

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.
Trial Court Case No. 2013CP1004592

Appellate Case No. 2016-000471

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SC Court of Appeals

MARIA ALLWIN.....APPELLANT,

V.

RUSS COOPER ASSOCIATES, INC., BUFFINGTON HOMES, L.P., AND SHOPE RENO
WARTON,..... DEFENDANTS,

OF WHOM, RUSS COOPER ASSOCIATES, INC., AND SHOPE RENO
WARTON ARE THE RESPONDENTS.

BUFFINGTON HOMES, L.P., ...THIRD-PARTY PLAINTIFF,

V.

ALBRECHT ENVIRONMENTAL, INC., ALL POINTS CONSTRUCTION, INC., PATRIOTS
DRYWALL, INC., PICQUET ROOFING, INC., SPRAYSEAL FOAM INSULATION, AND
TISCHLER UND SOHN (USA) LIMITED,.....THIRD-PARTY DEFENDANTS.

**RECORD ON APPEAL
VOLUME 1 OF 4**

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² All Exhibits to Russ Cooper Associates Inc.'s Memorandum in Support of Summary Judgment correspond to the Exhibits to the Order Granting Summary Judgment and are included in the Exhibit Section below.

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³ The following materials were not originally designated as matters to be included in the Record on Appeal; however, they have been added to the Record on Appeal by agreement of the parties.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-4592

Maria Allwin, et al

2015 DEC 16 PM 2:30

Russ Cooper Associates, Inc., et al

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

12/16/15
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Maria Allwin,

Plaintiff,

vs.

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

Defendants.

Buffington Homes, L.P.,

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

FILED
2015 DEC 16 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT


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

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

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

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

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

STANDARD OF REVIEW -- STATUTE OF LIMITATIONS

A trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381

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

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157, 159-60 (Ct.App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as the plaintiff "knew or by the exercise of reasonable diligence should have known that [s]he had a cause of action." S.C. Code § 15-3-535. In construing the "reasonable diligence" requirement, our Supreme Court stated:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of [hers] has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

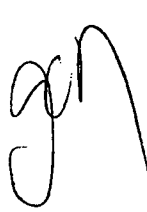
June 1, 2001 – In a letter produced by Plaintiff, Cowan wrote to RCA about ongoing roof leaks, a leak at a fireplace flue, leaks at wall vents/louvers, moisture intrusion into the kitchen wall, leaks at a wall in the chiller room, ongoing leaks in the basement, and mold and peeling paint on a kitchen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

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

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

5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

this water intrusion. (Exh. 178).

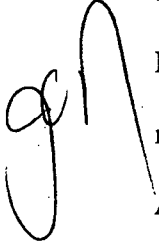
September 24, 2004 – In a letter produced by Plaintiff, Morgan sent Plaintiff a copy of Buffington Homes' July 6, 2004 proposal to address storm water intrusion into the basement. (Exh. 182). Morgan instructed Buffington Homes to proceed with these repairs at a cost of \$34,781. Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

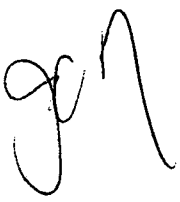
June 2008 – Plaintiff forwarded the July 2007 AIG inspection report (Exhibit 228) to Buffington Homes and expressed her frustration about ongoing problems after having spent several hundred thousand dollars to repair defects in the Residence. (Exhs. 235 and 236; Stein Dep. at 54, l. 7-18, p. 56, l. 23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

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

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

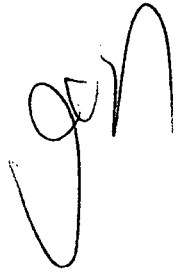
contractors who had previously inspected and performed repairs to the home. (Exhs. 244 and 254; Stein Dep. at p. 27, l. 21 – p. 28, l. 2 and p. 65, l. 3-6). Stein considered herself a consultant to Plaintiff with respect to her investigative efforts. (Stein Dep. at p. 75, l. 8-12). The scope of Stein's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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

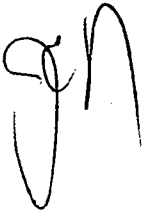
 March 23, 2009 – Plaintiff met with Victoria Stein and attorney Robert Lyles at the Residence. (Exhs. 282 and 284; Stein Dep. at p. 95, l. 16-18). During the meeting, Attorney Lyles tasked Stein with preparing an estimate to repair the aesthetic issues at the Residence. (Exh. 284; see Exh. 290). Stein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

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

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

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

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

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

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

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

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

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

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

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(Exh. 602).

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

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

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

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

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

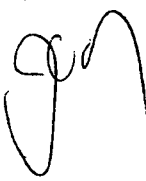
II. THE EVIDENCE MIRRORS THE FACTS IN OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASES IN WHICH THE COURTS UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS

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

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

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

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

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

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

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

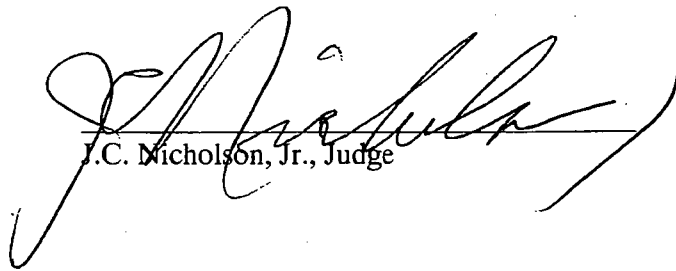
 Further, as a result of her knowledge of these defects and resulting damage, Plaintiff was aware, or ought to have been aware, of her claims against these defendants. Again, the statute of limitations runs from the date the injured party either knows or, through the exercise of reasonable diligence,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

CONCLUSION

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

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

IT IS SO ORDERED.



J.C. Nicholson, Jr., Judge

December 16, 2015
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-4592

Maria Allwin

2016 JAN 28 PM 4: 35

Russ Cooper Associates, Inc., et al

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Plaintiff's Motion to Alter or Amend Judgment, filed on December 29, 2015. Plaintiff's motion is respectfully **denied** without a rehearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

1/29/16
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NUMBER: 2013-CP-10-

MARIA ALLWIN,

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC.,
and BUFFINGTON HOMES, L. P.,

Defendants.

COMPLAINT
(Jury Trial Demanded)

FILED
2013 AUG -5 PM 4:22
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE ABOVE-NAMED DEFENDANTS:

COMES NOW, Plaintiff Maria Allwin, by and through her undersigned attorneys, and hereby complains and alleges unto this Honorable Court as follows:

GENERAL ALLEGATIONS

1. Maria Allwin (hereinafter as "Plaintiff") is the owner of a residence located at 133 Flyway Drive, located on Kiawah, South Carolina (hereinafter as "the Project"). The residence is in Charleston County, South Carolina.

2. Defendant Russ Cooper Associates, Inc. (hereinafter as "Cooper") was, at all times complained of herein, a licensed contractor performing work in Charleston County, South Carolina.

3. Buffington Homes, L.P. (hereinafter "Buffington") was, at all times complained of herein, a licensed contractor performing work in Charleston County, South Carolina.

4. Jurisdiction and venue are proper in the Circuit Court for Charleston County, South Carolina.

5. Cooper acted as the general contractor for the original construction of the Project and performed certain repairs to the Project, and Buffington performed certain repairs to the Project (Cooper and Buffington will hereinafter be referred to collectively as "Construction Defendants."

6. Plaintiff has discovered deficiencies in the design, construction, and repairs of the Project, including but not limited to, the following:

- a. Severe and pervasive water intrusion into the Project;
- b. Premature degradation of components, materials and finishes at the Project;
- c. Structural deficiencies; and
- d. Latent and previously undiscoverable deficiencies, decay and rot and other damage to tangible property including, but not limited to, components, materials and finishes of the Project.

7. Upon information and belief, the above referenced problems, and any subsequently discovered problems of a similar nature, are a direct and proximate result of the negligence and gross negligence of the Construction Defendants with respect to the construction or repairs of the Project.

8. As a direct and proximate result of the negligence and gross negligence of Defendants, the Plaintiff has incurred, and will continue to incur, substantial damages related to the investigation and analysis of the Project; the development of a repair design; the costs and expenses associated with a repair of the Project; the loss of use of the Project, losses associated with being able to market or sell the Project; and a diminution in value of the Project.

9. Plaintiff has demanded that Defendants investigate and repair conditions at the Project but Defendants have failed and refused to investigate or repair the Project.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence)

10. Plaintiff reasserts and realleges the allegations in the above Paragraphs 1 through 9 as if stated herein verbatim.

11. The Construction Defendants, by virtue of their role in the construction/repair and/or supervision of construction/repair of the above referenced Project, owed a duty to Plaintiff to accomplish such in accordance with all applicable codes and applicable industry work standards, and to conform such work to the design documents and/or manufacturer's literature.

12. Construction Defendants breached their duties to Plaintiff in one or more of the following particulars:

- a. In failing to comply with applicable codes, industry or manufacturing standards or the applicable standard of care;
- b. In failing to properly select, schedule, and/or supervise its employees or subcontractors;
- c. In failing to properly select and/or install components and materials at Project;
- d. In failing to adequately or properly repair the Project;
- e. In misrepresenting the nature of problems at the Project and the completeness of repairs done to the Project; and
- f. For negligent, willful and intentional failure to repair known defects and concealing said defects from Plaintiff.

13. The negligence, gross negligence, willfulness, wantonness, and recklessness of the Construction Defendants directly and proximately resulted in physical injury to tangible property and/or the work of others, including but not limited to, water damage to windows, doors, floors, masonry, soffits, soffit vents and/or the structure adjacent to these items, caused by the continuous and repeated exposure to substantially the same harmful conditions and the damages set forth above. Construction Defendants' conduct also proximately caused Plaintiff to

lose the use of the Project and has rendered the Project uninhabitable, all at great cost and expense to the Plaintiff.

FOR A SECOND CAUSE OF ACTION
(Breach of Implied Warranty of Service)

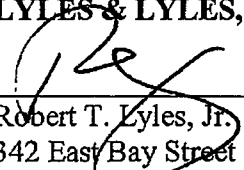
14. Plaintiff reasserts and realleges the allegations in the above Paragraphs 1 through 13 as if stated herein verbatim.

15. The conduct and failure of the Construction Defendants constitutes a breach of the implied warranty of service.

16. As a direct and proximate result of such breach, Plaintiff has suffered damages as set forth above.

WHEREFORE, having fully stated its Complaint herein against the above-named Defendant, Plaintiff prays for judgment in such amounts as may be proven at trial, including actual and punitive damages, against the Defendant on its cause of action, for the costs of this action, including attorney's fees and prejudgment interest, and for such other relief as the Court deems just and proper.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
342 East Bay Street
Charleston, South Carolina
T: 843-577-7730
F: 843-577-7172
rtl@lylesfirm.com

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina

Aug 2, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
MARIA ALLWIN,)

Plaintiff,)

vs.)

RUSS COOPER ASSOCIATES, INC.,)
and BUFFINGTON HOMES, L.P.,)

Defendants.)

BUFFINGTON HOMES, L.P.,)

Third-Party Plaintiff,)

vs.)

AIR FASTENERS OF CAROLINA, INC.,)
ALBRECHT ENVIRONMENTAL, Inc.,)
ALL POINTS CONSTRUCTION, INC.,)
BERLIN G. MEYERS LUMBER CORP.,)
BUILDERS FIRSTSOURCE-SOUTHEAST)
GROUP, LLC F/K/A BUILDERS FIRST-)
SOURCE SOUTHEAST GROUP, INC.,)
FRANK LEIGH CONTRACTORS, INC.,)
PATRIOTS DRYWALL, INC., PICQUET)
ROOFING, INC., PLANTATION)
CONSTRUCTION, SPRAYSEAL FOAM)
INSULATION, L&L SERVICES, LLC,)
LONEY DAVIS, SUPERIOR SURFACES)
OF CHARLESTON, INC., & TISCHLER)
UND SOHN (USA) LIMITED,)

Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2013-CP-10-4592

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT - 8 PM 2:20

FILED

TO: THE ABOVE-NAMED DEFENDANTS:

COMES NOW, Plaintiff Maria Allwin, by and through her undersigned attorneys, and

hereby complains and alleges unto this Honorable Court as follows:

GENERAL ALLEGATIONS

1. Maria Allwin (hereinafter as "Plaintiff") is the owner of a residence located at 133 Flyway Drive, located on Kiawah, South Carolina (hereinafter as "the Project"). The residence is in Charleston County, South Carolina.

2. Defendant Russ Cooper Associates, Inc. (hereinafter as "Cooper") was, at all times complained of herein, a licensed contractor performing work in Charleston County, South Carolina.

3. Buffington Homes, L.P. (hereinafter "Buffington") was, at all times complained of herein, a licensed contractor performing work in Charleston County, South Carolina.

4. Shope Reno Wharton, (herein after "SRW") an architectural firm located in South Norwalk, Ct. which performed the complained of work for use in Charleston County, South Carolina.

5. Jurisdiction and venue are proper in the Circuit Court for Charleston County, South Carolina.

6. SRW provided design services for the Project, upon information and belief, at all times relevant to the allegations in this complaint, Cooper acted as the general contractor for the original construction of the Project and performed certain repairs to the Project, and Buffington performed certain repairs to the Project (Cooper and Buffington will hereinafter be referred to collectively as "Construction Defendants").

7. Plaintiff has discovered deficiencies in the design, construction, and repairs of the Project, including but not limited to, the following:

- a. Severe and pervasive water intrusion into the Project;

- b. Premature degradation of components, materials and finishes at the Project;
- c. Structural deficiencies; and
- d. Latent and previously undiscoverable deficiencies, decay and rot and other damage to tangible property including, but not limited to, components, materials and finishes of the Project.

8. Upon information and belief, the above referenced problems, and any subsequently discovered problems of a similar nature, are a direct and proximate result of the negligence and gross negligence of SRW in their efforts to design the home and in their contract administration duties, and/or negligence and gross negligence of the Construction Defendants with respect to the construction or repairs of the Project.

9. As a direct and proximate result of the negligence and gross negligence of Defendants, the Plaintiff has incurred, and will continue to incur, substantial damages related to the investigation and analysis of the Project; the development of a repair design; the costs and expenses associated with a repair of the Project; the loss of use of the Project, losses associated with being able to market or sell the Project; and a diminution in value of the Project.

10. Plaintiff has demanded that Defendants investigate and repair conditions at the Project but Defendants have failed and refused to investigate or repair the Project.

FOR A FIRST CAUSE OF ACTION

(Negligence and Gross Negligence)

11. Plaintiff reasserts and realleges the allegations in the above Paragraphs 1 through

9 as if stated herein verbatim.

12. The Construction Defendants, by virtue of their role in the construction/repair and/or supervision of construction/repair of the above referenced Project, owed a duty to Plaintiff to accomplish such in accordance with all applicable codes and applicable industry work standards, and to conform such work to the design documents and/or manufacturer's literature.

13. Construction Defendants breached their duties to Plaintiff in one or more of the following particulars:

- a. In failing to comply with applicable codes, industry or manufacturing standards or the applicable standard of care;
- b. In failing to properly select, schedule, and/or supervise its employees or subcontractors;
- c. In failing to properly select and/or install components and materials at Project;
- d. In failing to adequately or properly repair the Project;
- e. In misrepresenting the nature of problems at the Project and the completeness of repairs done to the Project; and
- f. For negligent, willful and intentional failure to repair known defects and concealing said defects from Plaintiff.

14. The negligence, gross negligence, willfulness, wantonness, and recklessness of the Construction Defendants directly and proximately resulted in physical injury to tangible property and/or the work of others, including but not limited to, water damage to windows, doors, floors, masonry, soffits, soffit vents and/or the structure adjacent to these items, caused by the continuous and repeated exposure to substantially the same harmful conditions and the damages set forth above. Construction Defendants' conduct also proximately caused Plaintiff to

lose the use of the Project and has rendered the Project uninhabitable, all at great cost and expense to the Plaintiff.

FOR A SECOND CAUSE OF ACTION

(Breach of Implied Warranty of Service)

15. Plaintiff reasserts and realleges the allegations in the above Paragraphs 1 through 13 as if stated herein verbatim.

16. The conduct and failure of the Construction Defendants constitutes a breach of the implied warranty of service.

17. As a direct and proximate result of such breach, Plaintiff has suffered damages as set forth above.

FOR A THIRD CAUSE OF ACTION

(Negligence as to SRW)

18. Plaintiff reasserts and realleges the allegations in the above Paragraphs 1 through 17 as if stated herein verbatim.

19. Defendant SRW was negligent, and/or grossly negligent in the design and inspection of the Project in one or more of the following particulars:

- a. failure to adequately design a waterproofing system so as to prevent water infiltration into the interior portions of the building;
- b. improper design of waterproofing of the exterior of the building and non-existent or improper design of flashing;
- c. inadequate inspection and acceptance of defective or non-conforming construction work;

- d. failure to design and insure construction in compliance with applicable building codes State and Federal laws and regulations and acceptable building practices; and,
- e. failure to properly specify appropriate materials to be used in the construction of the Project.

20. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant SRW, Plaintiff has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR A FOURTH CAUSE OF ACTION

(Breach of Express and Implied Warranty as to SRW)

21. Plaintiff reasserts and realleges the allegations in the above Paragraphs 1 through 20 as if stated herein verbatim.

22. Defendant SRW expressly and impliedly warranted that its design of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

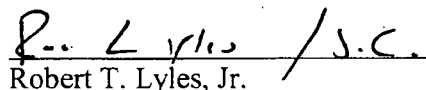
23. Defendant SRW further expressly and impliedly warranted that the plans and specifications prepared for the Project were suitable and fit for use in constructing the Project, and that the building, when complete, would be free of design defects.

24. The plans and specifications as provided by SRW were not suitable or appropriate for their intended purpose, and as a result of SRW's breach of warranties by designing the

Project with severe structural and water intrusion problems, Plaintiff was entitled to such actual damages as this Court may deem appropriate.

WHEREFORE, having fully stated its Complaint herein against the above-named Defendant, Plaintiff prays for judgment in such amounts as may be proven at trial, including actual and punitive damages, against the Defendants on its cause of action; for the costs of this action, including attorney's fees and prejudgment interest, and for such other relief as the Court deems just and proper.

LYLES & LYLES, LLC



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rtl@lylesfirm.com

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina

October ____, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

MARIA ALLWIN)

Plaintiff,)

vs.)

RUSS COOPER ASSOCIATES, INC., ET AL)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2013 -CP-10-4592

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Robert T. Lyles, Bar No. _____

Address:

PO Box 773

Charleston, SC 29402

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

TYLER WINTON, Bar No. 77877

Address:

400 CALHOUN ST. SUITE 400

Phone: 843-727-0307 Fax 843-727-2995

E-mail: twinton@carlockcopeland.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: MOTION TO COMPEL

Estimated Time Needed: 30 MINUTES

Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID – AMOUNT: \$** _____

☐ Rule to Show Cause in Child or Spousal Support

Reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED – AMOUNT DUE: \$** _____

000049

may be heard, for an Order of this Court granting SRW's Motion to Dismiss pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. SRW makes this Motion on the following grounds:

(1) Plaintiff is barred from any recovery against SRW pursuant to the applicable three (3) year statute of limitations (S.C. Code Ann. § 15-3-530), the applicable statute of repose (S.C. Code Ann. § 15-3-640) and relevant case law. Simply stated, the relevant statute of limitations expired prior to Plaintiff's commencement of its action against SRW. (See February 23, 2011 claim letter attached as Exhibit "A");

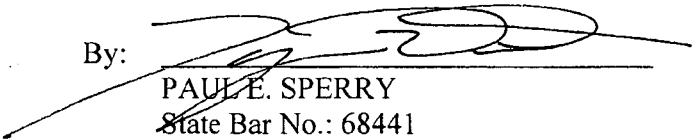
(2) Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC; and

(3) Plaintiff failed to file an expert affidavit alleging professional negligence simultaneously with the Complaint as required by S.C. Code Ann. §15-36-100, et seq.

This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings previously filed, and any and all affidavits, memorandums and supporting material which may be filed with the Court prior to the hearing of this Motion.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

PAUL E. SPERRY
State Bar No.: 68441

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

TYLER P. WINTON
State Bar No.: 77877

Attorneys for Defendant Shope Reno Warton

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARIA ALLWIN,

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC., et al

Defendants.

) IN THE COURT OF COMMON PLEAS

) THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-10-4592

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CERTIFICATE OF SERVICE

2014 NOV 20 PM 3:19
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

I hereby certify that I have this day served a copy of the within and foregoing **Motion to Dismiss** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

For the Plaintiff

Robert T. Lyles, Esq.
Lyles & Lyles
Post Office Box 773
Charleston, SC 29402

Attorney for Russ Cooper

Dean Best, Esq.
Best Honeycutt, P.A.
Post Office Box 13466
Charleston, SC 29422

Attorney for Plantation Construction

Graham P. Powell, Esq.
Wall Templeton & Haldrup, P.A.
145 King Street - Suite 300
Charleston, SC 29401

Attorney for Albrecht Environmental Inc.

C. Thomas Tolly, III, Esq.
P.O. Box 80458
Charleston, SC 29416

Attorney for L&L Services

Frank M. Cisa, Esq.
Cisa & Dodds, LLP
858 Lowcountry Blvd., Suite 101
Mt Pleasant, SC 29464

Attorney for Tischler Und Sohn

Richard S. Dukes, Jr., Esq.
Turner Padgett Graham & Laney, P.A.
P. O. Box 22129
Charleston, SC 29413-2129

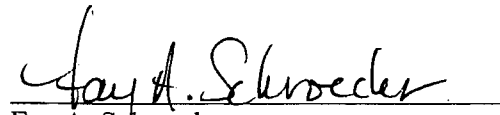
Attorney for Picquet Roofing

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Attorney for Sprayseal Foam Insulation

Bonum S. Wilson, III, Esq.
Wilson & Heyward, LLC
P.O. Box 13177
Charleston, SC 29422

This 19th day of November, 2014.


Fay A. Schroeder
Secretary to Tyler P. Winton

LYLES & LYLES, LLC
ATTORNEYS AT LAW
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Charleston, South Carolina 29401
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Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

February 23, 2011

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Shope Reno Waiton
18 Marshall Street, Ste. 114
South Norwalk, CT 06854

Re: 133 Flyway Drive, Kiawah Island, South Carolina

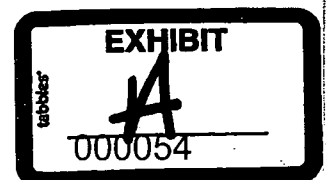
Gentlemen,

I have been retained by Maria Allwin and her family in connection with significant deficiencies at the residence known as 133 Flyway on Kiawah Island (The "Home"). You served as the architect for the Home. Ms. Allwin is contemplating putting the Home on the market. In the course of that process, a limited investigation has revealed numerous and significant deficiencies related to the Home. These deficiencies relate to the design/installation of doors and windows, waterproofing and sealant, flashing installation and other deficiencies which have lead to significant damage and which have prevented Ms. Allwin and her family from using the Home.

As a result of these deficiencies and the damages to property resulting therefrom, Ms. Allwin faces a significant financial burden, including the cost to complete a thorough investigation of the home, as well as repair of the home, which will inevitably be very expensive. Alternatively, Ms. Allwin may attempt to sell the Home in "as is" condition and take a substantial loss on the purchase price. She has not decided, at this point, which option she will choose.

Since you served as the design professional for the Home, Ms. Allwin hereby requests that you contact me and make arrangements to investigate the conditions at the Home and assist her with the evaluation and repair of those conditions.

If you refuse to investigate and correct the conditions at the project in a suitable manner, Ms. Allwin will be forced to deal with those issues on her own and reserves any and all legal rights and remedies she may have against you as a result. In that event, you are also notified of the conditions at the Home and should you choose to review and inspect these prior to repair, arrangements for a site visit must be made with my office as soon as possible.

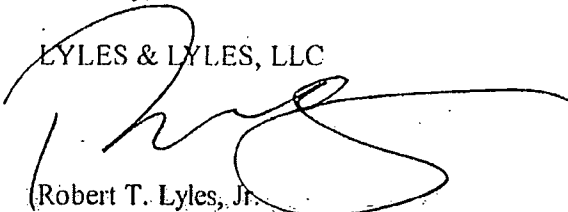


Please forward this letter to your attorney and to your insurance agent/broker and any known liability insurance carriers. I also hereby request that you make your files relative to the Home available for my review.

If you have any questions or wish to discuss this further, please feel free to call me.

Sincerely,

LYLES & LYLES, LLC


(Robert T. Lyles, Jr.)

RTL:bl

cc: Maria Allwin
Christopher Allwin

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Maria Allwin,

☐ Plaintiff

v.

Russ Cooper Associates, Inc., et al

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-10-04592

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Robert T. Lyles, Jr., Bar No.
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Best Honeycutt, PA
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Charleston, SC 29412
phone: 843-793-4744 fax: 843-793-4278
e-mail: dean@besthoneycutt.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

04.24.15
Date/submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

- Date Filed: Collected by:
☐ MOTION FEE COLLECTED:
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Maria Allwin,

Plaintiff,

vs.

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

Defendants.

Buffington Homes, L.P.,

Third-Party Plaintiff,

vs.

Air Fasteners Of Carolina, Inc., All Points
Construction, Inc., Berlin G. Myers Lumber
Corp., Builders FirstSource-Southeast
Group, LLC f/n/a Builders FirstSource
Southeast Group, Inc., Frank Leigh
Contractors, Inc., Patriots Drywall, Inc.,
Picquet Roofing, Inc., Plantation
Construction, Sprayseal Foam Insulation,
L&L Services, LLC, Loney Davis, Superior
Surfaces Of Charleston, Inc., & Tischler Und
Sohn (USA) Limited

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

**DEFENDANT RUSS COOPER
ASSOCIATES, INC.'S NOTICE OF AND
MOTION FOR SUMMARY JUDGMENT**

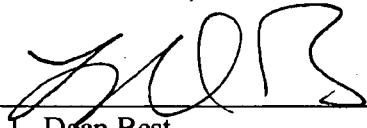
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2015 APR 27 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

YOU WILL PLEASE TAKE NOTICE that Defendant, Russ Cooper Associates, Inc. (hereinafter "Defendant"), will move pursuant to SCRCP Rule 56 before the Ninth Judicial Circuit, Court of Common Pleas, County of Charleston, ten (10) days, or as soon thereafter as may be permitted, for an Order granting it summary judgment on the grounds that Plaintiff's claims are barred by the Statute of Limitations, S.C. Code § 15-3-530(3), and Defendant is entitled to judgment as a matter of law in its favor dismissing all claims asserted against it in this matter.

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This motion is based upon the South Carolina Rules of Civil Procedure, deposition testimony, documents exchanged in the course of discovery, applicable case law and statutes, affidavits, and a memorandum in support which may be submitted prior to oral argument.

BEST HONEYCUTT, P.A.

By: 

L. Dean Best

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Charleston, South Carolina 29422

T: (843) 793-4744

Email: Dean@besthoneycutt.com

***Attorney for Defendant Russ Cooper Associates,
Inc.***

April 24, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, Dani Knecht, an employee of Best Honeycutt, P.A., do hereby certify that a true and correct copy of the foregoing has been provided by U.S. Mail, postage pre-paid, and/or via electronic mail to all other counsel of record, on this 24th day of April, 2015, to the following:

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FILED
2015 APR 27 PM 2:35
JULIE J. ARISTARONG
CLERK OF COURT

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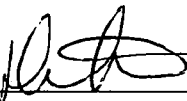
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Attorneys for Loney Davis



Dani Knecht

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Maria Allwin,

Plaintiff,

vs.

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

Defendants.

Buffington Homes, L.P.,

Third-Party Plaintiff,

vs.

Air Fasteners Of Carolina, Inc., Albrecht
Environmental, Inc., All Points
Construction, Inc., Berlin G. Myers Lumber
Corp., Builders FirstSource-Southeast
Group, LLC f/n/a Builders FirstSource
Southeast Group, Inc., Frank Leigh
Contractors, Inc., Patriots Drywall, Inc.,
Picquet Roofing, Inc., Plantation
Construction, Sprayseal Foam Insulation,
L&L Services, LLC, Loney Davis, Superior
Surfaces Of Charleston, Inc., & Tischler Und
Sohn (USA) Limited,

Third-Party Defendants,

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

**RUSS COOPER ASSOCIATES, INC.'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

2015 SEP -9 PM 2:15
JULIE J. AGUISTONG
CLERK OF COURT

FILED

BASIC FACTS & PROCEDURAL POSTURE

Russ Cooper Associates, Inc. ("RCA") acted as the general contractor for the original construction of Plaintiff's oceanfront vacation home, located at 133 Flyway Drive, Kiawah Island, South Carolina. RCA completed construction of the home on or about May 18, 1994 – over 20 years ago. Since at least 1999, Plaintiff has both observed and received numerous and repeated reports of

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defects in RCA's construction work, including, but not limited to, roof leaks, water intrusion into or through exterior walls, air/water intrusion at windows and doors, basement leaks, mold/mildew, and damage to interior finishes. Further, since 2004, Plaintiff has hired multiple contractors to repair the reported defects and problems in RCA's construction work.

Plaintiff filed this lawsuit on August 5, 2013, alleging, among other things, defects in the original construction of the residence by RCA. Plaintiff served her complaint upon RCA on November 12, 2013.

STANDARD FOR STATUTE OF LIMITATIONS

In South Carolina, a plaintiff must commence an action within three years of the date the cause of action arises. S.C. Code Ann. § 15-3-530. The three-year statute of limitations "begins to run when the underlying cause of action reasonably ought to have been discovered." Martin v. Companion Healthcare Corp., 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct.App. 2004). Pursuant to the "discovery rule," "the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Id. at 576, 593 S.E.2d at 627. This is an objective, not a subjective, determination. Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994). In construing the "reasonable diligence" requirement, our Supreme Court stated:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of [hers] has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.

Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). "A key element in the reasonable diligence test is 'notice.' The fact that an injured party may not comprehend the full extent of the damage is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442

DISCUSSION

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

I. THE UNDISPUTED EVIDENCE, INCLUDING TESTIMONY FROM PLAINTIFF AND HER AGENTS, ESTABLISHES THAT PLAINTIFF KNEW ABOUT THE ALLEGED DEFECTS IN RCA'S CONSTRUCTION WORK FOR MORE THAN A DECADE PRIOR TO AUGUST 5, 2010

Plaintiff's causation expert, Ross Clements of Fuller Consulting Engineers, Inc., identified numerous alleged construction deficiencies in RCA's work in the following relevant categories:

1. Roof and Stucco at Chimneys – including longstanding roof leaks and improper stucco application that damaged the interior and permitted moisture to access the exterior wall sheathing and roof decking. (Exh. 549; see also Exhs. 529 and 545). Clements called for the replacement of the metal roof and stucco on the chimneys. Id.
2. Exterior Walls – including deficiencies in the exterior wall weather barrier/flashings that contributed to water intrusion and damage. Id. Clements called for the removal and replacement of the exterior cladding. Id.
3. Windows and Doors – including air/moisture intrusion and damage at windows and doors due to inadequate waterproofing and flashing. Id. Clements called for the removal and

reinstallation of the windows and doors to permit the installation of proper waterproofing.

Id.

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

However, the evidence establishes that Plaintiff knew about these alleged construction defects and damage for more than a decade prior to August 5, 2010, as demonstrated by the following:

February 4, 1999 – Robert Cowan lived in the residence as Plaintiff's guest in the late 1990's/early 2000's. (Cowan Depo. at 8, l. 11 – 9, l. 9 and 35, l. 25 – 36, l. 5). There were numerous and continuous roof leaks while Cowan lived in the home (approximately 1999-2000) at roof valleys, in the master suite, at chimneys, and in the kitchen area. (Cowan Depo. at 14, l. 19 – 15, l. 4 and 16, l. 5-12). In February 1999, Cowan informed Plaintiff in writing that the roof continued to leak. (Exhibit 3). Cowan also informed Plaintiff of a leak in the basement where water entered underneath the rear windows and doors above, leaked along the entire basement wall, and caused wooden floor joists to rot. (Id.; Cowan Depo. at 18, l. 15-21 and at 19, l. 17 – 20, l. 5). Exhibits 360, 362, and 366 show basement leaks similar to those observed by Cowan in 1999-2000. (Cowan Depo. at 19, l. 10 – 20, l. 12). Plaintiff admitted that Cowan and his wife informed her of roof and basement leaks in February 1999. (Allwin Depo. at 43, l. 13-21).

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

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

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

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

March 23, 2001 – Cowan informed Plaintiff in writing of continued and new roof leaks, leaking wall vents, a leaking window, and continued basement leaks. (Exh. 12; Allwin Depo. at 68, l. 25 – 69, l. 2). Cowan also informed Plaintiff of various types of interior water damage, including areas damaged by roof leaks, ceiling replacement in the basement, separation of hardwood flooring, and damaged wall paper. Id. Plaintiff admitted her knowledge of a roof leak in the master bedroom sitting area in 2001. (Allwin Depo. at 68, l. 5-10). Cowan opined in writing to Plaintiff that roof leaks were one of “the most important problems” with the residence at this time. (Exh. 12; Cowan Depo. at 27, l. 4-10).

