

FORM 15  
RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2015-CP-38-01199  
Appellate Case No.: 2017-000618

James E. Hensley

Appellant,

v.

Giles Home, LLC f/k/a Giles  
Industries of Tazewell, Inc,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) IN THE FIRST JUDICIAL CIRCUIT  
COUNTY OF ORANGEBURG )

James E. Hensley, )  
 )  
Plaintiff, )

Civil Action No. 2015-CP-38-01119  
2199 (JC)

vs. )

**ORDER DENYING PLAINTIFF'S  
MOTION TO RECONSIDER**

Giles Homes, LLC. f/k/a Giles Industries )  
of Tazewell, Inc.; )  
 )  
Defendant. )

(BJ)

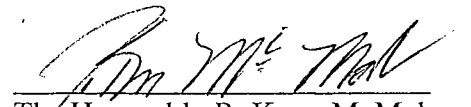
This matter comes before the Court by way of Plaintiff's Motion to Alter and/or Amend the Judgment pursuant to Rule 59(e), SCRCF filed August 10, 2016. Specifically, Plaintiff asks this Court to reconsider its Order Granting Defendant's Motion for Summary Judgment that was filed on August 2, 2016.

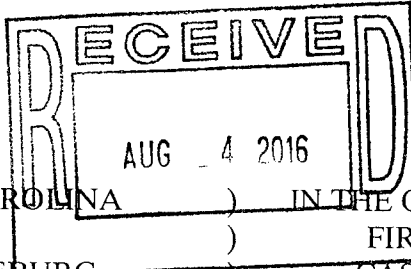
After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded, and further finds there was no error of law or facts that were not appropriately considered. This Court finds that the Pleadings in this case raise no genuine issues of material fact.

Accordingly, this Court hereby **DENIES** Plaintiff's Motion under Rule 59(e), SCRCF, to reconsider this Court's August 2, 2016 Order. Furthermore, pursuant to Rule 59(f), SCRCF, the Court is of the opinion that oral argument is not necessary.

**IT IS SO ORDERED.**

Calvin, South Carolina  
November 28, 2016

  
The Honorable R. Knox McMahon  
Presiding Judge



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT  
CASE NO. 2015-CP-38-01199

James E. Hensley,

Plaintiff,

v.

Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc.,

Defendant.

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

FILED FOR RECORD  
WINIFRED CLARK  
JULY 29 2016  
CLERK OF COURT  
ORANGEBURG, SC

*fm*

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**.

**SUMMARY JUDGMENT STANDARD**

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).

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*Winifred B. Clark*  
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

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), SCRCP, 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.

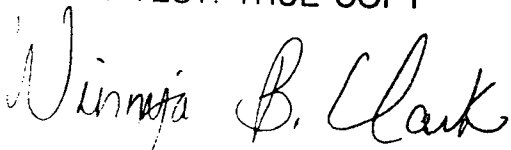
Plaintiff has argued that an exception to the statute of repose exists, i.e., the element of gross negligence. Plaintiff argues that gross negligence presents an issue of fact precluding summary judgment. However, the Plaintiff has neither pled gross negligence nor submitted any summary judgment evidence 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

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CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

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

James E. Hensley, )  
 )  
Plaintiff, )

-vs- )

Giles Homes, LLC f/k/a Giles Industries )  
of Tazewell, Inc., )  
 )  
Defendant. )

COMPLAINT

FILED FOR RECORD  
WINNIFA B. CLARK  
2015 OCT 13 A 10:06  
CLERK OF COURT  
ORANGEBURG, SC

The Plaintiff above named complaining of the Defendant above would allege and show as follows:

1. The Plaintiff is a citizen and resident of Orangeburg County, South Carolina and has been such at all times relevant to the matters complained of herein.

2. The Plaintiff is informed and believes the Defendant is a corporation, formerly known as Giles Industries of Tazewell Inc. and is organized and existing under the laws of the State of Tennessee and is in the business of constructing manufactured homes for sale throughout the Southeastern United States including in the State of South Carolina and is licensed to do business in the State of South Carolina.

3. On or about December 1, 2006 the Plaintiff purchased a 2007, brand new, Gile Manufactured home from an Oakwood Homes dealership located in Charleston County, South Carolina and which was manufactured by the Defendant for sale to the general public.

4. The Plaintiff and his family, following his purchase of the manufactured home had the home set up on his property located at 639 Four Winds Road in Holly Hill, South Carolina and

ATTEST: TRUE COPY

*Winnif B. Clark*

CLERK OF COURT  
ORANGEBURG COUNTY, SC

thereafter recently became aware of significant construction defects which has caused the home to be uninhabitable.

5. That as a result of the deficiencies in the construction of the Plaintiff's home, the Plaintiff has been damaged and he and his family has had to secure alternate rental housing because he will have to expend large sums of money to repair, correct and replace various parts and components of the home and reconstruct major portions of his home, have been exposed to and will be subject to the loss of use, enjoyment and depreciation in value of his property.

FOR A FIRST CAUSE OF ACTION

(NEGLIGENCE)

6. The Plaintiff would restate every allegation contained in paragraphs 1 through 5 above as fully as if repeated herein.

7. At all times material hereto, the Defendant by and through its agents, servants and employees were under a duty to construct the manufactured home purchased by the Plaintiff in accordance with applicable building codes, and in conformance with accepted construction and industry standards.

8. The Plaintiff is informed and believes the Defendant was negligent, careless, reckless, willful and wanton in constructing, supervising and inspecting the residence purchased by the Plaintiff and in failing to construct the manufactured home in conformance with accepted construction and industry standards, all of which have directly and proximately caused the defects and deficiencies in the residence which will need to be corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness include but are not limited to the following particulars:

A. In failing to adequately supervise the work and construction of the residence.

B. In constructing the subject residence in violation of applicable building codes, standard building practices and accepted construction industry standards and practices.

C. In failing and neglecting to properly and reasonably construct the home to prevent and eliminate water and moisture from intrusion into the home.

D. In constructing the home in such a manner that water entered into the walls, floors and joist of the home.

E. And other deficiencies or failures as will be proved at trial.

9. That as a direct and proximate result of the negligence, carelessness, willfulness and wantonness of the Defendant, the Plaintiff has suffered actual, direct, incidental, consequential and special damages which include the Plaintiff having to pay rent because of the condition of his home and will have to spend a substantial sum of money in order to renovate, correct, repair and restore the residence to make it safe and habitable. Additionally, the Plaintiff has been injured and otherwise damaged in that water and moisture exists and continues to intrude in to the home causing rot, mold, deterioration and other damages to the finish and structural elements of the Plaintiff's home. All of which will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of his property as well as loss of value in depreciation by virtue of the defects and damages aforementioned.

