THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Court 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF Corp.; Gary Freeman Architect, Inc.; and Gary Freeman, individually,.....Respondents.

and

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

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,.....Respondents.

FINAL BRIEF OF RESPONDENT CAROLINA CONCRETE SYSTEMS, INC.

David S. Cobb
Turner Padget Graham & Laney, P.A.
Post Office Box 22129
Charleston, South Carolina 29413-2129
(843) 576-2803

Attorney for Respondent Carolina Concrete Systems, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

STATEMENT OF ISSUES ON APPEAL

I. **THE TRIAL COURT PROPERLY GRANTED PARTIAL SUMMARY TO DEFENDANT CAROLINA CONCRETE SYSTEMS, INC. IN THIS CONSTRUCTION DEFECTS LITIGATION BASED ON THE STATUTE OF LIMITATIONS BECAUSE PLAINTIFFS FAILED TO SUE DEFENDANT WITHIN THE APPLICABLE TIME.**

II. **THESE FACTS MIRROR OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.**

STATEMENT OF THE CASE

This is a construction defects case in which Plaintiffs attempted to claim significant repairs to their oceanfront condominium buildings completed in 2013-2015 that should have been done in the mid-2000s if Plaintiffs had followed their own advice and knowledge. The trial court granted partial summary judgment to Carolina Concrete Systems, Inc. ("CCS") and dismissed certain claims based on the statute of limitations. The trial court made the ruling orally on October 27, 2014. Before counsel for CCS could submit a written order to the Court, Plaintiffs' attorney filed a motion for reconsideration, which the trial court denied without a hearing on December 1, 2014. Plaintiffs now appeal.

The trial court only heard CCS' summary judgment motion (although many of the other defendants have pending summary judgment motions). Thus, CCS should be the only "Respondent" to the appeal; however, the issues related to the summary judgment ruling apply to the other defendants.

STATEMENT OF FACTS

Plaintiffs filed lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012 and set forth causes of action for negligence, violation of the S.C. Unfair Trade

Practice Act (S.C. Code §§ 39-5-10 et seq.), aiding and abetting a breach of fiduciary duty, breach of contract, breach of express and/or implied warranties, and strict liability in tort (R. pp. 38-56).

The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the subcontractors in this litigation had any involvement with the original construction.

From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some (but not all) of the original EIFS (Exterior Insulation Finish System) cladding with a Durock Wall System ("DEFS"); removal of some (but not all) original windows and sliding glass doors at certain locations on the endwalls, oceanside, and streetside elevations; reframing of chimneys; and recoating of certain balcony and corridor decks. CCS' contracts with Plaintiffs included:

> November 5, 2002 Contract for chimney repairs, waterproofing repairs, corridor/balcony repairs, and traffic coatings;
>
> September 22, 2003 Contract for re-sloping of balconies, window and door repairs, removal of EIFS and replacement with Durock Stucco System on endwalls and fourth and fifth floor streetside, removal and replacement of stucco at stairwell and elevator towers, repairs to privacy walls and chimneys; and
>
> December 19, 2008 Contract for removal and replacement of 16 EFCO doors in specified units.

The work took place primarily between 2002-2005 and 2008-2011.

CCS agrees that any work performed after the applicable date for statute of limitations purposes (July 12, 2009) should not be included within the trial court's order (and are not included in the order); however, the undisputed evidence shows Plaintiffs knew about significant water intrusion issues and damages with the building components well before July 12, 2009. In this litigation, Plaintiffs claim those items, plus damages associated with repair and replacement performed in 2013-2015 of original building components (such as EIFS, sliding glass doors, windows, and coatings) installed by others in the mid-1980s. Plaintiffs knew in the mid-2000s that those items and other building components leaked and damaged their buildings.

The trial court correctly agreed the statute of limitations barred those claims. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED PARTIAL SUMMARY TO DEFENDANT CAROLINA CONCRETE SYSTEMS, INC. IN THIS CONSTRUCTION DEFECTS LITIGATION BASED ON THE STATUTE OF LIMITATIONS BECAUSE PLAINTIFFS FAILED TO SUE DEFENDANT WITHIN THE APPLICABLE TIME.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar the claims

because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation. The trial court's order properly absolved CCS from having to pay Plaintiffs for the costs associated with addressing these issues and for the alleged loss of use or loss of property rights associated with not being able to access the buildings during repairs because of these repairs. The trial court's order did not dismiss the entire litigation and allows Plaintiffs to continue the lawsuit for claims concerning work done within or after the three year window established by the statute of limitations started.

A. The undisputed testimony from Plaintiffs' board members and regime manager is that Plaintiffs knew about many of the issues they assert in this litigation well before any three-year period involving the statute of limitations

Plaintiffs clearly knew about various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). In fact, many of the damages claimed in this lawsuit were recommended to Plaintiffs for replacement in 2008 by Plaintiff's regime manager because of water intrusion or other damage. Nevertheless, in this litigation, Plaintiffs claimed as damages the costs incurred in 2013-2015 associated with removing, replacing, and repairing items that Plaintiffs did not remove or replace 5-10 years earlier despite knowledge of problems and damages. In a nutshell, that is why the trial court correctly struck these claims pursuant to the statute of limitations.