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

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

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

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

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

June 23, 2001 – Cowan reported to Plaintiff in writing about continued roof and fireplace flue leaks, leaks at wall vents/louvers, and the status of repairs to the kitchen wall damaged by water intrusion. (Exh. 18; Allwin Depo. at 93, l. 14-24). Plaintiff admitted that she was aware of continued roof leaks and leaking vents/louvers in June 2001. (Id. at 93, l. 25 – 94, l. 5).

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

Plaintiff admitted knowing of water intrusion at windows and mildew problems in 2001. Id. at 100, l. 17-21.

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

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

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

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

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

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

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

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

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

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

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

Early 2003 – Plaintiff requested the assistance of Defendant Buffington Homes, L.P., to diagnose and repair the longstanding problems with the roof, exterior walls, air infiltration at windows and doors, and basement leaks. (Allwin Depo. at 125, l. 22 – 126, l. 3; see Exh. 31).

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

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

July 21, 2003 – In a report produced by Plaintiff, Buffington Homes informed Plaintiff of peeling roof finish, active roof leaks, rot in the exterior trim, water flowing into the basement area

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

August 28, 2003 – Buffington Homes retained the services of an engineering firm, Campbell, Schneider and Associates, LLC (CSA), to survey the house and determine the sources of moisture that had resulted in areas of damage and fungal growth. (Exh. 37). CSA observed water damage and/or mildew throughout the residence. Id. CSA opined that the damage was the direct result of numerous sources of unconditioned air infiltration, condensation on finished interior surfaces, and ongoing water intrusion around windows, at roof valleys, and at several sub-grade locations. Id. CSA recommended the source of liquid water leaks be investigated from the exterior, to include the removal of certain windows and roof sections to identify possible paths of water leakage. Id. Plaintiff admitted that Buffington retained the services of CSA on her behalf in an effort to identify and diagnose the problems with the home. (Allwin Depo. at 138, l. 25 – 139, l. 12). Buffington reported that Plaintiff received a copy of the CSA report. (Exh. 49).

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

and requested permission to have an environmental firm, Albrecht Environmental, Inc., perform a mold study. (Exh. 38; Allwin Depo. at 130, l. 1-4).

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

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

January 13, 2004 – In a letter produced by Plaintiff, Dan Buffington with Buffington Homes wrote to Plaintiff and expressed his thoughts on Morgan’s scope of work and, in some instances, recommended more aggressive repair options. (Exh. 51). With respect to the roof, Buffington opined that the patch repair proposed by Morgan was not a permanent solution and would negatively affect the roof’s beauty. Id. Buffington also informed Plaintiff that “South Carolina has a 13-year statute of limitation (sic) for water intrusion. Your home is approaching that deadline.” Id. (emphasis added). Further, Buffington wrote, “I strongly urge you to contact the builder/roofer who installed the roof. If he is unwilling to accept responsibility and replace the roof, I would suggest enlisting

legal counsel.” Id. (emphasis added). Buffington informed Plaintiff that the cost of replacing the roof would require significant siding replacement and cost in excess of \$500,000. Id. With respect to the windows, Buffington noted leaks and air infiltration at various windows and set forth a proposed scope of investigation to identify and repair the leaks. Id. With respect to the basement, Buffington noted leaks where the patio connects to the residence and set forth a proposed scope to repair the leaks. Id. Buffington also reported damaged and severely cupped hardwood flooring, and damaged and mildew-stained drywall. Id. Finally, Buffington presented a budget for the Morgan scope of repair totaling \$238,504. Id.

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

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

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

May 7, 2004 – In a Weekly Progress Report, Buffington Homes informed Plaintiff in writing

of the discovery of rotten studs and sheathing uncovered during the repair process. (Exh. 165; Allwin Depo. at 158, l. 21 – 159, l. 15).

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

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

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

July 6, 2004 – In a letter produced by Plaintiff, Buffington Homes informed Plaintiff that storm water entered the basement every time it rained and recommended various repairs to address this water intrusion. (Exh. 178).

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

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

November 30, 2005 – Plaintiff’s property manager (GHS) invoiced Plaintiff \$979 for repair

work, including caulking the bottom of the cladding at the rear patio to prevent water leaks in the subfloor. (Exh. 212).

July 11, 2006 – In 2006, Plaintiff wanted to sell the residence. (Allwin Depo. at 174, l. 11-17; Noble Depo. at 16, l. 24 – 17, l. 4 and 18, l. 8-12). Cynthia Noble with Kiawah Island Real Estate was Plaintiff's real estate agent. (Allwin Depo. at 169, l. 4-8; Noble Depo. at 20, l. 24-25). In advance of listing the residence for sale, Noble procured a home inspection report prepared by Complete Inspection Services (CIS). (Noble Depo. at 19, l. 9-24 and 21, l. 3-7). CIS noted numerous construction deficiencies, including indications of roof leaks, signs of prior termite activity in an exterior wall, damage to the wood cladding at several locations, indications of water infiltration at rear doors, water stains at rear basement walls, cupped and discolored hardwood flooring, water stains, mildew, and damaged drywall. (Exh. 215). CIS also suggested a "negative pressure" situation might exist and recommended having an environmental contractor evaluate the areas of mold/mildew. Id. CIS also recommended roofing repairs, further investigation of the termite activity, and inspection of the flashing and subflooring at the rear doors. Id. Plaintiff's real estate agent admitted she likely received the CIS report and was "reasonably confident" that Plaintiff received the CIS report. (Noble Depo. at 21, l. 16 – 22, l. 23, 29, l. 6-9, and 67, l. 24 – 68, l. 20). Plaintiff admitted that in July 2006 she was aware of water infiltration at the rear doors, basement leaks from the pool deck, and cupping/discolored hardwood floors. (Allwin Depo. at 170, l. 2-14 and at 171, l. 1-5).

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

35, l. 6-13).

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

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

September 11, 2006 – Plaintiff’s real estate agent (Noble) asked Buffington Homes to prepare an estimate for repairs necessary to address the ongoing problems with the home, including those noted in the July 2006 CIS report (Exhibit 215). (Exh. 222; see Exhs. 583, 590-91; Noble Depo. at 165, l. 7-12). The estimate totaled \$282,850 and proposed repairs to the roof, exterior walls at the front porch and rear patio, windows and doors at the front porch and rear patio, basement ventilation, mold remediation, and damaged flooring. (Exh. 222). Further, Buffington Homes pointed out that the proposed roofing repairs were only temporary fixes and, again, recommended the complete replacement of the roof. Id. According to Buffington, “The single most significant concern is the roof.” Id. Plaintiff’s real estate agent believes she forwarded the Buffington Homes report/estimate to Plaintiff upon receiving it. (Noble Depo. at 43, l. 2-8, 18-21).

July 29, 2007 – Plaintiff’s homeowner’s hazard insurance company (AIG) inspected the residence to determine if there were water damage problems within the home. (Exh. 228). AIG observed several indications of high moisture levels, including suspected window and roof leaks. Id. Notably, the insurance company required Plaintiff to “have you (sic) home checked by a qualified

water remediation engineer to investigate why water continues to enter these areas of your home. Once the cause is identified, the necessary repairs should be made.” Id. Plaintiff does not recall taking any action in response to AIG’s water remediation testing requirement. (Allwin Depo. at 185, l. 22 – 186, l. 3).

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

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

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

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

June 2008 – Plaintiff forwarded the July 2007 AIG inspection report (Exhibit 228) to Buffington Homes and expressed her frustration about ongoing problems after having spent several hundred thousand dollars to repair construction defects. (Exhs. 235 and 236; Stein Depo. at 54, l. 7-18, 56, l. 23 – 57, l. 5, 58, l. 5 – 59, l. 8, and 59, l. 25 – 60, l. 3). Plaintiff wrote to Victoria Stein, “I

do not understand how the mold around fixtures etc. (sic) escaped inspection until this point. Dan understood my – irritation??? – in 2004 and 05 we did a complete overhaul of the house – several hundred thousand \$\$ later and the problem is still there. Kiawah is an ongoing saga . . . “ (Exhibit 236). Stein acknowledged there were “lots of water intrusion issues in the house in June of 2008.” (Stein Depo. at 61, l. 8-11).

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

July 2008 -- Plaintiff paid Victoria Stein \$6,978.14 to investigate problems with the home, including the review of documents provided by Plaintiff and discussions with consultants and contractors who had previously inspected and performed repairs to the home. (Exhs. 244 and 254; Stein Depo. at 27, l. 21 – 28, l. 2 and 65, l. 3-6). Stein considered herself a consultant to Plaintiff with respect to her investigative efforts. (Stein Depo. at 75, l. 8-12). The scope of Stein’s investigation included reviewing past repairs to and water intrusion at the roofs, the basement, windows and doors, mold/mildew, and “anything that would be in those reports by Alan Campbell and Snyder (sic), Albrecht” (referring to Exhibits 37, 167, and 217). (Id. at 30, l. 23 – 31, l. 11 and 68, l. 14 – 69, l. 9).

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

1. Exhibit 3 – February 4, 1999 correspondence from Robert Cowan to Plaintiff regarding continued roof and basement leaks. (Id. at 22, l. 21 – 23, l. 12).
2. Exhibit 8 – May 3, 2000 Cowan correspondence regarding leaks at rear/oceanside doors. (Exh. 604).
3. March 21, 2001 Cowan correspondence regarding multiple roof leaks, basement wall leaks, chiller room leaks, and structural settlement. Id.

4. Exhibit 12 – March 23, 2001 Cowan correspondence re roof leaks. Id.
5. Exhibit 16 – June 1, 2001 Cowan letter to RCA regarding, among other things, ongoing roof leaks, leak at a fireplace flue, leaks at wall vents/louvers, moisture intrusion into the kitchen wall, and chiller room leaks. Id.
6. Exhibit 19 – August 2001 Gamble Home Services report regarding mildew, leaking windows, and water stains. Id.
7. Exhibit 20 – September 4, 2001 Cowan moisture detection report evidencing high moisture meter test readings. Id.
8. Exhibit 22 – October 24, 2001 Cowan correspondence regarding unresolved construction issues and warning about the statute of limitations. Id.
9. August 2002 Cowan correspondence regarding roof leaks, basement leaks, moisture in exterior wall, leaking louvers, and rear door leaks. Id.
10. Exhibit 34/37 – August 15, 2003 CSA report regarding water intrusion, including roof leaks and leaks at sub-grade locations. (Exh. 604; Stein Depo. at 34, l. 7 – 35, l. 21).
11. Exhibit 39 – September 12, 2003 correspondence from Roy Davis Smith to Morgan proposing testing to determine the source of water intrusion at various locations. (Stein Depo. at 37, l. 15 – 38, l. 7).
12. Exhibit 41 – October 2003 Picquet Roofing roof inspection report and repair estimate. (Exh. 604).
13. Exhibit 51 – January 2004 Buffington letter to Plaintiff referencing statute of limitations. Id.
14. Correspondence between Plaintiff/her late husband and Milton Morgan concerning the 2004-05 repairs performed by Buffington Homes. (Stein Depo. at 36, l. 24 – 37, l. 14 and 66, l. 20-22).

15. Exhibit 54 – February 19, 2004 contract between Plaintiff and Buffington Homes to repair defects in RCA’s original construction work. (Exh. 604; Stein Depo. at 39, l. 24 – 40, l. 7). Stein reviewed the Buffington Homes invoices, also. (Exh. 604; Stein Depo. at 66, l. 13-15).
16. Exhibit 163 – April 27, 2004 ED&T report outlining construction defects as the source of moisture intrusion. (Exh. 604; Stein Depo. at 43, l. 4-10).
17. April 19, 2004 Albrecht Environmental document regarding mold growth and ground-level moisture. (Exh. 604).
18. Exhibit 165 – May 7, 2004 Buffington Homes progress report regarding discovery of rotten studs and sheathing. Id.
19. Exhibit 167 – May 10, 2004 Albrecht Environmental report noting elevated mold readings and recommending mold remediation. (Stein Depo. at 43, l. 11-16).
20. May 24, 2004 flood relied design by Albrecht Environmental to address moisture in crawl space. (Exh. 604).
21. Exhibit 172 – May 28, 2004 Buffington Homes letter to project manager Milton Morgan regarding cost overruns due to discovery of wood rot and engineering report costs. Id.
22. Exhibit 174 – June 7, 2004 AIG Insurance report referencing construction defects. (Exh. 604; Stein Depo. at 44, l. 4-11 and 56, l. 23 – 57, l. 20).
23. Exhibit 217 – July 24, 2006 Albrecht Environmental report noting elevated mold readings and recommending mold remediation. (Exh 604; Stein Depo. at 46, l. 6-16).
24. Exhibit 228 – July 29, 2007 AIG Insurance correspondence to Plaintiff requiring water remediation testing. (Stein Depo. at 47, l. 24 – 48, l. 22 and 64, l. 11 – 65, l. 2).

As part of her investigation, Stein also spoke with contractors and consultants regarding past problems with and repairs performed to the residence, including: a meeting at house with engineer

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

September 2008 – Plaintiff's property manager (GHS) informed Plaintiff that the "mold situation [was] getting worse" in a guestroom closet and bathroom ceiling. (Exh. 249).

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

deck. Id. Stein suggested repairs to the residence and that Plaintiff seek the advice of legal counsel. Id. Stein went on to note that the list of items for which RCA is responsible, including roof issues, moisture in basement, and window/door issues, “are numerous but bottom line is that the Statute of Limitations ran out in May 2007.” Id. (emphasis added).

October 17, 2008 – Victoria Stein believed that Plaintiff was considering legal action at this time, but was uncertain if it related only to HVAC issues or to all the problems with the house. (Stein Depo. at 76, l. 4 – 77, l. 3). Stein wrote to Plaintiff following up on a telephone conversation in which the two discussed Plaintiff’s “frustrations and anger” and going down the “legal road.” (Exh. 257). Stein also informed Plaintiff that she would be forwarding proposals for various repairs, including repairs to metal roof valleys and subsequent drywall repairs in bedrooms, sealing around windows and doors, installing a moisture barrier on the basement ceiling, and sealing the basement walls with elastomeric paint. Id.

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

November 24, 2008 – Victoria Stein presented to Plaintiff a \$185,480.62 proposal from Gamble-Atlantic, LLC to perform various repairs to alleviate the longstanding problems at the residence, including the repair of two roof valleys to stem continuing leaks, sealing 345 outlets/switches/wall penetrations, 160 windows, and 8 exterior doors to prevent mold/mildew/condensation problems at those locations, and repairs to remedy ongoing moisture problems in the basement. (Exhs. 260 and 261; Stein Depo. at 81, l. 1 – 82, l. 4, at 83, l. 21 – 84, l. 17 – 85, l. 15). At this time, the basement ceiling was leaking “all over the place,” possibly including where the pool deck connected to the residence. (Stein Depo. at 77, l. 19 – 78, l. 15).

February 2, 2009 – Picquet Roofing invoiced Atlantic Builders \$1,261 for the repair of two

roof valleys pursuant to the Plaintiff's November 2008 repair contract with Gamble-Atlantic. (Exh. 276; Stein Depo. at 89, l. 15-25).

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

March 17, 2009 – Plaintiff exchanged emails with Victoria Stein concerning the “shingle/roof issues as well as other work that needs to get done.” (Exh. 282). The two also wrote about an upcoming meeting at the residence with attorney Robert Lyles to develop a strategy with respect to the repair of the home. (*Id.*; Allwin Depo. at 210, l. 14 – 211, l. 15). As of this date, Plaintiff admitted that she had a clear appreciation that there were problems with her home that needed repair, including the roof, mold, and damaged/cupping hardwood floors. (Allwin Depo. at 212, l. 24 – 213, l. 3). Stein recommended that Plaintiff consult with Attorney Lyles because Plaintiff wished to speak with someone concerning the continued problems, damage, and water intrusion at the residence in spite of previous repairs. (Stein Depo. at 96, l. 13-14, 98, l. 4 – 99, l. 20, and 100, l. 20 – 101, l. 2). When Plaintiff expressed her concerns about the residence, Stein recommended that Plaintiff meet with Attorney Lyles, rather than consult a general contractor, construction manager, engineer, architect, or forensic investigator. (*Id.* at 101, l. 12-25).

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

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

March 30, 2009 – Plaintiff retained Attorney Lyles as her counsel and, on her behalf, Lyles contacted engineer L.G. “Skip” Lewis with H2L Consulting Engineers (H2L). (Exhs. 287 and 290; Allwin Depo. at 226, l. 20 – 227, l. 2). Attorney Lyles informed Lewis of the residence’s history of water intrusion problems, informed Lewis the house needed a comprehensive assessment and “plan of attack,” and requested that H2L prepare a proposal for these services. (Exh. 287 and 290; Allwin Depo. at 227, l. 14 – 228, l. 4 and 229, l. 16-20).

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

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

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

May 14, 2010 – In a document produced by Plaintiff's property manager (GHS), Complete Inspection Services (CIS) inspected the residence and completed a home inspection report for a potential purchaser. (Exh. 337). CIS noted numerous construction deficiencies, including indications of roof leaks, flaking roof finish and signs of corrosion, deterioration on the underside of the metal roofing, signs of prior termite activity, damage to the siding, water infiltration at windows, water infiltration and damaged flooring at ocean side and office windows and doors, wet basement walls from water infiltration at rear doors, cupped hardwood flooring, and water infiltration, water stains, and mildew at numerous locations. Id. CIS recommended checking the flashings and subfloor in the area of the rear doors. Id.

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

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

(Exh. 602).

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

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

August 1, 2010 – Victoria Stein wrote to Plaintiff concerning a \$233,000 exterior painting proposal and noted, "I know you understand the issues regarding the stressed cedar shakes and the

unprotected windows . . . The trim around the windows [is] in good shape although the windows need attention.” (Exh. 601).

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

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

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

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

was sufficient notice of water damage to trigger the running of the statute of limitations.

In the present case, Plaintiff clearly knew about possible claims for damage from water intrusion for years before August 5, 2010, as evidenced by her own testimony and the testimony of Cowan, Noble, and Stein. In addition, dozens of records provided to Plaintiff dating back to 1999 clearly document her knowledge of chronic and continuous leaks at the roof, through and into exterior walls, at windows and doors, and into the basement; as well as the damage to interior finishes resulting from these longstanding leaks.

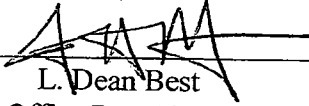
CONCLUSION

Plaintiff was aware of longstanding construction defects in the construction work performed by RCA for more than a decade prior to filing this lawsuit. Plaintiff failed to act with "reasonable diligence" in pursuing her claims against RCA, and the statute of limitations expired long before she filed this lawsuit. For these reasons, the Court should grant summary judgment in favor of RCA as to each of Plaintiff's claims asserted in this action.

BEST HONEYCUTT, P.A.

JOSHUA H. UMBARGER

For By:


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*Attorneys for Defendant Russ Cooper
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September 9, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, Dani Knecht, an employee of Best Honeycutt, P.A., do hereby certify that a true and correct copy of the foregoing has been provided by U.S. Mail, postage pre-paid, and/or via electronic mail to all other counsel of record, on this 9th day of September, 2015, to the following:

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JULIE J. ARISTON
CLERK OF COURT

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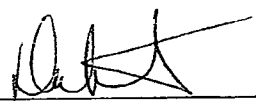
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Dani Knecht

) IN THE COURT OF COMMON PLEAS

) THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2013-CP-10-4592

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FACTS AND PROCEDURAL POSTURE

Over 23 years ago, Defendant Shope Reno Wharton ("SRW") designed and served as the architect of record for the original construction of the Plaintiff's property located at 133 Flyway Drive, Kiawah Island, South Carolina ("Property"). SRW was engaged to design Plaintiff's Property in 1992. SRW worked with Plaintiff to design the Property and issued a set of plans for construction on July 21, 1992, which were revised in final form on August 10, 1993. Construction of the Property was completed on or about May 18, 1994. Plaintiff did not bring her claim against SRW until over 20 years after the last involvement by SRW on the Property and more than 20 years after construction of the Property was entirely complete.

The record in this case is replete with evidence and written documentation demonstrating that since 1999 Plaintiff has received a plethora of reports detailing deficiencies in her Property, including, but not limited to, water intrusion into or through exterior walls and roof, air and water intrusion at windows and doors, water intrusion into the basement, presence of mold/mildew, and resulting damage to the interior. Moreover, since 2004, Plaintiff has hired several different design professionals and contractors to repair the reported and known deficiencies with the Property.

SRW had no knowledge of the issues Plaintiff was having with her Property, and had no involvement whatsoever with the Property, until SRW received a letter from Plaintiff's attorney, on February 23, 2011. Notwithstanding the fact that SRW had an office on Kiawah from 1993 to 1996, or that SRW worked with the Allwins from 1995 until 2001 on the design for a series of projects in Connecticut, the Allwins never reported any issue with the construction or design of the subject Property until the 2011 letter was sent to SRW from Plaintiff's counsel. That letter states that an investigation of the Property "has revealed numerous and significant deficiencies"

and that “[t]hese deficiencies relate to the design/installation of doors and windows, waterproofing and sealant, flashing installation and other deficiencies which have led to significant damage and which have prevented Ms. Allwin and her family from using the Home.” (See February 23, 2011 letter attached hereto as Exhibit A). This letter is further discussed in the analysis section below. After receiving the letter, SRW retained undersigned counsel and made a site visit to the Property with counsel, but did not assist Plaintiff in the evaluation and repair of her home or make any representation to Plaintiff that SRW would do so.

Plaintiff first filed this action against SRW on October 8, 2014, and alleged, in part, deficiencies in the original design and construction of the Property. In conjunction with its Answer, on November 20, 2014, SRW filed a dispositive motion based on three (3) primary grounds: 1) Plaintiff is barred from any recovery against SRW pursuant to the applicable three (3) year statute of limitations (S.C. Code Ann. § 15-3-530), the applicable statute of repose (S.C. Code Ann. § 15-3-640) and relevant case law; 2) Plaintiff’s Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC; and, 3) Plaintiff failed to file an expert affidavit alleging professional negligence simultaneously with the Complaint as required by S.C. Code Ann. §15-36-100, *et seq.*

STATUTE OF LIMITATIONS

In South Carolina, a plaintiff must bring an action within three years of the date the cause of action arises. See S.C. Code Ann. § 15-3-530. Under our discovery rule, “the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of

reasonable diligence that a cause of action arises from the wrongful conduct.” Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citation omitted).

The exercise of “reasonable diligence” means that the injured party “must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist.” Id. at 363-64, 468 S.E.2d at 647 (citing Snell v. Columbia Gun Exch., 276 S.C. 301, 278 S.E.2d 333 (1981)). “Reasonable diligence is intrinsically tied to the issue of notice.” Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 356, 559 S.E.2d 327, 336 (Ct. App. 2001). “[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial.” 321 S.C. at 364, 468 S.E.2d at 647 (citing Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985), *overruled on other grounds by* Atlas Food Sys. and Servs., Inc. v. Crane Nat’l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995)).

“The test of whether a person should have known the operative facts is objective, rather than subjective.” Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997)(citation omitted). Our courts have consistently held that “the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer.” Wiggins v. Edwards 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). On discovery of an injury, “the statute of limitations begins to run for all claims based on that injury.” Id. (citing Tollison v. B & J Mach. Co., Inc., 812 F. Supp. 618, 620 (D.S.C. 1993)). Indeed, as our case law clearly illustrates, “South Carolina’s statute of limitations requires ‘very little to start the clock.’” Maher v. Tietex Corp., 331 S.C. 371, 380, 500 S.E.2d 204, 208 (Ct. App. 1998) (quoting Roe v. Doe, 28 F.3d 404 (4th Cir. 1994)).

ANALYSIS

Plaintiff's Claims Against SRW are Barred by the Three Year Statute of Limitation

Plaintiff has asserted causes of action against SRW for negligence and breach of express and implied warranties. The applicable statute of limitations for Plaintiff's claims against SRW is three years. See S.C. Code Ann. § 15-3-530. Under the applicable statute of limitations, Plaintiff had a three-year window in which to bring a claim against SRW from the point Plaintiff knew or should have known she had a claim against SRW, as more fully described in the standard defined by the case law above. It is clear that the facts and circumstances of this case were sufficient to put Plaintiff on notice that a potential claim against SRW existed well over three years prior to her bringing a claim against SRW.

Perhaps most telling is the February 23, 2011 correspondence from Plaintiff's attorney notifying SRW of a potential claim against SRW due to design and construction deficiencies that was sent more than three years and seven months before the lawsuit was filed against SRW. That letter, which was copied to Maria Allwin, notified SRW of the following: 1) that Plaintiff's counsel had been retained by Mrs. Allwin in connection with "significant deficiencies" at the Project; 2) that the known deficiencies, uncovered by investigation "relate to the design/installation" of various building components; and, 3) that the deficiencies "have led to significant damage" to the Property. The letter goes on to discuss the anticipated "significant financial burden" Plaintiff will face as a result of the deficiencies and damages to the Property. Later in the correspondence, Plaintiff's counsel requests that SRW assist Plaintiff with the evaluation and repair of those conditions. (Note, SRW did not assist with the repair of said conditions.) Counsel for Plaintiff then concludes the letter by putting SRW on notice of a

potential claim and instructing SRW to “forward this letter to your attorney and to your insurance agent/broker and any known liability insurance carriers.”

Additional evidence clearly solidifies that Plaintiff knew about alleged design and construction defects and damage for more than a decade before retaining counsel and sending SRW a letter. A sampling of that evidence is as follows:

1) Robert Cowan (“Cowan”), who occupied the subject property with his wife in the 1999-2000 timeframe, informed Plaintiff in writing of a roof leak at the east end of the great room, evidence of a leak in the ceiling in a guest room, and mold around an air conditioning register in a bedroom by February 8, 1999. (Ex. B; Allwin Dep. at p. 33. l. 15-17 and p. 49. l. 21 – p. 50. - l. 1).

2) Cowan informed Plaintiff in writing of continued and new roof leaks, and continued basement leaks on March 24, 2000. (Ex. B; Allwin Dep. at p. 56, l. 16-19 and p. 57. l. 14 – p. 57, l. 25).

3) Plaintiff admitted that she was well aware of leaks in the house as of 2001, including longstanding roof leaks as of May 21, 2001. (Ex. B; Allwin Dep. at p. 76., l. 2-9 and p. 81. l. 2-18).

4) Dan Buffington, with Buffington Homes, wrote to Plaintiff on January 13, 2004, and expressed his thoughts on a proposed scope of work and, in some instances, recommended more aggressive repair options. (Ex. C). With respect to the roof, Buffington stated that the patch repair was not a permanent solution and would negatively affect the roof’s beauty. *Id.* Buffington also informed Plaintiff that “South Carolina has a 13-year statute of limitation (sic) for water intrusion. Your home is approaching that deadline.” *Id.* (emphasis added). Further Buffington wrote, “I strongly urge you to contact the builder/roofer who installed the roof. If he

is unwilling to accept responsibility and replace the roof, I would suggest enlisting legal counsel." Id. (emphasis added). Buffington informed Plaintiff that the cost of replacing the roof would require significant siding replacement and cost in excess of \$500,000. Id. With respect to the windows, Buffington noted leaks and air infiltration at various windows and set forth a proposed scope of investigation to identify and repair the leaks. Id. With respect to the basement, Buffington noted leaks where the patio connects to the residence and set forth a proposed scope to repair the leaks. Id. Buffington also reported damaged and severely cupped hardwood flooring, and damaged and mildew-stained drywall. Id. Finally, Buffington presented a budget for the Morgan scope of repair totaling \$238,504. Id.

5) By way of letter on June 7, 2004, AIG declined Plaintiff's property damage claim, which was filed in March of 2004 and reported various sources of water intrusion to AIG, including ongoing roof leaks and water intrusion around windows and doors" (Ex. B; Allwin Dep. at p. 157, l. 23 – p. 158, l. 7) (emphasis added), referencing both the 2003 CSA report (Ex. D) and the 2004 ED&T report (Ex. E), and referring to the longstanding construction defects noted in both reports.

6) On or about March 30, 2009, Plaintiff retained Attorney Lyles to serve as her counsel and, on her behalf, Lyles contacted forensic engineer L.G. "Skip" Lewis with H2L Consulting Engineers (H2L). (Ex. B; Allwin Dep. at p. 226, l. 20 – p. 227, l. 2). Attorney Lyles informed Lewis of the residence's history of water intrusion problems, informed Lewis the house needed a comprehensive assessment and "plan of attack," and requested that H2L prepare a proposal for these services. (Ex. B; Allwin Dep. at p. 227, l. 14 – p. 228, l. 4 and p. 229, l. 16 – p. 229, l. 20). Yet despite her counsel's recommendation for H2L to inspect the residence, there was no forensic analysis of the home until Plaintiff's present causation expert, Ross Clements

with Fuller Engineering, inspected the residence in 2001. (Ex. F; Stein Dep. at p. 137, l. 1 – p. 138, l. 1).

In addition to what is set forth above and in the interest of avoiding duplicative memoranda in support of the same argument, SRW incorporates all exhibits and supporting material referenced and relied upon by Defendant Russ Cooper Associates, Inc. in its Memorandum in Support of Its Motion for Summary, filed on September 9, 2015. Defendant Cooper's Memorandum in Support of its Motion for Summary Judgment provides a thoroughly annotated chronology setting forth a detailed and documented history of evidence and testimony in support of summary judgment based on the three (3) year statute of limitations. Indeed, Defendant Cooper's Motion is supported by 142 separate documents, dated from 1999 to 2011, as well as testimony including admissions by Plaintiff as to her knowledge and understanding of ongoing problems with the Property. The numerosity and clarity of the known defects with the design and construction of the home and resulting damages therefrom presented to Plaintiff render any statement to the contrary (i.e. that the statute had not run) unfathomable. In short, there is an astounding amount of evidence in support of the position that Plaintiff was repeatedly apprised of construction and design deficiencies with the Property.

At the most basic level, the undisputed facts of this case establish that Plaintiff was aware of deficiencies in the design and construction of the Property that led to damage of her home more than three years before she commenced this litigation. Because Plaintiff failed to timely bring her claim against SRW within the applicable limitations period of three years, Plaintiff's claims against SRW are barred by the statute of limitations. SRW is entitled to judgment as a matter of law. Accordingly, SRW seeks an Order from this Court granting it summary judgment as to all of Plaintiff's claims against SRW.

Statute of Repose

Plaintiff's claims are unequivocally barred by South Carolina's statute of repose, which expired almost seven (7) years before Plaintiff filed this lawsuit against SRW. Pursuant to the applicable statute of repose under S.C. Code Ann. § 15-3-640, a plaintiff has thirteen (13) years from the date of substantial completion of an improvement to bring a claim. "A statute of repose represents an absolute time limit beyond which liability no longer exists." Bundrick v. E. Richland Cnty. Pub. Serv. Dist., No. 2005-UP-225, 2005 WL 7083866, at *2 (Ct. App. Mar. 31, 2005). "When causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission." Id. (internal citations omitted). In this case, Plaintiff's home was substantially complete in May of 1994 and the statute of repose expired in May of 2007. Plaintiff did not file this lawsuit against most Defendants until August 5, 2013 and against SRW until October 8, 2014. Both dates are many years outside of the statute of repose, and as a result all of Plaintiff's rights and remedies against SRW are expired. It would violate the very purpose of the statute of repose to deny SRW freedom from liability and a dismissal from this action. Due to the extreme passage of time, SRW has disposed of its project file for the Property, including contract documents, the project manual, and specifications book detailing important design and construction elements. No one that was involved in the original design is still employed by SRW.

Presumably the only way Plaintiff may attempt to get around the statute of repose is to argue that an exception applies. The statute of repose contains a limited exception that applies strictly to acts of gross negligence. Id. at *3. Gross negligence is defined as "the intentional, conscious failure to do something which it is *incumbent* upon one to do or the doing of a thing

intentionally that one ought not to do.” Hollins v. Richland Cnty. Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993) (quoting Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988) (Emphasis supplied)). This exception is a reasonable way to prevent intentional bad actors from escaping liability due to the passage of time. However, it does not apply to this case. Tucked away in paragraph 20 of her Complaint, in the context of her cause of action for simple negligence, Plaintiff inserted the phrase “gross negligence” as if it was an afterthought. There are no other allegations of gross negligence contained in the Complaint. In fact, throughout the discovery process, there has been no evidence produced to support a claim of gross negligence against SRW. In order to withstand a dismissal based on the expiration of the statute of repose, Plaintiff would have to establish that SRW intentionally and consciously failed to do something that SRW was required to do. Plaintiff is unable to make such a showing. Rather, the evidence (and common sense) indicates that SRW’s intention was to design the best home they could for Plaintiff, who was an important client to SRW. SRW had neither the incentive nor interest in providing Plaintiff with anything but the best product SRW could design. Without any evidence or argument to support an allegation of grossly negligent conduct on SRW’s part, SRW is entitled to summary judgment.