FOR A SECOND CAUSE OF ACTION

(BREACH OF WARRANTY OF HABITABILITY, BREACH OF WARRANTY OF FITNESS

FOR A PARTICULAR PURPOSE, BREACH OF WARRANTY AGAINST LATENT

DEFECTS)

10. The Plaintiff would restate and re-allege each allegation contained in paragraphs 1 through 9 as fully as if repeated herein.

11. The Defendant implicitly and/or expressly warranted that its building and construction of the manufactured home would be habitable and fit for its intended use as a single family home and that such building and construction of the residence would be performed in a fit; good and workman like fashion in accordance with the applicable building codes, accepted construction industry standards and that the building and construction would be free of latent defects and fit for the purpose for which the manufactured home was constructed.

12. The Defendant breached said warranties by building and constructing the manufactured home in such a manner as to be in violation of applicable building codes, industry standards and accepted construction industry standards and practices.

13. As a direct and proximate result of the Defendant's breach of these warranties the Plaintiff has suffered actual, direct, incidental, consequential and special damages, including but not limited to having to stay in a rental home because his home is uninhabitable and having the need to spend substantial sums of money in order to renovate, correct, repair, remediate and restore his home to make it safe and habitable. All of which will require the Plaintiff to expend great sums of money to correct and repair the deficiencies as set forth herein as well as to suffer lost, use and enjoyment of his property as well as the loss of value and depreciation by virtue of the defects and damages aforementioned.

FOR A THIRD CAUSE OF ACTION

(UNFAIR TRADE PRACTICE)

14. The Plaintiff re-allege the allegations contained in paragraphs 1 through 13 of this Complaint as fully as if repeated herein.

15. The Defendant is a "person" within the meaning of South Carolina Code of Law section 39-5-10(a) and by its actions in preparing, building and constructing the manufactured home and by placing this home in the stream of commerce as the term is defined in South Carolina Code of Law section 39-5-10(b).

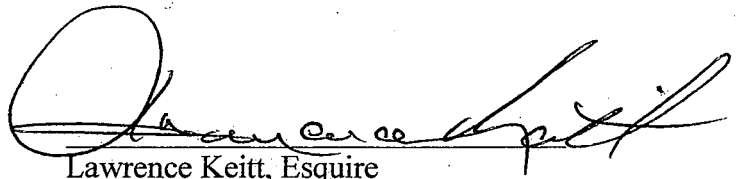
16. The Defendant by its actions described herein above constitute unfair and deceptive practices within the meaning of South Carolina Code section 39-5-20(a) and such action(s) are capable of repetition.

17. That the conduct of the Defendant affects the public interest of the people of South Carolina and the Defendant knew or should have known that its conduct violated the South Carolina Unfair Trade Practices Act.

18. As a direct foreseeable and proximate result of the Defendant's unfair and deceptive practices, the Plaintiff has suffered actual, direct, incidental consequential and special damages, including but not limited to the expenses associated with hiring experts to investigate the cause of the defects and deficiencies set forth above and will have to spend a substantial sum of money to renovate, correct, repair, restore and remediate his home to make it safe and habitable. All which will require the Plaintiff to expend great amounts of money to correct, and repair as well as suffer the loss of use and enjoyment of his property as well as loss of value and depreciation by virtue of the defects and damages aforementioned.

Wherefore, the Plaintiff prays for a judgment against the Defendant in a reasonable sum in actual, punitive and treble damages to be determined by a jury: for attorney fees and the cost of this action; for prejudgment interest, or post-judgment interest on the Plaintiff's damages: and for such other and further relief as this Court may deem just and proper.

**\*\*\* SIGNATURE PAGE TO FOLLOW \*\*\***

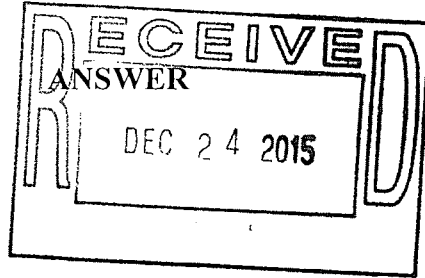


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October 13, 2015  
Orangeburg, SC

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



COMES NOW Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc. ("Giles"), Defendant, and, subject to the Motion to Stay and Compel Arbitration and Memorandum in Support Thereof, answers the Plaintiff's Complaint as follows:

1. Giles is without sufficient information to either admit or deny the allegations of paragraph 1 of the Complaint; therefore, same are denied.
2. Giles denies that it has been sued in the proper name in this case.
3. Giles admits the allegations of paragraph 3 of the Complaint.
4. Giles is without sufficient information to either admit or deny the allegations of paragraph 4 of the Complaint; therefore, same are denied.
5. Giles denies the allegations of paragraph 5 of the Complaint.
6. Paragraph 6 of the Complaint is a re-allegation of previous paragraphs; therefore, all of the allegations in this Answer are incorporated by reference herein.
7. Giles denies the allegations of paragraph 7 of the Complaint. The manufactured home purchased by Plaintiff is subject to laws and industry standards that pertain specifically to manufactured homes.

8. Giles denies all subparts of paragraph 8 of the Complaint.
9. Giles denies all allegations of paragraph 9 of the Complaint.
10. Paragraph 10 of the Complaint is a re-allegation of previous paragraphs; therefore, all of the allegations in this Answer are incorporated by reference herein.
11. Giles denies the allegations of paragraph 11 of the Complaint. The manufactured home purchased by Plaintiff is subject to laws and industry standards that pertain specifically to manufactured homes.
12. Giles denies all allegations of paragraph 12 of the Complaint.
13. Giles denies all allegations of paragraph 13 of the Complaint.
14. Paragraph 14 of the Complaint is a re-allegation of previous paragraphs; therefore, all of the allegations in this Answer are incorporated by reference herein.
15. Giles denies all allegations of paragraph 15 of the Complaint.
16. Giles denies all allegations of paragraph 16 of the Complaint.
17. Giles denies all allegations of paragraph 17 of the Complaint.
18. Giles denies all allegations of paragraph 18 of the Complaint.

Giles asserts the following by way of affirmative defense:

**FOR A FIRST AFFIRMATIVE DEFENSE**

1. The Complaint fails to state a claim from which relief may be granted. Accordingly, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the SCRPC.

**FOR A SECOND AFFIRMATIVE DEFENSE**

2. This case is subject to arbitration as set forth in the accompanying Motion to Stay and Compel Arbitration and Memorandum in Support Thereof.

