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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS **FILED**

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-4592

Maria Allwin, et al

2015 DEC 16 PH 2: 30

Russ Cooper Associates, Inc., et al

PLAINTIFF(S)

JULIE N. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

RECEIVED
MAR 07 2016
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.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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 (List amount(s) below)
N/A		\$

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

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.

[Signature]
Circuit Court Judge

2117
Judge Code

12/16/15
Date



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Maria Allwin,

Plaintiff,

vs.

Russ Cooper Associates, Inc., Buffington
Homes, L.P., and Shope Reno Warton,

Defendants.

Buffington Homes, L.P.,

Third-Party Plaintiff,

vs.

Albrecht Environmental, Inc., All Points
Construction, Inc., Patriots Drywall, Inc.,
Picquet Roofing, Inc., Sprayseal Foam
Insulation, and Tischler Und Sohn (USA)
Limited,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-4592

**ORDER GRANTING DEFENDANTS
RUSS COOPER ASSOCIATES, INC.
AND SHOPE RENO WARTON'S
MOTIONS FOR SUMMARY
JUDGMENT**

RECEIVED


MAR 07 2016

SC Court of Appeals

JULIE J. APOSTOLAKIS
CLERK OF COURT

2015 DEC 16 PM 2:30


FILED


Hearing Date:
Presiding Judge:
Plaintiff's Attorney:
Def. Russ Cooper Associates Attorney:
Def. Shope Reno Warton Attorney:

September 15, 2015
J.C. Nicholson, Jr.
Robert T. Lyles
L. Dean Best
Paul E. Sperry

This matter came before the Court on Defendant Russ Cooper Associates, Inc. ("RCA") and Defendant Shope Reno Warton's ("SRW") respective motions for summary judgment based on the statute of limitations. As discussed below, based upon the evidence presented at the hearing of this matter and in the parties' motions and supporting memoranda, the Court grants the Defendants' motions for summary judgment.

Plaintiff filed this lawsuit against Defendants RCA and Buffington Homes, L.P. on August 5, 2013, alleging defective and deficient construction at her oceanfront vacation home (“the Residence”) located at 133 Flyway Drive, Kiawah Island, South Carolina. Defendant RCA acted as the general contractor for the original construction of the Residence, which was completed on or about May 18, 1994 – more than nineteen years before Plaintiff initiated this lawsuit. Plaintiff engaged SRW to design the Residence in 1992. SRW ultimately issued a set of plans for construction in July 1992, which were revised in final form on August 10, 1993. Plaintiff amended her original complaint to add SRW as a defendant and to assert claims for defective and deficient design of the Residence on October 8, 2014 – more than 20 years after original construction of the Residence was completed.

 Defendants RCA and SRW presented evidence establishing that, since at least 1999, Plaintiff has both observed and received repeated reports of defects in the Residence, including, but not limited to, roof leaks, water intrusion into or through exterior walls, air/moisture intrusion at windows and doors, basement leaks, mold/mildew, and damage to interior finishes. Further, since 2004, Plaintiff hired multiple contractors to repair the reported defects and problems in the Residence, all which allegedly stem from RCA’s original construction work and SRW’s original design efforts.

STANDARD OF REVIEW -- STATUTE OF LIMITATIONS

A trial court may grant a motion for summary judgment “if 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 a judgment as a matter of law.” Rule 56(c), SCRPC. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” Hancock v. Mid-South Mgmt. Co., Inc., 381

S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Id. Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Id.

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 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 plaintiff "knew or by the exercise of reasonable diligence should have known that [s]he had a cause of action." S.C. Code § 15-3-535. In construing the "reasonable diligence" requirement, our Supreme Court stated:

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 [hers] 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 developed.

Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). "A key element in the reasonable diligence test is 'notice.' The fact that an injured party may not comprehend the full extent of the damage is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury. Id.

DISCUSSION

The applicable statute of limitations for Plaintiff's claims against RCA (negligence/gross negligence and breach of implied warranty of service) and against SRW (negligence and breach of express/implied warranties) is three years. S.C. Code Ann. § 15-3-530. Thus, the present inquiry is simply whether the facts and circumstances of this case were sufficient to put Plaintiff on notice that some right of hers had been invaded or that some claim against Defendants might have existed prior to August 5, 2010 (three years before Plaintiff filed her lawsuit against RCA) or October 8, 2011 (three years before Plaintiff amended her complaint to assert claims against SRW). The statute of limitations bars Plaintiff's claims against these Defendants because the facts establish that Plaintiff was well aware of the alleged defects in both RCA's construction of and SRW's design of the Residence more than three years before she asserted claims against them.


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I. THE EVIDENCE, INCLUDING TESTIMONY FROM PLAINTIFF AND HER AGENTS, ESTABLISHES THAT PLAINTIFF KNEW ABOUT THE ALLEGED DEFECTS IN DEFENDANTS' WORK FOR MORE THAN A DECADE PRIOR TO ASSERTING CLAIMS AGAINST THEM

In his investigative report of March 16, 2012, Plaintiff's causation expert, Ross Clements of Fuller Consulting Engineers, Inc., identified numerous deficiencies in the Residence allegedly resulting from Defendants RCA and SRW's construction/design work in the following relevant categories:

1. Roof and Stucco at Chimneys – including longstanding roof leaks and improper stucco application that damaged the interior and permitted moisture to access the exterior wall sheathing and roof decking. (Exh. 549; see also Exhs. 529 and 545). Clements called for the replacement of the metal roof and stucco on the chimneys. Id.
2. Exterior Walls – including deficiencies in the exterior wall weather barrier/flashings

that contributed to water intrusion and damage. Id. Clements called for the removal and replacement of the exterior cladding. Id.

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3. Windows and Doors – including air/moisture intrusion and damage at windows and doors due to inadequate waterproofing and flashing. Id. Clements called for the removal and reinstallation of the windows and doors to permit the installation of proper waterproofing. Id.
 4. Oceanfront Patio/Basement – including water intrusion at the basement level where the ocean-side patio connects to the residence and rotted wood framing below the doors at this location. Id. Clements called for the complete replacement of the patio finish material and waterproofing material at these locations. Id.
 5. Interiors – including mold and mildew, moisture-damaged drywall, degradation of interior finishes, rotted wood subflooring, and buckling of hardwood flooring. Id.