S.C. Code Ann. § 15-36-100, *et seq.*

Plaintiffs failure to file an expert affidavit alleging professional negligence simultaneously with the Complaint, as required by S.C. Code Ann. §15-36-100, *et seq.*, is further support for the dismissal of Plaintiff’s claims against SRW. Licensed architects like SRW fall within the S.C. Code Ann. § 15-36-100’s list of covered professionals. S.C. Code Ann. § 15-36-100(G)(1). Plaintiff’s causes of action against SRW for Breach of Express and Implied Warranty and Negligence, as set forth in the Complaint, are based upon a theory of professional

negligence in the practice of architecture. According to S.C. Code Ann. § 15-36-100, a claim for professional negligence against professional architects arising after July 1, 2005, requires an affidavit by a qualified expert witness to be filed contemporaneously with the complaint. In this case, the Plaintiff filed the Complaint on October 8, 2014. As stated above, Plaintiff did not file any affidavit by an expert alleging professional negligence against SRW simultaneously with the Complaint, as they were required to do to sustain their claims against SRW.

Further, the language of the applicable statute does not provide for the dismissal of only a negligence cause of action within a complaint failing to adhere to the requirements of filing an expert affidavit. Instead, the entire complaint is subject to dismissal: "[I]f an affidavit is not filed... and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, *the complaint is subject to dismissal for failure to state a claim.*" (Emphasis added). S.C. Code § 15-36-100(C)(1).

Yet, in the current case, despite their awareness of the affidavit requirement and its application to their claims against SRW, 342 days have elapsed since the Complaint was filed and 297 days have passed since the expiration of the additional 45 day extension. Because Plaintiff failed to file an affidavit of an expert identifying any negligence by SRW, in accordance with S.C. Code Ann. § 15-36-100, in support of their claims against SRW, Plaintiff's claims against SRW should be dismissed pursuant to Rule 12(b)(6), SCRPC.

a. The entire Complaint against SRW must be dismissed.

Plaintiff's allegations against SRW are predicated on the professional architecture services provided by SRW and require expert testimony regarding a breach of the applicable standard of care. The fact that the Complaint has styled one cause of action as a warranty claim

does not alleviate the expert affidavit requirement. Although Plaintiffs use the labels "Breach of Express and Implied Warranty," the acts complained of in the Complaint allege engineering design deficiencies against SRW. The same requirement of supporting expert testimony exists for Breach of Warranty claims as for negligent design claims. Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 570 S.E.2d 197 (Ct. App. 2002)(citing Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp., 332 S.C. 197, 209, 503 S.E.2d 761, 767 (Ct. App. 1998)). In other words, to prevail under *any* cause of action against a professional engineer, a plaintiff must show some negligent act that resulted in damages, and the very purpose of the statute is to require that the plaintiff provide expert testimony regarding some negligent act. Plaintiff's causes of action against SRW for Breach of Warranty should be dismissed pursuant to S.C. Code Ann. § 15-36-100, because such causes of action constitute claims for professional negligence, and require a properly filed expert affidavit to support such claims.

Again, each claim against SRW is predicated on proof of a breach of the applicable standard of care of a professional architect, and, regardless of headings in the Complaint, the statutory requirement for suits against professionals remains. Plaintiff failed to attach an expert's affidavit to the Complaint in support of its claims based on the alleged negligence of SRW. Consequently, SRW is entitled to an Order dismissing the Complaint as filed against it, pursuant to Rule 12(b)(6), SCRCp.

b. The Complaint against SRW should be dismissed *with prejudice*.

It is imperative that the claims be dismissed with prejudice. Clearly, without a dismissal with prejudice, the intent of the statute is not met. The Complaint is not subject to renewal after the expiration of the applicable period of limitation established by the statute. Under S.C. Code

§ 15-36-100(E), the applicable period of limitation is established as 30 days from the filing of Complaint to cure any deficiencies in the affidavit. Again, that time period has clearly expired in the present case. Further, the statute lacks meaning if a plaintiff is permitted to remedy any deficiencies related to the affidavit at a later date. The purpose of the Tort Reform Act is to limit litigation in situations where a plaintiff lacks the basis for a claim. A dismissal with prejudice when an expert affidavit is not filed with the Complaint is consistent with the intent of the Tort Reform Act. Accordingly, the only means by which the statute can be strictly enforced and for the legislative intent to be met is for the dismissal to be entered with prejudice.

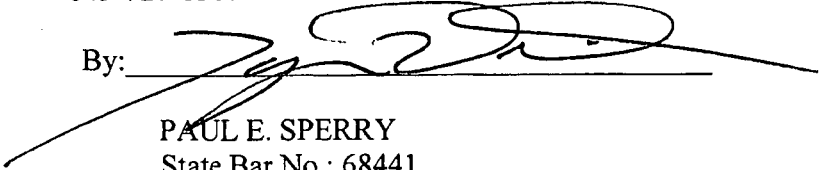
CONCLUSION

SRW is entitled to an Order granting summary judgment on all of Plaintiff's claims against SRW in light of the Plaintiff's failure to timely bring her claims for alleged design and construction deficiencies with the Property. Notwithstanding the fact that Plaintiff's claims are time-barred, there are other grounds for dismissal as set forth above. For the reasons expressed herein, SRW requests that this Court grant summary judgment as to Plaintiff's claims against SRW. This Memorandum is based upon Rules 12(b) and 56, SCRCPP; the pleadings; discovery; evidence of record; applicable case law; deposition testimony; Defendant Cooper's Memorandum in Support of its Motion for Summary Judgment and related exhibits; and any further memorandum in support of a dismissal of Plaintiff's Claims against SRW to be submitted to the Court under separate filing.

[Signature Page Follows]

Respectfully submitted,

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843-727-0307

By: 

PAUL E. SPERRY
State Bar No.: 68441

TYLER P. WINTON
State Bar No.: 77877

Attorneys for Defendant Shope Reno Wharton

EXHIBIT A

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Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

February 23, 2011

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Shope Reno Warton
18 Marshall Street, Ste. 114
South Norwalk, CT 06854

Re: 133 Flyway Drive, Kiawah Island, South Carolina

Gentlemen,

I have been retained by Maria Allwin and her family in connection with significant deficiencies at the residence known as 133 Flyway on Kiawah Island (The "Home"). You served as the architect for the Home. Ms. Allwin is contemplating putting the Home on the market. In the course of that process, a limited investigation has revealed numerous and significant deficiencies related to the Home. These deficiencies relate to the design/installation of doors and windows, waterproofing and sealant, flashing installation and other deficiencies which have lead to significant damage and which have prevented Ms. Allwin and her family from using the Home.

As a result of these deficiencies and the damages to property resulting therefrom, Ms. Allwin faces a significant financial burden, including the cost to complete a thorough investigation of the home, as well as repair of the home, which will inevitably be very expensive. Alternatively, Ms. Allwin may attempt to sell the Home in "as is" condition and take a substantial loss on the purchase price. She has not decided, at this point, which option she will choose.

Since you served as the design professional for the Home, Ms. Allwin hereby requests that you contact me and make arrangements to investigate the conditions at the Home and assist her with the evaluation and repair of those conditions.

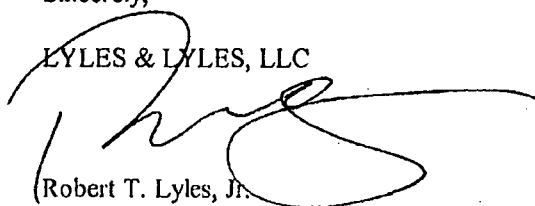
If you refuse to investigate and correct the conditions at the project in a suitable manner, Ms. Allwin will be forced to deal with those issues on her own and reserves any and all legal rights and remedies she may have against you as a result. In that event, you are also notified of the conditions at the Home and should you choose to review and inspect these prior to repair, arrangements for a site visit must be made with my office as soon as possible.

Please forward this letter to your attorney and to your insurance agent/broker and any known liability insurance carriers. I also hereby request that you make your files relative to the Home available for my review.

If you have any questions or wish to discuss this further, please feel free to call me.

Sincerely,

LYLES & LYLES, LLC

A large, stylized handwritten signature in black ink, likely belonging to Robert T. Lyles, Jr.

(Robert T. Lyles, Jr.)

RTL:bl

cc: Maria Allwin
Christopher Allwin

EXHIBIT B

1 IN THE STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

3
4 DEPOSITION OF MARIA ALLWIN

5 VOLUME 1

6 MARIA ALLWIN,

7
8 Plaintiff,

9
10 vs.

11
12 RUSS COOPER ASSOCIATES, INC.,
and BUFFINGTON HOMES, L.P.,

13 Defendants.

14 -----
15 BUFFINGTON HOMES, L.P.,

16 Third-Party Plaintiff,

vs.

17 AIR FASTENERS OF CAROLINA, INC., ALBRECHT
18 ENVIRONMENTAL, INC., ALL POINTS CONSTRUCTION,
INC., BERLIN G. MYERS LUMBER CORP., BUILDERS
19 FIRSTSOURCE-SOUTHEAST GROUP, LLC f/n/a
BUILDERS FIRSTSOURCE SOUTHEAST GROUP, INC.,
20 FRANK LEIGH CONTRACTORS, INC., PATRIOTS DRYWALL,
INC., PICQUET ROOFING, INC., PLANTATION
CONSTRUCTION, SPRAYSEAL FOAM INSULATION, L&L
21 SERVICES, LLC, LONEY DAVIS, SUPERIOR SURFACES OF
CHARLESTON, INC., and TISCHLER UND SOHN (USA)
22 LIMITED,

23 Third-Party Defendants.

24 -----
JAY DEITZ & ASSOCIATES, LTD.
New York, New York

25 January 26, 2015

Clark and Associates Inc.

000108

1 (Exhibit No. 3 was marked for
2 identification.)

3 Q. I hand you Exhibit Number 3, and you are
4 welcome to take a look at that. Have you seen
5 this document before?

6 A. No.

7 Q. I'll point out some Bates numbers at the
8 bottom. It's Allwin 3, 4 and 5. I represent to
9 you that these are documents that you produced
10 through your attorney in response to discovery
11 requests.

12 A. Okay.

13 Q. So my assumption is that these documents
14 came from your file and the letter is addressed
15 to you. Do you believe you may have seen it in
16 1998?

17 A. I may have seen it, yes.

18 Q. This is a letter from Bob and Mary Lou.
19 That would be the Cowans?

20 A. Yes.

21 Q. Do you believe they were living in your
22 house in February of 1998?

23 A. I don't know.

24 Q. There's some handwriting up at the top.
25 There's a check mark and the name Allan Shope.

1 Q. It's a fax stamp.

2 A. Yes.

3 Q. And if you look at the last page of
4 Exhibit 3, it references an attached status list.

5 A. Oh. So that's it.

6 Q. I'm pretty sure that it is.

7 A. Yeah. Okay.

8 Q. In addition to the five sort of general
9 areas that the Cowans pointed out in Exhibit 3,
10 it looks like here they were making a detailed
11 laundry list of items that they have concerns
12 about, be it something in need of repair, be it a
13 maintenance item that just needs to be handled,
14 or in some cases they are even looking out to the
15 future things that will need to be addressed into
16 the future.

17 Have you seen this document? And,
18 again, I'll point out to you that it came from
19 your records.

20 A. No.

21 Q. You don't deny that this was sent to you
22 and your husband in February of 1999?

23 A. Yes. I believe that.

24 Q. Do you believe you may have seen it in
25 1999?

1 here Mr. Cowan points out to you and your husband
2 damage from air conditioning and roof leaks.

3 Did you have any conversations with the
4 Cowans about HVAC or roof leaks in this time
5 period?

6 A. I don't recall.

7 Q. Did you have any conversations with your
8 husband about roof leaks in this time period?

9 A. No. I just don't recall.

10 Q. Were you aware of HVAC and roof leaks in
11 this time period?

12 A. I don't recall.

13 Q. Does this come as a complete shock to
14 you?

15 A. No.

16 Q. There is a long history of roof leaks at
17 the house dating back to the '90s; is that
18 correct?

19 A. Yes.

20 Q. There's a long history of HVAC problems
21 at the house dating back to the '90s; is that
22 correct?

23 A. Yes.

24 Q. Do you know if Mr. Cowan or your husband
25 or you contacted Russ Cooper or the architect

1 about the HVAC or roof leaks?

2 A. I did not contact Mr. Cowan or anybody.

3 Q. On page 2 at the bottom there is, again,
4 a reference to basement leaks. You and your
5 husband were aware of basement leak problems in
6 2000, correct?

7 A. I don't know what he was aware of.

8 Q. You were aware of basement leak problems
9 in 2000?

10 A. I don't remember.

11 Q. When did you become aware of basement
12 leak problems?

13 A. I don't remember that I was aware.

14 Q. Is the fact that Mr. Cowan is informing
15 you and your husband in March of 2000 about
16 basement leaks a surprise to you?

17 A. No. There's been a long history of
18 basement leaks.

19 Q. Give me some others.

20 A. Well, what's the question?

21 Q. There has been a long history of
22 basement leaks at the house, correct?

23 A. Yes.

24 Q. Dating back to the '90s?

25 A. Yes.

1 A. I don't recall.

2 Q. There's no doubt in your mind that as of
3 May 10, 2001, and, as we have seen sometime
4 before that, there were significant roof leaks in
5 the home?

6 A. Yes.

7 Q. And you are aware in 2001 there were
8 significant roof leaks in the home, correct?

9 A. Yes.

10 Q. Section B, Other leaks. The basement
11 wall, Mr. Cowan points out on the second line, we
12 have experienced leaks over the top of the
13 basement wall the entire length of the house.

14 And I'm assuming he's referring to go
15 down to the basement or the cave there is a wall
16 that runs parallel to the house that is between
17 the house and the pool and it's a subterranean
18 wall, correct?

19 A. Yes.

20 Q. And there's water that would come from
21 somewhere above and run down that wall.

22 A. I don't know that.

23 Q. Do you go down to the cave?

24 A. No. Would you go down there? No.
Nobody went down there.

1 -- not the specifics but just the concepts.

2 Q. Of these major items here -- roof leaks,
3 basement leaks, a leak at the chiller room, HVAC
4 concerns, structural settlement, paint problems
5 and then wood rot at the cabana -- which of these
6 do you recall speaking to your husband about in
7 2001?

8 A. Conceptually all of them, but
9 specifically I can't recall.

10 Q. You may not have gone into the
11 particular calls or particular problem, but you
12 were aware that -- paragraph B2 -- there was a
13 problem with the chiller room, there was a leak
14 noted over the wall in the chiller room.

15 A. No. I was aware there were leaks in the
16 house, and that we -- I was aware that there were
17 leaks at the house, yes. Specific issues or
18 spaces, I don't remember.

19 Q. Was there a plan in 2001 or 2000 to
20 remedy these leaks that you are aware of?

21 A. I think we -- I think -- I don't recall.

22 (Exhibit No. 15 was marked for
23 identification.)

24 Q. Exhibit 15 is a May 24, 2001 letter from
25 Bob Cowan to your husband. Looking at paragraph

1 Another leaky roof in each case.

2 Q. I have got a bunch of other documents
3 that I can ask other people about and --

4 A. I'd like to hear what other people have
5 to say.

6 Q. Well, we'll probably have to find out
7 what other people have to say, but is there
8 anything in these documents from 2003, 2004,
9 2005, 2006 and 2007 that if I show you, you are
10 going to have any clear recollection of?

11 A. No. Probably not.

12 And then my husband was diagnosed and
13 that was -- it was really --

14 Q. And that was tragic.

15 A. -- a blur. Those few years were just a
16 blur.

17 Q. I can't imagine. And I understand that,
18 and, again, I'm not trying to be insensitive.
19 I'm just trying to understand how things worked.

20 When was your husband diagnosed?

21 A. He was -- he became ill in '05. He was
22 diagnosed in '06 and passed away in '07, October.

23 Q. In 2004 you made a claim with your home
24 owner's insurance, AIG

25 A. Yes.

1 Q. That was not the lightning strike,
2 correct? It was just a mold claim?

3 A. Well, I tried it.

4 Q. And they said thanks, but no thanks.
5 They said this is the responsibility of the
6 original general contractor.

7 A. I don't know what they said.

8 MR. BEST: For those of you
9 playing at home, I am skipping a ton of exhibits.
10 I am going to 163.

11 (Exhibit No. 163 was marked for
12 identification.)

13 Q. This is an April 2004 report prepared by
14 a gentleman by the name of David Horn. He is an
15 engineer that your insurance company hired to
16 come and inspect your house. Do you recall
17 seeing this report?

18 A. No. I don't.

19 (Exhibit No. 165 was marked for
20 identification.)

21 Q. Exhibit 165 is entitled a weekly
22 progress report prepared by Buffington Homes
23 reporting on the status of the work, and there
24 are a few of these in the file. Did you review
25 these as they came in?

1 A. I do not.

2 Q. When Mr. Smith did his repair work, the
3 most recent repair work, did you go forward with
4 that plan and add the media room?

5 A. No, I did not.

6 Q. Did you do any of these things?

7 A. No, none of them.

8 Q. Did you add anything over the pool
9 cabana?

10 A. No, nothing.

11 Q. So I was there when repairs were
12 beginning, but the great room still exists --

13 A. Yes.

14 Q. -- it's still open to the second story.

15 A. Yes.

16 (Exhibit No. 287 was marked for
17 identification.)

18 Q. Please look at Exhibit 287.

19 A. Uh-huh.

20 Q. This is a document that was produced by
21 H2L, an engineering firm in the upstate of South
22 Carolina. And they are, I believe, phone notes
23 taken on March 30th by Skip Lewis in a conference
24 with your attorney. And you had retained Mr.
25 Lyles by March 30th, 2009? He was acting on your

1 behalf as your counsel?

2 A. Yes, he was.

3 Q. It looks like Mr. Lyles contacted Mr.
4 Lewis on March 30, 2009. Does that sound
5 consistent or just refreshing your recollection
6 at all?

7 A. It's not.

8 Q. The issue is a building condition
9 assessment request. You see that?

10 A. Where is that?

11 Q. Under issue, at the top.

12 A. Oh, issue, yes.

13 Q. A building condition assessment request?
14 Do you not recall any plan to hire an engineer to
15 come in to assess the condition of your
16 residence?

17 A. Yes. We did do that. We did want -- I
18 did want that.

19 Q. Okay.

20 A. I don't know who it ended up --

21 Q. So that was the plan in March of 2009,
22 because you wanted to know exactly what was wrong
23 with your home.

24 A. Right.

25 Q. If you drop down a few lines, you'll see

1 history of problems with water infiltration and
2 HVAC issues. That's consistent with the problems
3 you knew you were having with your home, correct?

4 A. Yes.

5 Q. Owner has spent dollar sign, dollar
6 sign, dollar sign over a number of years with
7 engineers and contractors in an effort to remedy
8 problems.

9 That's a true statement, correct?

10 A. Yes.

11 Q. Spent over, plus or minus, \$300,000 with
12 Buffington on window work.

13 That's a true statement, correct?

14 A. Yes.

15 Q. Spent \$700,000, plus or minus, to
16 replace the HVAC system. That was back in 2000.

17 That's a true statement, correct?

18 A. Yes.

19 Q. Appear to have, among other issues,
20 negative air problem. Do you understand what a
21 negative air --

22 A. No.

23 Q. Okay. Have you had any conversations
24 with anyone who suggested that, due to the
25 environmental dynamic and the way your HVAC

1 system functions, that there is a negative
2 pressure, meaning outside air is drawn into the
3 home versus inside air being pushed out into the
4 environment? Does that make sense?

5 A. It doesn't make sense, but I have heard
6 someone try to explain that to me.

7 Q. When did you first learn that your house
8 may have a negative pressure or negative air
9 problem?

10 A. I don't recall when.

11 Q. It appears that Mr. Lyles is reporting
12 this to Mr. Lewis, or maybe it's speculation on
13 Mr. Lewis' part, but you just don't recall when
14 you learned that.

15 A. No, I don't recall.

16 Q. Mr. Lewis notes a need for comprehensive
17 assessment and plan of attack. That's exactly
18 what you understand the engineer was going to be
19 asked to do, correct?

20 A. Yes.

21 Q. The current property manager is
22 compiling history of prior actions and reports.
23 Does that refresh your recollection as to what,
24 if anything, Ms. Tori Stein was asked to do
25 following the meeting with Mr. Lyles?

EXHIBIT C

BUFFINGTON HOMES, L.P.
1900 Andell Bluff Blvd.
Seabrook Island, S.C. 29455
843-768-8525
Fax: 843-768-8524

Date: 1/13/04

Attn: JIM ALLWIN

Project: 133 FLYWAY

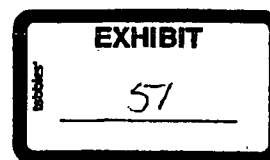
Fax Number: 212-201-2535

From: DAN BUFFINGTON

Number of pages in incl g cover sheet: 5

Instructions: I HAVE ALSO FAXED THIS TO
MILT MORGAN. PLEASE CALL TO
DISCUSS AT OFFICE, OR MY CELL PHONE
843-532-5913. YOU CAN ALSO
CALL ME IN THE EVENINGS AT MY
HOME 843-768-4630

THANKS.



Allwin 01425

000122



January 8, 2004

Jim & Maria Allwin
65 Upper Cross Road
Greenwich, CT 06831

Dear Jim And Maria,

As we discussed in our prior meetings, there are several problems in your home at 133 Flyway that need to be addressed. I have had numerous discussions with various experts to determine the best method for correcting the conditions causing the mold and mildew in your home. The two experts that I would like to note are Andre Desjarlais and Larry Elkin. Andre is the program manager for the Building Envelope Program of the Oak Ridge National Laboratory. Larry is a forensic engineer with Campbell, Schneider, and Associates and a noted expert in the determination and the mitigation of the causes of mold and mildew within the building envelope. You have received his report dated August 15, 2003. The areas of concern are:

1. The roof has numerous problems, from peeling paint to many leaks. There is strong evidence of the roof leaking in three of the bedrooms, as well as four places in the main attic where I personally saw water leaking during a rainstorm. Picquet Roofing, Inc., through Milt Morgan, has proposed patching the areas where leaks are suspected, primarily at the valleys. I have discussed this solution with DeVcaux Picquet, and would like to point out a few concerns.
 - a. This solution is not permanent. It will need to be redone on a periodic basis, Mr. Picquet estimates it will be good for 5 years. He explained to me that his suggestion for patching the roof was merely to buy time until the roof could be replaced. (Please see item c. below.)
 - b. Your house is very "roof dominant", meaning that much of what one sees when looking at your house is the roof. The patching system proposed is the *PremiumCoat System* from Hydro-stop. With this system, the valleys and all areas that may potentially leak will be covered with a fabric membrane system. The entire roof system is then coated with a colored, flexible, elastomeric compound. I am concerned that the heauty of the roof will be compromised.
 - c. South Carolina has a 13-year statute of limitation for water intrusion. Your home is approaching that deadline. According to the roofer I originally contacted, Dave Harvey Roofing, as well as Mr. Picquet, the roof was so poorly installed that the only way to properly repair the roof is to replace it. When properly installed, your roof should last a lifetime. Even an asphalt shingle roof will last at least 15 to 20 years. I strongly urge you to contact the builder/roofer who installed the roof. If he is unwilling to accept responsibility and replace the roof, I would suggest enlisting legal counsel. Replacing the roof will necessitate removing and replacing much of the siding, thus, the cost for the roof replacement will be over \$500,000.

1900 Andell
Bluff Boulevard
Seabrook Island
South Carolina
29435

843.768.8525
P: 800.096.3859
F: 843.768.8524

Allwin 01426

000123

- d. The rubber (EPDM) membrane roof over the pool cabana also needs repairing. We will patch the leaks, while at the same time repairing the rotted trellis above the cabana.
 - e. Dave Harvey Roofing has refused to give us a price for doing the patch job, as he cannot give you a warranty and feels that you will be unhappy with the fix. Mr. Picquet will supply a one year warranty.
 - f. Again, I must emphasize that I believe that pursuing this option is a mistake, unless it is merely to buy time while you convince the original builder/roofer to replace the roof.
2. The bead-board paneling on the exterior wall of the garage staircase is buckling. This suggests that there is moisture coming through the wall from the outside. This wall is part of the "planter" on the left side of the front door. We dug down approximately 18" on the outside of the offending wall and were unable to find any waterproofing to prevent moisture from entering the wall. I am not sure if the stucco is covering the waterproofing, or if the dirt is higher than it should be. This needs to be further explored, and either the wall must be better waterproofed or the elevation of the dirt must be lowered.
3. We discussed the fact that the mouth of the culvert on the right side of the house is below the surrounding grade. The pipe in the culvert leads to the foundation vents in the basement. When it rains, water runs into the culvert and then into the basement. The culvert area on the west side of the house needs to be regraded.
4. The basement under the house is very damp. Although some of the moisture is coming from the foundation vents described in item 3, most of the moisture is coming from the gravel area under the pool deck. Much of the moisture entering the house is coming from the basement area and infiltrating through the floor system. I am sure you have noticed the cupping of the hardwood on the first floor, especially during the summer. To correct this, we suggest:
 - a. Replacing the screen door to the pool crawl space with a solid, fiberglass exterior door.
 - b. Installing breakaway foundation vent covers to prevent any humid air from entering the basement area.
 - c. Installing dehumidifiers under the house. A dehumidification system can be installed by Aero Mechanical. As a savings alternative, we can install three smaller dehumidifiers that would be purchased from Home Depot and set up on stands.
 - d. Apply water-proof paint on the wall between the basement and crawl space under the pool deck to reduce the moisture transference through that concrete block wall.
5. The pool decking at the southwestern corner of the house by the office, as well as the steps leading from the rear doors to the pool deck, are at the elevation of the subfloor. The decking at the southwesterly corner also slopes slightly towards the house. It appears that the interface between the house and the deck/steps was not

properly waterproofed. This explains why the hardwood flooring in the interior against those areas is damaged and cups severely, especially during the summer. We suggest removing the stone, etc in those areas and waterproofing the outside of the house. At that time, we will also reslope the deck at the southwesterly corner so water will drain away from the house.

6. The window in the breakfast room that has failed has been ordered and we expect delivery soon. There is a leak under that window which has damaged the drywall. We will remove the drywall under the window to determine the source of the leak and correct it accordingly.
7. The faulty transom window in the master sitting room has been ordered and will be replaced at the same time as #6.
8. There are numerous areas where there has been air infiltration around the windows. The proper method of correcting these air leaks is to remove the exterior trim and siding around the windows and seal the gaps between the window frames and the plywood sheathing. Unless the siding is to be removed during the course of a new roof installation, we feel that a different approach would be more cost effective. For all affected windows, we suggest removing the interior casing and sealing between the drywall and the window frame. This will prevent the warm, wind-driven moist air from contacting the cool interior surfaces of the drywall, where it condenses and allows the mold and mildew to grow.
9. There are gaps around the attic doors as well as openings within many of the recessed lighting fixtures. Large, temperature activated fans have been installed to prevent the attic from exceeding a certain temperature. Unfortunately, this has the wrong effect on the home. The fans create a negative pressure within the attic, causing air to be drawn through the various openings from the inside of the house. This then pulls the moist outside air into the house from around the windows, etc. Conversely, when the fans are not activated, warm moist air is forced from the attic into the house by the prevailing ocean breezes, etc.

In our original proposal, we suggested installing "boxes" to cover the recessed fixtures within the attic to prevent the air exchange back and forth from the attic and the interior of the house. Upon further examination, this solution will necessitate changing out the fixtures over the great room.

As a better alternative, we propose closing the roof and gable vents and spraying open cell polyisocyanurate (Icynene) foam under the entire roof system in the accessible attic areas. This foam is used to insulate refrigerators, boats, homes, and many commercial applications. It has numerous benefits for your application:

- a. It will keep your attics cool in the summer and warm in the winter.
- b. It will reduce some of your air conditioning load.
- c. It will not be necessary to seal the recessed light fixtures.

- d. It will prevent the warm, wet ocean breezes from blowing into the attic and down into the house.
- e. The natural chimney effect from air being drawn through the wall envelope and out through the attic vents will be stopped.
- f. The attic fans will no longer be necessary.
- g. Because the attic HVAC systems will be operating in a semi-climatized space, they will be more efficient and last longer because they are no longer exposed to the moist, salt laden air.
- h. Because it is an open-celled foam, it will not trap water if the roof leaks.

Milt Morgan expressed a concern that the foam may cause the roof temperature to become elevated, damaging the plywood roof sheathing. I have discussed this concern with several roof manufacturers, the American Plywood Association, as well as several of the engineers with the Building Envelope Project at the Oak Ridge National Laboratory, and have not found anyone who has heard of this condition affecting a metal roof or its plywood sheathing.

- 10. The damaged and mildew stained areas will require repainting. If the drywall is damaged, we will repair or replace the drywall. We have not priced replacing any drywall that is merely stained. Our proposal does not include replacing the damaged wallpaper, nor does it include repainting the undamaged areas of the house. If damaged or stained, we will repaint the entire wall section or ceiling section. We intend to caulk and repair any wood trim that is damaged or has unsightly gaps, etc. This proposal does not include changing any paint colors.
- 11. Due to the extensive work required within the house, we will need to have furniture moved and the artwork removed and stored. We have not priced this work, and suggest that you or Gamble Home Services handle this effort.
- 12. Within Milt Morgan's proposed scope of work dated November 10, 2003, he mentioned installing strap ties and additional framing members (#8 & 9). We have not seen the consultant's report, but have included an allowance for this work.

Please call if you have any questions. I will be discussing this with Milt.

Sincerely,


Dan Buffington
Buffington Homes, L.P.
Bohicket Marina
1900 Andell Bluff Blvd.
Seabrook Island, SC 2945

CC. Milt Morgan, Gamble Home Services

Allwin 01429

000126

**BUFFINGTON HOMES
BASE BID
ALLWIN RESIDENCE**

COST CODE	DESCRIPTION	COST REFERENCE	BUDGET AMOUNT
DIVISION 1 - GENERAL REQUIREMENTS			
1200	Permits & Fees	SCH DIV1	\$ 2,049
1320	Temporary Toilet	SCH DIV1	\$ 270
1330	Trash Removal	SCH DIV1	\$ 300
1450	Project Management	SCH DIV1	\$ 8,170
1650	Final Cleaning	Allowance	\$ 2,250
1850	Site Protection		\$ 1,500
Subtotal Division 1			\$ 12,539
DIVISION 2 - SITE WORK			
2900	Landscaping & Irrigation	Allowance	\$ 18,000
Subtotal Division 2			\$ 18,000
DIVISION 4 - MASONRY			
4400	Pool Deck Materials	Allowance	\$ 15,710
4500	Pool Deck Labor	Bid	\$ 7,885
Subtotal Division 4			\$ 23,595
DIVISION 5 - STRUCTURAL STEEL			
5300	Fasteners & Connectors	Stainless & Hurricane	\$ 200
Subtotal Division 5			\$ 200
DIVISION 6 - WOOD			
6100	Framing Labor	Allowance	\$ 2,000
6150	Framing Lumber	Allowance	\$ 875
6400	Exterior Trim Labor	Allowance	\$ 1,000
6450	Exterior Trim Materials	Allowance	\$ 788
6500	Interior Trim Labor	20 Windows, 4 doors	\$ 4,948
6520	Interior Trim Materials	allowance	\$ 4,173
Subtotal Division 6			\$ 13,584
DIVISION 7 - THERMAL & MOISTURE PROTECTION			
7100	Roofing	Patch with Hydro-sep	\$ 60,000
7300	Waterproofing	Allowance	\$ 4,000
7400	Insulation	Bid	\$ 18,039
Subtotal Division 7			\$ 82,039
DIVISION 8 - DOORS & WINDOWS			
8100	Windows & Exterior Doors	Techler - 2 windows	\$ 9,650
8150	Window Installation	Techler - 2 windows	\$ 3,200
8300	Lower Level Door	Fiberglass Exterior Door	\$ 270
8600	Hardware Lower Level Door	Allowance	\$ 100
Subtotal Division 8			\$ 13,220
DIVISION 9 - FINISHES			
9100	Gypsum Board	Allowance	\$ 1,200
9600	Interior Painting	Allowance	\$ 32,407
9900	Exterior Painting	Allowance	\$ 2,000
Subtotal Division 9			\$ 35,607
SUB TOTAL			\$ 198,753
100100	BUILDER'S FEE	20.00%	\$ 39,761
TOTAL BUDGET ESTIMATE			\$ 238,504

EXHIBIT D

GAMBLE

HOME SERVICES



August 28, 2003

Mr. and Mrs. James Allwin
65 Upper Cross Road
Greenwich, CT 06831

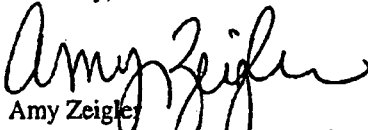
Dear Jim and Maria:

Enclosed is the engineering report that we arranged to analyze the various water and air intrusion issues at your Kiawah Island home. Hopefully you will find the report consistent with the discussions that we have had and helpful in your decision making process as to how to proceed.