**FOR A THIRD AFFIRMATIVE DEFENSE**

3. All of the Plaintiff's claims are barred by the applicable statute of limitations and statute of repose.

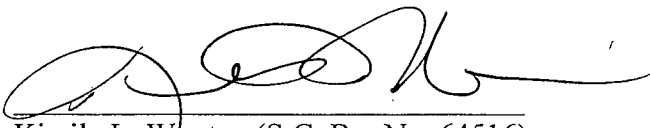
WHEREFORE, Giles requests that this court enter an order:

1. Compelling arbitration pursuant to the accompanying Motion to Stay and Compel Arbitration and Memorandum in Support Thereof;
2. Dismissing the case pursuant to Rule 12(b)(6) of the SCRPC;
3. Dismissing the case for failure to timely file under the applicable statutes of limitation and repose; and
4. For such other and further relief to which Giles may be justly entitled.

Dated this 2nd day of December, 2015.

Respectfully submitted,

By:



Kimila L. Wooten (S.C. Bar No. 64516)  
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Industries of Tazewell, Inc., Defendant*



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

**MOTION FOR SUMMARY  
JUDGMENT**

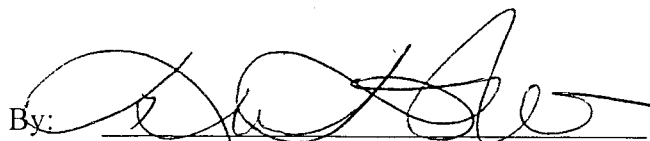
COMES NOW the Defendant, Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc. (“Giles Homes”), and moves this court for summary judgment, and shows as follows:

1. There is no genuine issue of fact, and the movant is entitled to summary judgment as a matter of law.
2. The basis for this motion is that the applicable statute of repose expired prior to the filing and/or serving of the Complaint.

WHEREFORE, Defendant, Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc., respectfully requests that this court grant its Motion for Summary Judgment.

This 18<sup>th</sup> day of March, 2016.

Respectfully submitted,

By: 

Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE GOLDSMITH, PA  
55 Beattie Place, Suite 1050 (29601)

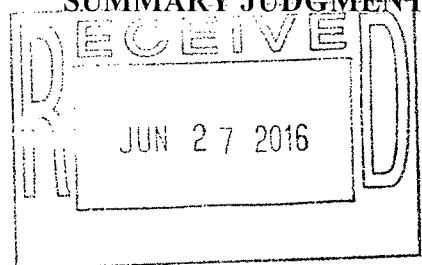
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*Counsel for Defendant, Giles Homes, LLC  
f/k/a Giles Industries of Tazewell, Inc.*



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

**MEMORANDUM IN SUPPORT  
 OF MOTION FOR  
 SUMMARY JUDGMENT**



COMES NOW Defendant, Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc. (“Giles Homes”), by and through its undersigned attorneys, and submits its memorandum of law in support of its Motion for Summary Judgment. The ground for the Motion is that the applicable statute of repose absolutely bars all claims against Giles Homes in this case.

**UNDISPUTED FACTS**

This lawsuit arises from the Plaintiff’s complaints about a mobile home that he purchased in **December of 2006**. Giles Industries, Inc. was the manufacturer of the home. Plaintiff admits and sets forth the date of purchase in Paragraph 3 of his Complaint. Attached as Exhibit “A” hereto is a true and correct copy of the Certificate of Completion of Installation which shows that installation of the home was complete on **December 15, 2006**. Plaintiff signed the certificate of completion, thereby acknowledging that the installation was complete. This case was filed on October 13, 2015, and was served upon the Defendant on December 2, 2015.

## THE SUMMARY JUDGMENT STANDARD

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).

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).

**ARGUMENT: THE STATUTE OF REPOSE IS AN ABSOLUTE  
BAR TO THE PLAINTIFF'S CLAIMS**

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).

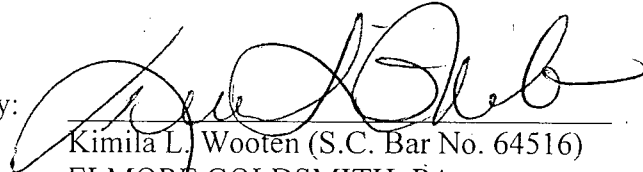
Plaintiff has admitted that the applicable statute of repose for this case is S.C. Code Ann. § 15-3-640 (copy attached as Exhibit "B."). This statute, signed into law by Gov. Sanford in March of 2005, came into effect on July 1, 2005 (see highlighted history on page 2 of the attached statute) and governs 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." As noted above, and as admitted by the Plaintiff, 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.

WHEREFORE, based on the foregoing arguments and authorities, Defendant, Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc., respectfully requests that this court grant its Motion for Summary Judgment.

This 24<sup>th</sup> day of June, 2016.

Respectfully submitted,

By:



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*Counsel for Defendant, Giles Homes, LLC*

*f/k/a Giles Industries of Tazewell, Inc.*

Dec 19 2006 11:33AM OAKWOOD HOMES

843 764 0304

P.1

### CERTIFICATION OF COMPLETION OF INSTALLATION

The undersigned installer hereby states and certifies that [1] the undersigned is a duly licensed installer under the regulations for the SC Manufactured Housing Board, and holds license no. 1810; [2] the undersigned has performed such services, and provided such equipment and material as has been necessary for the provision of such services, as set forth above; [3] such services have been performed in accordance with the regulations of the SC Manufactured Housing Board and have been performed in a good and workmanlike manner; [4] within three (3) calendar days of the date of execution by the undersigned, the undersigned will mail or deliver a copy of this document to Retailer; and [5] at the time of installation of the services described above the undersigned has provided the Home Purchaser with a copy of this document.

Signed this 15<sup>th</sup> day of Dec, 2006.

Reckley C Jones  
Name of Installer as it appears on License

[Signature]  
Signature for Installer

Reckley C Jones  
Typed/Printed Name of Person Signing

Receipt Acknowledged by Buyer(s) on Dec 15, 2006.

[Signature]  
Signature of Buyer

James E. Hensley  
Typed/Printed Name of Buyer

\_\_\_\_\_  
Signature of Buyer

\_\_\_\_\_  
Typed/Printed Name of Buyer

WESTLAW

NOTES OF DECISIONS (11)

Code of Laws of South Carolina 1976 Annotated  
Title 15, Civil Remedies and Procedures  
Chapter 3, Limitation of Civil Actions

Validity  
In general  
Actions for contribution  
Easements  
Limitation of actions

§ 15-3-640. Actions based upon defective or unsafe condition of improvement to real property; right to contract fo...  
Code of Laws of South Carolina 1976 Annotated Title 15, Civil Remedies and Procedures (Pages: 2 pages)

Code 1976 § 15-3-640

§ 15-3-640. Actions based upon defective or unsafe condition of improvement to real property; right to contract for guarantee of structure for extended period.

