

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 James E. Hensley,)
)
)
 Plaintiff,)
)
 v.)
)
 Giles Homes, LLC f/k/a Giles)
 Industries of Tazewell, Inc.,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 CASE NO. 2015-CP-38-01199

**ORDER GRANTING MOTION
 FOR SUMMARY JUDGMENT**

FILED FOR RECORD
 WINNIFRA B. CLARK
 2016 AUG 22 A 11:34
 CLERK OF COURT
 ORANGEBURG, SC

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THIS MATTER came before the court on June 29, 2016 on the Motion for Summary Judgment of Defendant Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc. ("Giles"), and pursuant to S.C. R. Civ. P. 55(c) for an Order granting summary judgment in this matter. Present at the hearing were counsel for the Plaintiff and the Defendant. For the reasons stated herein, Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc.'s Motion for Summary Judgment is **GRANTED**.

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SUMMARY JUDGMENT STANDARD

SC Court of Appeals

Rule 55(c) of the South Carolina Rules of Civil Procedure requires that summary judgment be granted:

if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

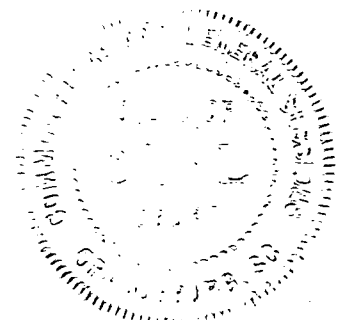
S.C. R. Civ. P. 55(c).

ATTEST: TRUE COPY

Winnifra B. Clark

CLERK OF COURT
 ORANGEBURG COUNTY, SC

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Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Silvester v. Spring Valley Country Club, 543 S.E.2d 563, 566 (S.C. App. 2001).

Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 410 S.E.2d 537 (S.C. 1991). Once the moving party carries its initial burden, the “opposing party must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.’” Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. George v. Empire Fire & Marine Ins. Co., 545 S.E.2d 500 (S.C. 2001). More than a mere scintilla of evidence is required to overcome summary judgment. Bravis v. Dunbar, 449 S.E.2d 495 (S.C. App. 1994).

FINDINGS OF UNDISPUTED FACTS

Based upon the evidence presented at the hearing, I find the following to be material undisputed facts:

1. Plaintiff has admitted that the home in question was substantially complete and installed as of December 15, 2006.
2. Plaintiff filed its suit in this case on October 13, 2015.
3. Plaintiff presented no evidence outside the pleadings in the case in opposition to the Defendant’s Motion.



4. The parties have accomplished all written discovery in the case, and no depositions have been noticed or requested by the Plaintiff.

CONCLUSIONS OF LAW

Plaintiff has admitted that the applicable statute of repose for this case is S.C. Code Ann. § 15-3-640. This statute, signed into law by Gov. Sanford in March of 2005, came into effect on July 1, 2005 (see highlighted history on page 2 of the attached statute) and governs claims relating to defects in improvement to real property. The statute provides that “[n]o actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than **eight years** after substantial completion of the improvement.”

The applicable statute of repose presents an absolute bar to the Plaintiff’s claims in this case. Unlike a statute of limitations, which bars to limit the remedies available for certain causes of action, a statute of repose creates a substantive right for parties to be free from liability for any and all claims after a legislatively-determined period of time. A statute of repose is an absolute time limit beyond which liability no longer exists and is not tolled for any reason. Langley v. Pierce, 313 S.C. 401, 438 S.E.2d 242 (1993); Florence County School District v. Interkal, Inc., 348 S.C. 446, 559 S.E.2d 866 (Ct. App. 2002).

The Plaintiff has admitted that installation of the home was complete on December 15, 2006. As such, any lawsuit alleging any claims for defects in the home in question would have had to have been initiated by December 15, 2014. Plaintiff filed its suit on October 13, 2015, nearly a year after the expiration of the statute of repose. As such, any and all claims for defects in the home are absolutely barred. All of the


Plaintiff's claims in this case are admittedly based on defects in the home. As such, Giles is entitled to summary judgment on all claims.

Plaintiff has argued that an exception to the statute of repose exists, i.e., the element of gross negligence. Plaintiff argues that gross negligence presents an issue of fact precluding summary judgment. However, the Plaintiff has neither pled gross negligence nor submitted any summary judgment evidence on the issue of gross negligence. As noted above, the party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. George v. Empire Fire & Marine Ins. Co., 545 S.E.2d 500 (S.C. 2001). Instead, a party "must come forward with specific facts showing that there is a genuine issue for trial." Baughman v. American Tel. and Tel. Co., 410 S.E.2d 537 (S.C. 1991). (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). The record is devoid of any summary judgment evidence to support the Plaintiff's position. Accordingly, this Court has no choice but to grant the Defendant's Motion.

For these reasons, the Court GRANTS the Defendant's Motion for Summary Judgment in this case.

IT IS SO ORDERED.

27 July, 2016
Lexington, South Carolina


The Honorable R. Knox McMahon
Presiding Judge, First Judicial Circuit