Please note that this report does not address problems with the roof (other than a brief mention of problems with roof valleys). As you know, it is our assessment as well as Dan Buffington's and our roofing contractor's that there are serious problems with the roof. If you would like an independent assessment of the roof, we can engage an expert who can do a study of the roofing system and provide an engineering report.

Please call Richard or me if you have questions. Otherwise we will wait to hear from you before we begin the process of developing cost estimates for the various repairs that need to be addressed.

Sincerely,


Amy Zeigler
Customer Service Representative

Fax To:

Tori Martindale
843-554-2068

Cc: Richard Frisch

Enclosure



80 Kestrel Court • Kiawah Island, SC 29455
(843) 768-9923 • Fax (843) 768-9007 • Pager (843) 807-9940
email@GAMBLEHOMESERVICES.com • www.GAMBLEHOMESERVICES.com

Allwin 00939

000129

CAMPBELL, SCHNEIDER AND ASSOCIATES, LLC
ARCHITECTS - ENGINEERS - ROOFING & MOISTURE MIGRATION CONSULTANTS

3690 BO-HICKET ROAD, SUITE 1-D
JOHN'S ISLAND, SOUTH CAROLINA 29455
(843) 768-1333 FAX (843) 768-1716

218 E. MAIN STREET
WESTMINSTER, SOUTH CAROLINA 29693
(864) 847-1060 FAX (864) 847-1078

August 15, 2003
CSA Job No. 3320.34

Mr. Dan Buffington
Buffington Homes, L.P.
1900 Andell Bluff Boulevard
Seabrook Island, SC 29455

Re: Allwin Residence
133 Flyway Drive
Kiawah Island, South Carolina

Dear Mr. Buffington:

Pursuant to your request, we performed a survey of the above referenced home. The purpose of the survey was to determine the likely sources of moisture that have resulted in isolated areas of damage and fungal growth in the home. This report summarizes our most significant observations, measurements, calculations and conclusions.

Description

The subject structure is a three story, wood framed, single-family residence elevated over a garage. The main roof is built with intersecting gables and is covered with standing seam sheet metal. The exterior is clad with stained cedar shingles and painted wood trim. For orientation purposes, the front elevation faces north.

Observations

We visited the site on June 30, and July 17, 2003. You provided information regarding the problems at the home. We made observations of selected areas of the interior and exterior. We surveyed the interior of the house with a thermographic camera to check for possible sources of outside air intrusion.

In order to create optimal thermal imaging conditions, the thermostats were set to cool the house and a negative pressure (-15 Pa) was maintained by exhausting air to the outside with a blower door fan. Several areas of significant temperature difference were observed on the walls and ceilings that separate the interior from either the exterior or unconditioned spaces. This boundary, between the air conditioned interior and the exterior or unconditioned spaces, is referred to in this report as the "conditioned envelope." Several representative photographs and thermographic images are attached to this report. The thermographic images show relative

www.campbell-schneider.com

Allwin 00940

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temperatures based on a color scale. The white, red, and orange areas are relatively warm while the darker colors are cooler. We have enhanced some of the thermographic images with white lines to show the location of wall corners and wood trim. In some cases, we measured the surface temperatures of the warm and cold regions shown in the thermographic image with a laser thermometer. The following is a summary of our most significant observations:

Third Floor

Hall:

- Fungal growth has formed on the surrounding wall and trim of the door to the attic due to unconditioned air infiltration at the perimeter of the door. There is a temperature difference of five degrees between the head casing on the door frame and the top of the door. The moisture content of the left jamb casing was measured to be 16 percent. The joints of the door casing are separated. (See Image 1A and Photo 1A.)
- Fungal growth has formed on the ceiling around the light fixture due to unconditioned air infiltration from the attic.
- An air pressure difference of negative 0.3 Pa was measured across the door opening between the Hall and the Attic space.

Bathroom:

- Fungal growth has formed on the painted ceiling and wall between the air supply register and the shower light fixture. The fungal growth is most likely a result of the high humidity of the shower, the cold air supply from the register and the relatively warm unconditioned air infiltration around the light fixture. (See Photo 1B and Image 1B.)
- The joints in wood trim around the window and door are separated. Fungal growth has formed on the wall surface around the window. The fungal growth and joint separations are most likely caused by unconditioned air infiltration at the window perimeter and the high humidity levels in the room.

West Bedroom:

- Fungal growth has formed at the penetrations of the switch, outlet, and the closet light.
- There is some separation in the joints of the wood door casing.

South Bedroom:

- Fungal growth has formed along the baseboard and lower portion of the south wall. Thermographic scanning revealed unconditioned air infiltration at the edges of the baseboard and from the electrical outlet mounted in the baseboard. A temperature difference of three degrees was measured across the baseboard. (See Photo 2A and Image 2A.)

Stairway at Levels 2 to 3:

- Fungal growth and moisture damage was found at the top of the left wall along the third floor landing. Thermographic scanning and spot temperature measurements revealed hot

spots at the corners of the walls and sloped ceiling in this area. The source of the hot spots may be gaps in the thermal insulation above the ceiling. The moisture damage may be the result of condensation on the wall surface or water intrusion from a roof leak above the ceiling (see Photo 2B).

- A very noticeable hot spot was found on the north exterior wall of the stair between levels 2.5 and 3. Clearly, this hot spot is the result of a gap in the thermal insulation. No evidence of damage was found at this location during our survey.

Second Floor

Media Room:

- The left end of the curved window sill is separated from the wall. Fungal growth has formed on the sill at this location. This area is below an air diffuser in the ceiling.

Bathroom at Media Room:

- Fungal growth occurring at the head of the window appears to be the result of unconditioned air infiltration at the head of the window. The joints in the window casing are separated. (See Photo 3A and Image 3A.)
- Fungal growth around the light fixtures, air supply diffuser, and exhaust grill appears to be the result of unconditioned air infiltration and thermal gradients on the finished surfaces.

Safari Bedroom:

- The sloped ceiling under the roof valley is water damaged near where it intersects the wall and the book case. The roof to wall intersection in this area has a significant hot spot. (See Photo 3B and Image 3B.)
- There is possible unconditioned air infiltration at the window and base trim.

Safari Bathroom:

- Fungal growth has formed on the ceiling.
- The joints in the window casing are separated and unconditioned air infiltration was found under the right end of the window sill (see Image 4A).

Blue Bedroom:

- Fungal growth has formed on the ceiling near the air supply register.
- The joints in the window casing have separated.

Red Bathroom:

- Fungal growth has formed on the ceiling near the air supply register.
- The joints in the window casing have separated.

Green Bedroom:

- There appears to be significant unconditioned air infiltration along the base boards.

- Hot spots in the sloped ceiling in the corner of the room reveal uninsulated roof rafter spaces. There is a temperature difference of six degrees across the sloped ceiling.

West Hallway at Laundry:

- Fungal growth has formed on the ceiling and walls at the north end of the hallway. There is a four degree temperature difference at this location.

Master Bath Suite:

- There are numerous locations of fungal growth on the walls and ceilings.
- Significant hot spots were found on the exterior wall above the medicine cabinet (see Photo 4B and Image 4B) and around the light fixture and side walls of the recessed ceiling in the center area (see Photo 5A and Image 5A).
- The bath and shower rooms have supply diffusers and exhaust grills.

Lady's Closet:

- There appears to be unconditioned air infiltration at the window sill and along the base board on the exterior wall (see Photo 5B and Image 5B).
- The paint below the window is damaged.

Man's Closet:

- There is missing insulation in the sloped ceiling above the left self.
- There are moisture stains on the ceiling.

Bathroom Suite Foyer:

- There is widespread fungal growth on the walls and ceiling adjacent to each closet and the attic access door (see Photo 6A and Image 6A).
- An air pressure difference of negative 0.2 Pa was measured across the attic access door.

East Sitting Room

- There are significant thermal gradients in the sloped ceiling at the corner of the room. This portion of the ceiling appears to have missing thermal insulation in spots and is also being cooled by a floor mounted air diffuser.
- There is a significant hot spot below the center mullion of the window. There appears to be unconditioned air infiltration through the exterior wall at this location. The joints in the window casing are separated. (See Image 6B.)

Master Bedroom:

- There appear to be uninsulated portions of the exterior walls and ceiling in the south west corner (see Image 6C).
- The wall covering around the window has become unglued. The joints in the window casing are separated.

Turret Sitting Room:

- There are several locations of damaged casing and wall finishes at the jambs and sills of the windows. It appears that there is significant unconditioned air infiltration around the windows. The heavily damaged areas may also be the result of water intrusion around the windows. (See Photo 7A and Image 7A.)

Second Floor Bridge:

- There are significant hot spots on the north wall surrounding the triangular window over the Foyer. These spots appear to be locations of uninsulated wall and/or locations of unconditioned air infiltration around the window.
- The ceiling paint is damaged around the light fixture and air diffuser near the west end of the bridge. This appears to be a result of close proximity between the uninsulated light fixture and the cool diffuser. (See Photo 7B and Image 7B.)

Stairway at Levels 1 to 2:

- There appear to be uninsulated portions of the north wall above the stair and around the window and portions of the east wall below the stair.
- The wood stair trim along the wall has become separated.

First Floor

Turret Breakfast Room:

- The wall finishes and window casing are damaged in several locations. Cold air from a floor mounted diffuser is blowing on the curved wall below the south center window.
- The damaged finishes and wood trim at this location may be the result of the steep thermal gradient from the cold air and water infiltration around the window. The expansion and contraction of the south exterior wall may have resulted in joint separation and severe splitting of the wood casing. (See Photo 8A and Image 8A.)

Kitchen:

- There appears to be unconditioned air infiltration around the patio doors. The air diffusers in the floor near the doors are blowing cold air across the door surfaces and adjacent walls.

Foyer at Front Entry:

- There appears to be unconditioned air infiltration around the doors and electrical outlets.
- The air diffuser below the tall window to the left of the door is blowing cold air across the wall surface. This location appears to be the site of previous moisture damage. (See Photo 8B and Image 8B.)

Red Office:

- The joints in the hardwood floor along the circular windows are separated. Some of the flooring is cupped along the rear elevation.

- There have been reports of standing water where the exterior wall intersects the outside deck.

Bathroom of Green Bedroom:

- There appears to be a wet area on the ceiling to the right of the diffuser. This area measures roughly 24 inches square and is significantly cooler than the surrounding ceiling (see Image 9A).

Powder Room:

- There is fungal growth on the ceiling near the exhaust fan.

Great Room:

- There is fungal growth and peeling paint on the ceiling and upper surfaces in this room.
- The upper portions of the wall above each fireplace are significantly warmer compared to the wall areas below the second floor ceiling level. (See Image 9B.)
- The fire place dampers were in the open position.

Stair to Garage:

- The tongue and groove wood bead board is slightly buckled and out-of-plane. This condition is reportedly worse in August.

Ground Floor:

Garage:

- Dirt has been piled up against the hydrostatic vent at the base of the garage wall. Water is allowed to flow into the Garage through these vents (see Photo 9A).
- The floor joist space of the first floor is open to the atmosphere (see Photo 9B).

Conclusions

The damage to this home appears to be a direct result of the numerous sources of unconditioned air infiltration, steep thermal gradients on finished interior surfaces, and ongoing water intrusion around windows, at roof valleys, and at several sub-grade locations..

Our measurements indicate that the house has a slight interior negative pressure relative to the attic spaces and outside air. One cause of a negatively pressurized house is pressurized air leakage from the ductwork and equipment on the supply side of the air conditioning system into the unconditioned attic and floor spaces. Since this air never enters the conditioned spaces, the demand of the return air portion of the system is not met by the air volume entering the house from the supply side. To make up the difference, the return air system draws in outside air through paths of least resistance in the air conditioned envelope. Wind can also cause building envelope pressure differences. This is particularly true at ocean front locations.

Unconditioned air infiltration appears to occur at numerous typical locations:

- At the perimeter of window rough openings, typically behind the wood casing.
- At unsealed joints between the door and door frame of exterior doors and attic access doors.
- At the unsealed penetrations of the air conditioned envelope by light fixtures, electrical boxes, and pipes.
- At unsealed gaps between the bottom of the drywall and the floor deck behind the base boards.
- Through open fire place dampers and numerous bathroom exhaust ducts.

It appears that excessive unconditioned air infiltration has resulted in elevated indoor moisture levels on many surfaces at the second and third floor levels. The relative humidity of the air increases as it cools and, in some instances, condensation may form. Long-term, local humidity levels above 70% can promote fungal growth on surfaces.

Condensation and an increased propensity for fungal growth can occur wherever there is a steep thermal gradient on the finished surfaces of walls, ceilings, and trim. At several locations, we noted fungal growth or damaged finishes where the cooler air of a supply diffuser flows across a ceiling or wall next to a source of warm air such as at light fixtures, bathroom exhausts, and air infiltration through the gaps and openings discussed above. The damage to the surrounding surfaces manifested itself as fungal growth, water stains, un-adhered wall covering, and separations in the wood joinery. At many locations, we noted the cold air from the floor mounted supply diffusers is allowed to blow directly onto the adjacent walls or up between draperies and windows. The cooler air washing across the warmer surfaces causes a thermal gradient and increases the likelihood of condensation.

The lack of thermal insulation at some locations of the exterior walls and roofs causes thermal gradients on these surfaces and contributes to the thermal inefficiency of the house. Large portions of the wall in the stairway and the front foyer appear to be either under-insulated or un-insulated. The upper portions of the fireplace walls are significantly warmer than the lower portions. While this would be expected under normal circumstances, the boundary is quite dramatic and is approximately in-line with the second floor ceiling. It appears that the unheated air of the attic is warming the backside of the fire place walls. These heated surfaces are apparently contributing to the warm-moist air trapped under the curved ceiling of the Great Room.

The localized moisture damage found at the top of the main stairway, the roof valley above the Safari Bedroom, around the windows of the first and second floor-east Turret Rooms, and the floor boards of the west Turret Room appears to be caused by water leaks. The damage under the windows of the Turret Rooms may also be caused in part by the unconditioned air infiltration and thermal gradient issues discussed above. In addition to these areas of visible damage, we found what appears to be a wet area above the ceiling of the bathroom adjacent to the first floor Green Bedroom. The thermographic image of this ceiling shows a significantly colder spot that cannot be attributed to any other reason.

Given that the problems appear to be related to both the conditioned envelope and the air distribution system, we recommend a phased approach to correcting the problems. Starting with the building envelope, we recommend the following action items:

1. Seal obvious infiltration paths across the conditioned envelope:
 - Seal the perimeter joints between the windows and rough openings with expanding foam or caulk.
 - Seal the joints at the bottom of walls behind base boards with expanding foam or caulk.
 - Seal all plumbing and electrical penetrations through the air conditioned envelope with expanding foam or caulk.
 - Close the fireplace dampers when not in use. Ensure that exhaust fans or vents have properly working backdraft dampers installed. Seal the large vent on the wall of the garage.
 - Ensure that the attic side of the envelope walls are sealed with a vapor barrier. This is to prevent unconditioned attic air from entering the room through the wall. Ensure that these walls are adequately insulated.
 - Floor joist cavities that are open to unconditioned spaces can be closed with wood blocking or rigid insulation board.
 - Ensure that all exterior doors and attic access doors are properly weather stripped around their entire perimeter.
2. Test the HVAC ducts for leakage. SMACNA (the Sheet Metal and Air Conditioning Contractors' National Association) publishes guidelines for air duct leakage. If leakage in excess of the published standards is identified, the leaks should be located and sealed.
3. Direct the air flow from floor mounted diffusers out into the room. The air flow should not blow against the exterior walls or become trapped behind draperies.
4. After correcting the duct and building envelope leaks, the building pressure should be altered to provide positive interior pressure with respect to the exterior. This can be accomplished by introducing filtered outside air to the return air streams or installing a separate make-up air system. The volume of outside air required will be a function of the infiltration rate after the duct and building envelope leaks are sealed. A blower door test could determine the effectiveness of the sealing efforts and provide guidance for selection of make-up air equipment. If you choose to simply add outside air to the existing equipment, a motorized mixing damper can be used to adjust the volume of outside air to the appropriate level to positively pressurize the interior of the home with respect to the exterior. The infiltration load resulting from the outside air should be considered to ensure that the air handling units will provide the proper amounts of sensible (temperature-related) and latent (moisture-related) heat removal.

We recommend that the source of the liquid water leaks be investigated from the exterior to identify possible paths of water leakage. In some cases, the removal of the large curved windows and portions of the metal roof may be necessary to address these problems.

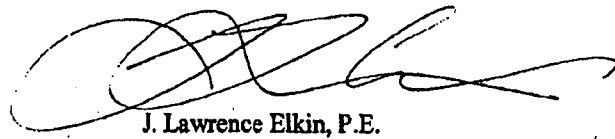
In summary, outside air infiltration is the dominant source of moisture in the home and can be resolved by sealing air leakage paths and pressurizing the home. Isolated cases of water damage can be investigated and repaired on an individual basis.

Please call if you should have any questions.

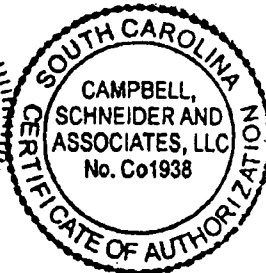
Best regards,

CAMPBELL, SCHNEIDER AND ASSOCIATES, LLC


David M. Rody, EIT


J. Lawrence Elkin, P.E.

Attachments



Allwin 00948

000138

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

FILED

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NUMBER: 2013-CP-10-4592

MARIA ALLWIN. 2015 SEP 15 AM 10: 14

Plaintiff, JULIE J. ARMSTRONG
CLERK OF COURT

vs.

BY

RUSS COOPER ASSOCIATES, INC,
BUFFINGTON HOMES L.P. AND SHOPE
RENO WHARTON

Defendants.

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO THE MOTIONS FOR
SUMMARY JUDGMENT OF RUSS
COOPER ASSOCIATES, INC. AND
SHOPE RENO WHARTON

Allwin submits this memorandum in opposition to the motions for summary judgment submitted by Russ Cooper Associates, Inc. ("Cooper"), the general contractor, and Shope Reno Wharton ("SRW"), the architect, who designed, built and supervised construction of the Plaintiff's home on Kiawah Island. For the reasons set forth herein, Allwin respectfully requests that the motions be denied.

RELEVANT FACTS

Maria Allwin is a resident of Connecticut who has, since 1994, owned a home on Kiawah that is the subject of this lawsuit (the residence will hereinafter be referred to as the "Home"). Ms. Allwin originally built the home with her husband, Jim Allwin, and Jim was primarily responsible for dealing with the Home until his death in 2007. (Affidavit of Maria Allwin, "Allwin Aff." ¶ 3, attached as Exhibit A). At that time, Ms. Allwin became primarily responsible for and involved with the Home.

The Home is a large, complex structure occupying two adjoining lots on the front beach at Kiawah. (Allwin Aff. ¶ 2). It faces the ocean and is exposed to the heat, wind and rain coming off the water throughout the year. *Id.* The Home has required significant upkeep, repair

and maintenance through the years. From approximately 2000 through 2010, the Allwins paid approximately \$2,000,000 to maintain and repair issues with the home. (Allwin Aff. ¶ 6). That sum is not at issue in this lawsuit, meaning Ms. Allwin is not seeking to recover that from any party. That sum does demonstrate that the Allwins paid substantial sums when faced with maintenance and repair issues over many years. Spending that sum is clear evidence that the Allwins followed the advice of contractors and other experts they hired and made the repairs that were recommended to them.

In 2011, with the Home in distress, Ms. Allwin hired Fuller Consulting Engineers ("Fuller") to perform a thorough forensic investigation into the condition of the Home. In its preliminary report, Fuller reported on a number of construction deficiencies at the Home. While some of the problems noted by Fuller were in areas the Allwins had experienced prior concerns and which had been subsequently repaired, many were not. In addition, Fuller suggested a comprehensive repair of the Home, to include the removal of the roof and all of the exterior siding, interior drywall and the removal of a large concrete deck on the ocean side of the Home, so that Fuller could assure that all unexposed and unknown defects could be repaired. (Allwin Aff. ¶ 11). This repair had never *been suggested by any other expert and Ms. Allwin, who had unsuccessfully tried to speak with the original contractor, Russ Cooper, about it, sought the input of the principal architect, Shope Reno Wharton ("SRW").* (Allwin Aff. ¶ 12).

Unlike Cooper, who refused to discuss the conditions with Ms. Allwin, SRW agreed to travel to South Carolina to meet with Ms. Allwin and discuss a scope of work proposed by Fuller. At that meeting, even given the history of repairs to the Home, SRW's representative, a South Carolina licensed architect, advised Ms. Allwin that he did not see evidence of systemic, pervasive problems at the Home of the sort Fuller sought to correct. (Allwin Aff. ¶ 12). Rather,

he suggested, like many before him, that Ms. Allwin needed to make isolated repairs to the Home and to perform routine maintenance. *Id.*

After meeting with SRW, Ms. Allwin agreed with the scope of work of Fuller and hired Phillip Smith to implement those repairs which include the complete removal of all exterior siding, interior drywall, the roof and the concrete deck on the ocean side of the Home. (Allwin Aff. ¶ 13). As reflected in the Affidavit of Ross Clements of Fuller ("Clements Aff.", Exhibit B), the removal of those components exposed, for the first time, extensive and pervasive original construction deficiencies that could not have been seen, and would not have been known, but for the wholesale deconstruction of the Home. (Clements Aff. ¶ 16). If Ms. Allwin had followed the advice of SRW in 2011, the defects still would not be known.

According to the Plaintiff's expert, the latent construction defects, which are the subject of the present action, were unprecedented in his experience. (Clements Aff. ¶ 16). Mr. Clements has identified at least 32 defective conditions including defects in the installation of the roof underlayment, sheathing and framing; the Tyvek weather-resistive barrier (WRB); building felt behind the stucco; windows and doors; waterproofing and flashing; and patios. (Clements Aff. ¶ 17). As noted in his affidavit, many of the defects *could not have been discovered* without complete removal of the exterior and interior building components. *Id.*

Testimony given by Russ Cooper also corroborates the testimony of Plaintiff's expert regarding the latency of the defects. Cooper acknowledges that although framing and WRB are observable during construction, once they are covered by exterior cladding these components are no longer observable:

Q But you would agree with me that if you are out on the site and you observe a deficiency, something that you do see and recognize as a deficiency, once that framing is covered up by drywall or exterior sheeting or siding, then you can no longer observe it?

A If you can't see it, you cannot observe it.

Q And are you comfortable that the same thing would be true with something like WRB? Is that right? It's installed on the wall by Mr. Carrigan or whoever else installed it, and it's observable by you, as the general contractor while it's installed on the walls. Is that right?

A WRB?

Q I'm sorry. Building wrap.

MR. BEST: Weather resistant barrier.

BY MR. LYLES:

Q Weather resistant barrier. Tyvek.

A Okay. Yes.

Q And then at some point that WRB or Tyvek is going to be covered up by exterior cladding, in this case I guess shingles of some sort?

A That is correct.

Q And installation defects in the WRB, once the shingles go up, are no longer observable?

A They are not.

Q Would you agree with me that if this Tyvek is covered by cedar siding, that the manner of installation of the Tyvek would not be readily observable by an owner of the house?

A Yes, I would agree with that. This photograph shows a lot more than just Tyvek, though.

Q If you assume for a minute that the stucco that is shown to the left covered the balance of the chimney, would you agree with me that that flashing condition and the condition of the building felt was something that was concealed behind the stucco?

A Yes.

(Cooper Depo. at 50:4 – 51:5; 68:7-12; Cooper depo. excerpts attached as Exhibit C):

Cooper also testified as follows:

Q If we assume for a minute that this Tyvek installation is how it was installed during original construction, would you agree with me that there is no way that anybody could have observed that, absent the removal of the shingles?

A There is no way you could see through the shingles. And if I had seen that, it would never have stayed.

(Cooper Depo. at 78:1-8).

The affidavit of Clements and even the testimony of Cooper establish that significant latent deficiencies existed at the Home which were uncovered, for the first time, during the Fuller/Smith repair.

The cost to repair the defects uncovered by the work of Clements and Phillip Smith, incurred since 2011, is approximately \$3,000,000. That is the sum Ms. Allwin seeks to recover in this lawsuit, along with loss of use.

STANDARD

To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Id.* (citation omitted).

Pursuant to South Carolina law, the statute of limitations applicable to the instant case is three years. S.C.Code Ann. § 15–3–530. Under the discovery rule, the statute of limitations must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action. “Under the discovery rule, the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.” *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011) (internal citation omitted); S.C. Code Ann. § 15-5-535 (“[A]ll actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.”).

Application of the discovery rule contained in S.C.Code Ann. § 15-3-535, as well as the determination of the date the statute began to run in a particular case, are questions of fact for the jury when the parties present conflicting evidence. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 338, 534 S.E.2d 672, 681 (2000).

ARGUMENT

1) Whether Ms. Allwin acted with reasonable diligence in the face of isolated known problems is a question of fact for the jury.

As established by the affidavits of Ms. Allwin and Mr. Clements, and the testimony of Cooper, the defects giving rise to this claim were latent, literally hidden behind the exterior siding, interior drywall, a standing seam metal roof and a thick, concrete deck. As largely acknowledged by Mr. Cooper, these defects were not known and could not have been known absent the wholesale deconstruction of the Home. The issue before the Court is whether the statute of limitations began to run for Ms. Allwins' claim for latent defects found and repaired after 2011, because she or her husband Jim were aware of prior, isolated problems, for which Ms. Allwin is not now making a claim. There is clear South Carolina law on this issue which favors Ms. Allwin.

One South Carolina Supreme Court case bearing directly on the issue of the statute of limitations in a case involving latent defects is *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989). In *Santee*, the plaintiff had a cement storage complex installed in 1965 that included twelve concrete silos and three bins. *Id.* at 693. In 1969, a small crack was discovered in one of the bins, which was repaired. *Id.* In 1975, another crack appeared in the same bin. *Id.* at 694. The complex was inspected at this point, and the bin was again repaired at a relatively small cost. *Id.* In 1980, two individuals were killed when a second storage bin collapsed. *Id.* A subsequent investigation revealed that the bin, as well as the twelve silos, were structurally unsound because steel reinforcement rods had been improperly spaced and tied together. *Id.*

The plaintiff brought suit against the general contractor responsible for the construction of the cement plant. The trial court concluded that the plaintiff knew or should have known that

it had a cause of action against the contractor when the first crack appeared in 1969, or at least when the second crack appeared in 1975. *Id.* at 695. The South Carolina Supreme Court rejected this conclusion, noting that the plaintiff had introduced expert testimony that the defects in the silos were latent because the rods were inside concrete walls. *Id.* at 696. There was evidence that repairs were performed. *Id.* The South Carolina Supreme Court concluded that the evidence introduced “went to the reasonableness of [the plaintiff’s] actions, which was an issue to be decided by the jury.” *Id.* (citing *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962)).

More recently, the *Santee* case is cited in support of *Centex Homes v. S. Carolina State Plastering, LLC*, No. 4:08-CV-2495-TLW, 2010 WL 2998519 (D.S.C. July 28, 2010). In *Centex Homes*, Judge Wooten held that although the question was close, the record in the case contained questions of material fact regarding when Centex should have known, through the exercise of reasonable diligence, that a cause of action existed against several of its subcontractors for alleged construction defects associated with a condominium complex. *Id.*

On June 20, 2001, Building 3 was the first building to be completed at the condominium complex, and Building 1 was completed on April 29, 2002. In 2002, Centex discovered water damage to Building 3, which was thought to have been caused by water intrusion at the intersection of the deck and outside walls. Two subcontractors participated in repairs performed in 2002 to address the damage, which included the installation of kick out flashing at the intersections. Centex did not add the kickout flashing to Building 1, which was a similar building. In 2006 Centex discovered water damage in Building 3 and in Building 1. Again it was thought to be caused, at least in part, by water intrusion at the decks. Between 2006 and 2007 Centex made repairs and filed suit against several subcontractors. The subcontractors moved for summary judgment on the statute of limitations.

Centex argued the water damage to building 1 could not be attributed in total to the lack of kickout flashing, and that damage to Building 3 continued despite the addition of kickout flashing. The Court held that a conclusion that Centex was barred from bringing an action to recover for water intrusion damage that was discovered in 2006 because it did not take steps to insure the kickout flashing was properly installed in 2002 would require the court to infer that the damage could have been prevented if the flashing had been properly installed, which it found was a jury question.

Centex argued that there were factual issues as to the causes of the damage; the existence of latent defects prevented discovery; and that there was evidence it took reasonable steps to investigate. *Id.* at *7. The Court found that the determination of whether Centex, through the exercise of reasonable diligence, should have discovered these alleged deficiencies prior to 2006 was an issue properly resolved by the finder-of-fact. *Id.* at *8.

In this case, it is clear that a claim for defects found and repaired by Buffington is time barred, as would other claims against Cooper for defects found and repaired prior to 2011. However, those claims are not being asserted in this case. This is a claim for defects which were unknown and unknowable, through the exercise of reasonable diligence, until the work of Clements and Smith revealed them.

In order to prevail, Cooper must establish that, as a matter of law, the exercise of reasonable diligence required the Allwins in the face of isolated problems to completely deconstruct their home, as Clements and Smith did starting in 2011. The difficulty in that position is that it ignores the fact that the Allwins received a great deal of expert advice over the years about what to do in response to isolated problems, much of which was conflicting. The one uncontroverted fact is that in response to problems, and the advice they received, in reliance

on their experts the Allwins continually made repairs totaling \$2,000,000 between 2000 and 2010.

For example, as referenced in Cooper's memorandum, in 2004, the Allwins retained Milt Morgan, a contractor, to assess the home and prepare a scope of repair which provided for the repair of localized problem areas. (Russ Cooper Associates, Inc.'s Memo in Support of Motion for Summary Judgment, p. 10-11) Mr. Buffington, a contractor, priced the scope but expressed concern to the Allwins about whether more work was needed. Based upon the advice of Mr. Morgan, the Allwins proceeded with the more limited Morgan scope of repair.

As the work proceeded, Buffington found areas of damage not anticipated by Mr. Morgan and additional work was done which increased the cost of the work done by Mr. Buffington from \$238,504 to \$359,728.21 (an increase of more than 50%). The Allwins paid for the additional work and, as Mr. Cooper's memorandum establishes, the Allwins believed the problems were fixed. (Russ Cooper Associates, Inc.'s Memo in Support of Motion for Summary Judgment, p. 10-11).

To prevail on this motion Cooper must persuade the Court that the reliance of the Allwins on Buffington and Morgan in 2004 was not, as a matter of law, the exercise of reasonable diligence. Reasonable diligence, Cooper must contend, required the Allwins to direct Mr. Buffington to remove all of the siding at the home, the ocean side deck and the interior drywall, even though neither Morgan or Buffington recommended that.

Similarly, in subsequent years, Ms. Allwin hired Gamble Home Services and paid them an enormous sum of money to repair and maintain the Home. In reviewing the Gamble documents submitted by Cooper, it is clear that Gamble also recommended and charged Ms. Allwin for isolated repairs in response to isolated problems. For example, Tori Stein attributed

tmold at the Home to a problem with the HVAC (the HVAC in question was not installed by Cooper) and then noted several problems requiring localized, isolated repairs. Ms. Allwin agreed to have those repairs done and she paid for them. Again, Cooper now contends that reasonable diligence required Ms. Allwin to disregard the advice of Gamble and to direct the removal of all of the siding, interior drywall and the ocean side concrete deck in 2008 or 2009. However, the law does not impose upon a homeowner the burden of disregarding the advice of qualified experts who make recommendations about isolated problems, even if they are ongoing. Interestingly, neither would the defendants in this case.

First, as established by the Affidavit of Ms. Allwin, even as late as 2011, SRW advised Ms. Allwin that the deconstruction recommended by Mr. Clements was not necessary, instead advising that the Home only needed isolated repairs for known, isolated problems. It is the height of irony for the lawyers for SRW and Cooper to now argue that the law required her to do, in 2000, 2004 or 2006, what SRW recommended that Ms. Allwin *not do* in 2011.

Second, in his recent deposition, Mr. Cooper testified as follows with regard to the removal of siding and interior drywall to investigate isolated water leaks:

Lyles: Would you agree with me that removal of all the siding on a house like that is an extreme measure?

Cooper: You're asking me if a 1992 system, in 2015, is an extreme measure to change what was built in 1992 to 2015, and my answer is no, it is not an extreme measure.

Lyles: I'm asking you if it would be an extreme measure for an owner to remove all the siding on his house to determine the source of water infiltration.

Cooper: That's an extreme measure.

Cooper Depo. at 64, l. 1-24.

As the remarks of SRW and the testimony of Cooper make perfectly clear, it is far from settled that the exercise of reasonable diligence required the Allwins to deconstruct their Home

in the face of even recurring isolated problems. As in *Centex*, the question of whether the Allwins acted with reasonable diligence in the face of isolated problems, and should have discovered latent defects prior to 2011 is one for the jury.