Currentness

No 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. For purposes of this section, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

- (1) an action to recover damages for breach of a contract to construct or repair an improvement to real property;
- (2) an action to recover damages for the negligent construction or repair of an improvement to real property;
- (3) an action to recover damages for personal injury, death, or damage to property;
- (4) an action to recover damages for economic or monetary loss;
- (5) an action in contract or in tort or otherwise;
- (6) an action for contribution or indemnification for damages sustained on account of an action described in this section;
- (7) an action against a surety or guarantor of a defendant described in this section;
- (8) an action brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest in the real property or improvement;
- (9) an action against owners or manufacturers of components, or against any person furnishing materials, or against any person who develops real property, or who performs or furnishes the design, plans, specifications, surveying, planning, supervision, testing, or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

This section describes an outside limitation of eight years after the substantial completion of the improvement, within which normal statutes of limitations continue to run.

A building permit for the construction of an improvement to real property must contain in bold type notice to the owner or possessor of the property of his rights under this section to contract for a guarantee of the structure being free from defective or unsafe conditions beyond eight years after substantial completion of the improvement. The Department of Consumer Affairs shall publish in conspicuous places the right of an owner or possessor to contract for extended liability under this section. Nothing in this section prohibits a person from entering into a contractual agreement prior to the substantial completion of the improvement which extends any guarantee of a structure or component being free from

EXHIBIT B

defective or unsafe conditions beyond eight years after substantial completion of the improvement or component.

For any improvement to real property, a certificate of occupancy issued by a county or municipality, in the case of new construction or completion of a final inspection by the responsible building official in the case of improvements to existing improvements, shall constitute proof of substantial completion of the improvement under the provisions of Section 15-3-630, unless the contractor and owner, by written agreement, establish a different date of substantial completion.

**Credits**

HISTORY: 1962 Code § 10-152; 1970 (56) 2397; 1986 Act No. 412, § 15-3-640; 2005 Act No. 27, § 15-3-640

**Notes of Decisions (11)**

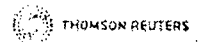
COPYRIGHT (C) 2016 BY THE STATE OF SOUTH CAROLINA

Code 1976 § 15-3-640, SC ST § 15-3-640

Current through 2016 Act No. 167, effective April 29, 2016, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

End of Document

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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

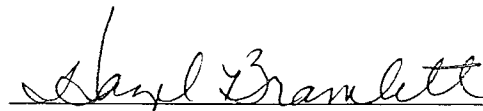
FIRST JUDICIAL CIRCUIT

CASE NO. 2015-CP-38-01199

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served **Memorandum in Support of Motion for Summary Judgment**, by serving via e-mail and by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, at Greenville, South Carolina, addressed to the following person at the following address, which is the last address known to me:

Lawrence Keitt, Esquire  
Law Office of Lawrence Keitt  
340 Summers Avenue  
Post Office Box 811  
Orangeburg, South Carolina 29116  
*Counsel for Plaintiff*



Hazel Bramlett  
Legal Assistant to Kimila L. Wooten

June 24, 2016

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

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

James E. Hensley, )  
 )  
Plaintiff, )

-vs- )

Giles Homes, LLC f/k/a Giles )  
Industries of Tazewell, Inc., )

Defendant. )

NOTICE OF AND MOTION FOR  
RECONSIDRATION OF THE COURT'S  
SUMMARY JUDGMENT ORDER

FILED FOR REPORT  
MINOR L. CLARK  
2015 APR 20 P 3 31  
CLERK OF COURT  
ORANGEBURG, SC

**TO: THE HONORABLE R. KNOX MCMAHAN AND KIMILA L. WOOTEN,  
ESQUIRE, COUNSEL FOR THE DEFENDANT**

YOU WILL TAKE NOTICE HEREBY that the Plaintiff by and through his undersigned counsel will move before the Honorable R. Knox McMahan, Presiding Judge of the Court of Common Pleas for the First Judicial Circuit at Orangeburg, South Carolina for an order reconsidering the Court's Order granting the Defendant's Motion for Summary Judgment.

Said Motion is made pursuant to Rule 59(c) of the Rules of Civil Procedure and is based upon the below listed specifications of errors.

**STATEMENT OF FACTS**

The Defendant moved for Summary Judgment based solely upon the law as stated in Section 15-3-640 ect., al of the South Carolina Code of Laws as amended. This section reduced the limitation from thirteen (13) years to eight (8) years to pursue an action based upon the allegations of faulty construction of an improvement on a person's land. The only material submitted to the Court by the Defendant in support of its Motion

were documents confirming the date of sale and date of occupancy of the Plaintiff in the home constructed by the Defendant.

The Plaintiff in response to the Defendant's Motion cited section 15-3-670, ect., al of the South Carolina Code of Laws as amended. This section specifically states that the limitation contained in section 15-3-640, ect., al does not apply and cannot be used as a defense if the construction was accompanied by fraud, gross negligence or recklessness.

Rule 56 (a) allows a party to move for Summary Judgment with or without supporting affidavits but subpart (e) of the Rule requires the moving party to serve its supporting affidavits at least 10 days before the hearing which show the facts which would be admissible into evidence and show the affiant is competent to testify to the matters stated therein regarding any fact at issue in the Motion.

This Rule goes onto say that when a Motion is made and supported as provided in the Rule only then an Adverse party may not rest upon the mere allegations or denials of his pleadings, but his response by affidavit or otherwise must set forth specific facts showing that there is a genuine issue for trial.

The Defendant submitted no affidavits in support of its Motion which attested to the soundness of its construction of the Plaintiff's home nor did it raise the sufficiency of the Plaintiff's pleading in its Motion.

The Court granted the Defendant's Motion for Summary Judgment because the Plaintiff did not submit any evidence beyond the allegations of his Complaint which detailed the fact that the home constructed by the Defendant became uninhabitable within eight years of its construction, thus supporting his claim of recklessness and gross negligence in the construction of the home by the Defendant.

Also, the Court ruled as a further sustaining ground that the Plaintiff's Complaint failed to allege gross negligence in the construction of the home by the Defendant.

#### ERRORS OF THE COURT

1. The Defendant was allowed to argue and the Court ruled that the Plaintiff was required to present evidence of the deficiency of the Defendant's construction of his home even though this issue was not Noticed by the Defendant in its Motion nor supported by any affidavit or other admissible evidence produced by the Defendant.

2. The Defendant was allowed to argue and the Court ruled that the Plaintiff's Complaint was deficient even though the issue was not raised to the Plaintiff and the Court in the Defendant's Motion and not supported by any evidence including a statement telling the Court in what way the Plaintiff's pleading was deficient served on the Plaintiff prior to the hearing.

3. The Court wrongly shifted the burden of proof from the Defendant to the Plaintiff in direct contradiction to the requirement of the law.