Accordingly, the statute of limitations bars the following claims:

Originally-installed EIFS (Exterior Insulation Finish System):

In this litigation, Plaintiffs demanded CCS pay for the costs of removing the remaining EIFS on the exterior of the buildings and replacing the exterior cladding on the buildings, even though CCS never installed the EIFS and Plaintiffs knew about damage and water intrusion associated with EIFS by the mid-2000s. For example, Plaintiffs' former board member Fred Trombino testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. (R. p.694, line 24-p.695, line 6). Specifically, Trombino said the board knew that water tended to get trapped behind EIFS, which caused the metal studs to rot and fail (R. p.695, lines 11-17). However, the board elected not to further inspect the buildings at that time because it had decided to remove the EIFS cladding (R. p.695, lines 18-25).

The regime manager (Linda Jernigan), whom Plaintiffs have employed since 2005, testified she told Plaintiffs in September 2008 that she had obtained a contract to remove and replace the originally-installed EIFS off of all buildings at a projected cost of $1,800,000 (or approximately $423,060 per building) (R. p.656, line 2-p.657, line 18). The September 2008 HOA Board Minutes also detailed that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. (R. p. 659, line 14-p. 660, line 11).

Originally-installed sliding glass doors:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed sliding glass doors and replacing those doors with modern versions, even though CCS never installed the original sliding glass doors and Plaintiffs knew about damage and water intrusion associated with leaking sliding glass doors by the mid-2000s. Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the oceanside sliding glass doors when CCS began work in 2002-2003 (R. p.702, line 9-p.703, line 22). In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years (R. p. 658, line 15-p.659, line 13). Jernigan testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005 (R. p.653, lines 8-18, p. 654, lines 9-12).

Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. (R. p.698, line 22-p.699, line 14). Beginning in 2006, the Board replaced a certain number of leaking sliding glass doors (approximately 10-15 per year) based mainly upon homeowner complaints (R. p. 706, line 11-p.707, line 6).

In addition, HOA Board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass

doors, including the fifth floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking (R. p.103 and p.107). In 2006, the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs using caulk (R. p.120).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb (R. pp.123-128).

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking" (R. p.130). However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources" (R. p.132).

The September 13, 2008 HOA Board meeting minutes stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over $10,000 per door as they are not stock doors and must be custom made – the cost is for taking off the old door, replacing and shim the door to fit, plus caulking." (R. p.790).

Originally-installed windows:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed windows and replacing them with enhanced windows, even though CCS never installed those windows and Plaintiffs knew about damage and water intrusion associated with leaking windows by the mid-2000s. As discussed, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the original bay windows when CCS began work in 2002-2003 (R. p.702, line 9-p.37, line 22). Jernigan noted leaking bay windows in 2007 (R. p.655, lines 12-21).

Deck coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior deck coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2008. For example, in September 2008, Jernigan recommended Plaintiffs remove and replace the deck coatings (R. p.658, line 15-p.659, line 13). The September 2008 HOA Board meeting minutes stated, "[t]he Board previously passed on coating the decks because we needed to have money to

do other projects . . . and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to point buildings will have to be closed and decks completely redone." (R. p.789). The minutes reflected Jernigan "highly recommended" this work. (R. p.789). The minutes further reflected the Board's acknowledgment in 2008 that the balcony deck recoating, along with the recommended EIFS replacement and sliding glass door replacement, "were items that either were 'on-going' or [had] been held back from years previous." (R. p. 789).

Balcony ceiling coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the balcony ceiling coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2005. For example, Trombino testified that the breezeway ceilings had "peeling" issues since he started on the board in 2005 (R. p. 696, line 17-p.697, line 2). Schaewe testified that Plaintiffs only "spot repaired" the ceilings from 2002-2013 and that he did not know why Plaintiffs did not make any wholesale repair to the balcony ceiling coatings (R. p. 701, lines 2-23).

Handrails

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior handrails throughout the complex even though CCS did not install the original handrails and Plaintiffs knew about damage associated with deteriorated handrails by 2008. For example, in September 2007 and September 2008, the HOA Board meeting minutes discussed the continued need to sand and

repaint the railings. The Board decided to remove the repairs to the handrails from the budget "in lieu of more important items." (R. p.783) On September 13, 2008, the Board meeting minutes note the decision that the Board "will again delay painting of the railings" (R. p.791)

Moreover, Trombino testified CCS is not responsible for the cost of new handrails (R. p.697, lines 8-12). Schaewe also testified CCS should not be held responsible for the cost to remove and replace the handrails (R. p. 704, line25-p.705, line 15).