However, the evidence presented by Defendants establishes that Plaintiff knew about these same above-referenced alleged construction defects and damages for more than a decade prior to initiating this lawsuit, as demonstrated by the following:

February 4, 1999 – Robert Cowan lived in the Residence as Plaintiff's guest in the late 1990's/early 2000's. (Cowan Dep. at p. 8, l. 11 – p. 9, l. 9 and p. 35, l. 25 – p. 36, l. 5). There were numerous and continuous roof leaks while Cowan lived in the home at roof valleys, in the master suite, at chimneys, and in the kitchen area. (Id. at p. 14, l. 19 – p. 15, l. 4 and p. 16, l. 5-12). In February 1999, Cowan informed Plaintiff in writing that the roof continued to leak. (Exhibit 3). Cowan also informed Plaintiff of a leak in the basement where water entered underneath the rear windows and doors above, leaked along the entire basement wall, and caused wooden floor joists to rot. (Id.; Cowan Dep. at p. 18, l. 15-21 and p. 19, l. 17 – p. 20, l. 5). Exhibits 360, 362, and 366 show basement leaks similar to those observed by Cowan in 1999-2000. (Cowan Dep. at p. 19, l.

10 – p. 20, l. 12). Plaintiff admitted that Cowan and his wife informed her of roof and basement leaks in February 1999. (Allwin Dep. at p. 43, l. 13-21).

February 8, 1999 – Cowan informed Plaintiff in writing of a roof leak at the east end of the great room, evidence of a leak in the ceiling in a guest room, and mold around an air conditioning register in a bedroom. (Exh. 4; Allwin Dep. at p. 33, l. 15-17 and p. 49, l. 21 – p. 50, l. 1).

1999-2000 – Cowan observed mold and mildew while he lived at the residence due to leaking windows, louvers, and the roof. (Cowan Dep. at p. 37, l. 12 – p. 38, l. 13). Cowan observed mold/mildew in the kitchen, the breakfast nook, master bedroom sitting area, the children’s bedrooms, the basement, and over the fireplace at the west end of the great room. Id. In the office adjacent to the patio, water “was getting underneath the floor causing it to buckle and expand and dry.” Id.

March 24, 2000 – Cowan informed Plaintiff in writing of continued and new roof leaks, and continued basement leaks. (Exh. 6; Allwin Dep. at p. 55, l. 12-15). Plaintiff admitted her knowledge of a long history of roof and basement leaks dating back to the 1990’s. (Allwin Dep. at p. 56, l. 16-19 and p. 57, l. 14-25). Cowan testified the roof continued to leak in March 2000 and that water leaked underneath sliding glass doors onto the basement wall below. (Cowan Dep. at p. 22, l. 23-25 and p. 25, l. 10 – p. 26, l. 3).

May 3, 2000 – Cowan informed Plaintiff in writing of leaks at the ocean-side doors. (Exh. 8).

March 23, 2001 – Cowan informed Plaintiff in writing of continued and new roof leaks, leaking wall vents, a leaking window, and continued basement leaks. (Exh. 12; Allwin Dep. at p. 68, l. 25 – p. 69, l. 2). Cowan also informed Plaintiff of various types of interior water damage, including areas damaged by roof leaks, ceiling replacement in the basement, separation of hardwood flooring, and damaged wall paper. Id. Plaintiff admitted her knowledge of a roof leak in

the master bedroom sitting area in 2001. (Allwin Dep. at p. 68, l. 5-10). Cowan opined in writing to Plaintiff that roof leaks were one of “the most important problems” with the residence at this time. (Exh. 12; Cowan Dep. at p. 27, l. 4-10).

April 28, 2001 – In notes from a conversation with Plaintiff, Cowan documented continued leaks at a roof valley, at vents/louvers, and at a wall penetration. (Exh. 593). Cowan also noted damaged drywall in the great room and a leak at a fireplace flue. Id.

May 21, 2001 – Cowan informed Plaintiff in writing of continued roof and chimney leaks, leaks at wall vents/covers, and continued and new leaks in the basement. (Exh. 14; Allwin Dep. at p. 75, l. 9-11). Plaintiff admitted that she was well aware of leaks in the house as of 2001, including longstanding roof leaks. (Allwin Dep. at p. 76, l. 2-9 and p. 81, l. 2-18).

May 24, 2001 – Cowan informed Plaintiff in writing of continued leaks at wall vents/louvers and continued leaks in the basement. (Exh. 15).

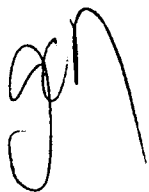
June 1, 2001 – In a letter produced by Plaintiff, Cowan wrote to RCA about ongoing roof leaks, a leak at a fireplace flue, leaks at wall vents/louvers, moisture intrusion into the kitchen wall, leaks at a wall in the chiller room, ongoing leaks in the basement, and mold and peeling paint on a kitchen wall due to moisture intrusion. (Exh. 16; Allwin Dep. at p. 85, l. 20-22). Plaintiff admitted knowing in 2001 of moisture intrusion into the kitchen wall and the leak in the chiller room. (Allwin Dep. at p. 86, l. 15-19, p. 87, l. 17-24, and p. 89, l. 7-8).

June 13, 2001 – In correspondence to an HVAC contractor, Cowan noted continued leaks in the chiller room. (Exh. 594).

June 23, 2001 – Cowan reported to Plaintiff in writing about continued roof and fireplace flue leaks, leaks at wall vents/louvers, and the status of repairs to the kitchen wall damaged by water intrusion. (Exh. 18; Allwin Dep. at p. 93, l. 14-24). Plaintiff admitted that she was aware of continued roof leaks and leaking vents/louvers in June 2001. (Allwin Dep. at p. 93, l. 25 – p. 94, l.

5).

August 2001 – Gamble Home Services (GHS) served as property manager for the residence beginning in 2001. (Allwin Dep. at p. 95, l. 10-15). In a monthly inspection report, GHS informed Plaintiff of a leak above a rear door, a leaking window in a third-floor bedroom, a water stain on the ceiling above a rear door, mildew around a leaking window in a guest bedroom, mildew around master bedroom windows, and mildew in several other rooms of the house. (Exh. 19). Plaintiff has no doubt that she received the 2001 GHS inspection report. (Allwin Dep. at p. 100, l. 13-15). Further, Plaintiff admitted knowing of water intrusion at windows and mildew problems in 2001. Id. at p. 100, l. 17-21.

 September 4, 2001 – In a document produced by Plaintiff, Cowan prepared a moisture detection report and noted unacceptable moisture readings below a roof beam and at several windows. (Exhs. 20 and 595). Cowan also reported mildew and drywall damage throughout the house. Id. Cowan noted, “If my test[s] are accurate, we could have a major problem inside the exterior walls, such as wood rot.” (Exh. 20). Documents produced by Plaintiff also indicate that Cowan researched at least two local moisture intrusion consultants (engineer Robert Sisnroy and contractor Robert “Bobby” Hedgepath) due to the leaks at the residence. (Exh. 595).