2) A jury should determine which claims are time barred and which are not.

To the extent the Court is persuaded that some portion of her claim for damages is barred by the statute of limitations, that too is a question that should be submitted to a jury.

In *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 708 S.E.2d 787, (Ct. App. 2011), a homeowners' association filed suit against a developer in 2005. A trial resulted in a jury verdict and the defendant appealed the trial judge's decision not to grant a directed verdict on the statute of limitations because it argued that the plaintiffs were aware of problems with the development prior to 2002. Specifically, the minutes from an annual meeting of the Association's board in 1991 indicated that the Association was aware of problems with the development including a pool leak, drainage problems and termite issues, and that additional problems were known between 1998 and 2000. There was also testimony that drainage issues were corrected by an engineer and that additional drainage issues later developed. The Court of Appeals found that whether the damages the Association claimed in 2005 were different from those it experienced in the past was a question for the jury. *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 185, 708 S.E.2d 787, 794 (Ct. App. 2011).

CONCLUSION

The issues that are relevant to the application of the statute of limitations, specifically whether Ms. Allwin acted with reasonable diligence and whether some or all of her claimed damages relate to the same or different problems than those she earlier knew of and repaired, are questions of fact for the jury.

September 14 2015

LYLES & LYLES, LLC

Robert T. Lyles / by
C. Walton

Robert T. Lyles

342 East Bay Street

Post Office Box 773 (29402)

Charleston, South Carolina 29401

T: 843.577.7730

F: 843.577.7172

Email: rtl@lylesfirm.com

Attorneys for Plaintiff

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NUMBER: 2013-CP-10-4592

) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NUMBER: 2013-CP-10-4592

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we paid Cooper to perform repairs to the home, which clearly suggests that we did not believe we had a claim against him. In 2004, we also paid other contractors to perform significant repairs and at no time did we demand or expect Cooper to be responsible for those costs.

5. While there were periodic problems with our home, particularly on the ocean front side, we continually paid contractors to make the repairs that were recommended to us. We believed that the problems with our home were being repaired by the contractors we hired to make repairs and to maintain the home, including Russ Cooper, Dan Buffington, and Gamble Home Services.
6. As evidence of our belief that the contractors we hired were making repairs to problems they observed as they occurred, and that we did not believe we had the basis for a claim against Cooper or SRW, we voluntarily spent approximately \$2,000,000.00 following the contractors' recommendations of repair and maintenance to our home between 2000 and 2011. We never asked or demanded that Cooper or SRW pay those bills or reimburse us. I am not seeking to recover those sums now in this case.
7. In 2009, two years after Jim's death, I contacted attorney Robert Lyles to discuss the ongoing maintenance and repair costs and how to try and manage them. From that meeting, we met with Skip Lewis, an engineer recommended by Mr. Lyles, to do a property condition assessment and to develop a life cycle repair for maintenance of our home. The plan was to budget for the ongoing costs to maintain the home. That was never done.
8. In 2011, with repair costs mounting, we retained the services of Fuller Consulting Engineers and Ross Clements to investigate the root cause of problems at the home, some of which were similar to those previously identified and repaired and others which, to me, were new.

9. In 2011, Fuller issued a preliminary report (attached) in which it identified pervasive and systemic original construction deficiencies, meaning defects in the work done by Cooper.
10. The nature and pervasiveness of the defects identified by Fuller had never been identified by any of the numerous repair contractors who had worked on our home previously; had they been, we would have repaired them.
11. To repair the defects observed by Fuller in 2011, and to ensure that any other hidden defects were identified and repaired, Fuller developed a comprehensive scope of work to repair known deficiencies and ensure that any other problems were exposed, identified, and repaired. No other contractor or person hired by me or Jim had ever recommended that the home be stripped completely of its siding in order to assess defects in the home. In fact, we followed the advice of the other contractors who never recommended more than localized repairs and maintenance that we paid them to perform.
12. Prior to agreeing to repair the home pursuant to Fuller's suggested scope of repair, I met with a representative of SRW, in 2011, who reviewed Fuller's repair scope. At that meeting, SRW advised me that the Fuller scope of repair was excessive and was not necessary in his professional opinion. SRW told me that all the home needed, even in 2011, was maintenance and, at most, more isolated repairs to address known leaks. SRW's representative told me, in 2011, that in his investigation of the home, there was no evidence of comprehensive, systemic construction defects that would warrant the extensive scope of work recommended by Fuller. This is the same advice that Jim and I had gotten from the other contractors, and that we followed, for many years preceding my retention of Fuller.
13. Notwithstanding SRW's advice and recommendation, I elected to follow the Fuller repair recommendation. In doing so I hired Phillip Smith to act as general contractor for the repair

of the home. That work commenced after April 23, 2013, and during that time, the roof and siding were removed as were extensive portions of interior drywall. The removal of those components revealed evidence of extensive and pervasive defects in the original construction of the home, which were unknown to me or, to my knowledge, Jim. Over the years of our ownership of the home, despite paying more than \$2,000,000 for repairs and maintenance, no contractor had ever suggested to us that our home had the defects uncovered by the work of Phillip Smith.

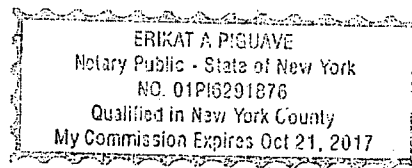
14. The defects uncovered by Smith, which were unobservable to any one prior to the removal of the roof, siding and interior drywall, included evidence of improperly installed flashing, improperly installed building wrap, improperly installed windows and the omission of components such as insulation around windows. Again, there was no way I or anyone else could have observed those deficiencies hidden in the walls and under the roof absent removal of the roof, siding and interior drywall.
15. No one ever recommended that Jim or I remove the roof, siding or drywall to investigate isolated water leaks. In fact, as I mentioned, even after Fuller recommended it, in 2011, SRW still advised that it was not necessary. Had we followed SRW's advice in 2011, it is my belief that we still would not know of the hidden defects at the home.
16. In 2012, as part of the repair, Phillip Smith exposed the installation of certain windows on the ocean front side of the home after removing interior drywall at the home. Pictures of those windows sent to me indicated that the windows had been installed without all necessary fasteners and without necessary insulation surrounding the windows. I could literally see daylight around the windows from the pictures which were taken on the inside of my home.

17. Those pictures, together with the evidence of the sloppily installed building wrap, which had been exposed when the siding was removed, convinced me that SRW had grossly failed me and Jim when we paid them to be on site during construction to monitor the progress of the work of Cooper and to approve the Cooper Pay Applications. A copy of a Cooper Pay application is attached, one of 37. SRW signed each pay application and made certifications about the progress and quality of the work of Cooper that clearly were not true. The evidence I saw in 2012 convinced me that SRW breached its duty to me which led to my bringing suit against SRW at that time.

By *Maria Allwin*
Maria Allwin

SWORN to before me this 10th day of September, 2015

Erikat A. Piguave
NOTARY PUBLIC FOR NEW YORK



My commission expires: 10/21/2017

May 10, 2011

Mr. Robert Lyles
Lyles and Lyles, LLC
342 E Bay St.
Charleston, SC 29401

Re: Preliminary Summary of Visual Survey and Destructive Testing
Allwin Residence
133 Flyway Drive
Kiawah Island, SC 29455

Dear Robert,

Pursuant to your request, Fuller Consulting Engineers, Inc. (FCE) has performed a site visit at the above referenced property. The purpose of the site visit was to study the current condition of the existing building components and to determine the cause of water-related damage previously observed within the residence. This report provides a summary of our findings to date.

SCOPE of WORK PERFORMED

FCE has performed a limited review of previously published reports and documents prepared by other entities related to the residence. At this time, FCE has reviewed the following reports and documents:

1. Campbell, Schneider and Assoc. Report (dated August 15, 2003)
2. Applied Building Sciences Report (dated December 13, 2004)
3. Engineering Design and Testing Corp. (dated April 27, 2004)
4. Timeline of Repair Work Performed and Reports Produced (b/n 1999 and 2006)
5. Shope Reno Wharton Architectural Drawings (original date of July 21, 1992)
6. ABS Proposal for Scope of Work (dated March 15, 2011)
7. ABS Proposal for Flashing/Cladding Investigation (dated March 29, 2011)

FCE has also performed a site visit, which was conducted over two (2) days, April 21-22, 2011. Tori Stein and Darin Dennis assisted FCE with gaining access to the residence and with the destructive testing. Our on-site work included visual observations of the interior and exterior of the residence, including the basement, habitable spaces, attic, and roof. Our on-site work also included destructive testing at interior and exterior locations that were believed to be problematic or thought to be

contributing to the observed interior damages. At this time, FCE has conducted destructive test cuts at the following locations:

1. Great Room French Door Sill (Exterior Tile and R.O. Flashing)
2. Master Bedroom Window Sill
3. Master Bedroom Window Sill/Jamb Trim (Interior)
4. Master Bathroom Window Sill
5. Roof to Wall Flashing Below Master Bathroom Window
6. Master Bedroom Valley Drywall (Interior)
7. Media Room Window Sill
8. Bathroom Window Sill at Media Room
9. Bathroom Window Head at Media Room
10. Roof to Wall Flashing Below Bathroom Window at Media Room
11. Breakfast Room Turret
12. Study Turret Wood Flooring (Interior)
13. Study Turret Tile/Deck to Wall Flashing
14. Tile/Deck to Wall Flashing at Study (Oceanfront)
15. Tile at Outside Edge of Patio at Transition Steps
16. Patio Knee Wall at Wood Shingles

OBSERVATIONS

During our site visit we observed various existing conditions that we considered to be noteworthy. The following list has been generated to serve as a set of talking points to discuss the existing conditions observed at the subject residence.

1. Standing Seam Metal Roof

- 1.1 Hydro-stop Installed at Joints
- 1.2 Repainted Roof
- 1.3 Gutters
- 1.4 Peeling paint
- 1.5 Crack in Hydro-stop
- 1.6 Roof Underlayment
- 1.7 Roof to Wall Flashing

2. Attic

- 2.1 HVAC Chiller System
- 2.2 Spray-foam Insulation
- 2.3 Fiberglass Batt Insulation

3. Exterior Wall Claddings

- 3.1 Hard Coat Stucco/Accessories at Chimneys
- 3.2 Hard Coat Stucco/Accessories at Retaining Walls
- 3.3 Wood Shingles (stain)
- 3.4 Tyvek WRB (incomplete, butt-jointed to window trim, and reverse-lapped with R.O. flashing)
- 3.5 Water-stained Plywood Sheathing

4. Window Installation

- 4.1 Tischler mahogany windows
- 4.2 Air Infiltration (gaps in spray foam)
- 4.3 Incomplete Tyvek WRB
- 4.4 Pan Flashing (outside termination of pan, height of vertical leg, and end dams)
- 4.5 Rotted Window Sill at Master Bathroom Window
- 4.6 Ferrous Metal Screws for Window Trim
- 4.7 Paint/Stain of Exterior Window Components

5. French Door Installation

- 5.1 Tischler Mahogany Doors
- 5.2 Incomplete Tyvek WRB
- 5.3 Inadequate Rough Opening Flashing
- 5.4 Inadequate Pan Flashing at French Doors (folded under subflooring)
- 5.5 Inadequate Repairs Attempted

6. Patio Waterproofing

- 6.1 Study Turret Deck to Wall Flashing
- 6.2 Oceanfront Deck to Wall Flashing
- 6.3 Line of Damage at Deck to Wall Transition in CMU
- 6.4 Extent of Waterproofing (start and stop)
- 6.5 Slope of Patio (above and below)
- 6.6 Rotted Wood at Patio Knee Walls/Half Columns

7. Interior

- 7.1 Wall Coverings
- 7.2 Moisture Staining on Drywall (interior, below windows and near south chimney)
- 7.3 Fungal Growth/Mildew (interior, below windows and attic penetrations)
- 7.4 Rotted Wood and Buckling of Hardwood Flooring (study turret and inside of French doors)

CONCLUSIONS

Based on our on-site observations and a review of the available documentation, FCE believes that the existing residence has been well-maintained. However, we did observe existing conditions that do require additional maintenance. We also observed original construction defects and inadequate repair work that has caused damage to the residence and needs to be corrected. The following list summarizes those issues that we believe need to be repaired and/or maintained at this time. We have also generated a list of issues that we believe require additional investigative work in order to determine if repairs are required.

Recommended Repairs

1. French Door Installation/Flashing and Damage to Wood Framing/Flooring
2. Deck to Wall Flashing/Waterproofing and Damage to Wood Framing (Oceanfront Patio)
3. Deck to Wall Flashing/Waterproofing and Damage to Wood Framing/Flooring (Study Turret)
4. Repair Tyvek Reverse-lapped with Other Flashings and Incomplete
5. Window Pan Flashing Installation at Outside of Sill
6. Replace Rotted Wood at Master Bathroom Window Sill
7. Replace Curled Wood Shingles
8. Paint/Stain Exterior of Windows/Doors
9. Replace Rusted Ferrous Metal Screws at Window Sill/Trim
10. Peeling Paint on Metal Roof
11. Cracked Hydro-stop on Metal Roof
12. Repair Stucco Cladding/Accessories at Chimneys
13. Repair Stucco Cladding/Accessories at Retaining Walls
14. Replace Rotted Wood at Patio Knee Walls/Half Columns
15. Interior Wall Coverings

Additional Investigative Work

16. Air Infiltration and Condensation – Spray Foam at Rough Openings and Tyvek
17. HVAC Chiller System - Positive/Negative Pressure
18. Mildew @ Attic Penetrations
19. Moisture Staining Below Windows on Interior
20. Window Installation and Pan Flashing
21. Patio Waterproofing and Flashing
22. Turret Repair Work and Flashing
23. Degradation of Interior Veneer Plaster
24. Discoloration of Ceiling in Great Room
25. Metal Roof Condition and Roof Underlayment

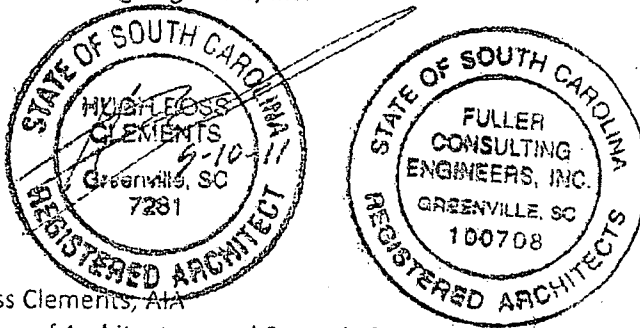
SUMMARY

FCE requests a copy of all available documentation and project binders related to the subject residence in order to evaluate the above mentioned issues. This information should include maintenance logs, reports and scopes of work produced by other entities related to the residence. Progress photos of previous repair work at the patio and turret would also be beneficial.

This report is provided with a reasonable degree of architectural certainty. In the event that additional relevant information becomes available, we reserve the right to respectively amend the opinions expressed herein. Please contact me if you have any questions or require additional information.

Sincerely,

Fuller Consulting Engineers, Inc.



H. Ross Clements, AIA
Director of Architecture and Forensic Services

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702 (Instructions on reverse side) PAGE ONE OF PAGES

TO OWNER: **Mr. & Mrs. James Allwin**
Chappaqua, New York

PROJECT: **133 Flyway Drive**
Kiawah Island, SC

APPLICATION NO.: **36**
PERIOD TO: **5/11/94**
PROJECT NOS.: **9217**

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐

FROM CONTRACTOR:
Mgmt. of Architectural Construction, Inc.
Kiawah Island, SC

VIA ARCHITECT: **Shope Reno Wharton Assoc.**
Greenwich, CT

CONTRACT DATE: **9/23/92**

CONTRACT FOR: **New Residence**

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 2,565,000.00
2. Net change by Change Orders \$ 1,197,914.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 3,762,914.00
4. TOTAL COMPLETED & STORED TO DATE \$ 3,697,977.00
(Column G on G703)
5. RETAINAGE:
 - a. _____% of Completed Work \$ _____
(Columns D + E on G703)
 - b. _____% of Stored Material \$ _____
(Column F on G703)
 - Total Retainage (Line 5a + 5b or
Total in Column I of G703) \$ 8,875.00
6. TOTAL EARNED LESS RETAINAGE \$ 3,689,102.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 3,493,926.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 195,176.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 73,812.00
(Line 3 less Line 6)

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	16	1,155,821.00	
Total approved this Month	1	42,093.00	
TOTALS		1,197,914.00	
NET CHANGES by Change Order		1,197,914.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: **Mgmt. of Architectural Construction, Inc.**

By: *Russ Corp* Date: 5/11/94

State of:

County of:

Subscribed and sworn to before
me this _____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 195,176

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: *Shope*

Date: May 12 1994

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA DOCUMENT G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • 1992 EDITION • AIA® • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292 • WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

G702-1992

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Allwin 03246

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ALLWIN VS. BUFFINGTON HOMES, ET AL. 2012-0359

CERTIFICATE OF SERVICE

I, Brooke Trevino, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRPC and counsel's regular business practices, do hereby certify that I have this date, either electronically or sent via regular mail, mailed a true and correct copy of the Affidavit of Maria Allwin to the following counsel of record:

Best Honeycutt, P.A.
Dean Best
Post Office Box 13466
Charleston, SC 29422
Attorney for Russ Cooper Associates, Inc.
dean@besthoneycutt.com
Dani@besthoneycutt.com

Paul E. Sperry, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, S.C. 29401
Attorney for Shope Reno Wharton
psperry@carlockcopeland.com

FILED
CLERK OF COURT
2015 SEP 11 AM 11:41

By: Brooke Trevino
Brooke Trevino

This 11 day of September, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARIA ALLWIN.

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC,
BUFFINGTON HOMES L.P. AND SHOPE
RENO WHARTON

Defendants.

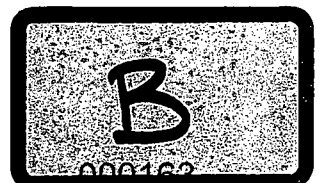
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2013-CP-10-4592

AFFIDAVIT OF ROSS CLEMENTS

FILED
2015 SEP 10 AM 10:00
JULIA L. COLEMAN
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Ross Clements, who, being duly sworn,
deposes and says that:

1. I am over the age of eighteen (18) and the assertions made in this Affidavit are true and are based upon my personal knowledge.
2. I am a licensed^{inc} architect in the state of South Carolina and additionally hold active licenses in North Carolina and Georgia.
3. I am certified by the National Council of Architectural Registration Boards (NCARB) and am a member of the American Institute of Architects (AIA).
4. I am the Director of Architecture and Forensic Services at Fuller Consulting Engineers, Inc. (hereinafter FCE), which specializes in forensic architectural and engineering investigations for construction projects.
5. I have personally reviewed the construction documents for the subject residence, which is located at 133 Flyway Drive, Kiawah Island, SC. Shope Reno Wharton Architecture (hereinafter SRW) of Greenwich, CT is named in the title block as the architecture firm.



6. Generally, the construction documents are dated July 21, 1992 at the lower right corner of the title block and the architectural drawings exhibit an additional date of July 31, 1992, which is accompanied by the statement, "Issued for Final ARB Approval".

7. Sheets A1-A6, A8, A10, A11-A13 and C1 have additional revision dates, up to and including Revision #6, dated July 21, 1993. A revision is not indicated on sheet A7. Sheets A9, A10 and A10a have additional revision dates, up to and including Revision #7, dated August 10, 1993.

8. Additional drawings exist within the construction documents, including electrical drawings and Pool House drawings, as well as topographic survey prepared by Southeastern Surveying, Inc. and structural drawings signed/sealed by Jeffrey M. Dillon, PE, a South Carolina registered professional engineer.

9. Upon information and belief, the architectural plans were prepared by SRW for the benefit and use of James (since deceased) and Maria Allwin to have a home constructed at 133 Flyway Drive, Kiawah Island, SC.

10. I issued a scope of work for repairs to the residence on or about March 16, 2012. From this scope of work, Plaintiff's contractor, Phillip W. Smith General Contractor, Inc. calculated repair estimates and an AIA A103 (2007) contract was executed with the Plaintiff on or about April 23, 2013. The repair work is currently being performed at the residence.

11. I have been on-site for investigations of the residence before and after the current repair project commenced.

12. Upon my review of the architectural drawings prepared by SRW, it is my professional opinion that SRW failed to adequately design and detail critical components related to the building envelope of the residence. These errors and omissions by SRW have contributed

to the damages suffered by the Plaintiff. Deficiencies related to the architectural drawings include, but may not be limited to the following:

- a. Inadequate design and detailing of the window and door openings, including the proper integration of the exterior weather-resistive barrier (hereinafter WRB) with the rough-opening flashings and perimeter air sealing.
- b. Inadequate design and detailing of the flashing and waterproofing at the exterior deck-to-wall intersections of the Oceanfront Patio, Study Patio, and the Front Porch Patio.
- c. Inadequate design and detailing of the roof system, including flashing and critical roof-to-wall intersections.

13. In my professional opinion, a reasonably prudent architect, in similar circumstances would have prepared construction documents that more accurately detail the design of the building envelope at the residence. Therefore, in my professional opinion, these errors and omissions by SRW constitute a breach of its standard of care.

14. Furthermore, it is my professional opinion that SRW failed to provide adequate Construction Contract Administration (hereinafter CA) services during the original construction of the residence. The deficiencies FCE observed of the original construction were not latent defects at the time of construction and would have been readily visible, open and obvious to SRW. In fact, the extent to which defects existed within the building envelope has led me to conclude that in the process of performing CA services, SRW exhibited a conscious disregard for the requirements of the architectural drawings and the applicable building code (1989 CABO One and Two Family Dwelling Code).

15. While the construction defects FCE observed would have been open and obvious to SRW, as construction was ongoing, it is my professional opinion that as original construction

continued and ultimately concluded, the defects could not have been known to the Plaintiff, absent extensive deconstruction efforts.

16. Furthermore, it is my opinion that the level of destructive testing and deconstruction required at the subject residence to uncover latent construction defects was unprecedented in my experience as a forensic architect. It would be unreasonable for a homeowner to determine such a level of destructive testing or deconstruction was necessary based on the visual deficiencies observed. In my opinion, the root cause of many of the observed visual deficiencies could not have been fully explained without complete removal of the interior and exterior building components. Additionally, through the deconstruction of the current repair project, we uncovered many instances of previously unknown construction defects and defects that were more pervasive than what was observed during limited destructive testing.

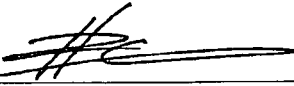
17. Complete removal of interior and exterior building envelope components was required in order to uncover latent construction defects and damages, including but not limited to the following:

1. Reverse-lapped roof underlayment;
2. Improper roof terminations;
3. Water damaged roof sheathing and framing;
4. Unsealed roof-to-wall intersections allowing air intrusion/condensation;
5. Incomplete spray foam insulation in attic and sloped roof areas;
6. Incomplete/missing Tyvek weather-resistive barrier (hereinafter WRB);
7. Reverse-lapped WRB;
8. Improper integration of WRB with window and door flashing;
9. Improper integration of WRB with roof-to-wall flashings;

10. Improper integration of window and door opening head flashings with flexible flashing and/or WRB;
11. Improperly installed wall/cornice flashing;
12. Water damaged wall sheathing, framing, termites;
13. Incomplete asphalt-saturated building felt (WRB) behind stucco;
14. Incomplete perimeter air seal at windows resulting in air intrusion/condensation;
15. Incomplete perimeter seal at windows resulting in bulk water intrusion;
16. Improper integration of window rough opening flashing with pan flashings and WRB;
17. Improper installation of sill pan flashing at windows;
18. Improper installation of WRB at window openings;
19. Improper structural attachment of windows – fasteners missing;
20. Fungal growth/mildew behind window trim;
21. Incomplete perimeter air seal at doors resulting in air intrusion/condensation;
22. Incomplete perimeter seal at doors resulting in bulk water intrusion;
23. Improper integration of door rough opening flashing with pan flashings and WRB;
24. Improper installation of sill pan flashing at doors;
25. Wood sub-flooring improperly installed over flattened back leg of sill pan flashings;
26. Improper installation of WRB at door openings;
27. Fungal growth/mildew behind door trim;
28. Inadequate patio deck-to-wall waterproofing and flashing;
29. Inadequate repairs attempted at patio deck-to-wall waterproofing and flashing;

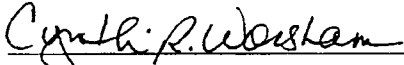
- 30. Water damaged wood framing at deck-to-wall intersections;
- 31. Improper slope of patio at elevated concrete slab (below tile surface); and
- 32. Insulation missing between Study turret floor and elevated concrete slab.

18. Through my observations and investigative work related to destructive testing and the deconstruction required of the repair project, it is my professional opinion that the contractors that originally constructed the residence exhibited a conscious disregard for the requirements of the architectural drawings, the applicable building codes, and their own standards of construction, which were established by their precedents.

By: 

Ross Clements

SWORN to before me this 9th day of September, 2015



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 2-6-2024

ALLWIN VS. BUFFINGTON HOMES, ET AL. 2012-0359

CERTIFICATE OF SERVICE

I, Brooke Trevino, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRPC and counsel's regular business practices, do hereby certify that I have this date, either electronically or sent via regular mail, mailed a true and correct copy of the Affidavit of Ross Clements to the following counsel of record:

Best Honeycutt, P.A.
Dean Best
Post Office Box 13466
Charleston, SC 29422
Attorney for Russ Cooper Associates, Inc.
dean@besthoneycutt.com
Dani@besthoneycutt.com

Paul E. Sperry, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, S.C. 29401
Attorney for Shope Reno Wharton
psperry@carlockcopeland.com

FILED
2015 SEP 10 AM 10:00
JULIE J. COPELAND
CLERK OF COURT

By: Brooke Trevino
Brooke Trevino

This 10 day of September, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO: 2013-CP-10-4592

MARIA ALLWIN,

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC.,

and BUFFINGTON HOMES, L.P.,

SHOPE RENO WHARTON,

Defendants.

DEPOSITION OF RUSS COOPER ASSOCIATES, INC.

(By Russ Cooper)

DATE TAKEN: Wednesday, August 26, 2015

TIME BEGAN: 10:15 a.m.

TIME ENDED: 12:10 p.m.

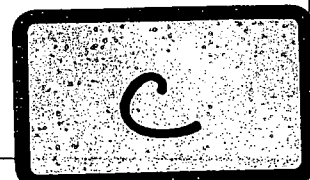
LOCATION: Golkow Global Litigation
28 Bridgeside Boulevard, Second Floor
Mt. Pleasant, South Carolina 29464

REPORTED BY: Elaine L. Grove-DeFreitas, RPR

GOLKOW TECHNOLOGIES, INC.

877.370.3377 ph | 917.591.5672 fax

deps@golkow.com



1 alluding to the fact -- am I a framing contractor,
2 do I fully understand framing, am I an engineer of
3 framing? I can't answer that.

4 Q But you would agree with me that if you
5 are out on the site and you observe a deficiency,
6 something that you do see and recognize as a
7 deficiency, once that framing is covered up by
8 drywall or exterior sheeting or siding, then you can
9 no longer observe it?

10 A If you can't see it, you cannot observe
11 it.

12 Q And are you comfortable that the same
13 thing would be true with something like WRB? Is
14 that right? It's installed on the wall by
15 Mr. Carrigan or whoever else installed it, and it's
16 observable by you, as the general contractor while
17 it's installed on the walls. Is that right?

18 A WRB?

19 Q I'm sorry. Building wrap.

20 MR. BEST: Weather resistant barrier.

21 BY MR. LYLES:

22 Q Weather resistant barrier. Tyvek.

23 A Okay. Yes.

24 Q And then at some point that WRB or Tyvek
25 is going to be covered up by exterior cladding, in

1 this case I guess shingles of some sort?

2 A That is correct.

3 Q And installation defects in the WRB, once
4 the shingles go up, are no longer observable?

5 A They are not.

6 Q SRW, what was their role, if any, during
7 the course of construction?

8 MR. STAIR: Object to the form.

9 WITNESS ANSWERS:

10 A I'm not sure if you're asking me if they
11 had a contract with Jim Allwin or not. That, I
12 don't know. But there were monthly site visits on
13 the job. I imagine they were contracted to do site
14 supervision.

15 Q Without regard to what their contractual
16 obligations were to the Allwins, in your
17 observation, how often were they on the job site?

18 A I think Allan was down once a month.

19 Q And how long would those visits last?

20 A A day.

21 Q And what would he do during those visits?

22 A Walk around the building.

23 Q And what was he doing when he was walking
24 around the building?

25 A Walking around the building.

1 Q When the leaks were report by Mr. Cowan,
2 at any point in time did you recommend that the
3 Allwins declad the house?

4 A No.

5 Q Why not?

6 A Why would I?

7 Q What information would you have to have
8 had about water infiltration at the Allwin house
9 that would have led you to recommend that they take
10 all the siding off?

11 MR. BEST: Object to the form.

12 WITNESS ANSWERS:

13 A I can't answer that question.

14 Q Would you agree with me that removal of
15 all the siding on a house like that is an extreme
16 measure?

17 A You're asking me if a 1992 system, in
18 2015, is an extreme measure to change what was built
19 in 1992 to 2015, and my answer is no, it is not an
20 extreme measure.

21 Q I'm asking you if it would be an extreme
22 measure for an owner to remove all the siding on his
23 house to determine the source of water infiltration.

24 A That's an extreme measure.

25 Q When you were called by Mr. Cowan about

1 with all the people who have been out there, where
2 it is would be --

3 MR. LYLES: Well, he doesn't have to
4 acknowledge that it's his construction. I think I
5 asked him to assume that.

6 EXAMINATION RESUMED BY MR. LYLES:

7 Q Would you agree with me that if this Tyvek
8 is covered by cedar siding, that the manner of
9 installation of the Tyvek would not be readily
10 observable by an owner of the house?

11 A Yes, I would agree with that. This
12 photograph shows a lot more than just Tyvek, though.

13 Q Okay. What does it show?

14 A No maintenance, whatsoever, on that paint.

15 Q And what, about that photograph, suggests
16 no maintenance?

17 A Well, if you look under the sill, all the
18 caulk is cracked.

19 Q Okay. Do you know how long that caulk has
20 been there?

21 A I have no clue.

22 Q Do you remember if that's the color of the
23 window that was painted by Russ Cooper?

24 A It looks similar. I see rust holes.

25 Q Okay. Where are the rust holes?

1 Q If we assume for a minute that this Tyvek
2 installation is how it was installed during original
3 construction, would you agree with me that there is
4 no way that anybody could have observed that, absent
5 the removal of the shingles?

6 A There is no way you could see through the
7 shingles. And if I had seen that, it would never
8 have stayed.

9 (Exhibit No. 620, Copy of photograph, was marked)
10 BY MR. LYLES:

11 Q Let me show you what I have marked as
12 Exhibit 620. Do you recognize where that is on the
13 house?

14 A No, but I have an idea. I think it's on
15 the eastside gable over the master bedroom.

16 Q Eastside, is that the ocean side?

17 A No.

18 Q Ocean, southern side?

19 A Eastern side.

20 Q Is the ocean side the southern side --

21 A Yes, yes, yes.

22 Q -- or the eastern side?

23 A Yes.

24 Q So this would be on the eastern side.

25 A Uh-huh.

13-4592

ALLWIN VS. BUFFINGTON HOMES, ET AL. 2012-0359

CERTIFICATE OF SERVICE

I, Brooke Trevino, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, do hereby certify that I have this date, either electronically or via hand delivery a true and correct copy of Plaintiff's Memorandum in Opposition to the Motions for Summary Judgment of Russ Cooper Associates, Inc. and Shope Reno Wharton to the following counsel of record:

Best Honeycutt, P.A.
Dean Best
Post Office Box 13466
Charleston, SC 29422
Attorney for Russ Cooper Associates, Inc.
dean@besthoneycutt.com
Dani@besthoneycutt.com

Paul E. Sperry, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, S.C. 29401
Attorney for Shope Reno Wharton
psperry@carlockcopeland.com

FILED
2015 SEP 15 AM 10:12
JULIE J. ARMSTRONG
CLERK OF COURT

By: Brooke Trevino
Brooke Trevino

This 15 day of September, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NUMBER: 2013-CP-10-4592

MARIA ALLWIN.

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC,
BUFFINGTON HOMES L.P. AND SHOPE
RENO WHARTON

Defendants.