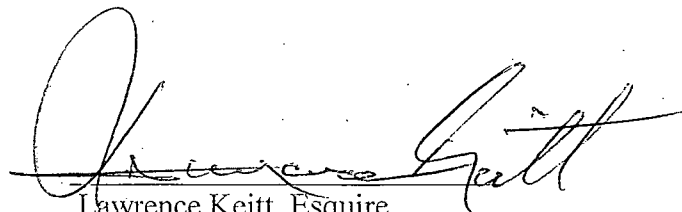
4. The Court ruled by implication that the clear and unambiguous words of section 15-3-670, ect. A1 of the Code of Laws of South Carolina can defeat a Motion for Summary Judgment based upon section 15-3-640 of the Code of laws only if a prima facie showing of any construction defects are presented with the statute even though the Defendant presents no evidence as to the soundness of its construction of the property.

5. The Court by implication ruled that the Plaintiff must be prepared to anticipate the reply of the Defendant to any matter raised in defense of the Motion for Summary Judgment even though the matter was not raised in the Defendant's Motion for Summary

Judgment or supported by any affidavits or other admissible evidence prior to the hearing of the Motion.

6. The Court by implication ruled that the burden to defend against a Motion for Summary Judgment shifts to the Plaintiff on the mere argument of the Defendant, no supporting affidavits or other admissible evidence is required to support any of the Defendant's arguments.

7. The Court wrongly applied the requirements of the law upon ruling on Motions for Summary Judgment in the State of South Carolina by wrongly shifting the burden to the Plaintiff; by failing to find all reasonable inferences from the lack of evidence submitted by the Defendant in favor of the Plaintiff and by granting Summary Judgment when the issue of the quality or lack of quality of the construction of the Plaintiff's home by the Defendant still needed to be heard by a fact finder, and a judgment rendered on the issue.



Lawrence Keitt, Esquire  
Attorney for the Plaintiff  
Law office of Lawrence Keitt  
Post Office Box 811  
340 Summers Avenue  
Orangeburg, South Carolina 29116

August 10, 2016  
Orangeburg, SC

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FIRST JUDICIAL CIRCUIT  
COUNTY OF ORANGEBURG ) CASE NO. 2015-CP-38-01199

James E. Hensley, )  
 )  
Plaintiff, )

-vs- )

Giles Homes, LLC f/k/a Giles )  
Industries of Tazewell, Inc., )  
 )  
Defendant. )

CERTIFICATE OF SERVICE

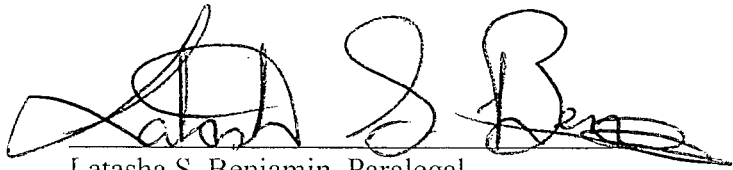
FILED FOR RECORD  
KIMILA L. WOOTEN  
JULY AUG 10 P 3 31  
CLERK OF COURT  
ORANGEBURG, S

I, the undersigned, do hereby certify that on August 8, 2016, I served the following documents: NOTICE OF AND MOTION FOR RECONSIDARIONT OF THE COURT'S SUMMARY JUDGMENT ORDER on the Honorable R. Knox McMahan and the Defendant by placing same in the United States Mail, postage prepaid and properly addressed as follows:

The Honorable R. Knox McMahan  
205 E. Main Street  
Lexington, SC 29072

Kimila L. Wooten, Esquire  
Elmore Goldsmith, Attorneys at Law  
Post Office Box 1887  
Greenville, SC 29602

\*\*\* SIGNATURE PAGE TO FOLLOW \*\*\*



Latasha S. Benjamin, Paralegal  
LAW OFFICE LAWRENCE KEITT  
POST OFFICE BOX 811  
ORANGEBURG, SC 29116  
803-531-2379

August 10, 2016  
Orangeburg, SC

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

**RESPONSE TO MOTION FOR  
 RECONSIDERATION OF  
 THE COURT'S SUMMARY  
 JUDGMENT ORDER**

DEPARTMENT OF  
 COURT REPORTERS  
 100 W. 8th Ave  
 Columbia, SC 29201  
 803.799.1111

*fm*

**TO: THE HONORABLE R. KNOX MCMAHAN AND LAWRENCE KEITT,  
 ESQUIRE, COUNSEL FOR PLAINTIFF**

COMES NOW the Defendant, Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc. (“Giles Homes”), and files its response to the Plaintiff’s Motion for Reconsideration of the Court’s Summary Judgment Order, and shows as follows:

**ARGUMENT AND AUTHORITIES**

The arguments made by the Plaintiff are meritless, and many misstate the findings of fact and conclusions of law of the Court. Each argument set forth in the Motion to Reconsider is addressed in turn.

**A. Plaintiff’s First Argument**

The Plaintiff first argues in its Motion that “the Defendant was allowed to argue and the Court ruled that the Plaintiff was required to present evidence of the deficiency of the Defendant’s construction of his home even though this issue was not Noticed (sic) by the Defendant in its Motion nor supported by any affidavit or other admissible evidence produced by the Defendant.” This argument, like all others submitted in the Plaintiff’s

motion, demonstrates a fundamental misinterpretation of the burdens required in a summary judgment scenario.

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) (emphasis added). 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)).

In the present case, the Defendant’s Motion was based on the expiration of the statute of repose. As argued in the Defendant’s Motion and at the hearing, the Plaintiff admitted that the applicable statute of repose for the present 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 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.” As noted in the Defendant’s Exhibit “A” to its Motion (Certificate of Completion of installation) and as admitted by the Plaintiff, 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. Thus, any and all claims for defects in the home are absolutely barred.

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 (App. 2002). All of the Plaintiff's claims in this case are admittedly based on defects in the home. Given that the statute of repose is an absolute bar to any claims, Defendant's required argument for summary judgment was simply to prove that the statutory period had expired. With the evidence attached to the Defendant's motion, and by admissions of the Plaintiff in its Complaint, Defendant's simple burden was met.

The burden to produce summary judgment evidence then shifts to the Plaintiff. The Plaintiff, though previously contending that an outdated version of the statute of repose applied, settled on another defense when it was time for the hearing. At the hearing, the Plaintiff argued that an exception to the statute of repose applies in this case, i.e., S.C. Code Section 15-3-670. That statute provides an exception to the statute of repose if a party is proved "guilty of ...gross negligence in providing components, in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of

construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action.”

To resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues of fact. SCRPC, Rule 56(c); NationsBank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (App. 1995). Under Rule 56, when a party makes a motion for summary judgment and supports it by evidence, the adverse party may not rest on the allegations of his or her pleadings but must respond by affidavit or other evidence demonstrating a genuine issue of material fact. Klippel v Mid-Carolina Oil, Inc. 303 SC 127, 399 SE2d 163 (App. 1990). Once the party moving for summary judgment carries its initial burden of showing absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in pleadings. SCRPC, Rule 56(c); NationsBank v. Scott Farm, *supra*, 320 S.C. 299, 465 S.E.2d 98 (App. 1995). With respect to an issue upon which the non-moving party has the burden of proof, the moving party may discharge the initial burden of demonstrating the absence of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. Lanham v. Blue Cross and Blue Shield of South Carolina, Inc. 349 S.C. 356, 563 S.E.2d 331 (2002).

In the present case, the Plaintiff presented no summary judgment evidence of any kind as required to show an exception to the statute of repose. Rule 7, SCRPC, requires that a motion must “state with particularity the grounds thereof.” SCRPC, Rule 7(b). The basis for the Defendant’s motion was the expiration of the statute of repose, not the “gross negligence” exception to the statute. As such, no notice to the Plaintiff is required.

Rather, the Plaintiff was required to present evidence beyond its pleadings to show that the exception it sought to rely upon applied in this case. The Plaintiff produced no evidence. Accordingly, the Court quite properly granted summary judgment under the statute and case law cited above.

**B. Plaintiff's Second Argument**

The Plaintiff next states that the "Defendant was allowed to argue and the court ruled that the Plaintiff's Complaint was deficient even though the issue was not raised to the Plaintiff and the court in the Defendant's motion and not supported by any evidence including a statement telling the court in what way the Plaintiff's pleading was deficient served on the Plaintiff prior to the hearing." This argument must fail. The Plaintiff has incorrectly stated the Court's findings. The Court's Order states that the Plaintiff "neither pled nor presented any evidence of gross negligence in response to the summary judgment motion." The Order goes on to state that "[t]he record is devoid of any summary judgment evidence to support the Plaintiff's position." As such, the Court did not base its Order on deficient pleadings, but rather on the Plaintiff's failure to produce any summary judgment evidence.

**C. Plaintiff's Third Argument**

The Plaintiff's next argument is that "the court wrongly shifted the burden of proof from the Defendant to the Plaintiff in direct contradiction to the requirement of the law." This is manifestly incorrect, as set forth by the response above to the Plaintiff's First Argument. The Court correctly applied the summary judgment standard and burdens of proof in this case.

#### D. Plaintiff's Fourth Argument

The Plaintiff's fourth argument is equally insupportable. Plaintiff states the court "ruled by implication that the clear and unambiguous words of § 15-3-670, et. al of the Code of Laws of South Carolina can defeat a Motion for Summary Judgment based upon § 15-3-640 of the Code of Laws only if a *prima facie* showing of any construction defects are presented with the statute even though the Defendant presents no evidence as to the soundness of its construction of the property." The Defendant is at a loss to comprehend this circuitous argument, but certainly, this alleged "ruling by implication" was not made by the Court, nor does the argument in any way show an error on the part of the Court. The Court's Order does not require or suggest that the Plaintiff needed to present a *prima facie* showing of anything. Rather, the Order notes that **absolutely no evidence** outside the pleadings was presented by the Plaintiff to show the gross negligence exception to the statute of repose. As such, under the case law cited above, the Plaintiff did not meet its burden of producing evidence outside the pleadings.

#### E. Plaintiff's Fifth Argument

The Plaintiff next argues that the Court "by implication ruled that the Plaintiff must be prepared to anticipate the reply of the Defendant to any matter raised in defense of the Motion for Summary Judgment even though the matter was not raised in the Defendant's Motion for Summary Judgment or supported by any affidavits or other admissible evidence prior to the hearing of the Motion." Again, it is difficult to comprehend this argument, but simply put, the Court did not rule that the Plaintiff must be prepared to anticipate the reply of the Defendant. Rather, the Court quite properly ruled that what the Plaintiff must anticipate is the requirement of Rule 56 that a party

must present evidence of its defenses in a summary judgment hearing. In this case, the Defendant presented ample evidence of the expiration of the statute of repose in the form of citations to the Plaintiff's own complaint and a certificate of completion for the home. The Plaintiff did not contradict this evidence, but rather admitted the dates in question, thereby establishing that the statute of repose applies in this case and that the statute had run before the case was filed. Once this showing was made, it was incumbent on the Plaintiff to present evidence in opposition. This simply was not done.

**F. Plaintiff's Sixth Argument**

Plaintiff states the court "by implication ruled that the burden to defend against a Motion for Summary Judgment shifts to the Plaintiff on the mere argument of the Defendant, no (sic) supporting affidavits or other admissible evidence is required to support any of the Defendant's arguments." This argument must also fail. Again, in the present case, the Plaintiff admitted in its complaint that the home was purchased in December of 2006. The Defendant presented the Certificate of Completion of Installation, dated December 15, 2006, in support of its Motion and this evidence was not contradicted by the Plaintiff. Thus, the running of the statute was established by admissible, uncontradicted evidence. Nowhere does the Court's Order state or even suggest that summary judgment was granted on the "mere argument" of the Defendant or that "no supporting evidence" was required.

**G. Plaintiff's Seventh Argument**

Plaintiff's final argument is that the Court "wrongly applied the requirements of the law upon ruling on Motions for Summary Judgment in the state of South Carolina by wrongly shifting the burden to the Plaintiff; by failing to find all reasonable inferences

from the lack of evidence submitted by the Defendant in favor of the Plaintiff and by granting Summary Judgment when the issue of the quality or lack of quality of the construction of the Plaintiff's home by the Defendant still needed to be heard by a fact finder, and a judgment rendered on the issue."

The first part of this argument is addressed in the response to the Plaintiff's First and Sixth Arguments above. There was no improper "shift of burden."

The second part of this argument alleges that the Court failed "to find all reasonable inferences from the lack of evidence submitted by the Defendant in favor of the Plaintiff." This argument is addressed above as well. The Defendant presented ample, uncontradicted evidence that was not objected to but rather admitted by the Plaintiff.

The last part of this argument is that the Court erred in "granting summary judgment when the issue of the quality or lack of quality of the construction of the Plaintiff's home by the Defendant still needed to be heard by a fact finder, and a judgment rendered on the issue." This argument is meritless. It is the Plaintiff's burden to create any issue of fact that may exist once the Defendant's summary judgment burden is met. Moreover, the issue of "quality or lack of quality of the construction" of the home is irrelevant to the statutory analysis done by the Court. Rather, the issue is whether the Plaintiff had produced any evidence of **gross negligence** so as to establish an exception to the statute of repose. The Plaintiff produced no evidence at all, in any form. Therefore, the Court was correct in its ruling.