September 19, 2001 – In a document produced by Plaintiff, an HVAC contractor reported to Cowan that there were many unsealed/uninsulated penetrations in the building envelope and that the penetrations allow hot, humid air to enter the residence. (Exh. 21). The contractor also noted problems with the louvers. Id.

October 24, 2001 – In a letter produced by Plaintiff, Cowan informed her late husband in writing of numerous construction issues and warned him that “the ‘Statute of Limitations’ will end soon.” (Exh. 22) (emphasis added). Cowan issued this warning because of the leaks and other problems with the residence. (Cowan Dep. at p. 41, l. 3-6).

2001 – Plaintiff admitted that she was aware of significant problems with the house in 2001, including roof leaks and mildew. (Allwin Dep. at p. 104, l. 12-16).

January 8, 2002 – In a status report produced by GHS (Plaintiff's property manager), Cowan reported continued roof leaks and peeling paint in the great room. (Exh. 24).

March 5, 2002 – In a document produced by Plaintiff, Cowan reported a leak at a roof valley, leaks in the basement, and a leak at a fireplace flue. (Exh. 25). Cowan also reported the subfloor framing near the kitchen and the great room was "saturated." Id.

April 2002 – Plaintiff's late husband attempted to identify roofing contractors to perform roof repairs. (Exhs. 26 and 27).

August 22, 2002 – In a document produced by Plaintiff, Cowan reported a number of continued roof leaks, continued louver leaks, moisture intrusion into exterior walls in the breakfast room, leaks and damaged plaster at breakfast room windows, leaks at office and great room doors, and continued basement leaks. (Exh. 28).

November 20, 2002 – Plaintiff's property manager (GHS) requested Plaintiff's permission to investigate a roof leak and leaking windows. (Exh. 30).

December 2002 – In a monthly inspection report prepared by GHS, Plaintiff's property manager informed Plaintiff of caulking cracks around windows throughout the house, mildew at multiple locations, loose wallpaper and trim cracks at windows, damaged ceilings at multiple locations, and that the living room leak had worsened. (Exh. 596).

January 2003 – In a monthly inspection report prepared by GHS, Plaintiff's property manager informed Plaintiff of mildew at multiple locations, damaged ceilings at multiple locations, and chipped paint and damaged drywall at windows. (Exh. 597).

Early 2003 – Plaintiff requested the assistance of Defendant Buffington Homes, L.P., to diagnose and repair the longstanding problems with the roof, exterior walls, air infiltration at

windows and doors, and basement leaks. (Allwin Dep. at p. 125, l. 22 – p. 126, l. 3; see Exh. 31).

March 2003 – In a monthly inspection report prepared by GHS, Plaintiff's property manager informed Plaintiff of mildew on a second-floor ceiling. (Exh. 598).


April 2003 – In a monthly inspection report prepared by GHS, Plaintiff's property manager informed Plaintiff of "more mildew" at multiple locations. (Exh. 599).

July 21, 2003 – In a report produced by Plaintiff, Defendant Buffington Homes informed Plaintiff of peeling roof finish, active roof leaks, rot in the exterior trim, water flowing into the basement area from foundation vents, leaks into the basement caused by water flowing from the patio above, pooling water on the patio, and numerous interior finishes damaged by water intrusion, including deteriorating drywall, buckling/damaged hardwood flooring, mold/mildew, and peeling paint. (Exh. 32). Buffington Homes recommended the complete replacement of the roof, destructive testing to determine the source of window leaks, removing the patio tile and installing waterproofing at the office and the steps where the patio connects to the residence, and replacing the patio tile with a slope away from the structure. Id.

August 28, 2003 – Defendant Buffington Homes retained the services of an engineering firm, Campbell, Schneider and Associates, LLC (CSA), to survey the house and determine the sources of moisture that had resulted in areas of damage and fungal growth. (Exh. 37). CSA observed water damage and/or mildew throughout the residence. Id. CSA opined that the damage was the direct result of numerous sources of unconditioned air infiltration, condensation on finished interior surfaces, and ongoing water intrusion around windows, at roof valleys, and at several sub-grade locations. Id. CSA recommended the source of liquid water leaks be investigated from the exterior, to include the removal of certain windows and roof sections to identify possible paths of water leakage. Id. Plaintiff admitted that Buffington Homes retained the services of CSA on her behalf in an effort to identify and diagnose the problems with the home.

(Allwin Dep. at p. 138, l. 25 – p. 139, l. 12). Buffington Homes reported that Plaintiff received a copy of the CSA report. (Exh. 49).

September 15, 2003 – Plaintiff previously retained Milton Morgan to serve as her project manager for the upcoming repair work to be performed by Buffington Homes. (Allwin Dep. at p. 130, l. 1-4). On the date above, Morgan informed Plaintiff in writing that he had contacted a roofing contractor to inspect the roof and that a local architect (Roy Smith) recommended water testing to determine the source of basement, window, and door leaks, and taking humidity readings throughout the house to address the mold issue. (Exhs. 38 and 39). Morgan also recommended mold testing and requested permission to have an environmental firm, Albrecht Environmental, Inc., perform a mold study. (Exh. 38; Allwin Dep. at p. 130, l. 1-4).

 October 11, 2003 – Morgan forwarded Picquet Roofing, Inc.'s inspection report to Plaintiff. In the report, Picquet Roofing noted numerous roofing deficiencies, including peeling finishes, improperly connected panels, an unsealed penetration, gaps in flashing, improper panel laps, and multiple leaks. Picquet Roofing recommended the roof be patched/repared and repainted at an estimated cost of \$35,000. (Exhs. 41 and 44). Morgan also informed Plaintiff that the recommended mold testing by Albrecht Environmental would cost between \$2,500 and \$5,000. (Exh. 41).

November 13, 2003 – Morgan forwarded to Plaintiff a proposed scope of work he prepared for the Buffington Homes repairs to correct the reported defects in the Residence. (Exh. 45). Included in Morgan's scope of work are instructions for Buffington Homes to correct defects in roof valleys, patch/paint the roof in effected areas, remove window and door casings which display evidence of water intrusion, explore flashings and seals, "find and secure source of water leaks where evidence of leaks exist, water pressure test the junction of the rear deck steps and the rear wall and work with consultant to explore and seal the infiltration points, assist the environmental

engineer in obtaining mold samples, and remove water-damaged drywall.” Id.

