

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Case No. 2010-CP-26-03901  
Appellate Case No.: 2015-000248

Rivergate Homeowners' Association, ..... Appellant,  
v.

WW & LB Development Company, LLC, RWG, Inc., Aiello Associates, Daniels Engineering, Inc., Rivergate Homeowners' Association, Rivergate Homeowners' Association Board of Directors, Wayne Winderman, individually, Salvatrice Foran, individually, Gerald Foran, individually, Marcos Soares Construction, William C. DeSouza, individually, James Eason, individually and d/b/a James Eason & Company, D&D Cleaning and Construction, Inc., Joel's Framing, Joe Freza, Aroldo Garcia, Joaquin Geraldo Zeferinao, individually, and d/b/a Zeferino Framing, Leo Trombley, Judy Schultz, J&D Interior Design, Jose Dasmercese d/b/a J.P. construction, Scott Chandler d/b/a Coastal Custom Windows & Doors, R&D Construction, Nicasio Ramirez Zunigo, Walchir Morais, Marco Trebbi, Blankenship Roofing, Inc., DLJ Construction, LLC, Dewayne Bates, The Bates Group, LLC, Bridges Construction Co., Brewer Construction, Inc., Speedy Concrete, REB-FEL, Inc., Mark Mychajluk, Eric Jazwinski, Southern Framing Corporation, AB Consulting Engineers, Inc., WWI Development Company, LLC, Michael Dawson Construction, Inc., Asphalt Paving & Maintenance Co., Inc. and Chuck's Construction Co., Inc. Right Way Group, Inc., Stevens Construction Co., Inc., Geometrics, Inc., Eric Yazwinski, Law Engineering, Inc., D&M Builders, Inc., Hill Construction Company, Bonnie Stone a/k/a Bonny Stone, DJL Construction Company, L.L.P., Adrian Mondragon, individually and d/b/a Mondragon Construction, Inc., and Glen Causey, ..... Defendants,

Of Whom Chuck's Construction, Inc. is the Respondent,

Chuck's Construction Co., Inc., ..... Third-Party Plaintiff,

v.

Vereen Concrete Co., Inc. and Asphalt Pavement Maintenance of Myrtle Beach, Inc.,  
Third-Party Defendants.

Rivergate Homeowners' Association .....Appellant,

v.

WW & LB Development Company, LLC, Speedy Concrete, AB  
Consulting Engineers, Inc., and Chuck's Construction Co., Inc. Defendants

Of Whom AB Consulting Engineers, Inc. is the .....Respondent.

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RETURN OF RESPONDENT CHUCK'S CONSTRUCTION CO., INC. TO APPELLANT'S  
PETITION FOR REHEARING

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The Appellant seeks a rehearing on two issues pertaining to the Court's decision on July 19, 2017. Specifically, Appellant argues that the evidence on equitable tolling and standing should preclude summary judgment. This Respondent asserted that equitable tolling may be invoked only when (a) extraordinary circumstances prevented the party from filing despite due diligence, (b) the party actively pursued his remedies by filing a defective pleading during the statutory period or was induced or tricked by the defendant into allowing the deadline to pass, and (c) the party is unable to obtain vital information bearing on the existence of his claim despite due diligence. *Hooper v. Ebenezer Senior Serv. & Rehab Center*, 386 S.C. 108, 687 S.E.2d 29 (2009).

Here, the HOA - whether controlled by the developer or some other party - had ample capacity to bring suit against third parties such as Respondent at any time prior the turnover in October, 2007. The pre-turnover HOA had both the incentive and knowledge to bring an action to recover for construction defects brought to light in 2005. Appellant posits no confidential relationship, collusion, or other factual scenario which would have prevented the developer-

controlled HOA from proceeding against third parties who allegedly performed negligent services at Rivergate. Thus, there are no facts sufficient to satisfy the equitable tolling factors set forth in *Hooper*.

Appellant cites *Magnolia North Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012) in support of its equitable tolling claim, but that case is inapposite. In *Magnolia North*, this Court held that the statute of limitations was tolled during the period that the defendant developer controlled the plaintiff homeowner's association. By contrast, the Respondent in this action is not the developer but a third party, and neither controlled nor had any representation on Appellant's board while the statute ran. Thus, the Appellant was not faced with the peculiar prospect of "initiat[ing] an action against itself" during the relevant period – the action would have commenced against an arm's-length actor. (*Id.* at 372.)

Based on the foregoing, the Appellant's Petition for Reconsideration should be denied.



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Christina A. Bisset  
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Attorneys for Respondent  
Chuck's Construction Co., Inc.

August 23, 2017

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CERTIFICATE OF SERVICE

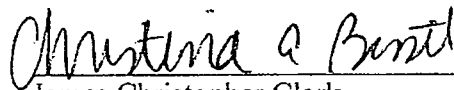
I certify that I served a copy of the Return of Respondent Chuck's Construction, Inc. to Appellant's Petition for Rehearing on the following Appellant and Respondents AB Consulting Engineers, Inc. and Speedee Concrete, Inc. by depositing the same in the United States Mail, postage prepaid, on August 23, 2017, addressed to their attorneys of record as follows:

Blake A. Hewitt, Esquire  
Bluestein Nichols  
Thompson & Delgado  
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Columbia, SC 29202  
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CERTIFICATE OF SERVICE

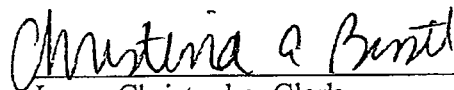
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Blake A. Hewitt, Esquire  
Bluestein Nichols  
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August 23 2017



**Reply To**

CHRISTINA A. BISSET  
Direct Dial: (843) 848-6008  
christina.bisset@mgclaw.com

August 30, 2017

The Honorable Jenny Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: Rivergate HOA vs. WW & LB Development Company, et al / vs.  
Chuck's Construction, et al.  
Liberty Mutual Claim No.09050880  
Case Number: 2008-cp-26-4690  
Our File No.: 20216.09088  
Claim No.: 5260032107 & 09050880-001  
Appellate Case No.: 2015-00248  
000248

Dear Ms. Kitchings:

Enclosed please find the original and 6 copies of Respondent Chuck's Construction Co., Inc.'s Return to Appellants' Petition for Rehearing and Proof of Service in the above-referenced case. Please file the originals and return the clocked in copies via our courier.

If you have any questions, please contact me.

Yours truly,

McAngus Goudelock & Courie, LLC

*Christina Bisset*  
Christina A. Bisset

CAB/tll  
Enclosures