of negligence, breach of contract, common-law warranty, and strict liability in tort. As indicated above, Glasgow completed its work on the subject property in 2004. By January 31, 2008, Shipwatch had received a report regarding alleged flashing deficiencies that are possibly alleged to be related to some roofing repair work. Since the Plaintiffs were placed on notice, at the latest, in January 2008 of alleged deficiencies in roofing, they arguably had until February 2011 to file suit against Glasgow. However, Plaintiffs did not file their complaint against Glasgow until June 13, 2012, well past the latest possible applicable statute of limitations date. At the outside, Plaintiffs would have had until 2011 to file claims against Glasgow, but the June 13, 2012 filing date is beyond the limitations.

Although the Court below noted in its Order that "the Plaintiffs clearly knew about possible claims for damage from water intrusion at the Project before July 12, 2009..." (ROA\_\_\_\_\_, Order Granting Defendant Carolina Concrete Systems, Inc. Partial Summary Judgment, filed July 28, 2015), the Court concluded that only certain elements of construction were subject to dismissal from the suit rather than any claim that arose on or before July 12, 2009. Specifically, the Court struck claims associated with EIFS, originally-installed sliding glass doors and windows, deck coatings, balcony ceiling coatings, handrails, metal framing behind originally-installed EIFS adjacent to originally-installed sliding glass doors and windows, and lack of kickout flashing or drip edge flashing. (ROA\_\_\_\_\_, Order Granting Defendant Carolina Concrete Systems, Inc. Partial Summary Judgment, filed July 28, 2015).

As discussed above, the Plaintiff was clearly aware of alleged issues with roofing in January 2008 at the latest. Thus, Court's ruling below should be affirmed.

### **CONCLUSION**

Based upon the above and forgoing, and incorporating herein the briefs of other Respondents to this appeal, Glasgow, Inc. respectfully requests the ruling of the trial court be affirmed.

*[Signature page to immediately follow]*

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