January 13, 2004 – In a letter produced by Plaintiff, Dan Buffington with Buffington Homes wrote to Plaintiff and expressed his thoughts on Morgan’s scope of work and, in some instances, recommended more aggressive repair options. (Exh. 51). With respect to the roof, Buffington opined that the patch repair proposed by Morgan was not a permanent solution and would negatively affect the roof’s beauty. Id. Buffington also informed Plaintiff that “South Carolina has a 13-year statute of limitation (sic) for water intrusion. Your home is approaching that deadline.” Id. (emphasis added). Further, Buffington wrote, “I strongly urge you to contact the builder/roofer who installed the roof. If he is unwilling to accept responsibility and replace the roof, I would suggest enlisting legal counsel.” Id. (emphasis added). Buffington informed Plaintiff that the cost of replacing the roof would require significant siding replacement and cost in excess of \$500,000. Id. With respect to the windows, Buffington noted leaks and air infiltration at various windows and set forth a proposed scope of investigation to identify and repair the leaks. Id. With respect to the basement, Buffington noted leaks where the patio connects to the residence and set forth a proposed scope to repair the leaks. Id. Buffington also reported damaged and severely cupped hardwood flooring, and damaged and mildew-stained drywall. Id. Finally, Buffington presented a budget for the Morgan scope of repair totaling \$238,504. Id.

February 19, 2004 – Plaintiff entered into a contract with Buffington Homes to repair the reported defects in the Residence pursuant to the Morgan scope of work; the contract amount was \$238,504. (Exh. 54).

March 2004 – Plaintiff made a claim to her homeowner’s hazard insurance company, AIG, for interior moisture that caused peeling paint and areas of mold growth. Plaintiff or her agents reported various sources of water intrusion to AIG, including ongoing roof leaks and water intrusion around windows and doors. (Exh. 58; Allwin Dep. at p. 157, l. 23 – p. 158, l. 7).

April 2004 – AIG retained the services of a local engineer, David Horne with Engineering, Design & Testing Corp. (ED&T), to investigate Plaintiff's property damage claim. (Exh. 163). Horne visited the residence and took numerous photographs of open and obvious defects in the roof system (Exhs. 62-63, 109-14, 135-39, 141-43, and 150), window leaks (Exhs. 72-75, 82-86), leaks in the basement (Exhs. 146-47), and areas of mold growth and water-damaged drywall (Exhs. 69-77, 81-92, 94-95, 97-100). Horne ultimately opined that the fungal growth and moisture damage in Plaintiff's residence resulted from long-term conditions of elevated moisture stemming from the construction of the residence. (Exh. 163).

May 7, 2004 – In a Weekly Progress Report, Buffington Homes informed Plaintiff in writing of the discovery of rotten studs and sheathing uncovered during the repair process. (Exh. 165; Allwin Dep. at p. 158, l. 21 – p. 159, l. 15).

May 10, 2004 – Albrecht Environmental issued an indoor air quality report to Buffington Homes, and noted, “[T]he wall cavities along the south and west elevations of the home contain significant quantities of mold which should be addressed by a certified remediation contractor. A remediation protocol should be completed prior to remediation.” (Exh. 167).

May 28, 2004 -- In a document produced by Plaintiff, Buffington Homes informed Plaintiff's project manager (Morgan) of considerable cost overruns due to the discovery of unanticipated rot within the walls, requiring the replacement of exterior siding and trim. (Exh. 172).

June 7, 2004 – In a letter produced by Plaintiff, AIG declined Plaintiff's property damage claim, referencing both the 2003 CSA report (Exhibit 37) and the 2004 ED&T report (Exhibit 163), and referring to the longstanding construction defects noted in both reports. (Exh. 174).

July 6, 2004 – In a letter produced by Plaintiff, Buffington Homes informed Plaintiff that storm water entered the basement every time it rained and recommended various repairs to address

this water intrusion. (Exh. 178).

September 24, 2004 – In a letter produced by Plaintiff, Morgan sent Plaintiff a copy of Buffington Homes' July 6, 2004 proposal to address storm water intrusion into the basement. (Exh. 182). Morgan instructed Buffington Homes to proceed with these repairs at a cost of \$34,781. Id.

March 2005 – Through March 2005, Plaintiff paid Buffington Homes at least \$359,728.21 to repair defects and deficiencies in the Residence. (Exh. 213; Allwin Dep. at p. 164, l. 21 – p. 165, l. 8). Plaintiff admitted that the Buffington Homes repairs were intended to address defects in RCA's original construction work, including defects in the roof, exterior walls, windows and doors, and patio/basement leaks (Allwin Dep. at p. 164, l. 21 – p. 165, l. 8 and p. 165, l. 22 – p. 166, l. 8; see Exhs. 165 and 172).

November 30, 2005 – Plaintiff's property manager (GHS) invoiced Plaintiff \$979 for repair work, including caulking the bottom of the cladding at the rear patio to prevent water leaks in the subfloor. (Exh. 212).

July 11, 2006 – In 2006, Plaintiff wanted to sell the Residence. (Allwin Dep. at p. 174, l. 11-17; Noble Dep. at p. 16, l. 24 – p. 17, l. 4 and p. 18, l. 8-12). Cynthia Noble with Kiawah Island Real Estate was Plaintiff's real estate agent. (Allwin Dep. at p. 169, l. 4-8; Noble Dep. at p. 20, l. 24-25). In advance of listing the Residence for sale, Noble procured a home inspection report prepared by Complete Inspection Services (CIS). (Noble Dep. at p. 19, l. 9-24 and p. 21, l. 3-7). CIS noted numerous construction deficiencies, including indications of roof leaks, signs of prior termite activity in an exterior wall, damage to the wood cladding at several locations, indications of water infiltration at rear doors, water stains at rear basement walls, cupped and discolored hardwood flooring, water stains, mildew, and damaged drywall. (Exh. 215). CIS also suspected a "negative pressure" situation might exist and recommended having an environmental contractor

evaluate the areas of mold/mildew. Id. CIS also recommended roofing repairs, further investigation of the termite activity, and inspection of the flashing and subflooring at the rear doors. Id. Plaintiff's real estate agent (Noble) admitted she likely received the CIS report and was "reasonably confident" that Plaintiff received the CIS report. (Noble Dep. at p. 21, l. 16 – p. 22, l. 23, p. 29, l. 6-9, and p. 67, l. 24 – p. 68, l. 20). Plaintiff admitted that in July 2006 she was aware of water infiltration at the rear doors, basement leaks from the pool deck, and cupping/discolored hardwood floors. (Allwin Dep. at p. 170, l. 2-14 and p. 171, l. 1-5).


July 24, 2006 – At the request of Plaintiff's real estate agent (Noble), Albrecht Environmental issued a report summarizing its findings following an inspection of the residence and recommending actions needed to remedy the mold/mildew situation in the home. (Exh. 217; Noble Dep. at p. 34, l. 9-13). Albrecht Environmental's report included a proposed mold remediation at an estimated cost of \$19,150. (Exh. 217). Plaintiff's real estate agent believed the Albrecht Environmental report was given to Plaintiff. (Noble Dep. at p. 35, l. 6-13).