AFFIDAVIT OF MARIA ALLWIN

FILED
2015 SEP 11 AM 11:40
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Maria Allwin, who, being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) and the assertions made in this Affidavit are true and are based upon my personal knowledge.
2. I am the owner of a residence located at 133 Flyway Drive, located on Kiawah, South Carolina. The house is a very large home, of approximately 11,000 square feet, and sits facing the ocean and is exposed to intense sunshine, heat, wind and rain.
3. My husband, Jim Allwin, was primarily responsible for issues related to maintaining our home from 1994 until he died in 2007. During that time he retained and paid contractors to perform repair and maintenance to the home so I had limited knowledge of conditions of the home.
4. During that period, the costs to repair and maintain the home were significant but, being a large home exposed to the ocean and the weather, I do not recall those costs raising significant concerns in my mind. I know that prior to Jim's death neither Jim nor I thought about bringing a claim against Russ Cooper Associates ("Cooper") or Shope Reno Wharton ("SRW") for the costs we incurred to maintain or repair our home. In fact, in the early 2000s

we paid Cooper to perform repairs to the home, which clearly suggests that we did not believe we had a claim against him. In 2004, we also paid other contractors to perform significant repairs and at no time did we demand or expect Cooper to be responsible for those costs.

5. While there were periodic problems with our home, particularly on the ocean front side, we continually paid contractors to make the repairs that were recommended to us. We believed that the problems with our home were being repaired by the contractors we hired to make repairs and to maintain the home, including Russ Cooper, Dan Buffington, and Gamble Home Services.
6. As evidence of our belief that the contractors we hired were making repairs to problems they observed as they occurred, and that we did not believe we had the basis for a claim against Cooper or SRW, we voluntarily spent approximately \$2,000,000.00 following the contractors' recommendations of repair and maintenance to our home between 2000 and 2011. We never asked or demanded that Cooper or SRW pay those bills or reimburse us. I am not seeking to recover those sums now in this case.
7. In 2009, two years after Jim's death, I contacted attorney Robert Lyles to discuss the ongoing maintenance and repair costs and how to try and manage them. From that meeting, we met with Skip Lewis, an engineer recommended by Mr. Lyles, to do a property condition assessment and to develop a life cycle repair for maintenance of our home. The plan was to budget for the ongoing costs to maintain the home. That was never done.
8. In 2011, with repair costs mounting, we retained the services of Fuller Consulting Engineers and Ross Clements to investigate the root cause of problems at the home, some of which were similar to those previously identified and repaired and others which, to me, were new.

9. In 2011, Fuller issued a preliminary report (attached) in which it identified pervasive and systemic original construction deficiencies, meaning defects in the work done by Cooper.
10. The nature and pervasiveness of the defects identified by Fuller had never been identified by any of the numerous repair contractors who had worked on our home previously; had they been, we would have repaired them.
11. To repair the defects observed by Fuller in 2011, and to ensure that any other hidden defects were identified and repaired, Fuller developed a comprehensive scope of work to repair known deficiencies and ensure that any other problems were exposed, identified, and repaired. No other contractor or person hired by me or Jim had ever recommended that the home be stripped completely of its siding in order to assess defects in the home. In fact, we followed the advice of the other contractors who never recommended more than localized repairs and maintenance that we paid them to perform.
12. Prior to agreeing to repair the home pursuant to Fuller's suggested scope of repair, I met with a representative of SRW, in 2011, who reviewed Fuller's repair scope. At that meeting, SRW advised me that the Fuller scope of repair was excessive and was not necessary in his professional opinion. SRW told me that all the home needed, even in 2011, was maintenance and, at most, more isolated repairs to address known leaks. SRW's representative told me, in 2011, that in his investigation of the home, there was no evidence of comprehensive, systemic construction defects that would warrant the extensive scope of work recommended by Fuller. This is the same advice that Jim and I had gotten from the other contractors, and that we followed, for many years preceding my retention of Fuller.
13. Notwithstanding SRW's advice and recommendation, I elected to follow the Fuller repair recommendation. In doing so I hired Phillip Smith to act as general contractor for the repair

of the home. That work commenced after April 23, 2013, and during that time, the roof and siding were removed as were extensive portions of interior drywall. The removal of those components revealed evidence of extensive and pervasive defects in the original construction of the home, which were unknown to me or, to my knowledge, Jim. Over the years of our ownership of the home, despite paying more than \$2,000,000 for repairs and maintenance, no contractor had ever suggested to us that our home had the defects uncovered by the work of Phillip Smith.

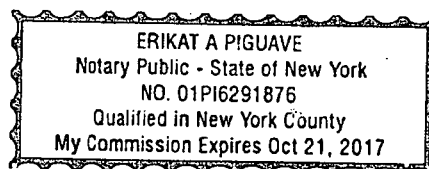
14. The defects uncovered by Smith, which were unobservable to any one prior to the removal of the roof, siding and interior drywall, included evidence of improperly installed flashing, improperly installed building wrap, improperly installed windows and the omission of components such as insulation around windows. Again, there was no way I or anyone else could have observed those deficiencies hidden in the walls and under the roof absent removal of the roof, siding and interior drywall.
15. No one ever recommended that Jim or I remove the roof, siding or drywall to investigate isolated water leaks. In fact, as I mentioned, even after Fuller recommended it, in 2011, SRW still advised that it was not necessary. Had we followed SRW's advice in 2011, it is my belief that we still would not know of the hidden defects at the home.
16. In 2012, as part of the repair, Phillip Smith exposed the installation of certain windows on the ocean front side of the home after removing interior drywall at the home. Pictures of those windows sent to me indicated that the windows had been installed without all necessary fasteners and without necessary insulation surrounding the windows. I could literally see daylight around the windows from the pictures which were taken on the inside of my home.

17. Those pictures, together with the evidence of the sloppily installed building wrap, which had been exposed when the siding was removed, convinced me that SRW had grossly failed me and Jim when we paid them to be on site during construction to monitor the progress of the work of Cooper and to approve the Cooper Pay Applications. A copy of a Cooper Pay application is attached, one of 37. SRW signed each pay application and made certifications about the progress and quality of the work of Cooper that clearly were not true. The evidence I saw in 2012 convinced me that SRW breached its duty to me which led to my bringing suit against SRW at that time.

By: Maria Allwin
Maria Allwin

SWORN to before me this 10th day of September, 2015

Erikat A. Piguave
NOTARY PUBLIC FOR NEW YORK



My commission expires: 10/21/2017

Mr. Robert Lyles
Lyles and Lyles, LLC
342 E Bay St.
Charleston, SC 29401

Re: Preliminary Summary of Visual Survey and Destructive Testing
Allwin Residence
133 Flyway Drive
Kiawah Island, SC 29455

Dear Robert,

Pursuant to your request, Fuller Consulting Engineers, Inc. (FCE) has performed a site visit at the above referenced property. The purpose of the site visit was to study the current condition of the existing building components and to determine the cause of water-related damage previously observed within the residence. This report provides a summary of our findings to date.

SCOPE of WORK PERFORMED

FCE has performed a limited review of previously published reports and documents prepared by other entities related to the residence. At this time, FCE has reviewed the following reports and documents:

1. Campbell, Schneider and Assoc. Report (dated August 15, 2003)
2. Applied Building Sciences Report (dated December 13, 2004)
3. Engineering Design and Testing Corp. (dated April 27, 2004)
4. Timeline of Repair Work Performed and Reports Produced (b/n 1999 and 2006)
5. Shope Reno Wharton Architectural Drawings (original date of July 21, 1992)
6. ABS Proposal for Scope of Work (dated March 15, 2011)
7. ABS Proposal for Flashing/Cladding Investigation (dated March 29, 2011)

FCE has also performed a site visit, which was conducted over two (2) days, April 21-22, 2011. Tori Stein and Darin Dennis assisted FCE with gaining access to the residence and with the destructive testing. Our on-site work included visual observations of the interior and exterior of the residence, including the basement, habitable spaces, attic, and roof. Our on-site work also included destructive testing at interior and exterior locations that were believed to be problematic or thought to be

contributing to the observed interior damages. At this time, FCE has conducted destructive test cuts at the following locations:

1. Great Room French Door Sill (Exterior Tile and R.O. Flashing)
2. Master Bedroom Window Sill
3. Master Bedroom Window Sill/Jamb Trim (Interior)
4. Master Bathroom Window Sill
5. Roof to Wall Flashing Below Master Bathroom Window
6. Master Bedroom Valley Drywall (Interior)
7. Media Room Window Sill
8. Bathroom Window Sill at Media Room
9. Bathroom Window Head at Media Room
10. Roof to Wall Flashing Below Bathroom Window at Media Room
11. Breakfast Room Turret
12. Study Turret Wood Flooring (Interior)
13. Study Turret Tile/Deck to Wall Flashing
14. Tile/Deck to Wall Flashing at Study (Oceanfront)
15. Tile at Outside Edge of Patio at Transition Steps
16. Patio Knee Wall at Wood Shingles

OBSERVATIONS

During our site visit we observed various existing conditions that we considered to be noteworthy. The following list has been generated to serve as a set of talking points to discuss the existing conditions observed at the subject residence.

1. Standing Seam Metal Roof
 - 1.1 Hydro-stop Installed at Joints
 - 1.2 Repainted Roof
 - 1.3 Gutters
 - 1.4 Peeling paint
 - 1.5 Crack in Hydro-stop
 - 1.6 Roof Underlayment
 - 1.7 Roof to Wall Flashing
2. Attic
 - 2.1 HVAC Chiller System
 - 2.2 Spray-foam Insulation
 - 2.3 Fiberglass Batt Insulation

3. Exterior Wall Claddings

- 3.1 Hard Coat Stucco/Accessories at Chimneys
- 3.2 Hard Coat Stucco/Accessories at Retaining Walls
- 3.3 Wood Shingles (stain)
- 3.4 Tyvek WRB (incomplete, butt-jointed to window trim, and reverse-lapped with R.O. flashing)
- 3.5 Water-stained Plywood Sheathing

4. Window Installation

- 4.1 Tischler mahogany windows
- 4.2 Air Infiltration (gaps in spray foam)
- 4.3 Incomplete Tyvek WRB
- 4.4 Pan Flashing (outside termination of pan, height of vertical leg, and end dams)
- 4.5 Rotted Window Sill at Master Bathroom Window
- 4.6 Ferrous Metal Screws for Window Trim
- 4.7 Paint/Stain of Exterior Window Components

5. French Door Installation

- 5.1 Tischler Mahogany Doors
- 5.2 Incomplete Tyvek WRB
- 5.3 Inadequate Rough Opening Flashing
- 5.4 Inadequate Pan Flashing at French Doors (folded under subflooring)
- 5.5 Inadequate Repairs Attempted

6. Patio Waterproofing

- 6.1 Study Turret Deck to Wall Flashing
- 6.2 Oceanfront Deck to Wall Flashing
- 6.3 Line of Damage at Deck to Wall Transition in CMU
- 6.4 Extent of Waterproofing (start and stop)
- 6.5 Slope of Patio (above and below)
- 6.6 Rotted Wood at Patio Knee Walls/Half Columns

7. Interior

- 7.1 Wall Coverings
- 7.2 Moisture Staining on Drywall (interior, below windows and near south chimney)
- 7.3 Fungal Growth/Mildew (interior, below windows and attic penetrations)
- 7.4 Rotted Wood and Buckling of Hardwood Flooring (study turret and inside of French doors)

CONCLUSIONS

Based on our on-site observations and a review of the available documentation, FCE believes that the existing residence has been well-maintained. However, we did observe existing conditions that do require additional maintenance. We also observed original construction defects and inadequate repair work that has caused damage to the residence and needs to be corrected. The following list summarizes those issues that we believe need to be repaired and/or maintained at this time. We have also generated a list of issues that we believe require additional investigative work in order to determine if repairs are required.

Recommended Repairs

1. French Door Installation/Flashing and Damage to Wood Framing/Flooring
2. Deck to Wall Flashing/Waterproofing and Damage to Wood Framing (Oceanfront Patio)
3. Deck to Wall Flashing/Waterproofing and Damage to Wood Framing/Flooring (Study Turret)
4. Repair Tyvek Reverse-lapped with Other Flashings and Incomplete
5. Window Pan Flashing Installation at Outside of Sill
6. Replace Rotted Wood at Master Bathroom Window Sill
7. Replace Curled Wood Shingles
8. Paint/Stain Exterior of Windows/Doors
9. Replace Rusted Ferrous Metal Screws at Window Sill/Trim
10. Peeling Paint on Metal Roof
11. Cracked Hydro-stop on Metal Roof
12. Repair Stucco Cladding/Accessories at Chimneys
13. Repair Stucco Cladding/Accessories at Retaining Walls
14. Replace Rotted Wood at Patio Knee Walls/Half Columns
15. Interior Wall Coverings

Additional Investigative Work

16. Air Infiltration and Condensation – Spray Foam at Rough Openings and Tyvek
17. HVAC Chiller System - Positive/Negative Pressure
18. Mildew @ Attic Penetrations
19. Moisture Staining Below Windows on Interior
20. Window Installation and Pan Flashing
21. Patio Waterproofing and Flashing
22. Turret Repair Work and Flashing
23. Degradation of Interior Veneer Plaster
24. Discoloration of Ceiling in Great Room
25. Metal Roof Condition and Roof Underlayment

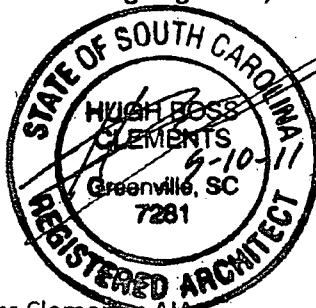
SUMMARY

FCE requests a copy of all available documentation and project binders related to the subject residence in order to evaluate the above mentioned issues. This information should include maintenance logs, reports and scopes of work produced by other entities related to the residence. Progress photos of previous repair work at the patio and turret would also be beneficial.

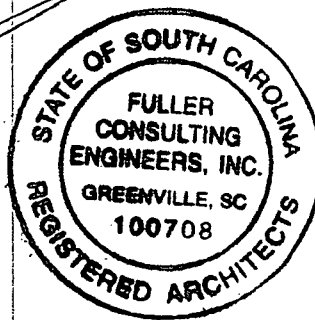
This report is provided with a reasonable degree of architectural certainty. In the event that additional relevant information becomes available, we reserve the right to respectively amend the opinions expressed herein. Please contact me if you have any questions or require additional information.

Sincerely,

Fuller Consulting Engineers, Inc.



H. Ross Clements, AIA
Director of Architecture and Forensic Services



APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702 (Instructions on reverse side) PAGE ONE OF PAGES

TO OWNER: **Mr. & Mrs. James Allwin**
Chappaqua, New York

PROJECT: **133 Flyway Drive**
Kiawah Island, SC

APPLICATION NO.: **36**
PERIOD TO: **5/11/94**
PROJECT NOS.: **9217**

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐
☐

FROM CONTRACTOR:
Mgmt. of Architectural Construction, Inc.
Kiawah Island, SC

VIA ARCHITECT: **Shope Reno Wharton Assoc.**
Greenwich, CT

CONTRACT DATE: **9/23/92**

CONTRACT FOR: **New Residence**

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 2,565,000.00
2. Net change by Change Orders \$ 1,197,914.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 3,762,914.00
4. TOTAL COMPLETED & STORED TO DATE \$ 3,697,977.00
(Column G on G703)
5. RETAINAGE:
 - a. _____% of Completed Work \$ _____
(Columns D + E on G703)
 - b. _____% of Stored Material \$ _____
(Column F on G703)
 - Total Retainage (Line 5a + 5b or
Total in Column I of G703) \$ 8,875.00
6. TOTAL EARNED LESS RETAINAGE \$ 3,689,102.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 3,493,926.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 195,176.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 73,812.00
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner 16	1,155,821.00	
Total approved this Month 1	42,093.00	
TOTALS	1,197,914.00	
NET CHANGES by Change Order	1,197,914.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: **Mgmt. of Architectural Construction, Inc.**

By: Russ Corp

Date: 5/11/94

State of:

County of:

Subscribed and sworn to before
me this _____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED

\$ 195,176

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT:

By: John J. Payne

Date: May 12 1994

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



AIA DOCUMENT G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • 1992 EDITION • AIA® • ©1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292 • WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

G702-1992

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000187 Allwin 03246

13-CP40-4592

ALLWIN VS. BUFFINGTON HOMES, ET AL. 2012-0359

CERTIFICATE OF SERVICE

I, Brooke Trevino, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRCF and counsel's regular business practices, do hereby certify that I have this date, either electronically or sent via regular mail, mailed a true and correct copy of the Affidavit of Ross Clements to the following counsel of record:

Best Honeycutt, P.A.
Dean Best
Post Office Box 13466
Charleston, SC 29422
Attorney for Russ Cooper Associates, Inc.
dean@besthoneycutt.com
Dani@besthoneycutt.com

Paul E. Sperry, Esquire
Carlock Copeland & Stair, LLP
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FILED
2015 SEP 10 AM 10:00
J. J. ARMSTRONG
CLERK OF COURT

By: Brooke Trevino
Brooke Trevino

This 10 day of September, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARIA ALLWIN.

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC,
BUFFINGTON HOMES L.P. AND SHOPE
RENO WHARTON

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2013-CP-10-4592

AFFIDAVIT OF ROSS CLEMENTS

FILED
SEP 10 AM 10:00
CLERK OF COURT
JULIE J. ANDERSON

PERSONALLY APPEARED BEFORE ME, Ross Clements, who, being duly sworn,
deposes and says that:

1. I am over the age of eighteen (18) and the assertions made in this Affidavit are true and are based upon my personal knowledge.
2. I am a licensed architect in the state of South Carolina and additionally hold active licenses in North Carolina and Georgia.
3. I am certified by the National Council of Architectural Registration Boards (NCARB) and am a member of the American Institute of Architects (AIA).
4. I am the Director of Architecture and Forensic Services at Fuller Consulting Engineers, Inc. (hereinafter FCE), which specializes in forensic architectural and engineering investigations for construction projects.
5. I have personally reviewed the construction documents for the subject residence, which is located at 133 Flyway Drive, Kiawah Island, SC. Shope Reno Wharton Architecture (hereinafter SRW) of Greenwich, CT is named in the title block as the architecture firm.

6. Generally, the construction documents are dated July 21, 1992 at the lower right corner of the title block and the architectural drawings exhibit an additional date of July 31, 1992, which is accompanied by the statement, "Issued for Final ARB Approval".

7. Sheets A1-A6, A8, A10, A11-A13 and C1 have additional revision dates, up to and including Revision #6, dated July 21, 1993. A revision is not indicated on sheet A7. Sheets A9, A10 and A10a have additional revision dates, up to and including Revision #7, dated August 10, 1993.

8. Additional drawings exist within the construction documents, including electrical drawings and Pool House drawings, as well as topographic survey prepared by Southeastern Surveying, Inc. and structural drawings signed/sealed by Jeffrey M. Dillon, PE, a South Carolina registered professional engineer.

9. Upon information and belief, the architectural plans were prepared by SRW for the benefit and use of James (since deceased) and Maria Allwin to have a home constructed at 133 Flyway Drive, Kiawah Island, SC.

10. I issued a scope of work for repairs to the residence on or about March 16, 2012. From this scope of work, Plaintiff's contractor, Phillip W. Smith General Contractor, Inc. calculated repair estimates and an AIA A103 (2007) contract was executed with the Plaintiff on or about April 23, 2013. The repair work is currently being performed at the residence.

11. I have been on-site for investigations of the residence before and after the current repair project commenced.

12. Upon my review of the architectural drawings prepared by SRW, it is my professional opinion that SRW failed to adequately design and detail critical components related to the building envelope of the residence. These errors and omissions by SRW have contributed

to the damages suffered by the Plaintiff. Deficiencies related to the architectural drawings include, but may not be limited to the following:

- a. Inadequate design and detailing of the window and door openings, including the proper integration of the exterior weather-resistive barrier (hereinafter WRB) with the rough-opening flashings and perimeter air sealing.
- b. Inadequate design and detailing of the flashing and waterproofing at the exterior deck-to-wall intersections of the Oceanfront Patio, Study Patio, and the Front Porch Patio.
- c. Inadequate design and detailing of the roof system, including flashing and critical roof-to-wall intersections.

13. In my professional opinion, a reasonably prudent architect, in similar circumstances would have prepared construction documents that more accurately detail the design of the building envelope at the residence. Therefore, in my professional opinion, these errors and omissions by SRW constitute a breach of its standard of care.

14. Furthermore, it is my professional opinion that SRW failed to provide adequate Construction Contract Administration (hereinafter CA) services during the original construction of the residence. The deficiencies FCE observed of the original construction were not latent defects at the time of construction and would have been readily visible, open and obvious to SRW. In fact, the extent to which defects existed within the building envelope has led me to conclude that in the process of performing CA services, SRW exhibited a conscious disregard for the requirements of the architectural drawings and the applicable building code (1989 CABO One and Two Family Dwelling Code).

15. While the construction defects FCE observed would have been open and obvious to SRW, as construction was ongoing, it is my professional opinion that as original construction

continued and ultimately concluded, the defects could not have been known to the Plaintiff, absent extensive deconstruction efforts.

16. Furthermore, it is my opinion that the level of destructive testing and deconstruction required at the subject residence to uncover latent construction defects was unprecedented in my experience as a forensic architect. It would be unreasonable for a homeowner to determine such a level of destructive testing or deconstruction was necessary based on the visual deficiencies observed. In my opinion, the root cause of many of the observed visual deficiencies could not have been fully explained without complete removal of the interior and exterior building components. Additionally, through the deconstruction of the current repair project, we uncovered many instances of previously unknown construction defects and defects that were more pervasive than what was observed during limited destructive testing.

17. Complete removal of interior and exterior building envelope components was required in order to uncover latent construction defects and damages, including but not limited to the following:

1. Reverse-lapped roof underlayment;
2. Improper roof terminations;
3. Water damaged roof sheathing and framing;
4. Unsealed roof-to-wall intersections allowing air intrusion/condensation;
5. Incomplete spray foam insulation in attic and sloped roof areas;
6. Incomplete/missing Tyvek weather-resistive barrier (hereinafter WRB);
7. Reverse-lapped WRB;
8. Improper integration of WRB with window and door flashing;
9. Improper integration of WRB with roof-to-wall flashings;

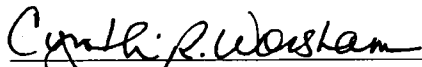
10. Improper integration of window and door opening head flashings with flexible flashing and/or WRB;
11. Improperly installed wall/cornice flashing;
12. Water damaged wall sheathing, framing, termites;
13. Incomplete asphalt-saturated building felt (WRB) behind stucco;
14. Incomplete perimeter air seal at windows resulting in air intrusion/condensation;
15. Incomplete perimeter seal at windows resulting in bulk water intrusion;
16. Improper integration of window rough opening flashing with pan flashings and WRB;
17. Improper installation of sill pan flashing at windows;
18. Improper installation of WRB at window openings;
19. Improper structural attachment of windows – fasteners missing;
20. Fungal growth/mildew behind window trim;
21. Incomplete perimeter air seal at doors resulting in air intrusion/condensation;
22. Incomplete perimeter seal at doors resulting in bulk water intrusion;
23. Improper integration of door rough opening flashing with pan flashings and WRB;
24. Improper installation of sill pan flashing at doors;
25. Wood sub-flooring improperly installed over flattened back leg of sill pan flashings;
26. Improper installation of WRB at door openings;
27. Fungal growth/mildew behind door trim;
28. Inadequate patio deck-to-wall waterproofing and flashing;
29. Inadequate repairs attempted at patio deck-to-wall waterproofing and flashing;

- 30. Water damaged wood framing at deck-to-wall intersections;
- 31. Improper slope of patio at elevated concrete slab (below tile surface); and
- 32. Insulation missing between Study turret floor and elevated concrete slab.

18. Through my observations and investigative work related to destructive testing and the deconstruction required of the repair project, it is my professional opinion that the contractors that originally constructed the residence exhibited a conscious disregard for the requirements of the architectural drawings, the applicable building codes, and their own standards of construction, which were established by their precedents.

By: 
Ross Clements

SWORN to before me this 9th day of September, 2015


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 2-6-2024

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARIA ALLWIN.

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC,
BUFFINGTON HOMES L.P. AND SHOPE
RENO WHARTON

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NUMBER: 2013-CP-10-4592

) NOTICE OF MOTION AND MOTION
) TO ALTER OR AMEND JUDGMENT
) UNDER RULE 59(e) SCRC

FILED
DEC 29 PM 4:04
CLERK OF COURT

PLEASE TAKE NOTICE that Plaintiff pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure will move before the Honorable J.C. Nicholson, Jr. in the Court of Common Pleas at the Charleston County Courthouse, Charleston, South Carolina on the 10th day after or at such time as counsel may be heard, for Reconsideration and to Alter and Amend the Court's Order entered December 16, 2015 by Judge Nicholson.

The grounds for this motion are as follows:

(a) the Order erred by failing to consider or apply *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 708 S.E.2d 787 (Ct. App. 2011) and *McAlhany v. Carter*, No. 2013-000578, 2015 WL 7008578 (S.C. Ct. App. Nov. 12, 2015) (decided November 12, 2015, after oral arguments in this case), both of which establish that the issue of what portion, if any, of Plaintiff's claim may be barred by the statute of limitations is a question of fact for the jury;

(b) the Order erred by failing to consider the affidavits of Ross Clements and Maria Allwin, which taken in the light most favorable to the Plaintiff, create at least a question of fact as to what damages were or could have been known by Allwin through the exercise of reasonable diligence;

(c) the Order erred by failing to consider the testimony of Defendant Russ Cooper who acknowledged that removal of siding was extreme —not required by the exercise of reasonable diligence — and the fact that Allwin was told by Shope Reno Wharton in 2011 that Ross Clements' scope of repair, which uncovered many of the defects, was unnecessary, both of which create a disputed issue of material fact regarding what was required in the exercise of reasonable diligence;

(d) The Order erred by making factual conclusions that Allwin was “well aware of the alleged defects” and “failed to act with reasonable diligence” when the record presents disputed facts and a dispute as to the conclusion to be drawn from these facts. *See McAlhany v. Carter*, No. 2013-000578, 2015 WL 7008578, at *4 (S.C. Ct. App. Nov. 12, 2015) (quoting *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000) (“Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.”));

(e) the Order erred by granting summary judgment because the facts present at least a scintilla of evidence that some of the conditions and damages for which Plaintiff seeks recovery could not have been known through the exercise of reasonable diligence, and preclude summary judgment on the issue of when the three-year statute of limitations accrued under the discovery rule.

This motion is supported by the pleadings and memoranda on file, the discovery conducted, and a memorandum to be filed at a later date.

LYLES & LYLES, LLC

By: Robert T. Lyles for B. Lyles

Robert T. Lyles, Esquire
342 East Bay Street
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Attorneys for Plaintiffs

December 28, 2015
Charleston, South Carolina

ALLWIN VS. BUFFINGTON HOMES, ET AL. 2012-0359

CERTIFICATE OF SERVICE

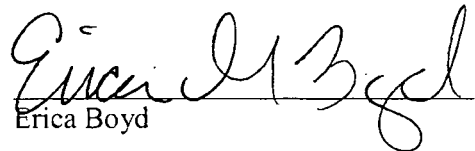
I, Erica Boyd, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRCP and counsel's regular business practices, do hereby certify that I have this date, either electronically or via hand delivery a true and correct copy of Notice of Motion and Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP to the following counsel of record:

Best Honeycutt, P.A.
Dean Best
Post Office Box 13466
Charleston, SC 29422
Attorney for Russ Cooper Associates, Inc.
dean@besthoneycutt.com
Dani@besthoneycutt.com

Paul E. Sperry, Esquire
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coliver@carlockcopeland.com

FILED
2015 DEC 29 PM 4:04
JULIE J. ARMSTRONG
CLERK OF COURT

By:


Erica Boyd

This 28th day of December, 2015
Charleston, South Carolina

ALLWIN VS. BUFFINGTON HOMES, ET AL. 2012-0359

CERTIFICATE OF SERVICE

I, Brooke Trevino, an employee of Lyles & Lyles, LLC, pursuant to Rule 5(b)(1), SCRPC and counsel's regular business practices, do hereby certify that I have this date, either electronically or sent via regular mail, mailed a true and correct copy of the Affidavit of Maria Allwin to the following counsel of record:

Best Honeycutt, P.A.
Dean Best
Post Office Box 13466
Charleston, SC 29422
Attorney for Russ Cooper Associates, Inc.
dean@besthoneycutt.com
Dani@besthoneycutt.com

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FILED
2015 SEP 11 AM 11:40
JULIE J. ARMSTRONG
CLERK OF COURT

By: Brooke Trevino
Brooke Trevino

This 11 day of September, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

CASE NO.: 2013-CP-10-4592

RUSS COOPER ASSOCIATES, INC. AND SHOPE RENO WHARTON, ... Respondents;

v.

MARIA ALLWIN, ... Appellant.

NOTICE OF APPEAL

Maria Allwin appeals the December 16, 2015 Order Granting Summary Judgment to Russ Cooper Associates, Inc. and Shope Reno Wharton (attached hereto as Exhibit A) and the January 28, 2016 Order Denying Plaintiff's Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP (attached hereto as Exhibit B). Appellant received written notice of entry of the January 28, 2016 Order Denying Plaintiff's Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP on February 1, 2016.

March 2, 2016


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LYLES & LYLES, LLC
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Attorney for Appellant

Other Counsel of Record

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***Attorney for Respondent Russ
Cooper Associates, Inc.***

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psperry@carlockcopeland.com
***Attorney for Respondent Shope
Reno Wharton***

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-4592

Maria Allwin, et al

2015 DEC 16 PM 2:30

Russ Cooper Associates, Inc., et al

PLAINTIFF(S)

JULIE J. ADAMS-STRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

12/16/15
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Maria Allwin,

Plaintiff,

vs.

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

Defendants.

Buffington Homes, L.P.,

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

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

FILED
2015 DEC 16 PM 2:30
JULIE J. ARISTON
CLERK OF COURT

Hearing Date:

Presiding Judge:

Plaintiff's Attorney:

Def. Russ Cooper Associates Attorney:

Def. Shope Reno Warton Attorney:

September 15, 2015

J.C. Nicholson, Jr.

Robert T. Lyles

L. Dean Best

Paul E. Sperry

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

000203

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

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

STANDARD OF REVIEW -- STATUTE OF LIMITATIONS

A trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381

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

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157, 159-60 (Ct.App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as the plaintiff "knew or by the exercise of reasonable diligence should have known that [s]he had a cause of action." S.C. Code § 15-3-535. In construing the "reasonable diligence" requirement, our Supreme Court stated:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of [hers] has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

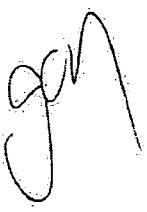
April 2003 – In a monthly inspection report prepared by GHS, Plaintiff's property manager informed Plaintiff of "more mildew" at multiple locations. (Exh. 599).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

this water intrusion. (Exh. 178).

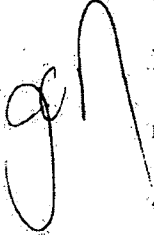
September 24, 2004 – In a letter produced by Plaintiff, Morgan sent Plaintiff a copy of Buffington Homes' July 6, 2004 proposal to address storm water intrusion into the basement. (Exh. 182). Morgan instructed Buffington Homes to proceed with these repairs at a cost of \$34,781. Id.

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

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

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

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

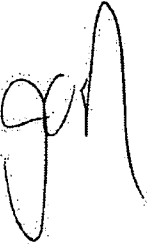
 July 24, 2006 – At the request of Plaintiff's real estate agent (Noble), Albrecht Environmental issued a report summarizing its findings following an inspection of the residence and recommending actions needed to remedy the mold/mildew situation in the home. (Exh. 217; Noble Dep. at p. 34, l. 9-13).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

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

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

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

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

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

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

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

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

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

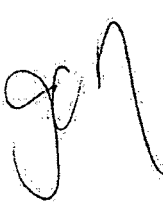
June 2008 – Plaintiff forwarded the July 2007 AIG inspection report (Exhibit 228) to Buffington Homes and expressed her frustration about ongoing problems after having spent several hundred thousand dollars to repair defects in the Residence. (Exhs. 235 and 236; Stein Dep. at 54, l. 7-18, p. 56, l. 23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

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

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

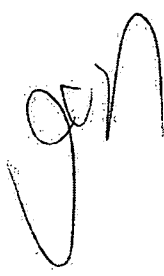
contractors who had previously inspected and performed repairs to the home. (Exhs. 244 and 254; Stein Dep. at p. 27, l. 21 – p. 28, l. 2 and p. 65, l. 3-6). Stein considered herself a consultant to Plaintiff with respect to her investigative efforts. (Stein Dep. at p. 75, l. 8-12). The scope of Stein's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

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

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

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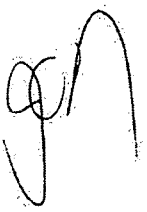
- construction issues and warning about the statute of limitations. Id.
9. August 2002 Cowan correspondence regarding roof leaks, basement leaks, moisture in exterior wall, leaking louvers, and rear door leaks. Id.
 10. Exhibit 34/37 – August 15, 2003 CSA report regarding water intrusion, including roof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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

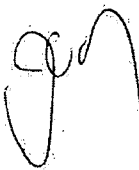
II. **THE EVIDENCE MIRRORS THE FACTS IN OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASES IN WHICH THE COURTS UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS**

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

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

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

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

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

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

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

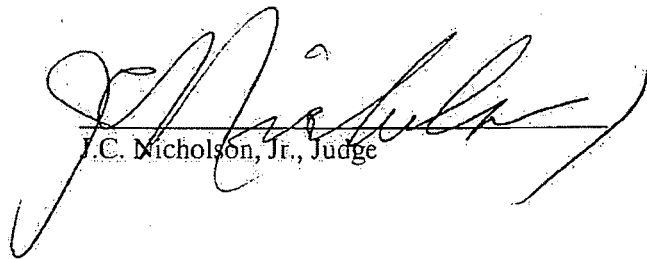
 Further, as a result of her knowledge of these defects and resulting damage, Plaintiff was aware, or ought to have been aware, of her claims against these defendants. Again, the statute of limitations runs from the date the injured party either knows or, through the exercise of reasonable diligence,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

CONCLUSION

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

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

IT IS SO ORDERED.