**CONCLUSION AND REQUEST FOR FEES**

For the reasons set forth herein, and by virtue of the authorities cited above, the Court should deny the Plaintiff's Motion for Reconsideration. In addition, the Defendant requests its reasonable attorney's fees for responding to the complaint and this Motion.

This 6<sup>th</sup> day of September, 2016.

Respectfully submitted,

By:



Kimila L. Wooten (S.C. Bar No. 64516)  
ELMORE GOLDSMITH, PA  
55 Beattie Place, Suite 1050 (29601)  
Post Office Box 1887  
Greenville, South Carolina 29602  
(864) 255-9500-Telephone  
(864) 255-9505-Facsimile  
kwooten@elmoregoldsmith.com  
*Counsel for Defendant, Giles Homes, LLC  
f/k/a Giles Industries of Tazewell, Inc.*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 James E. Hensley, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Giles Homes, LLC f/k/a Giles )  
 Industries of Tazewell, Inc., )  
 )  
 Defendant. )  
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IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT  
 CASE NO. 2015-CP-38-01199

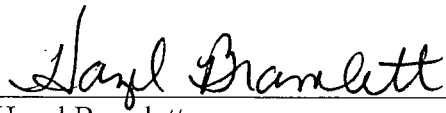
**CERTIFICATE OF SERVICE**

CLERK OF COURT  
 ORANGEBURG, SC  
 2015 SEP -8 A 11:37  
 DEPARTMENT OF  
 COURT REPORTING

I hereby certify that I have this date served **Response to Motion for Reconsideration of the Court's Summary Judgment Order**, by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, at Greenville, South Carolina, addressed to the following person at the following address, which is the last address known to me:

The Honorable R. Knox McMahon  
 Lexington County Judicial Center  
 205 E. Main Street  
 Lexington, South Carolina 29072

Lawrence Keitt, Esquire  
 Law Office of Lawrence Keitt  
 340 Summers Avenue  
 Post Office Box 811  
 Orangeburg, South Carolina 29116

  
 \_\_\_\_\_  
 Hazel Bramlett  
 Legal Assistant to Kimila L. Wooten

September 6, 2016

September 6, 2016

Via U.S. Mail

The Honorable Winnifa Brown-Clark  
Orangeburg County Clerk of Court  
Post Office Box 9000  
Orangeburg, South Carolina 29115-9000

FILED FOR MOTION  
WINNIFA B. CLARK  
2016 SEP - 8 A 11:37  
CLERK OF COURT  
ORANGEBURG, SC

Re: *James E. Hensley v. Giles Homes, LLC f/k/a Giles Industries of Tazewell, Inc.*  
C.A. No. 2015-CP-38-01199

Dear Ms. Brown-Clark:

Enclosed for filing are the original and one copy of Giles Homes' Response to Motion for Reconsideration of the Court's Summary Judgment Order in reference to the above-referenced case. Please file the original and return the file-stamped copy in the self-addressed, stamped envelope provided.

If you have any questions, please do not hesitate to give us a call.

With best regards,

ELMORE GOLDSMITH, PA



Hazel Bramlett  
Legal Assistant to Kimila L. Wooten

/hb  
Enclosure  
cc Ms. Suzie Malone (w/enc. via email)

1	State of South Carolina )	In the Court
	)	Of Common Pleas
2	County of Orangeburg )	
3		
4	Docket No: 2015-CP-38-01199	
5		
6	James Hensley, )	
	Plaintiff, )	
7	)	
8	vs. )	TRANSCRIPT OF RECORD
9	)	
10	Giles Homes, LLC, )	
	Defendant. )	
11		
12		
13	June 29, 2016	
	Orangeburg, South Carolina	
14		
15		
16	<u>B E F O R E:</u>	
17	The Honorable R. Knox McMahon, Judge.	
18		
19	<u>A P P E A R A N C E S:</u>	
20	Lawrence Keitt, Esquire	
	Attorney for the Plaintiff	
21	Kimila L. Wooten, Esquire	
	Attorney for the Defendant	
22		
23		
24	Brenda J. Sigwald, Circuit Court Reporter	
	To The Honorable R. Knox McMahon	
25	P.O. Box 206, Jackson, South Carolina 29831	

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(REPORTER'S NOTE: There were no exhibits  
entered during this hearing.)

1 THE COURT: All right. Let's see what case is this  
2 Madam Clerk?

3 THE CLERK: 2015-CP-38-01199, James E. Hensley  
4 versus Giles Homes L.L.C.

5 THE COURT: Ms. Wooten. This is the defendant's  
6 motion for summary judgment.

7 MS. WOOTEN: May it please the Court, Kimilia  
8 Wooten, representing Giles Home in this case. This is a  
9 case involving the sale of a manufactured home, a mobile  
10 home for lack of a better word. This home was purchased  
11 back in 2006 and was occupied in December of 2006. Our  
12 client was the manufacturer of the home. The suit under  
13 which the case was filed in October of 2015, and the basis  
14 of our summary judgement motion, is that the repose which  
15 is contained in South Carolina Annotated Section 15-3-640,  
16 this statute provides that in order to recover damages  
17 based on or arising out of the defective or unsafe  
18 condition to the real property must be brought within an  
19 eight year time limit from the time that this home is  
20 occupied.

21 And in Mr. Keitt's memorandum that he filed he in  
22 the reasons summary judgment should not be granted -- His  
23 memo states that if Section 15-3-640 is the proper statute  
24 that the statute does apply in this case, that there is a  
25 specified time and that that statute would bar the

1 plaintiff's claim and we would be entitled to summary  
2 judgment if not for an exception that Mr. Keitt has sited  
3 in his argument in response to our motion.

4 That exception has to do with gross negligence.  
5 The problem with that, Your Honor, there is an exception, a  
6 statutory exception contained in South Carolina Code  
7 Section 15-3-670. That exception allows for the statute of  
8 repose to absolutely bar claims when there is fraud or  
9 gross negligence involved. The problem with applying that  
10 statute to this case is there's been no gross negligence or  
11 fraud pled in the case as cause or a negligence or a breach  
12 of warranty of various types and unfair trade practices.

13 In addition there's been no evidence introduced  
14 in -- no arguments of any gross negligence or of any fraud  
15 in this case. As we point out in our memo they have not  
16 met the standard. A party may not merely rely and rest on  
17 their pleadings, the parties have to produce some evidence  
18 to show that any statutory exception or defense that  
19 they're asserting applies in a particular case. There's  
20 been no affidavits of it in this case; no documentary  
21 evidence in this case; so we would submit to the Court  
22 there are pleadings on gross negligence; and two, there's  
23 been no evidence produced in this summary judgment motion  
24 in opposition noted in the memorandum filed last week.