July/August 2006 – Plaintiff wrote to her real estate agent (Noble), stating it was "hard to believe that there is still moisture/humidity/mold after we spent so much \$\$\$" on the 2004-05 repairs by Buffington Homes. (Exh. 590; Noble Dep. at p. 164, l. 6-11). Plaintiff authorized her real estate agent to obtain a proposal from Buffington Homes to address the construction defects listed in the July 2006 CIS report (Exhibit 215). (Exhs. 583, 590-91; Noble Dep. at p. 165, l. 7-12).

September 5 and 6, 2006 – John Nelson with GHS (Plaintiff's property manager) asked Plaintiff if he should have the mold situation inspected. (Exh. 220). Nelson notified Plaintiff the following day that Noble (Plaintiff's real estate agent) had already contacted the "mold remediation experts." (Exh. 221)

September 11, 2006 – Plaintiff's real estate agent (Noble) asked Buffington Homes to prepare an estimate for repairs necessary to address the ongoing problems with the Residence,

including those noted in the July 2006 CIS report (Exhibit 215). (Exh. 222; see Exhs. 583, 590-91; Noble Dep. at p. 165, l. 7-12). The Buffington Homes estimate totaled \$282,850 and proposed repairs to the roof, exterior walls at the front porch and rear patio, windows and doors at the front porch and rear patio, basement ventilation, mold remediation, and damaged flooring. (Exh. 222). Further, Buffington Homes pointed out that the proposed roofing repairs were only temporary fixes and, again, recommended the complete replacement of the roof. Id. According to Buffington, “The single most significant concern is the roof.” Id. Plaintiff’s real estate agent believes she forwarded the Buffington Homes report/estimate to Plaintiff upon receiving it. (Noble Dep. at p. 43, l. 2-8, l. 18-21).

 July 29, 2007 – Plaintiff’s homeowner’s hazard insurance company (AIG) inspected the residence to determine if there were water damage problems within the home. (Exh. 228). AIG observed several indications of high moisture levels, including suspected window and roof leaks. Id. Notably, the insurance company required Plaintiff to “have you (sic) home checked by a qualified water remediation engineer to investigate why water continues to enter these areas of your home. Once the cause is identified, the necessary repairs should be made.” Id. Plaintiff does not recall taking any action in response to AIG’s water remediation testing requirement. (Allwin Dep. at p. 185, l. 22 – p. 186, l. 3).

July 2007 – Plaintiff’s property manager (GHS) informed Plaintiff of warping hardwood floors in multiple areas “indicating water intrusion.” (Exh. 243).

October 2007 – Plaintiff’s property manager (GHS) informed Plaintiff that the “ceiling plaster condition is getting worse in the 2nd floor guest bedroom.” (Exh. 229).

April 2008 – Plaintiff’s property manager (GHS) informed Plaintiff of (1) a new water stain on a ceiling, (2) warped floors in two rooms, and (3) condensation on the ceiling and insufficient air movement in the basement area. (Exh. 230).

Spring 2008 – Victoria Stein with Atlantic Builders first visited the Residence in the spring of 2008 at the request of Plaintiff’s property manager, GHS. (Stein Dep. at p. 52, l. 7 – p. 53, l. 20). During her initial visit to the Residence, Stein observed numerous indications of construction defects and air/water intrusion, including problems with windows, peeling paint on the roof, roof leaks, mildew, and moisture in the basement. (Stein Dep. at 41, l. 11 – p. 43, l. 3, and p. 52, l. 7 – p. 53, l. 20). Stein also observed damaged hardwood flooring adjacent to doors, suggestive of a water intrusion problem. (Stein Dep. at p. 108, l. 9 – p. 109, l. 14). During her initial visit in the spring of 2008, Stein pointed out these problems to John Nelson with GHS, but Nelson was already aware of them and was interested in working with Plaintiff to rectify the problems. (Stein Dep. at 52, l. 22 – p. 53, l. 20).

June 2008 – Plaintiff forwarded the July 2007 AIG inspection report (Exhibit 228) to Buffington Homes and expressed her frustration about ongoing problems after having spent several hundred thousand dollars to repair defects in the Residence. (Exhs. 235 and 236; Stein Dep. at 54, l. 7-18, p. 56, l. 23 – p. 57, l. 5, p. 58, l. 5 – p. 59, l. 8, and p. 59, l. 25 – p. 60, l. 3). Plaintiff wrote to Victoria Stein with Atlantic Builders, stating, “I do not understand how the mold around fixtures etc. (sic) escaped inspection until this point. Dan understood my – irritation??? – in 2004 and 05 we did a complete overhaul of the house – several hundred thousand \$\$ later and the problem is still there. Kiawah is an ongoing saga . . . “ (Exhibit 236). Stein acknowledged there were “lots of water intrusion issues in the house in June of 2008.” (Stein Dep. at p. 61, l. 8-11).

June 23, 2008 -- Plaintiff wrote to Victoria Stein with Atlantic Builders and inquired whether poor window performance could be contributing to the mold problems in the Residence. (Exh. 237).

July 2008 -- Plaintiff paid Victoria Stein \$6,978.14 to investigate problems with the home, including the review of documents provided by Plaintiff and discussions with consultants and

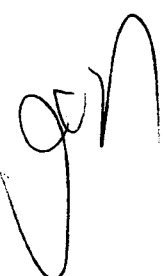
contractors who had previously inspected and performed repairs to the home. (Exhs. 244 and 254; Stein Dep. at p. 27, l. 21 – p. 28, l. 2 and p. 65, l. 3-6). Stein considered herself a consultant to Plaintiff with respect to her investigative efforts. (Stein Dep. at p. 75, l. 8-12). The scope of Stein’s investigation included reviewing past repairs to and water intrusion at the roofs, the basement, windows and doors, mold/mildew, and “anything that would be in those reports by Alan Campbell and Snyder (sic), Albrecht” (referring to Exhibits 37, 167, and 217). (Stein Dep. at p. 30, l. 23 – p. 31, l. 11 and p. 68, l. 14 – p. 69, l. 9).