J.C. Nicholson, Jr., Judge

December 16, 2015
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-4592

Maria Allwin 2016 JAN 28 PM 4:35

Russ Cooper Associates, Inc., et al

PLAINTIFF(S) JULIE J. ARMSTRONG

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court. This matter came before this Court on Plaintiff's Motion to Alter or Amend Judgment, filed on December 29, 2015. Plaintiff's motion is respectfully **denied** without a rehearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

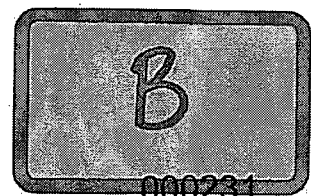
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

1/29/16
Date



STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

CASE NO.: 2013-CP-10-4592

RUSS COOPER ASSOCIATES, INC. AND SHOPE RENO WHARTON, ... Respondents,

v.

MARIA ALLWIN, ... Appellant.

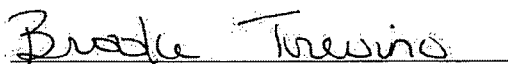
PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2016 to the counsel below:

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Reno Wharton*

March 2, 2016


Brooke Trevino
Paralegal

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2013-CP-10-04592

MARIA ALLWIN,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	
-vs-	)	September 15, 2015
	)	
RUSS COOPER ASSOCIATES,	)	
INC., et al,	)	Charleston, South Carolina
	)	
Defendants.	)	

B E F O R E:

The Honorable J.C. Nicholson, Judge.

A P P E A R A N C E S:

Robert T. Lyles, Jr., Esquire
Attorney for the Plaintiff

L. Dean Best, Esquire
Attorney for Defendant Russ Cooper Associates

Paul E. Sperry, Esquire
Attorney for Defendant Shope Reno Warton

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (September 15, 2015.)

2 THE COURT: Let me see. We've got two
3 motions. Which do y'all want to hear first?

4 MR. BEST: Russ Cooper's motion please, sir.

5 THE COURT: Okay.

6 MR. SPERRY: And, Your Honor, procedurally,
7 most of my motion is based on the same thing. I've got a
8 few additional grounds, but just as a general heads up,
9 most of what Mr. Best is going to say I'm going to be
10 adopting in mine, so there won't be a lot of repetition
11 on that part.

12 THE COURT: Okay. All right. I've been
13 hearing repetition all morning. Go ahead.

14 MR. BEST: Your Honor, again, I represent
15 Russ Cooper. He was the general contractor for the
16 plaintiff's house; actually, one of her houses.
17 Plaintiff is Maria Allwin. She lives in Manhattan.
18 She's got another big property in Connecticut. She's got
19 a property out in Colorado. Then she has this house.

20 This is a huge, grand 10,000 or 11,000 square
21 foot house in Kiawah. It was built in 1994 by Russ
22 Cooper, the general contractor. Shope Reno Warton,
23 Mr. Sperry's client, was the architect, and, Judge, I
24 regret that I had to send you 142 exhibits, but I've been
25 doing this for a while, and I never imagined that I would

1 ever see such a well-documented statute of limitations.

2 I don't know if you've had a chance --

3 THE COURT: It took you 127 documents to
4 document that?

5 MR. BEST: I just wanted to make sure Your
6 Honor appreciated the full scope of the defense.

7 THE COURT: Okay.

8 MR. BEST: Back in -- around 1999, 2000,
9 there was a gentleman named Robert Cowan, and Mr. Cowan,
10 at the plaintiff's invitation, lived in the subject
11 residence, he and his wife, while they were building
12 their own home. And Mr. Cowan testified because he was
13 living there for free, he felt obligated to report to the
14 plaintiff and her now late husband about problems he
15 observed at the house.

16 Before I go into that, the plaintiff's
17 present expert is a gentleman named Ross Clements with
18 Fuller Engineering. He inspected the house in 2011 and
19 identified numerous construction defects in both my
20 client's work and the work of subsequent subcontractors,
21 or contractors, and he grouped those problems into
22 five --

23 THE COURT: When did he find those defects?

24 MR. BEST: 2011.

25 THE COURT: Okay. And who did it?

1 MR. BEST: Ross Clements.

2 THE COURT: And who was he?

3 MR. BEST: He's the plaintiff's causation
4 expert.

5 THE COURT: Okay. All right. Go ahead. Is
6 he a structural engineer or what?

7 MR. BEST: I don't think he's a structural
8 engineer, just a PE, regular engineer.

9 MR. LYLES: He's actually an architect.

10 MR. BEST: He grouped them into five
11 categories: One is roof and chimneys; two, exterior
12 walls, that being water intrusion into the exterior
13 walls, that being water intrusion into exterior walls;
14 third group is windows and doors; fourth group is the
15 oceanfront patio, pool deck area, and the basement.

16 The pool deck ties into the first floor line
17 of the residence, and then below that, underneath the
18 physical structure, is what everybody has referred to
19 generally as a basement area; and then the fifth group
20 was interior damage resulting from all these leaks into
21 the above sections.

22 In all the exhibits I've presented to the
23 Court, the admissions of the plaintiff, the deposition
24 testimony of the witnesses all establish that Ms. Allwin
25 knew of all of these problems in these five categories

1 created by her expert as far back as 1999.

2 Going back to Mr. Cowan, he lived in the
3 house in the late '90s, early 2000's, and he would send
4 periodic reports to Mr. and Mrs. Allwin up in New York
5 and Connecticut, wherever they happened to be at the
6 time. And from February of 1999 through August of 2002,
7 he reported the following defects, the vast majority of
8 them on multiple occasions: Numerous and continuous roof
9 leaks, not just in one place, but in the master suite,
10 the kitchen, the great room, guest room, the chimneys,
11 and the fireplace flues.

12 In March of 2001 is when Mr. Cowan wrote and
13 stated that the roof leaks were one of the most important
14 problems with the residence at that time. Mr. Cowan
15 informed the plaintiff and her husband of multiple window
16 leaks, continuous leaks of the rear doors, continuous
17 leaks into the basement where floor joists were rotted,
18 moisture seeping into a kitchen wall, chiller room leaks,
19 of course resulting in interior damage stemming from all
20 these leaks.

21 Interior damage includes stains, damage to
22 ceilings, peeling paint, damaged drywall around windows,
23 damaged wallpaper. There was also mold in numerous rooms
24 throughout the house.

25 In September of 2001, Mr. Cowan prepared a

1 moisture detection report, and this is where he went
2 around the house with a moisture meter and actually
3 inserted it into the building components. He reported
4 high moisture readings and wrote to the plaintiff, If my
5 tests are accurate, we could have a major problem inside
6 the exterior walls such as wood rot. This was back in
7 2001.

8 About this time, documents produced by the
9 plaintiff also indicate that Mr. Cowan, on the
10 plaintiff's behalf, researched two local forensic water
11 intrusion experts: Bob Sisnroy, you may have heard of
12 him, a local engineer, and a contractor, Bobby Hedgepath.

13 Again, notably, in October of 2001, Cowan
14 wrote to Mr. Allwin concerning numerous concerning
15 defects and warned him that the statute of limitations
16 may be about to run soon. Again, this is in 2001.

17 So you got Cowan who lived there around 2000.
18 He gave all these reports in 1999 to 2002. In 2001,
19 plaintiff hired a property manager, because, again, this
20 house was only used, really, a few weekends a year, and
21 they didn't rent it out, so it was vacant for a large
22 period of time.

23 THE COURT: You say they did rent it out?

24 MR. BEST: They did not rent it out, no, sir.
25 So it was vacant the vast majority of the time.

1 In 2001, they hired a property manager, and
2 from August of 2001 to April 2003 -- there were more
3 reports later, but just in that period, August of '01 to
4 April of '03, Gamble Home Services was the property
5 manager, and they would go into the house weekly and just
6 make sure everything was okay. Then at the end of the
7 month, they would send a monthly inspection report to the
8 plaintiffs.

9 She testified that she saw various of these,
10 but the property manager reported leaks in the great
11 room, above a rear door; window leaks in the master
12 bedroom and in multiple guest rooms; caulking cracks at
13 windows throughout the residence; damaged wallpaper; trim
14 cracks; chipping paint at windows; water stains and
15 damage to ceilings in multiple locations; mold around
16 leaking windows on ceilings and in various other rooms.
17 Many of these items, again, were reported numerous times.

18 In November of 2008 --

19 THE COURT: When do you think the statute
20 started running?

21 MR. BEST: I think it started running in
22 1999.

23 THE COURT: '99?

24 MR. BEST: Yes, sir.

25 THE COURT: Okay. Because of the man that

1 was renting the property?

2 MR. BEST: He was staying there for free,
3 because, essentially, he was a guest, but he also took
4 upon this caretaker role.

5 THE COURT: Okay. So you think when he
6 informed her is when it started running?

7 MR. BEST: Yes, sir.

8 THE COURT: All right. Go ahead.

9 MR. BEST: In November of 2002, the property
10 manager requested plaintiff's permission to investigate a
11 roof leak and leaking windows, and I've seen no evidence
12 that plaintiff made any response to that request for an
13 investigation.

14 So we've got -- in 2001, 2002, Cowan is
15 looking for an expert, on behalf of the plaintiffs. The
16 property manager is asking permission to the plaintiff to
17 perform an investigation: Don't you want to have
18 somebody look at these problems?

19 Plaintiff's own admissions are important.
20 From '99 to --

21 THE COURT: Have you taken her deposition?

22 MR. BEST: Yes, sir.

23 THE COURT: What did she say? What did she
24 say she knew about it?

25 MR. BEST: Well, I can tell you she said she

1 knew all about it, most of it, but what she said was it
2 was maintenance, and I guess I can appreciate that from a
3 certain point of view when it's coming from Mr. Cowan, a
4 lay person, although he does have some construction
5 experience as a property manager, but you'll see in a
6 moment the experts started coming in, and she's
7 definitely on notice with the experts, the engineers.

8 THE COURT: Did she hire the experts?

9 MR. LYLES: She did. Yes, sir, she did,
10 three general contractors. The plaintiff admitted from
11 '99 to 2001 that she knew about the things that --

12 THE COURT: The caulking problem, the water
13 leaks.

14 MR. BEST: Right. Then in 2003 --

15 THE COURT: Let me ask you this: Why
16 wouldn't that be maintenance?

17 MR. BEST: Well, sir, if you --

18 THE COURT: I mean, is this oceanfront?

19 MR. BEST: It's oceanfront.

20 THE COURT: Out around the ocean, the rain
21 blows sideways.

22 MR. BEST: Right, but it is the continuous
23 nature -- every other month Mr. Cowan is writing to the
24 Allwins saying, You've got problems.

25 Mr. Cowan, who testified that he was

1 essentially involved in the building of Six Flags over
2 Georgia and maintenance over the property once it was
3 finished, he has a little bit of construction experience.
4 He's warning the homeowners, This is a big deal. The
5 statute of limitations is going to run. You need to get
6 some experts.

7 THE COURT: I'm not trying to argue with you,
8 but everything you mentioned is a routine problem of
9 properties near the ocean. When the caulking dries out,
10 probably every year, 18 months -- the only reason I say
11 that is I have had a house there for eight years, ten
12 years now. It's within 150 yards of the ocean, and those
13 problems are always cropping up, especially with caulking
14 issues. I don't know why it dries out, but it does.

15 MR. BEST: Yes, sir, but it's the roof leaks;
16 it's the wall leaks; it's the window leaks; water
17 intrusion into the inside, damaging drywall, and it's the
18 volume. It's not just one roof leak. It's a roof leak
19 in the master bedroom and the kitchen and multiple guest
20 rooms.

21 THE COURT: We've got a water leak on a door.
22 We still haven't figured out where it's coming from.
23 It's gone on for five years.

24 MR. BEST: Statute of limitations may have
25 run.

1 THE COURT: They have, but I don't know
2 what's causing it, but I don't know, but go ahead. I
3 don't think that's design, I think that's just the nature
4 of the beast from a maintenance standpoint.

5 MR. BEST: Well, this is where we get some
6 more learned opinions. In 2003, the plaintiffs recognize
7 the house needed some work, and they contacted a group --
8 a former defendant, Buffington Homes. That principal is
9 Dan Buffington, and plaintiff testified that in early
10 2003, she asked for the assistance of Buffington to
11 diagnose and repair the longstanding problems with the
12 roof, the exterior walls, air infiltration at windows and
13 doors, the basement leaks, and then there was the damage
14 that resulted to the property. Yet all five of the
15 categories --

16 THE COURT: All right. The rear exterior
17 walls, the basement leak, and what else?

18 MR. BEST: The exterior walls, the roof,
19 windows and doors -- and by attachment, of course, the
20 interior damage that resulted from those, so all five of
21 the categories that Mr. Clements identified in 2011, but
22 more so the plaintiff also testified that those repairs
23 by Buffington were intended to address construction
24 defects in my client's original work back in 1994.

25 THE COURT: Does the plaintiff's expert say

1 all the water problems are based on the design?

2 MR. BEST: He said design and construction.

3 THE COURT: Okay.

4 MR. BEST: We have not taken his deposition
5 yet. In 2003, on the plaintiff's behalf, Buffington
6 hired a group called Campbell, Schneider & Associates,
7 and Larry Elkin of Campbell Schneider inspected the home,
8 noted --

9 THE COURT: When was this?

10 MR. BEST: This was in August of 2003.

11 THE COURT: Okay. Did a home inspection.

12 MR. BEST: Well, Mr. Elkin's an engineer.

13 THE COURT: I know he's an engineer, but he
14 inspected the home.

15 MR. BEST: Yes, sir. He came in to survey
16 the house and specifically determine the sources of
17 moisture intrusion that had resulted in the areas of
18 damage and fungal growth.

19 He noted water damage and mildew throughout
20 the residence, and their opinion was, in addition to some
21 unconditioned air filtration condensation on finished
22 interior services, that there was ongoing water intrusion
23 around windows, at roof valleys, and at several subgrade
24 locations.

25 Elkin recommended a source of liquid, water

1 leaks, being investigated from the exterior, including
2 the removal of certain windows and roof sections to
3 identify possible passive water leakage. The plaintiff
4 admitted that Elkin secured that report on her behalf.

5 So in 2003, you got Campbell Schneider &
6 Associates, Mr. Elkin, coming into the house, and he
7 investigated and he identifies these construction defects
8 and wants to do more testing, destructive testing, and we
9 see no evidence that the plaintiff ever authorized that.

10 What she did do -- excuse me. In addition to
11 Mr. Elkin's finding, Mr. Buffington wrote her and said,
12 Yes, you have all these problems with your home, and,
13 more importantly, your statute of limitations is about to
14 run.

15 He thought it was 13 years. He may have been
16 referring to the statute of repose, but he said, Your
17 roof -- this is January of 2004 -- your roof needs to be
18 completely replaced. You need to contact your builder or
19 the roofing subcontractor, and if they won't agree to
20 replace it, you need to hire a lawyer. This was in
21 January of 2004.

22 As part of the proposed repairs to be made by
23 Mr. Buffington, the plaintiff hired Milt Morgan to act as
24 her construction manager, and Milt Morgan hired a
25 gentleman by the name of Roy Davis Smith, who was an

1 architect and brought Mr. Smith out to the house.

2 Mr. Smith issued a report that suggested,
3 again, there were problems with the house, and he wanted
4 to do water testing at the windows and where the pool
5 deck tied into the house to see exactly where the water
6 was coming in and why. And, again, I've seen no evidence
7 that plaintiff ever authorized that testing, but it was
8 recommended by both Mr. Smith and through the
9 construction manager, Milton Morgan.

10 THE COURT: When was that?

11 MR. BEST: That was 2003, September 2003.

12 Mr. Morgan also recommended mold testing,
13 which apparently the plaintiff did authorize. Buffington
14 also -- well, I'll get to that in a minute.

15 THE COURT: What kind of mold testing did
16 they do?

17 MR. BEST: That's where they come in and take
18 air samples and wall samples.

19 THE COURT: They don't go back in the wall,
20 they just take air samples?

21 MR. BEST: I'll have to go back. There are
22 multiple old reports. I'd have to go back and look at
23 the specifics, but I assume air.

24 In October of 2003, Mr. Morgan forwarded to
25 the plaintiffs a roofing inspection report prepared by

1 Picquet Roofing, and Mr. Picquet noted numerous roofing
2 deficiencies, including peeling finishes, improper
3 connected panels, unsealed penetrations, gaps in the
4 flashings, improper panel wraps, and multiple leaks, and
5 he recommended the roof be patched and repaired at an
6 estimated cost of \$35,000, and this is the report that
7 Mr. Morgan gives to the plaintiffs.

8 Mr. Morgan did prepare a scope of work as a
9 construction manager to perform repairs to remedy my
10 client's allegedly defective work. That was in November
11 of 2003. That scope of work included instructions for
12 Buffington's defects in the roof valleys --

13 THE COURT: When did they file the lawsuit?

14 MR. BEST: I'm sorry. I should have led with
15 that. August 5 of 2013.

16 THE COURT: That's when it was filed?

17 MR. BEST: Yes, sir.

18 THE COURT: Okay. All right. Go ahead.

19 MR. BEST: To repair roof defects, remove or
20 repair windows that displayed evidence of water
21 intrusion, explore the source of other leaks, and assist
22 the environmental engineer in obtaining mold samples.

23 In January of 2004, in response to the
24 construction manager's scope of work, Mr. Buffington
25 wrote to the plaintiffs and said, I appreciate

1 Mr. Morgan's work, but you need to do more. Patching the
2 roof is a temporary fix. You need to take the entire
3 roof off. These repairs at the windows, do that if you
4 want to, but you need to take off -- you need to do more
5 destructive testing at these windows.

6 He also proposed -- I believe at this time he
7 also proposed more aggressive repairs at that pool deck
8 intersection, having to explore the water leakage, and
9 this is when he wrote about the 13-year statute of
10 limitations about to expire, and he gave an estimate to
11 perform the Morgan scope of work of \$238,504, but he told
12 plaintiffs, If you do the roof repair that I suggest you
13 do, it's going to be in excess of \$500,000.

14 They entered into the work -- into a contract
15 with Buffington for the limited Morgan scope of work.
16 They ignored Buffington's recommendations.

17 During these repairs in the spring of 2004,
18 the plaintiff made a claim with her homeowner's insurance
19 about mold and other water damage, and the insurance
20 company, AIG, they hired a local engineer, David Horne
21 with Engineering Design and Testing, and he came out to
22 the house.

23 And, Judge, I've referenced several exhibits
24 and attached those to Exhibit 62, 63; 109 through 114;
25 135 through 139; 141 through 143; 150; Exhibit 72 through

1 75; 82 through 86; 146 through 147; 69 through 77; 81 to
2 92; 94, 95; and 97 through 100.

3 If you'll look at those photographs, they
4 show the open and obvious condition of the home in March
5 of -- or April of 2004. They show open and obvious
6 defects with the roof system, window leaks, and damage
7 stemming from window leaks, leaks in the basement, mold
8 growth, and water damaged drywall.

9 THE COURT: Is this what Mr. Horne found?

10 MR. BEST: This is what Mr. Horne found.

11 THE COURT: Did the insurance company pay it?

12 MR. BEST: The insurance company declined.

13 We'll get to that. The insurance company declined to pay
14 her property damage claim. They declined it, and they
15 wrote her a letter declining it, and in that letter, they
16 referenced Mr. Horne's report.

17 Most importantly, in Mr. Horne's report, his
18 conclusion was that the fungal growth and moisture damage
19 in plaintiff's residence resulted from long-term
20 conditions of elevated moisture, and this is the kicker,
21 stemming from the construction of the residence.

22 AIG then wrote the plaintiffs a letter
23 declining the claim and said, We're declining this claim
24 because it's construction related, and they specifically
25 referenced the 2003 Campbell Schneider report.

1 THE COURT: What date was that letter
2 written?

3 MR. BEST: The declination, June of 2004.

4 THE COURT: When do you think the statute
5 ran?

6 MR. BEST: I still think it ran in 1999, but
7 it absolutely started running in June of 2004.

8 THE COURT: Okay. When do you think it
9 expires if it started in 2004?

10 MR. BEST: Well, we can pick any date
11 throughout this. It's repeated and repeated and
12 repeated, and if Your Honor's not happy with Mr. Cowan,
13 we can turn to the engineer. We get this over and over
14 and constant and constant decades of property damages,
15 and guests at the home, or caretakers, whatever you want
16 to call them, engineers brought in by her own contractors
17 or her insurance company. It just keeps coming and keeps
18 coming and keeps coming, and she ignores it.

19 I'm not here to tell you there's nothing
20 wrong with my client's work, but I am here to tell you
21 these plaintiffs knew of these problems in 1999, in 2000,
22 2001; she knew about it every year up until she filed
23 this lawsuit in 2013. I'm just going through 2010.

24 THE COURT: All right.

25 MR. BEST: Pick any point on the timeline

1 Your Honor would like. It does not matter to me because
2 all of them get my client out of this case.

3 THE COURT: Okay.

4 MR. BEST: Buffington went about the repairs.
5 During the repairs --

6 THE COURT: You don't have some type of
7 timeline to simplify this, do you?

8 MR. BEST: Just the brief. The brief has a
9 distinct, clear --

10 THE COURT: I will have to take it under
11 advisement with you all, but I get where you're coming
12 from.

13 MR. BEST: At that point, I'm going to hit
14 the high points.

15 THE COURT: Please do.

16 MR. BEST: And I apologize for the time.

17 THE COURT: Go ahead.

18 MR. BEST: Yes, sir.

19 Again, they found more damage than they
20 anticipated. They found rotting in the walls. A 200 and
21 some thousand dollar repair contract became a \$359,000
22 repair job, and, again, the plaintiff testified the
23 Buffington repairs were intended to address the original
24 construction defects.

25 After Buffington, in 2006, the plaintiff

1 wanted to sell the house, so she hired Cynthia Noble of
2 Kiawah Island Real Estate. Ms. Noble's common practice
3 is to have the home inspected because she was listing
4 agent to see if it needed work. She brought in a home
5 inspector in 2006, completed inspection services.

6 They identified, again, construction
7 problems, leaks, indications of leaks, made
8 recommendations for repairs and further investigation,
9 and Ms. Noble testified that she was confident that a
10 copy of that report was given to the plaintiff in July of
11 2006.

12 As a result of that inspection, the real
13 estate agent brought in Albrecht Environmental again to
14 do another mold inspection, and Albrecht recommended
15 almost \$20,000 worth of mold remediation repairs. That
16 was in July of 2006.

17 Hitting the high points, in summer of 2006,
18 plaintiff wrote to Ms. Noble, the real estate agent, and
19 said, quote, Hard to believe that there's still moisture,
20 humidity, mold after we spent so much money; again
21 referring to the Buffington repairs.

22 The real estate agent on plaintiff's behalf
23 asked Buffington to do -- to prepare an estimate based on
24 this home inspector's report that was obtained in July
25 2006. This was just one year after he finished his

1 repairs. He comes up with a \$280,000 estimate to do all
2 the things he wasn't permitted to do the first go-round,
3 and he was not retained to do that work.

4 Judge, in 2007, AIG, which maybe red flagged
5 this house a little bit, they said that -- and it is a
6 grand property, and I'm sure it was a huge risk, right on
7 the ocean, and they may do annual inspections, but they
8 inspected the home in the summer of '07 and wrote to Ms.
9 Allwin.

10 They said, We can observe indications of high
11 moisture levels, including suspected window and roof
12 leaks. And they said, You are required to have your home
13 checked by a qualified water remediation engineer to
14 investigate why water continues to enter these areas of
15 your home. Once the cause is identified, the necessary
16 repairs should be made.

17 So, again, in 2007, you've got the
18 homeowner's insurance company telling the plaintiff, You
19 need to get your home checked out. You have problems.
20 She testified she doesn't recall taking any action in
21 response to that letter. More reports from the property
22 manager.

23 Fast forward to 2008 to a lady named Victoria
24 Stein, and I would point out to the Court, Ms. Stein
25 works for a company called Atlantic Builders, which is a

1 contracting firm, but she is not a licensed contractor.
2 She never held a license to build homes.

3 She later works for Gamble Home Services, and
4 at some time -- there it is, it's the property manager --
5 and at some time, there is a joint venture between
6 Atlantic Builders, the construction firm, and Gamble Home
7 Services, the property manager called Gamble Atlantic,
8 and that is effectively an entity that would provide
9 repair, maintenance, construction services to Gamble's
10 property management clients.

11 Victoria Stein visited the house in 2008 for
12 the first time, I think to do some boardwalk repairs,
13 nothing I'm concerned about, with a gentleman named John
14 Nelson from Gamble. He's sort of the manager, and as
15 they're walking through the house, Gamble is walking her
16 through the house because he wants her and Atlantic to
17 get involved with the repairs, assist the plaintiff with
18 the repairs, and she identifies mold, water damage, water
19 leaks at doors, windows, buckled hardwood flooring, all
20 the things that the plaintiff has attempted to repair in
21 the past but has never completely repaired, never
22 followed up on the rest of the Buffington scope when he
23 presented a subsequent repair estimate, never followed up
24 on the expert reports and the recommendations of her
25 insurance company.

1 The plaintiff then hires Ms. Stein to
2 investigate the house and its history, the history of
3 water intrusion and the history of repairs. This is in
4 July of 2008, and she pays her \$7,000, right at \$7,000
5 for her time, and what Ms. Stein does is she looks at all
6 these documents that we talked about. Ms. Allwin, the
7 plaintiff, mailed her a stack of documents from New York
8 or Connecticut or somewhere, and it had the Cowan reports
9 and the Gamble reports, the Elkin report, the Horne
10 report, and you'll see in the brief nearly two dozen
11 documents, or more than two dozen documents, that
12 evidenced not just the plaintiff's knowledge of what
13 might be a maintenance issue, but plaintiff's knowledge
14 of construction defects, and the experts are saying, You
15 have a problem.

16 And we included -- the documents she gave to
17 Ms. Stein included Cowan's warning about the statute of
18 limitations. It included Buffington's warning about the
19 statute of limitations. She met personally at the house
20 with Larry Elkin, the engineer that issued the Campbell
21 Schneider report, about water intrusion.

22 She met with Milt Morgan where they talked
23 about that report. Mr. Morgan was a construction
24 manager. She met with a bunch of other people, and at
25 the end of her investigation, in October of 2008, she

1 prepared a report to the plaintiff, and in the report,
2 she said, The house has got problems.

3 Now, I advise the Court there was an HVAC
4 issue, air conditioning issue, going on in the house.
5 The system that my clients installed in 1994 had since
6 been replaced, and the plaintiff has not looked at my
7 client for any HVAC problems.

8 Ms. Stein wrote the plaintiff and said, I
9 believe the HVAC problem is maybe the biggest problem
10 with respect to the mold issue, but then she goes on.
11 She noted there were several existing construction
12 defects that were unrelated to the HVAC, including
13 drywall repairs needed under most roof valleys because
14 most of the roof is leaking; buckled hardwood flooring in
15 the media room; and high levels of moisture in the
16 basement area under the pool deck.

17 Ms. Stein suggested to the plaintiff that she
18 repair the residence and the plaintiff seek the advice of
19 legal counsel, and here's the real kicker: Stein went on
20 to note that the list of items for which Russ Cooper
21 Associates is responsible, including the roof, moisture
22 in the basement, and the window issues, are numerous, but
23 the bottom line is that the statute of limitations ran
24 out in May of 2007. This is Ms. Stein's report.

25 Ms. Stein made some repairs to the residence,

1 or Ms. Stein's company. Ms. Stein's company also spent
2 about \$200,000 updating a media room with audio and
3 visual equipment, and the plaintiff elected to do that
4 but ignored to make other repairs to address some of
5 these leaks. She later did more repairs down the road,
6 but in the face of all these problems, she was more
7 concerned about updating the VCR and the DVD player and
8 the TV than securing the home.

9 The plaintiff continued to complain about the
10 house and voice her frustrations, and, again, Ms. Stein
11 had recommended in her October 2008 report that she get
12 legal counsel. In the spring of 2009, after hearing the
13 plaintiff's complaints and what she wanted to do moving
14 forward, she recommended the plaintiff speak with
15 Mr. Lyles.

16 She didn't recommend that she speak with an
17 architect or an engineer or another forensic expert, she
18 recommended, You need to go get legal advice, and
19 specifically you need to talk to Mr. Lyles.

20 Mr. Lyles and the plaintiff and Ms. Stein met
21 at the house in March of 2009. As a result of that
22 meeting, plaintiff retained Mr. Lyles, and he contacted
23 an engineer, Skip Lewis, from the upstate, and --

24 THE COURT: Have we pretty well covered that
25 now? Mr. Lyles is involved in it at this time?

1 MR. BEST: Mr. Lyles is involved in it.

2 THE COURT: Mr. Lyles, be glad to hear you.

3 MR. LYLES: Thank you very much, Your Honor.

4 May I approach the bench?

5 THE COURT: Yes, sir.

6 MR. LYLES: I filed a memorandum yesterday, I
7 believe this morning. I'm handing up our memorandum and
8 a couple of cases. There is a case out of District Court
9 involving Centex Homes, and we also have handed up a copy
10 of a case called Holly Woods case, which is an HOA
11 statute of limitations case.

12 Mr. Best made a couple points is that I would
13 like to highlight. One is that this house was involved
14 with an absentee owner in the Allwins. They weren't here
15 very often. They raised their family here in the early
16 1990s, and even the early 2000's, but they were not here
17 very much at all, and they were relying principally on
18 people in Charleston to assist them with the maintenance
19 of the house.

20 The second thing I point out to the Court is
21 that Mr. Best just mentioned the work that Ms. Stein did
22 in 2008 to catalog and summarize the history of
23 maintenance and repair in the house. That was in a
24 period of time after Ms. Allwin's husband, Jim, died, and
25 she was trying to get her hands around the care and

1 maintenance of this house that he had primarily managed
2 from its construction all the way through 2007 when he
3 died.

4 THE COURT: What about when the insurance
5 company comes out and hires an expert and they file a
6 claim and they write you this extensive letter? Why
7 wasn't she placed on notice at that time?

8 MR. LYLES: Well, Judge, she was certainly
9 placed on knowledge, and I would concede she had
10 knowledge of needed repairs, and she arguably had
11 knowledge of construction defects in this home going back
12 some period of time, either directly or through
13 Mr. Allwin. We're not bringing a claim for those
14 conditions.

15 The Allwins spent, from 2000 to 2010, \$2
16 million repairing and maintaining this home. Some of it
17 might have gone to enhancements like media rooms. They
18 replaced an air conditioning system that was \$800,000,
19 but several hundred thousand dollars went to the repair
20 and maintenance of problematic conditions at the home,
21 just like the kind of conditions you mentioned when we
22 started this argument that occur naturally in a house
23 that's on the oceanfront.

24 We are not making a claim for any of that.
25 The two points I wanted to make before I address

1 Mr. Best's argument were these: This is a case involving
2 latent deficiencies. We are seeking to recover the cost
3 to repair latent and concealed conditions that were
4 discovered after 2011, not anything before then.

5 THE COURT: Well, after 2011, did any of
6 those conditions relate to the water damage and the mold
7 damage and the other problems she experienced all these
8 years?

9 MR. LYLES: There is a question about that,
10 and I don't know the answer to it. We listed an
11 affidavit in response to this motion for summary judgment
12 from Mr. Clements, our forensic expert, and in that
13 affidavit, he just said that he has uncovered, as part of
14 his investigation and repair of the house after 2011, 32
15 conditions that he said could not have been observed
16 before.

17 What they did is when they prepared this
18 house in 2011 they completely, what I call it,
19 deconstructed it. They removed the roof. They removed
20 all the siding on this 11,000 square foot house. They
21 removed this entire concrete deck that Mr. Best referred
22 to, and correct me if I'm wrong, it's about the size of
23 this courtroom. It's an enormous deck, and they also
24 removed significant portions of the interior drywall, and
25 as part of that effort, they discovered these 32

1 conditions that Mr. Clements says could not have been
2 discovered prior to doing that work.

