

FEB 19 2016

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4004129

Elizabeth R Box

Sparrow Group LLC

RECEIVED

PLAINTIFF(S)

Bryan R Jones

DEFENDANT(S)

MAR 04 2016

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case. *As motion for summary judgment is granted because statute of limitations has run. See attached order.*
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Jana W. Lee Judge Code 2756 Date 2/5/16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of Feb, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Frederick Ivey Hall III

Eric Christopher Hale

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. White

SCANNED

FEB 19 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

v.

Sparrow Group, LLC and

Bryan S. Jones

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-40-4129

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

FILED
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THIS MATTER came before the Court by way of Defendants Sparrow Group, LLC and Bryan S. Jones' motion to dismiss. A hearing was held before me on November 3, 2015. Jennifer Cooper, Esquire, appeared on behalf of Plaintiff and Eric Hale, Esquire, appeared on behalf of Defendants. Although this motion was made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, counsel for both parties introduced evidence outside the pleadings. No party objected to the entry of the evidence into the record, and therefore, the matter was converted to a motion for summary judgment in accordance with Rule 12(b), SCRPC. See *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009); *Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003).

I. FACTS

In July of 2010, Plaintiff and Defendant Sparrow Group, LLC by and through its agent Defendant Bryan S. Jones entered into an agreement for the purchase of property in Irmo, South Carolina. Pursuant to the South Carolina Residential Disclosure Act, Plaintiff was furnished with a "Residential Property Condition Disclosure Statement" provided by Sparrow Group. On the Disclosure Statement, the Defendant/Seller checked "yes" to the question: "Do you have knowledge of any problem (malfunction or defect) with any of the following: 1. Foundation . . .". The Disclosure Statement further states: "If you answered 'yes' to any of the above questions,

1 of 3 *JNS*

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please use the following space for your explanation and attach any relevant professional reports,” to which the Defendant/Seller wrote: “Foundation/Slab stabilization by Ram Jack in November 2009.” Plaintiff alleged that on July 11, 2012, she discovered issues with the foundation. On July 8, 2015, Plaintiff filed this action against Defendants for breach of contract accompanied by fraud, fraud, negligent misrepresentation, violations of the South Carolina Unfair Trade Practices Act, and violations of the South Carolina Residential Property Condition Disclosure Act. Defendants filed a motion to dismiss alleging, *inter alia*, that the statute of limitations had run on Plaintiff’s causes of action. Defendants argued that the statute of limitations began when Plaintiff was given the Disclosure Statement. They argued that Plaintiff actually discovered or through reasonable diligence should have known that a claim existed when Sparrow Group disclosed to Plaintiff that there were problems with the foundation.

II. LAW/ANALYSIS

“Rule 56 of the SCRCP provides that a trial judge may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431, 436 (Ct. App. 1995). “In deciding a Rule 56 motion, the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party.” *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994).


A cause of action for damage to real property must be brought within three years of when the damage occurred. S.C. Code Ann. § 15-3-530(3) (2005). An exception lies in the discovery rule, which tolls the starting of the statute of limitations until a person discovers or should have known through reasonable diligence that a potential claim might exist. S.C. Code. Ann. § 15-3-535 (2005); *Barr v. City of Rock Hill*, 330 S.C. 640, 644-45, 500 S.E.2d 157, 160 (Ct. App. 1998). Likewise, the South Carolina Unfair Trade Practices Act has a three-year statute of limitations. S.C. Code Ann. § 39-5-150 (“No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.”).

After careful consideration of all the applicable memoranda and arguments of counsel, I grant Defendants’ motion for summary judgment because this action was filed after the statute of limitations had already run. Specifically, I find that Plaintiff knew or should have known that

there was a prior defect to the house's foundation when she reviewed the Property Disclosure Statement in July 2010. That Statement disclosed a problem with the foundation and did not affirmatively state that the foundation defects had been corrected. At that point, Plaintiff had reason to inquire further of the status of the foundation or whether a report from Ram Jack should have been attached.

Viewing the facts in the light most favorable to the Plaintiff, I find as a matter of law that the statute of limitations began to run as of the date of the disclosure, which was signed by Plaintiff on July 8, 2010. The Disclosure Statement revealed foundational issues on the property on that date, not in 2012 as Plaintiff alleges. While Defendant's failure to attach the Ram Jack report may have been actionable within three years' after Plaintiff's receipt of the Disclosure Statement, the inquiry before me today is a different one. This case was commenced by Plaintiff on July 8, 2015, well outside the statute of limitations for Plaintiff's causes of action. Because I find that Plaintiff's action was brought outside the statute of limitations, I need not address any other grounds for dismissal raised by counsel for Defendants.

AND IT IS SO ORDERED.


Tanya A. Gee

Columbia, South Carolina

February 5, 2016