Metal Framing/DEFS

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing metal framing at the buildings even though CCS notified Plaintiffs about damaged metal framing and Plaintiffs elected not to make repairs. The contract documents showed CCS and its subcontractors removed the original EIFS and replaced it with Durock/DEFS at certain locations on the buildings in two phases (from November 2002-December 2003 and September 2003-May 2004). Schaewe testified that during the removal of the original EIFS cladding in 2003-2004, Plaintiffs knew about rusted studs on the oceanside and endwalls of all four buildings, particularly behind originally-installed EIFS adjacent to originally-installed sliding glass door and windows (R. p .703, lines 1-9).

Between 2005-2007, the board learned that water tended to get behind EIFS and then rotted the studs and caused failure (R. p.695, lines 11-17). Trombino testified the board did not elect to hire someone to inspect the buildings at that

point because [the board] had already decided to remove the EIFS and replace the studs. (R. p.695, lines 18-25). Significantly, on May 9, 2007, CCS reported to Jernigan, "Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project [in 2003-2004]." (R. p.838, Carolina Concrete Systems, Inc. "Inspection Report" dated May 9, 2007, item 14).

On September 6, 2007 CCS issued a proposal for the removal and replacement of the fourth and fifth floor oceanside balcony sliding glass doors. Importantly, the proposal stated the proposed replacement did not include any repair to the metal studs that support the doors or the new installed wall studs, "for we do not know the extent of any damage ... the doors have been leaking since the new [Durock] wall system was installed ... and has allowed water to enter the wall ... and damaged the metal studs in the wall." (R. p. 229)

On February 5, 2009, CCS again notified Plaintiffs: "Leaks continue to be a problem at and around the old sliding glass doors on the beachfront and golf course side of the buildings. We have repeatedly shown [Jernigan] and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that was installed during 2003/2004. We are in the process of replacing 17 doors and I recommend the

remaining old doors be removed and replaced." (R. p.840, Carolina Concrete Systems, Inc. "Building Inspection Report" dated February 5, 2009, item 6).

Lack of kickout flashing or drip edge flashing:

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." The cut-off date for statute of limitations purposes is July 12, 2009; therefore, Plaintiff waited too late to sue CCS for these claims.

II. THESE FACTS MIRROR OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT 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 on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile

driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in 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 expired.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause 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." (emphasis in original). Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "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 court said, "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.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting

moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. Meeting minutes of the HOA board clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement.

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), *aff'd*, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. . . . Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. . . .

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

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, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act.

In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right ... has been invaded or that some claim against another party might exist." Id. "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 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.

Importantly, the statute is not tolled because of the inability of the plaintiff to identify alleged wrongdoers. In Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994), the Supreme Court said,

> The important date under the discovery rules is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run *for all claims based on that injury.*

Wiggins, 442 S.E.2d at 170 (emphasis added). Likewise, the inability of the plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic Contracting Corp.. South Carolina Dept. of Highways and Public Transportation. 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins, 442 S.E.2d at 170.

CONCLUSION

For these reasons, CCS respectfully asks this Court to uphold the trial court's grant of partial summary judgment. In Jackson v. John Doe, 342 S.C. 552, 556, 537 S.E.2d 567, 569 (Ct. App. 2000), the court acknowledged the policy reasons supporting the enactment and strict enforcement of statutes of limitation and the constitutional responsibility of the courts to effectuate the principles of repose, despite hardship in occasional circumstances.

In this case, the undisputed facts prove Plaintiffs delayed needed repairs and replacement of building components that clearly caused damage to their buildings and have attempted to use this litigation to have CCS (and the subcontractors) fund the 2013-2015 repairs undertaken by Plaintiffs to address problems that Plaintiffs knew about by the mid-2000s. CCS concedes that any work it performed after July 12, 2009 is properly at issue in this litigation. What is not at issue, and what the trial court recognized, is that Plaintiffs clearly knew about water intrusion and damages to their buildings before that date yet waited and waited to commence repairs and any litigation. The statute of limitations bars those claims. Accordingly, CCS respectfully asks this Court to affirm the trial court's ruling that the statute of limitations bars the specific claims discussed in the Order.

Respectfully submitted,

TURNER PADGET

David S. Cobb (by R. Hunter Bost)

David S. Cobb
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 576-2803
Fax: (843) 577-1629
dcobb@turnerpadget.com

Charleston, South Carolina

December 29, 2015

ATTORNEY FOR RESPONDENT
CAROLINA CONCRETE SYSTEMS, INC.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Court 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF Corp.; Gary Freeman Architect, Inc.; and Gary Freeman, individually,.....Respondents.

and

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

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence 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.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

David S. Cobb (by R. Heather Routh)

David S. Cobb
TURNER PADGET
Post Office Box 22129
Charleston, South Carolina 29413-2129
Direct: (843) 576-2803
Fax: (843) 577-1629
dcobb@turnerpadget.com
ATTORNEY FOR RESPONDENT
CAROLINA CONCRETE SYSTEMS, INC.

Charleston, South Carolina
December 29, 2015