Plaintiff mailed to Stein a box of documents relating to problems with the home. (Id. at p. 43, l. 17-22). The documents Plaintiff provided to Stein included, but were not limited to:

1. Exhibit 3 – February 4, 1999 correspondence from Robert Cowan to Plaintiff regarding continued roof and basement leaks. (Id. at p. 22, l. 21 – p. 23, l. 12).
2. Exhibit 8 – May 3, 2000 Cowan correspondence regarding leaks at rear/oceanside doors. (Exh. 604).
3. March 21, 2001 Cowan correspondence regarding multiple roof leaks, basement wall leaks, chiller room leaks, and structural settlement. Id.
4. Exhibit 12 – March 23, 2001 Cowan correspondence re roof leaks. Id.
5. Exhibit 16 – June 1, 2001 Cowan letter to RCA regarding, among other things, ongoing roof leaks, leak at a fireplace flue, leaks at wall vents/louvers, moisture intrusion into the kitchen wall, and chiller room leaks. Id.
6. Exhibit 19 – August 2001 Gamble Home Services report regarding mildew, leaking windows, and water stains. Id.
7. Exhibit 20 – September 4, 2001 Cowan moisture detection report evidencing high moisture meter test readings. Id.
8. Exhibit 22 – October 24, 2001 Cowan correspondence regarding unresolved

construction issues and warning about the statute of limitations. Id.

9. August 2002 Cowan correspondence regarding roof leaks, basement leaks, moisture in exterior wall, leaking louvers, and rear door leaks. Id.
10. Exhibit 34/37 – August 15, 2003 CSA report regarding water intrusion, including roof leaks and leaks at sub-grade locations. (Id.; Stein Dep. at p. 34, l. 7 – p. 35, l. 21).
11. Exhibit 39 – September 12, 2003 correspondence from Roy Davis Smith to Morgan proposing testing to determine the source of water intrusion at various locations. (Stein Dep. at p. 37, l. 15 – p. 38, l. 7).
12. Exhibit 41 – October 2003 Picquet Roofing roof inspection report and repair estimate. (Exh. 604).
13. Exhibit 51 – January 2004 Buffington letter to Plaintiff referencing statute of limitations. Id.
14. Correspondence between Plaintiff/her late husband and Milton Morgan concerning the 2004-05 repairs performed by Buffington Homes. (Stein Dep. at p. 36, l. 24 – p. 37, l. 14 and p. 66, l. 20-22).
15. Exhibit 54 – February 19, 2004 contract between Plaintiff and Buffington Homes to repair defects in the Residence. (Exh. 604; Stein Dep. at p. 39, l. 24 – p. 40, l. 7). Stein reviewed the Buffington Homes invoices, also. (Exh. 604; Stein Dep. at p. 66, l. 13-15).
16. Exhibit 163 – April 27, 2004 ED&T report outlining construction defects as the source of moisture intrusion. (Exh. 604; Stein Dep. at p. 43, l. 4-10).
17. April 19, 2004 Albrecht Environmental document regarding mold growth and ground-level moisture. (Exh. 604).
18. Exhibit 165 – May 7, 2004 Buffington Homes progress report regarding discovery of rotten studs and sheathing. Id.

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19. Exhibit 167 – May 10, 2004 Albrecht Environmental report noting elevated mold readings and recommending mold remediation. (Stein Dep. at p. 43, l. 11-16).
 20. May 24, 2004 flood-relief design by Albrecht Environmental to address moisture in crawl space. (Exh. 604).
 21. Exhibit 172 – May 28, 2004 Buffington Homes letter to project manager Milton Morgan regarding cost overruns due to discovery of wood rot and engineering report costs. Id.
 22. Exhibit 174 – June 7, 2004 AIG Insurance report referencing construction defects. (Exh. 604; Stein Dep. at p. 44, l. 4-11 and p. 56, l. 23 – p. 57, l. 20).
 23. Exhibit 217 – July 24, 2006 Albrecht Environmental report noting elevated mold readings and recommending mold remediation. (Exh. 604; Stein Dep. at p. 46, l. 6-16).
 24. Exhibit 228 – July 29, 2007 AIG Insurance correspondence to Plaintiff requiring water remediation testing. (Stein Dep. at p. 47, l. 24 – p. 48, l. 22 and p. 64, l. 11 – p. 65, l. 2).

As part of her investigation, Stein also spoke with contractors and consultants regarding past problems with and repairs performed to the residence, including: a meeting at house with engineer Larry Elkin (Id. at p. 65, l. 11-19 and p. 65, l. 24 – p. 66, l. 4), a meeting with Aero Service (HVAC contractor) (Id. at p. 65, l. 20-23), a conference with John Albrecht with Albrecht Environmental (Id. at p. 66, l. 5-12), a conference with Robbie Diamond with Buffington Homes regarding the 2004-05 repairs (Id. at p. 32, l. 6 – p. 33, l. 1), and a conference with Milton Morgan, Plaintiff's project manager for the 2004-05 Buffington Homes repairs, during which the 2003 CSA report was discussed. (Exh. 604; Stein Dep. at p. 33, l. 14-25). Stein also attempted to speak with architect Roy Davis Smith, who recommended water testing in 2003. (Stein Dep. at p. 66, l. 17 – p. 67, l. 13).

September 2008 – Plaintiff's property manager (GHS) informed Plaintiff that the "mold

situation [was] getting worse” in a guestroom closet and bathroom ceiling. (Exh. 249).

October 13, 2008 – Victoria Stein prepared and sent to Plaintiff a report regarding her investigation of water intrusion issues at the residence and offering suggestions on future action. (Stein Dep. at p. 72, l. 15-17 and p. 74, l. 12-22; see Exh. 254). The report included a timeline chronicling the history of longstanding water intrusion, attempts at repair, and the findings of consultants retained to identify the cause of moisture intrusion into the residence. (Exh. 604; Stein Dep. at p. 72, l. 4-11). In her report, Stein wrote, “The purpose of this report is to assist in an opinion evaluating what is contributing to the reappearance of fungi on the interior. . . . Due to the fact that a lot of money has been expended researching the source of fungus growth my opinion is established by verbal discussion with experts.” (Exh. 592). Stein’s report noted the following existing conditions at the Residence: interior paint peeling, cracked trim joints throughout, buckling wood flooring, peeling wallpaper, mildew at numerous locations, buckling drywall at various locations, and mildew in the basement area. Id. Although Stein opined that the HVAC system was the primary cause for the high humidity contributing to fungal growth, she expressly noted that several existing construction defects are unrelated to the HVAC issue, including drywall repairs needed under most roof valleys, buckled hardwood flooring in the media room, and high moisture levels in the basement area under the pool deck. Id. Stein suggested repairs to the Residence and that Plaintiff seek the advice of legal counsel. Id. Stein went on to note that the list of items for which RCA is responsible, including roof issues, moisture in basement, and window/door issues, “are numerous but bottom line is that the Statute of Limitations ran out in May 2007.” Id. (emphasis added).