25 THE COURT: Do you have another copy of your memo?

1 MS. WOOTEN: I do. Thank you.

2 THE COURT: Thank you.

3 MS. WOOTEN: And Your Honor, so to sum up my  
4 argument the facts of the case or the applicability of the  
5 law, the question is whether this exception that Mr. Keitt  
6 is claiming can operate to save the case from summary  
7 judgment and for the reasons we've stated it does not and  
8 we feel that we are entitled to summary judgment and we  
9 respectfully ask that it be granted.

10 Thank you, Your Honor.

11 MR. KEITT: I would like to hand up a copy of my  
12 memorandum.

13 Section 15-3-640 would allow this summary judgement  
14 if the legislature had not passed Section 15-3-670. I've  
15 attached a copy of the statute for your review.

16 As Counsel also knows the question of gross  
17 negligence, the question of negligence is a question for a  
18 jury to determine. The mere fact that she acknowledges  
19 that and then tells the Court, Well, let's ignore the rules  
20 let's let the Court decide that, there is no Court that  
21 would say that 670 does not apply if there's no gross  
22 negligence.

23 I would submit that the legislature did not intend  
24 that to be a decision by the Court. The case law or the  
25 orders of -- the rules of Court does not allow the Court to

1 make that decision. Again that's a question for a jury.

2 And contrary to what Counsel's represented to the Court I  
3 would suggest that the first cause of action pled by the  
4 plaintiff is a gross negligence cause of action.

5 Particularly couched it, I'll read in pertinent part, The  
6 limitations provided by section 15-3-640 are not available  
7 as a defense to an fraud, gross negligence, or recklessness  
8 in providing components in furnishing materials, in  
9 developing real property, in performing or furnishing the  
10 designs, plans, specifications of construction,  
11 construction of, in connection with such an improvement or  
12 to any person who conceals any such cause of action.

13 The claim alone is sufficient, Your Honor, because  
14 the claim is a factual one that only a jury can decide  
15 which testimony has been proven. Her basis for the  
16 argument that gross negligence was not pled, when it was  
17 pled, and the statute is very clear and the statute is  
18 designed for people like Mr. Hensley.

19 They paid \$102,000 for the house. The house fell  
20 apart around them and they filed on the 9th year; and  
21 obviously, the State legislature had an intention that  
22 people buying property of that nature where defects  
23 initially aren't readily apparent have a right to be heard,  
24 and in fact, that's why the state legislature passed 670,  
25 which specifically says the defense of repose will not

1 apply in this situation. It can't be clearer than that.

2 The State legislature relied on the gross  
3 negligence situation. Clearly this is a gross negligence  
4 situation.

5 THE COURT: Thank you Mr. Keitt.

6 MS. WOOTEN: Just briefly, Your Honor. We do not  
7 believe that the first cause of action for negligence is to  
8 state a cause of action; however, if that is the case,  
9 still Your Honor, there has been no evidence produced in  
10 response -- in response to the summary judgement motion.  
11 No affidavits, no documents, nothing. So all that we have  
12 on file, which as our courts have stated the motive is not  
13 sufficient on how much discovery has been done. The case  
14 was October 2015; all written discovery, we haven't been  
15 asked for my deposition; had we been asked, we would have  
16 given them. But we have provided our entire file which  
17 shows the history of the home to Mr. Keitt and we don't  
18 believe that this discovery would make any difference  
19 because it's already been admitted that the statute  
20 applies.

21 MR. KEITT: Just briefly, Your Honor. Clearly  
22 they're argument based on 15-3-640 it had failure of  
23 applicable repose in the case. That being the case, the  
24 whatever failure to be pled is not at issue before this  
25 Court. Whatever failure she perceives is not pled in the

1 plaintiff's evidence makes no notice of their position that  
2 the pleadings is defective. What they're pleading, Your  
3 Honor, is that Section 15-3-640 is an absolute bar to our  
4 client's claim based on the fact repose was modified from  
5 13 to 8 years; fine and dandy, except 15-3-670. That's not  
6 even a defense in the case if again gross negligence is  
7 proved. Again that's a factual question not one that can  
8 be determined in summary judgment.

9 THE COURT: Thank you. Did you want to address  
10 Ms. Wooten's issue about affidavits and presentation of  
11 affidavits, Mr. Keitt? Did you want the address that?

12 MR. WILLIAMS: Of course, affidavits again, that's  
13 not pled. That's not the motion before the Court. They're  
14 limited by the four corners within the complaint.

15 THE COURT: All right. Thank you.

16 MS. WOOTEN: Might I respond to that? Do you need  
17 a response?

18 THE COURT: I think I've heard enough. I don't  
19 mean that disrespectfully. I'm quoting the late Honorable  
20 Walter Bristow. I've heard enough. Y'all present proposed  
21 orders, Ms. Wooten, Mr. Keitt.

22 Thank y'all, thank y'all very much. Get those to  
23 me in 15 days. My law clerk and to each other. Thank you  
24 thank you very much.

25 \* \* \* \* \* END OF TRANSCRIPT \* \* \* \* \*

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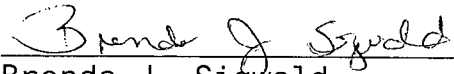
State of South Carolina )  
County of Aiken ) **Certificate of Reporter**

I, THE UNDERSIGNED, Brenda J. Sigwald,  
Official Court Reporter for the Eleventh Judicial Circuit  
of the State of South Carolina, do hereby certify that I  
reported the proceedings in the captioned case in the Court  
of Common Pleas in and for the State of South Carolina on  
the 29th day of June, 2016.

I FURTHER CERTIFY that the foregoing pages,  
constitute a true, accurate and complete transcript of said  
hearing.

I FURTHER CERTIFY that I am neither kin, counsel,  
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and  
seal at Aiken County, this 22nd day of May, 2017.

  
\_\_\_\_\_  
Brenda J. Sigwald,  
Court Reporter and Notary Public  
For the State of South Carolina  
My commission expires  
January 4, 2020

CERTIFICATE OF COUNSEL

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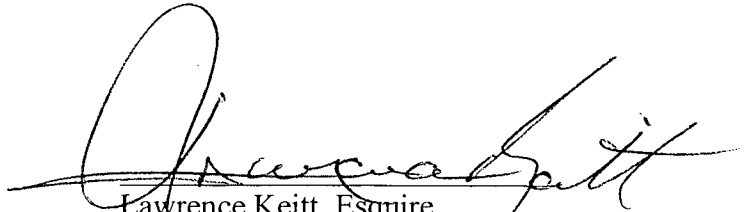
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AUG 16 2017

SC Court of Appeals

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 15, 2017



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