October 17, 2008 – Victoria Stein believed that Plaintiff was considering legal action at this time, but was uncertain if it related only to HVAC issues or to all the problems with the house. (Stein Dep. at p. 76, l. 4 – 77, l. 3). Stein wrote to Plaintiff following up on a telephone

conversation in which the two discussed Plaintiff's "frustrations and anger" and going down the "legal road." (Exh. 257). Stein also informed Plaintiff that she would be forwarding proposals for various repairs, including repairs to metal roof valleys and subsequent drywall repairs in bedrooms, sealing around windows and doors, installing a moisture barrier on the basement ceiling, and sealing the basement walls with elastomeric paint. Id.

October 2008 – Plaintiff's property manager (GHS) informed Plaintiff that the "[m]old situation in front bedroom/bath is getting worse" and "[c]eiling situation in second floor bedroom is getting worse." (Exh. 258).


November 24, 2008 – Victoria Stein presented to Plaintiff a \$185,480.62 proposal from Gamble-Atlantic, LLC to perform various repairs to alleviate the longstanding problems at the residence, including the repair of two roof valleys to stem continuing leaks, sealing 345 outlets/switches/wall penetrations, 160 windows, and 8 exterior doors to prevent mold/mildew/condensation problems at those locations, and repairs to remedy ongoing moisture problems in the basement. (Exhs. 260 and 261; Stein Dep. at p. 81, l. 1 – p. 82, l. 4, and p. 83, l. 21 – p. 85, l. 15). At this time, the basement ceiling was leaking "all over the place," possibly including where the pool deck connected to the residence. (Stein Dep. at p. 77, l. 19 – p. 78, l. 15).

February 2, 2009 – Picquet Roofing invoiced Atlantic Builders \$1,261 for the repair of two roof valleys pursuant to the Plaintiff's November 2008 repair contract with Gamble-Atlantic. (Exh. 276; Stein Dep. at p. 89, l. 15-25).

February 27, 2009 – Victoria Stein presented to Plaintiff an additional Gamble-Atlantic proposal totaling \$64,350.24 for roof repairs, including power washing the existing roof, patching the roof as necessary, and applying 2 coats of roof coating. (Exh. 280).

March 17, 2009 – Plaintiff exchanged emails with Victoria Stein concerning the "shingle/roof issues as well as other work that needs to get done." (Exh. 282). The two also wrote

about an upcoming meeting at the residence with attorney Robert Lyles to develop a strategy with respect to the repair of the home. (Id.; Allwin Dep. at p. 210, l. 14 – p. 211, l. 15). As of this date, Plaintiff admitted that she had a clear appreciation that there were problems with her home that needed repair, including the roof, mold, and damaged/cupping hardwood floors. (Allwin Dep. at p. 212, l. 24 – p. 213, l. 3). Stein recommended that Plaintiff consult with Attorney Lyles because Plaintiff wished to speak with someone concerning the continued problems, damage, and water intrusion at the residence in spite of previous repairs. (Stein Dep. at p. 96, l. 13-14, at p. 98, l. 4 – p. 99, l. 20, and at p. 100, l. 20 – p. 101, l. 2). When Plaintiff expressed her concerns about the Residence, Stein recommended that Plaintiff meet with Attorney Lyles, rather than consult a general contractor, construction manager, engineer, architect, or forensic investigator. (Id. at p. 101, l. 12-25).



March 23, 2009 – Plaintiff met with Victoria Stein and attorney Robert Lyles at the Residence. (Exhs. 282 and 284; Stein Dep. at p. 95, l. 16-18). During the meeting, Attorney Lyles tasked Stein with preparing an estimate to repair the aesthetic issues at the Residence. (Exh. 284; see Exh. 290). Stein noted that an engineer was to contact Plaintiff to survey the house for “structural issues,” including evaluating the roof and windows. Id. The purpose of the engineer’s inspection was to investigate the source of continued water intrusion despite the repairs performed by Buffington Homes in 2004-05. (Stein Dep. at p. 118, l. 16 – p. 119, l. 15).

March 24, 2009 – Gamble-Atlantic submitted the final invoice for the \$185,480.62 worth of repairs outlined in the November 2008 proposal and reported that “[a]ll outlets/switches/baseboards/windows have been sealed.” (Exh. 600).

March 30, 2009 – Plaintiff retained Attorney Lyles as her counsel and, on her behalf, Lyles contacted engineer L.G. “Skip” Lewis with H2L Consulting Engineers (H2L). (Exhs. 287 and 290; Allwin Dep. at p. 226, l. 20 – p. 227, l. 2). Attorney Lyles informed Lewis of the residence’s

history of water intrusion problems, informed Lewis the house needed a comprehensive assessment and “plan of attack,” and requested that H2L prepare a proposal for these services. (Exh. 287 and 290; Allwin Dep. at p. 227, l. 14 – p. 228, l. 4 and at p. 229, l. 16-20).

May 26, 2009 – H2L presented a \$45,000 proposal to Attorney Lyles to conduct a building condition survey of Plaintiff’s Kiawah residence, including a visual inspection of a representative sample of the building envelope, to include windows and cladding. (Exh. 294). Despite her counsel’s recommendation for H2L to inspect the residence, there was no forensic analysis of home until Plaintiff’s present causation expert, Ross Clements with Fuller Consulting Engineers, inspected the residence in 2011. (Stein Dep. at p. 137, l. 1 – p. 138, l. 1).

2008, 2009, or 2010 – Victoria Stein placed a level on the patio and discovered that it was sloped toward the Residence (and directing water toward the Residence) sometime in “’08, ’09, ’10. I knew about it.” (Stein Dep. at p. 109, l. 15 – p. 110, l. 1).


May 14, 2010 -- In a CL-100 termite inspection report prepared for a potential purchaser and produced by GHS (Plaintiff’s property manager), the termite inspector noted visible evidence of subterranean termites, evidence of active wood-destroying fungi, and visibly damaged wood members. Further, the termite inspector recommended a “complete and thorough evaluation by a qualified building expert to determine what repair if any is necessary to this property.” (Exh. 336). Stein saw the report in 2010. (Stein Dep. at p. 132, l. 3-4).

May 14, 2010 – In a document produced by Plaintiff’s property manager (GHS), Complete Inspection Services (CIS) inspected the residence and completed a home inspection report for a potential purchaser. (Exh. 337). CIS noted numerous construction deficiencies, including indications of roof leaks, flaking roof finish and signs of corrosion, deterioration on the underside of the metal roofing, signs of prior termite activity, damage to the siding, water infiltration at windows, water infiltration and damaged flooring at ocean side and office windows and doors, wet

basement walls from water infiltration at rear doors, cupped hardwood flooring, and water infiltration, water stains, and mildew at numerous locations. Id. CIS recommended checking the flashings and subfloor in the area of the rear doors. Id.

2010 – In an email concerning the May 2010 CIS report, Victoria Stein wrote:

[I found [the report] and will address possible issues in an email to [Plaintiff]. As noted to [Plaintiff] – the inspection report is incomplete mainly because the inspector only had 3 hours to walk the house before he had to get out. . . . We did not have enough time to do a thorough inspection so many items are not noted. But I will stick to the report and we'll deal with the new one since [Plaintiff] does not want "to know." Perhaps I will drop a couple of the issues like the back doors on Cynthia [Noble, Plaintiff's realtor] too although she's another person who likes to stick her head in the sand.

 (Exh. 602).


2010 – Following the completion of a \$188,000 media room renovation by Gamble-Atlantic in December 2009, Victoria Stein reported to John Nelson with GHS about possible repairs to the residence. (Exh. 603; see Exh. 323). Stein wrote:

[Plaintiff] asked what her next project should be – I took a deep breath and told her that she needed to get serious about painting the exterior of the house and the roof. The gable sheathing needed to be replaced too. She said – “I knew that I just wanted to hear you say it.” What is that – a mind game? Anyhow, I will send her some numbers but she wants to wait until August.

August 1, 2010 – Victoria Stein wrote to Plaintiff concerning a \$233,000 exterior painting proposal and noted, “I know you understand the issues regarding the stressed cedar shakes and the unprotected windows . . . The trim around the windows [is] in good shape although the windows need attention.” (Exh. 601).

February 23, 2011 – Plaintiff's counsel sent a letter on February 23, 2011 stating that an investigation of the Residence “has revealed numerous and significant deficiencies” and that “[t]hese deficiencies relate to the design/installation of doors and windows, waterproofing and sealant, flashing installation and other deficiencies which have led to significant damage and which

have prevented Ms. Allwin and her family from using the Home.” (Exhibit 582). The letter, which was copied to Maria Allwin, notified SRW of the following: 1) that Plaintiff’s counsel had been retained by Mrs. Allwin in connection with “significant deficiencies” at the Residence; 2) that the known deficiencies, uncovered by investigation “relate to the design/installation” of various building components; and, 3) that the deficiencies “have led to significant damage” to the Residence. Counsel for Plaintiff then concludes the letter by putting SRW on notice of a potential claim and instructing SRW to “forward this letter to your attorney and to your insurance agent/broker and any known liability insurance carriers.” This letter notifying SRW of a potential claim against it, due to design and construction deficiencies, was sent more than three years and seven months before the lawsuit was filed against SRW in October of 2014.




II. THE EVIDENCE MIRRORS THE FACTS IN OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASES IN WHICH THE COURTS UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS

In Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996), Dean purchased a building in Charleston in September 1984 after a contractor inspected it and deemed it structurally sound. Two months later, Dean noticed a fine crack in the building façade, which she thought might be related to nearby pile driving performed by Ruscon. Dean immediately hired expert consultants to examine the crack. Several months later, Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. Further, a second crack had appeared at another location. After being informed that the building was no longer structurally sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations had expired prior to the filing of her lawsuit.

On appeal, our Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court held, “Because Dean had

notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date.” Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court stated, “Dean’s subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved.” Id. Moreover, the “fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial.” Id.

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

 In the present case, Plaintiff clearly knew about possible claims for damage from water intrusion for many years before she asserted her claims against RCA and SRW, as evidenced by Plaintiff’s own testimony and the testimony of Cowan, Noble, and Stein. In addition, dozens of records provided to Plaintiff dating back to 1999 clearly document her knowledge of chronic and continuous leaks at the roof, through and into exterior walls, at windows and doors, and into the basement; as well as the damage to interior finishes resulting from these longstanding leaks.

In opposition to RCA and SRW’s motions for summary judgment, Plaintiff contends that statute of limitations should be tolled because the alleged defects were latent. Plaintiff relies upon Santee Portland Cement Co. v. Daniel Int’l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989), in which our Supreme Court reversed the grant of summary judgment based on the statute of limitations because the plaintiff in that case presented evidence that the defects in the structures were latent; specifically, the allegedly defective metal reinforcing rods were located within concrete walls and were not readily observable. In this action, Plaintiff submitted an affidavit from her forensic expert, engineer Ross Clements with Fuller Consulting Engineers. In his affidavit, Clements

testified that many of the defects in the Residence could not have been discovered until the removal of exterior and interior building components he performed in 2011. (Clements Aff. ¶ 17; see Exhs. 545 and 549). While it may be reasonable for the Court to assume that the precise nature and exact cause of the alleged design and construction defects could not have been discovered until Clements' destructive testing in 2011, the mountain of evidence presented by RCA and SRW establishes that Plaintiff had long-standing knowledge of defects and the damage resulting therefrom – since as early as 1999.

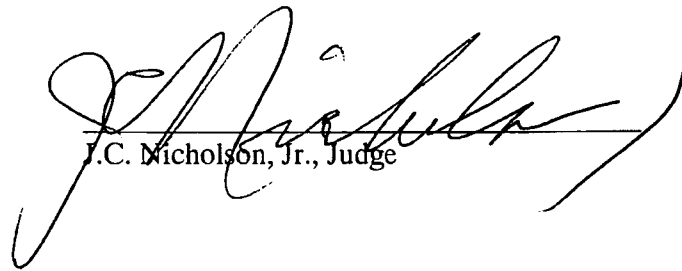
Further, as a result of her knowledge of these defects and resulting damage, Plaintiff was aware, or ought to have been aware, of her claims against these defendants. Again, the statute of limitations runs from the date the injured party either knows or, through the exercise of reasonable diligence, should have known that a cause of action exists. Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citation omitted). The exercise of “reasonable diligence” means that the injured party “must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist.” Id. at 363-64, 468 S.E.2d at 647 (citation omitted). Clearly, Plaintiff failed to act with “reasonable diligence” in response to numerous and repeated reports of, and her own observations of, chronic defects in and damage to the Residence. As a result of the Plaintiff's failure to act in a timely fashion in response to clearly observable and known problems with the Residence, her claims against RCA and SRW are time-barred.

CONCLUSION

The clear and undisputed evidence before this Court establishes that Plaintiff was on notice of the alleged defects in the construction work performed by RCA and in the design work performed by SRW for more than three years prior to filing this lawsuit. Plaintiff failed to act with “reasonable diligence” in pursuing her claims against RCA and SRW. As a result, the statute of

limitations expired long before Plaintiff filed this lawsuit and her claims against these defendants are time-barred. For the foregoing reasons, Plaintiff's claims against RCA and SRW are barred as a matter of law and are dismissed with prejudice.

IT IS SO ORDERED.



J.C. Nicholson, Jr., Judge

December 16, 2015
Charleston, South Carolina