3 And the question before the Court is this, I
4 think: The question before the Court is, did the
5 exercise of reasonable diligence by the Allwins require
6 them, in response to these isolated problems that
7 Mr. Best has told you about, did it cause them or were
8 they required to deconstruct their house in 2001, 2004,
9 2006? And I think the answer to that is a question of
10 fact for the jury. It's not an issue of law.

11 THE COURT: That may be, but how about the
12 fact that these engineers and, I guess, contractors kept
13 saying, Hey, they is what you need to do, and she
14 wouldn't do it, or he wouldn't do it, or whoever was in
15 charge?

16 MR. LYLES: That's not entirely true.
17 Mr. Best, I think, did a very fair job in the memorandum
18 of fleshing out the history of this project. We have
19 also submitted Ms. Allwin's affidavit in response to the
20 motion.

21 To say she did nothing is just not true.
22 Ms. Allwin and Mr. Allwin followed the advice of the
23 people that they had down here working on that house
24 throughout this period of time. Now, admittedly, there
25 were some people that said, You need to do more, or, You

1 need to investigate this, or you need to investigate
2 that, but in response to the problems that they had, they
3 followed the advice, which was often conflicting.

4 I focussed my memorandum on two different
5 things: He mentioned Buffington. There was a
6 disagreement between Mr. Buffington and Mr. Morgan about
7 what needed to occur in 2004 to address the problems.
8 Mr. Morgan said, I think you need to do X, Y, and Z.

9 Mr. Buffington, as Mr. Best has pointed out
10 to you, said, I think you need to do more, but they spent
11 almost \$400,000 doing what Mr. Morgan said they needed to
12 do. They followed advice. Admittedly, it was
13 conflicting advice, but they followed what they believed
14 to be the best advice that was available to them.

15 He said that -- Mr. Buffington said, You need
16 to replace the entire roof. Judge, that is a \$500,000
17 proposition on this house. So instead, they paid
18 \$100,000 paying a qualified roofing expert to go patch
19 the roof in the hopes that it would stop.

20 He mentions Ms. Stein. Again, 2008,
21 Ms. Stein's recommendations were, You have HVAC problems,
22 which Mr. Best has admitted are not an issue in this
23 lawsuit. That HVAC didn't apply to his client at all.
24 That dealt with the mold, and then Ms. Stein recommended
25 doing more repairs, which is what they did. I think that

1 she's paid Gamble Home Services a total of \$800,000 to do
2 repairs. To say that she did nothing is simply not true.
3 Did she always follow the right advice?

4 THE COURT: Once they did the deconstruction,
5 as you refer to it, of the house, what's the reason that
6 it couldn't have been determined by all these so-called
7 experts?

8 MR. LYLES: You mean previously?

9 THE WITNESS: Previously, yeah, right.

10 MR. LYLES: That's the issue in the case.
11 The issue in the case is, does the law require the
12 homeowner, in the face of isolated problems in 2001 or
13 2004 or 2008, to deconstruct the home, or is the
14 homeowner entitled to make a decision that is less
15 expansive and extensive than that, based on the advice of
16 their experts?

17 THE COURT: That's not my question. I mean,
18 what structural defects were found when they
19 deconstructed the house that couldn't have been
20 determined before? That's the question.

21 MR. LYLES: There are 32 defects listed by
22 Mr. Clements that he says could not have been found but
23 for the deconstruction.

24 THE COURT: Okay. My question is why?

25 MR. LYLES: Because they were hidden. They

1 were hidden behind the siding. They were hidden by the
2 roof. They were hidden underneath this massive concrete
3 deck, and they were hidden by the interior drywall.

4 In my memorandum, what you'll see is I
5 deposed Mr. Cooper, and I went through a series of
6 photographs with Mr. Cooper, and I said, Let me show you
7 the photographs of how the building wrap is applied to
8 this building.

9 And he said, That's bad.

10 And I said, Yes, it is, and wouldn't you
11 agree with me that it couldn't be seen absent removing
12 all the siding?

13 And he said, Yep, I agree.

14 And we went through item after item after
15 item about that, and so he agreed that these conditions
16 were hidden. They were latent conditions. Could they
17 have been discovered in 2001 or 2004 if all the siding
18 had been removed? The answer would be yes, but I don't
19 think that Ms. Allwin was required to do that in 2004,
20 and I think that that's a question of fact for the jury.

21 And just -- in closing, I would refer the
22 Court to a couple cases. Mr. Cooper has cited two cases
23 in support of his motion for summary judgment. He cited
24 Dean versus Rusconi, which is a trespass case. Doesn't
25 involve latent deficiencies, and he expressed that that

1 involved latent deficiencies, and he cited a case called
2 Barr vs. City of Rock Hill. Factually a very different
3 case than what we have.

4 In the Barr vs. City of Rock Hill case, which
5 I'm sure you've seen before, Ms. Barr is notified by a
6 termite inspector for three consecutive years that she
7 has high moisture levels. In the opinion, the Court
8 notes specifically: In response to this, she neither
9 investigated nor repaired. Ms. Allwin did both. In
10 addition, I don't know that the Barr case involves latent
11 deficiencies.

12 We have cited three cases, which I think bear
13 directly on point, two of which I think are factually
14 very similar to our case: We cite the Santee Portland
15 Cement case, which involved latent deficiencies in silos,
16 I believe, and then we cited two other cases that I
17 handed up to you: The Centex case, Judge Williams's
18 decision, where in a very similar type problem, Judge
19 Wooten was required to determine whether or not summary
20 judgment was appropriate based on the statute of
21 limitations where a general contractor had notice of
22 prior defects caused by a sub, had repaired those
23 defects, and then later sued the sub after the general
24 contractor had sued, and he found the statute of
25 limitations in that case and the general contractor's

1 response to the known problems was a question of fact for
2 the jury.

3 And the final case is the Holly Woods case,
4 which I think is most notably on point in here. In the
5 Holly Woods case, which is a Court of Appeals decision, a
6 homeowner's association that was constructed in 1991 had
7 notice of problems in '91, or '94, I think, fixed the
8 problems themselves, didn't sue anybody; had notice of
9 problems in 1998 and 2000, fixed the problems themselves,
10 didn't sue anybody; then got notice of other problems in
11 2002 and sued in 2005, and the Court of Appeals held that
12 whether or not the damages and the issues in the 2005
13 lawsuit were the same as those that had been found in
14 1991, 1994, and 1998 was a question of fact for the jury,
15 and I think that's what we've got here.

16 They may argue in front of the jury that,
17 gee, whiz, some of these issues that Mr. Clements says
18 were latent were actually things that they should have
19 about in 2005, 2006. We're going to take the position --
20 and we're talking about problems up on the second floor,
21 way up, not this pool deck anymore -- and we're going to
22 be able to argue that they're not the same problems, but
23 a jury should get to decide that.

24 THE COURT: Okay. Thank you very much. Let
25 me hear from -- what's different? You said you had some

1 additional grounds. Let me hear them real quick. I'm
2 going to have to read all this and take it under
3 advisement.

4 MR. SPERRY: Thank you, Your Honor. I'm just
5 going to try to focus on the statute of limitations.
6 I've got a statute of repose argument. That's all in my
7 brief. I filed this last night or this morning. Here's
8 a copy of my memorandum.

9 So the primary difference is based on the
10 fact that my client, Reno, the architect, was not added
11 to the lawsuit until October 8, 2014, more than a year
12 after everybody else was a party, so some things had
13 happened between when some of the folks were added and my
14 client was added that continue to trigger the statute of
15 limitations. Some additional things happened.

16 One of the critical things that occurred, and
17 it's attached as an exhibit to my memorandum, is a
18 February 23rd, 2011 letter from Mr. Lyles, a copy of his
19 filing to my client, and in this letter he's putting my
20 client on notice that he thinks he's got a claim against
21 my client. That February 23rd, 2011 letter, the lawsuit
22 was filed October 8, 2014, three years and eight months
23 or so after the letter, and some of the highlights of the
24 letter, it says that investigation has revealed numerous
25 and significant deficiencies related with the home.

1 These deficiencies relate to the design and
2 installation of the doors and windows, waterproofing and
3 sealing, flashing installation, and other deficiencies
4 which have led to significant damage and what's prevented
5 Ms. Allwin and her husband from using the home.

6 The letter goes on to say that Ms. Allwin
7 faces a significant financial burden, including the cost
8 to complete a thorough investigation to the home, so
9 she's acknowledging that she has to continue to do a
10 thorough investigation, and she's already aware that
11 she's got a claim, and what inevitably would be very
12 expensive, both the investigation and the repairs
13 associated with the damages.

14 The letter goes on to say that if my client
15 refuses to investigate and correct the conditions at the
16 project in a suitable manner, Ms. Allwin would be forced
17 to deal with the issues on her own and assert any legal
18 rights for everything she may have against my client.
19 She had some legal rights at some point. I think they
20 extinguished a long time ago, but to the extent that they
21 didn't extinguish a long time ago, they certainly began
22 to run at the time my client received a letter.

23 THE COURT: What was the date of the letter?

24 MR. SPERRY: February 23rd, 2011.

25 THE COURT: Okay.

1 MR. SPERRY: And it's the first exhibit in my
2 memorandum, so that's one of the primary distinctions
3 between my motion and Mr. Best's motion. I adopt all his
4 motions and all his reasons. There would certainly have
5 been notice --

6 THE COURT: How many months after that
7 letter?

8 MR. SPERRY: It was about three years and
9 eight months.

10 THE COURT: Three years and seven-and-a-half
11 months, eight months. Okay. Go ahead. Anything else?

12 MR. BEST: Yeah. Actually, attached to --
13 and I'm not sure you've been handed this or not, but
14 attached to Mr. Lyles's memorandum is an affidavit that
15 Maria Allwin signed and an affidavit that Ross Clements
16 had signed, the expert signed.

17 Attached to Maria Allwin's affidavit is a May
18 2011 report, and the May 2011 report sets out complaints
19 about issues with the house, a lot of complaints that
20 you've already heard: Flashing, waterproofing, roof
21 issues; basically what is also being alleged in the
22 complaint. All these things are now being alleged in the
23 complaint, and the May 2011 report, it's three years and
24 five months before my client received anything in this
25 lawsuit.

1 So you have a letter, you have a report, and
2 then you have the allegations in the complaint that were
3 repeatedly said in the letter and the report.

4 THE COURT: What is the date of the report?

5 MR. SPERRY: May 2011, May --

6 THE COURT: Well, does the letter say that
7 these are construction defects or design defects or are
8 those distinguished? You know, flashing, I mean, are
9 they saying it was installed improperly or the architect
10 designed it improperly? Which is it?

11 MR. SPERRY: Well, in the letter to my
12 client, it's both design and construction issues.

13 THE COURT: Was he hired to monitor the
14 construction?

15 MR. SPERRY: He was. So that's what he was
16 being sued for. He's being sued for both design issues
17 and for failing to observe construction defects. He's
18 considered for both aspects.

19 And if you look at the complaint, the
20 allegations of the complaint against my client mirror
21 both what was said in the letter and what's in Mr.
22 Clements's report. And then, also, I wanted to say too
23 that in Ms. Allwin's affidavit, she talks about a meeting
24 that took place with my client in 2011, and that meeting
25 took place between the February 2011 letter and the May

1 2011 report, and in that meeting she says that my client
2 met with her. They went out and met, and he disagreed
3 with what he was being told.

4 We actually did disagree with some of the
5 facts in this affidavit, but I'm just assuming that's the
6 truth. So reading from her words that he disagreed with
7 what her position was on certain issues and that he
8 believed that it was maintenance and most of it was
9 isolated repairs, to address those, and he represents --
10 SRW, my client's representative, told her in 2011 there's
11 no evidence of comprehensive systematic destruction
12 because, number one, of the extensive scope of work
13 recommended by Fuller, which is Ross Clements's company,
14 that's her expert.

15 So she says that, but then in the very next
16 paragraph, she says, Notwithstanding SRW's advice and
17 recommendations, my client's advice and recommendation --
18 which, again, we have some differences of opinion, is
19 what we said, but I'm just accepting this as true for
20 purposes of this hearing -- notwithstanding SRW's advice
21 and recommendation, I elected to follow the full repair
22 recommendation.

23 She kept doing what she was going to do
24 anyway, despite my client meeting with her. So there is
25 really no equitable estoppel on the statute of

1 limitations. Statute of limitations began to run. It
2 ran a long time ago, and it continued to run from the
3 February 2011 letter. It continued to run from the May
4 2011 report, and it was never stopped.

5 There was never any stopping of it running
6 because to the extent that my client told her anything
7 she disagreed with, she clearly didn't rely on it because
8 she continued to go forward with what Mr. Clements told
9 her to do.

10 THE COURT: All right.

11 MR. SPERRY: That's really it in a nutshell.
12 Everything else is spelled out in the brief. I do
13 have -- actually, I've got three cases I would like to
14 hand up to you, Your Honor. It's an unpublished opinion,
15 but I think it really --

16 THE COURT: I don't want to see it if it's
17 unpublished. Okay?

18 Mr. Lyles, what's your position? Is it also
19 deconstruction?

20 MR. LYLES: With respect to the architect?

21 THE COURT: Yeah, with the architect.

22 MR. LYLES: Number one, I don't think my
23 letter is particularly pointed about design deficiencies.
24 I mean, we are talking about problems in the home, and
25 we're seeking their assistance in 2011, and just in all

1 candor, Judge, you hit on this, that this is a case
2 that's not really about defective design, and we have
3 learned over the years what this case is about is
4 contract administration and a poor job in contract
5 administration, and just, in all candor, that became
6 evident to Ms. Allwin, and it became evident to her
7 experts as the deconstruction and the repair of the
8 house, which totalled \$3 million, proceeded, and that's
9 what led us to bring the architect after the fact.

10 THE COURT: Thank you all very much. I
11 appreciate it. We've got a lot of reading to do. Thank
12 you very much.

13 - - -

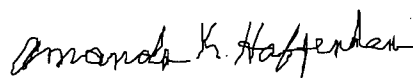
14 (Whereupon, the proceedings were concluded.)

15 - - -

I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 15th of September 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 20, 2016



Circuit Court Reporter

IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DEPOSITION OF MARIA ALLWIN
VOLUME 1

MARIA ALLWIN,

Plaintiff,

vs.

RUSS COOPER ASSOCIATES, INC.,
and BUFFINGTON HOMES, L.P.,

Defendants.

BUFFINGTON HOMES, L.P.,

Third-Party Plaintiff,

vs.

AIR FASTENERS OF CAROLINA, INC., ALBRECHT
ENVIRONMENTAL, INC., ALL POINTS CONSTRUCTION,
INC., BERLIN G. MYERS LUMBER CORP., BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP, LLC f/n/a
BUILDERS FIRSTSOURCE SOUTHEAST GROUP, INC.,
FRANK LEIGH CONTRACTORS, INC., PATRIOTS DRYWALL,
INC., PICQUET ROOFING, INC., PLANTATION
CONSTRUCTION, SPRAYSEAL FOAM INSULATION, L&L
SERVICES, LLC, LONEY DAVIS, SUPERIOR SURFACES OF
CHARLESTON, INC., and TISCHLER UND SOHN (USA)
LIMITED,

Third-Party Defendants.

JAY DEITZ & ASSOCIATES, LTD.
New York, New York

January 26, 2015

1 10:09 AM

2

3 DEPOSITION of MARIA ALLWIN, the
4 Plaintiff in the above-entitled action, held at
5 the above time and place, pursuant to Notice,
6 taken before Carol Vilardi, a shorthand reporter
7 and Notary Public within and for the State of New
8 York.

9

10

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2

EXAMINATION
BY MR. BEST

8

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1 MARIA ALLWIN,
2 the witness herein, having first been duly sworn
3 by a Notary Public of the State of New York, was
4 examined and testified as follows:

5

6 EXAMINATION

7 BY MR. BEST:

8 Q. State your name for the record, please.

9 A. Maria Allwin.

10 Q. State your address for the record,
11 please.

12 A. One Central Park West, New York, New
13 York 10023.

14 Q. Ms. Allwin, Hi. I'm Dean Best. I
15 represent Russ Cooper Associates. We met just a
16 few minutes ago. We're taking your deposition
17 pursuant to Notice under the South Carolina Rules
18 of Civil Procedure. Under those rules I'm
19 charged with telling you that if at any time
20 during the deposition you have any question or
21 concern about the questions being asked of you,
22 now that the deposition has started, direct those
23 questions, not to Mr. Lyles but to the attorney
24 asking the question. We'll be happy to answer
25 your question, resolve your problem, rephrase it,

1 whatever we need to do to get you through it.

2 Now that the deposition has started,
3 I'm charged with cautioning you that the
4 attorney-client privilege is not in play. It is
5 not in effect. That's pursuant to the South
6 Carolina rules. If you speak to Mr. Lyles about
7 the substance of your testimony while the
8 deposition is ongoing, we have the right to ask
9 you about that. It's a warning. It's a courtesy
10 warning. Are you comfortable?

11 A. Yes.

12 Q. Do you need anything before we start?

13 A. No.

14 Q. It's not a marathon. If you need to
15 take a break, stretch your legs, walk down the
16 hall, just let me know, and we will do that.

17 A. Okay.

18 MR. BEST: We are considering the
19 weather, and for you guys on the phone in
20 South Carolina, there's a major concern
21 that we may not be able to have the deposition
22 tomorrow, but we can speak more to that later,
23 and I hope we can go as long as we can today and
24 get through the majority of this and be done at
25 least for a little while.

1 Q. You stated your full name and your
2 address. Who lives there with you at Central
3 Park West?

4 A. My daughter.

5 Q. And what is her name?

6 A. Katrina.

7 Q. You have a son also. Christopher?

8 A. Yes.

9 Q. How old is Christopher?

10 A. 29.

11 Q. Where does he live?

12 A. On 70th Street.

13 Q. And Christina, how old is she?

14 A. Katrina, K-A-T-R-I-N-A. She is 28.

15 Q. What do Katrina and Christopher do?

16 A. Christopher is an investment banker with
17 a private shipping company and Katrina works for
18 a marketing and PR firm here in New York.

19 Q. How long have you lived at Central Park
20 West?

21 A. Five years.

22 Q. Any other children?

23 A. Yes.

24 Q. What are their names?

25 A. Michael.

1 Q. Where does Michael live?

2 A. Right here. 55th Street in New York.

3 Q. And how old is Michael?

4 A. 25.

5 Q. What does he do?

6 A. He is an investment banker at Deutsche
7 Bank.

8 Q. That's all your children?

9 A. Yes.

10 Q. Tell me a little bit about your
11 background, where you grew up, your education and
12 back history.

13 A. I grew up here in New York City. I work
14 at the Trevor Day School, which is an independent
15 day school here in Manhattan. I'm assistant to
16 the head of school. I have three children.

17 Q. I'll help you out. Where did you go to
18 school here in New York?

19 A. I went to Hunter College and NYU
20 Business School.

21 Q. What degree did you receive?

22 A. I received a BA degree.

23 Q. And what year was that?

24 A. I have no idea.

25 Q. Can you give me a decade?

1 A. Someplace in the '70s. '73.

2 Q. Did you work after that?

3 A. Yes.

4 Q. What did you do?

5 A. I worked at Morgan Stanley, an
6 investment bank firm.

7 Q. And what did you do there?

8 A. I was an administrative assistant.

9 Q. How long did you work there?

10 A. I worked there maybe, I don't know,
11 seven years -- six, seven years.

12 Q. And where did you work after that?

13 A. I worked at home.

14 Q. Is that when you married Mr. Allwin?

15 A. Yes.

16 Q. When did you marry Mr. Allwin?

17 A. 1985.

18 Q. And Mr. Allwin has passed away, I'm
19 sorry to say.

20 A. Yes.

21 Q. When did he pass away?

22 A. October 19, 2007.

23 Q. What did Mr. Allwin do?

24 A. He was in investment banking.

25 Q. Who did he work for?

1 A. He had his own private firm, Aetos
2 Capital.

3 Q. Aetos. Thank you very much.

4 What other properties do you own
5 right now besides the home in Kiawah that we are
6 here about? And do you own a condo or a co-op?
7 I'm not sure --

8 A. No. I own a house in Greenwich,
9 Connecticut and I have an apartment in River
10 Creek, Colorado.

11 Q. The apartment in Colorado, do you rent?

12 A. No. I own an apartment in Colorado.
13 It's a co-op.

14 Q. And do you remember the address for
15 that?

16 A. One Beaver Creek.

17 Q. And the house in Connecticut, the
18 address for that?

19 A. 116 Clapboard Ridge Road.

20 Q. And the property here is a condo,
21 apartment, house?

22 A. It's a rental apartment.

23 Q. How long have you rented that?

24 A. You asked me that. Five years.

25 Q. Actually, how long have you lived there?

1 A. Well, I've lived in the apartment five
2 years that I rent.

3 Q. In the last 20 years, have you owned any
4 other properties, properties that you don't own
5 anymore?

6 A. Yes.

7 Q. What are those?

8 A. I owned a house in Chappaqua, New York.

9 Q. Do you recall the address of that?

10 A. 275 North Bedford Road.

11 Owned a house in Greenwich, 65 Upper
12 Cross Road. We owned some property -- investment
13 property. At this time I don't know what those
14 addresses are.

15 Q. Which house is your primary residence?
16 Is that here in Manhattan?

17 A. Uh-huh.

18 Q. You have to say yes for the record.

19 A. Yes.

20 Q. And I'm sorry. I should have told you,
21 please try to say yes or no as opposed to a nod
22 or uh-huh.

23 A. Okay. Thank you for reminding, yes.

24 Q. And I may remind you during the course
25 of our discussions, so I'll try to help you out.

1 Before, say, 2010 or so, what was
2 your primary residence?

3 A. The Upper Cross Road house was the
4 primary residence.

5 Q. And I'm sorry. You still own that?

6 A. I do not. I sold that.

7 Q. How long was that your primary
8 residence?

9 A. That was the primary residence '98 to
10 2011, so whatever that is. 15 years.

11 Q. Before 1998 or so, what was your primary
12 residence?

13 A. Then we had a rental house on Zaccheus
14 Mead Lane, 84 Zaccheus, and then before that --

15 Q. What city is that?

16 A. Greenwich, Connecticut.

17 And then before that we had 275 North
18 Bedford Road in Chappaqua, New York for about 15
19 years.

20 Q. I'm trying to move as quickly as
21 possible given the time constraints.

22 What was the attraction to Kiawah?

23 A. Well, have you ever been there?

24 Q. A time or two.

25 A. Well, then you know what the attraction

1 is. It's a beautiful beach. It's a beautiful
2 community as the ARB controls the environment
3 there, and I think that was attractive, and
4 there's great golf, although I'm not a golfer.

5 Q. Was Mr. Allwin a golfer?

6 A. Yes.

7 Q. I am assuming that you went to Kiawah
8 the first time on vacation.

9 A. No. That's incorrect. We went to
10 Charleston and rented a car, a little sports car,
11 and drove around and ended up on Kiawah, and we
12 went back again, and then we went back and we
13 bought the lots.

14 Q. Did you work with a realtor?

15 A. We worked with the Kiawah Island Resort
16 people.

17 Q. Was there a particular realtor?

18 A. Cynthia Noble and Pat McKinney.

19 Q. I take it you expressed an interest, and
20 Ms. Noble gathered information on lots or houses
21 and sent that to you and your husband?

22 A. I don't know. I mean, we expressed an
23 interest, and we wanted something on the beach,
24 and they, I'm sure, followed up quickly.

25 Q. Do you recall if you were focused on a

1 house or lot or --

2 A. Oh, no. We wanted a lot. We were
3 building our dream house on the beach, which is
4 what you see there (indicating).

5 Q. Sure. Had you already contacted the
6 architect?

7 A. No.

8 Q. Ultimately you contacted Shope Reno
9 Wharton. How did you hear about that, know about
10 that?

11 A. I don't remember.

12 Q. Did you interview a series of architects
13 before selecting Shope Reno Wharton?

14 A. I don't remember.

15 Q. Ultimately you entered into a contract
16 --

17 A. Yes.

18 Q. -- with Shope Reno Wharton to design
19 your home.

20 A. Yes.

21 Q. And one other thing I didn't talk to you
22 about, I will try diligently to let you finish
23 your answer, and if you will let me finish my
24 question. The key is to give her time. She
25 can't take two people down at one time.

1 Do you have a written contract with
2 Shope Reno Wharton?

3 A. I don't know.

4 Q. Who was the lead architect at Shope Reno
5 Wharton that designed your home?

6 A. Bernard Wharton.

7 Q. And I take it you met with Mr. Wharton.

8 A. Yes. We did.

9 Q. What did you and your husband tell
10 Mr. Wharton that you wanted?

11 A. We wanted a family house on the beach
12 with wide open space and a view of the beach.

13 Q. Am I correct in recalling the house sits
14 on two lots?

15 A. Yes. You are correct.

16 Q. Do you recall how much you and your
17 husband paid for those lots?

18 A. I do not. Do you have that then? Does
19 anyone know?

20 Q. Not on me, ma'am. No. I can get you
21 that information.

22 A. That's okay.

23 Q. How did you select a builder?

24 A. Builder was a process we went through
25 with Shope as well as with the people on Kiawah,

1 who became our friends.

2 Q. You are talking about Ms. Noble?

3 A. No. I'm talking about Mr. McKinney and
4 some other friends my husband had in business,
5 business acquaintances, and they -- we went
6 around and saw houses, and they identified the
7 builders on Kiawah, and they subsequently gave us
8 ideas of how they would approach those drawings
9 that Shope drew.

10 And at the request of Shope, we
11 interviewed Russ Cooper, because he had just
12 finished a house with Russ and trusted Russ to
13 read his drawings as he drew them, because he is
14 so complicated -- and you can put that in quotes.
15 He introduced us. Russ seemed to be the person
16 who could read and understand what Shope and what
17 the SRW people were trying to achieve with the
18 house.

19 Q. Do you recall interviewing other
20 builders or speaking with other people?

21 A. Yes. We spoke with other builders. I
22 do not know who they were.

23 Q. Did Pat McKinney recommend Russ Cooper?

24 A. No.

25 Q. Who did he recommend --

1 A. I don't know. I didn't even know that
2 Pat did. He was just around to help us.

3 Q. The business associates of your husband,
4 had they built homes at Kiawah?

5 A. No. They are from Charleston. They
6 don't stay on Kiawah. That's just for the
7 northern people to come down.

8 Q. Do you know if any of the locals,
9 associates your husband had, recommended any
10 particular builder?

11 A. I do not know that.

12 (Exhibit No. 1 was marked for
13 identification.)

14 Q. We have marked as Exhibit 1 an article
15 from the May 1997 Architectural Digest. It's an
16 article about your home. It's not uncommon,
17 given this is an architectural magazine, that
18 architects will -- I'm going to go so far as to
19 say solicit an article on houses they are proud
20 of. Who was the impetus behind this article?

21 A. I have no idea.

22 Q. Were you interviewed or was your husband
23 interviewed for this article?

24 A. No.

25 Q. Did you give permission for the article?

1 A. Yes.

2 Q. Who contacted you about the article?

3 A. I have no idea.

4 Q. Someone at SRW?

5 A. SRW and -- I really don't know. It was
6 a collaborative effort on everybody's part.

7 Everybody was very proud of the house.

8 Q. Sure. The CO date, the building permit
9 said this house is finished and can be lived in
10 was May of 1994, May 18, 1994.

11 A. Yes.

12 Q. Were you there in May of 1994?

13 A. I don't know. Was I?

14 Q. Ma'am, I don't know. That's why I am
15 asking.

16 A. Oh, no. I don't know.

17 Q. Russ Cooper called or e-mailed or at
18 some point informed you that your house was
19 finished. How quickly did you and your family go
20 down there?

21 A. We went down over the summer. I mean,
22 my children have school, and we went down after
23 school.

24 Q. How long were you down or how frequently
25 would you go that first summer?

1 A. That first summer we were not there very
2 frequently. We went and we traveled in Europe,
3 so we did not go to Kiawah.

4 Q. When was the first time you went to the
5 house?

6 A. I don't know.

7 Q. Are you telling me you did not go to the
8 house in the summer of 1994?

9 A. No. I'm saying we didn't spend any time
10 there. We went there, but we left, and we went
11 on a tour of Europe. So we didn't spend any
12 time.

13 Q. How long were you in Europe?

14 A. Three or four weeks.

15 Q. Do you think you were at the house two
16 weekends, three weekends?

17 A. Yes. Maybe two or three weekends.

18 Q. The summer of '94?

19 A. Yes.

20 Q. How about the fall?

21 A. No.

22 Q. So in 1994, after the home was finished,
23 you think you were there two or three weekends
24 possibly?

25 A. Right. Maybe -- yes.

1 Q. How about in 1995? How frequently were
2 you or someone in your immediate family there?

3 A. I don't know.

4 Q. And I realize it's been a while.

5 A. Yes.

6 Q. Can you give me a ballpark? Do you
7 think you were there less than 30 days, less than
8 20 days?

9 A. Yes. Less than 30 days for the course
10 of the year, yes.

11 Q. Was there any type of pattern that you
12 and your family had to go down there? Once a
13 month or --

14 A. No.

15 Q. -- maybe in the summertimes more
16 frequently?

17 A. We would go after, I think after that
18 for the children's long weekends at school --
19 Martin Luther King weekend or President's weekend
20 -- and then at some point, I would guess maybe by
21 1997 maybe, I don't know, I spent the summers
22 down there, and I would spend through Labor Day
23 on Kiawah.

24 Q. So from maybe after school let out --

25 A. After school in June and through the

1 summer.

2 Q. And you were full-time?

3 A. Yes.

4 Q. And that would be the summers of?

5 A. I don't -- I mean, I'm thinking. I
6 don't know what years that started.

7 Q. Late '90s?

8 A. Maybe late '90s.

9 Q. How many summers did you do that?

10 A. Maybe eight summers.

11 Q. Consecutively?

12 A. Yes.

13 Q. So maybe through 2005, 2006?

14 A. Not that far, no. By 2005 we were done.

15 2003 my son graduated. So 2002. Once the kids
16 are gone, there's no reason to go there.

17 Q. Sure.

18 A. So we didn't spend the summers. They
19 were all working.

20 Q. And Michael is the youngest?

21 A. And he lost out on Kiawah summers.

22 Q. When did he graduate high school?

23 A. He graduated high school in -- Jim died
24 in 2007. So he graduated in 2008, June of 2008.

25 Q. And when you say when the kids are gone,

1 you mean when they go to college?

2 A. Yes.

3 Q. Why do you say Michael missed out on
4 Kiawah summers?

5 A. Because by 2006 I wasn't going down to
6 spend the summers.

7 Q. But he had been previously with you
8 during the summer?

9 A. Yes.

10 Q. When you went down and spent the summer,
11 did the kids come with you?

12 A. Yes.

13 Q. And Jim, I guess, was back and forth
14 with work?

15 A. Yes..

16 Q. Did you have anybody looking after the
17 house these first few years --

18 A. Yes.

19 Q. -- when you weren't there?

20 Who was doing that?

21 A. Bob and Mary Lou Cowan.

22 Q. I understand the Cowans lived in your
23 house for a while while they were building
24 theirs, right?

25 A. Yes.

1 Q. When did they live in your house?

2 A. I don't recall.

3 Q. The earliest reference that I have where
4 Bob Cowan is looking over your house and possibly
5 living in it is 1999. And right now I am
6 interested in when the house was finished in '94
7 until when I know Mr. Cowan was in the house,
8 which was in 1999.

9 Did you have a property manager or a
10 firm who would come inspect or someone local
11 looking after the house and going through it
12 periodically to make sure everything was okay?

13 A. I don't recall who it was. We did have
14 a property company on site, yes.

15 Q. It was not Gamble?

16 A. It was not Gamble. I don't remember who
17 it was.

18 Q. Was it through Kiawah Island Real
19 Estate?

20 A. I don't recall who it was.

21 Q. Was your husband the main contact for
22 that firm?

23 A. Yes.

24 Q. Did you have any dealings with that
25 firm?

1 A. I didn't have any dealings with them. I
2 don't remember. I have to look that up.

3 Q. I think in 1995 you said you were
4 probably at the house less than 30 days. '96,
5 '97, recognizing at some point you spent the
6 summers there --

7 A. Yes.

8 Q. -- and you think maybe you started
9 spending the summers there '99 to 2007.

10 A. Not until 2007.

11 Q. I'm sorry. You said 2002, 2003 earlier.

12 A. Yes.

13 Q. So you maybe spent the summers there
14 four or five years?

15 A. Yes.

16 Q. Going up to that early 2002 timeframe,
17 including the times you spent the summers, did
18 you notice any problems with the house?

19 MR. LYLES: Object to the form of
20 the question.

21 Q. During the course of my examination, the
22 other attorneys may -- in here and the other
23 attorneys -- make an objection. If you
24 understand the question, just ignore that
25 objection and answer the question. If you'd like

1 me to rephrase?

2 A. Yes. Would you rephrase the question.

3 Q. Prior to 2002, when you stopped spending
4 the summers in the house, did you notice anything
5 about the house that concerned you?

6 MR. LYLES: Objection to the form
7 of the question. Go ahead.

8 A. I don't recall.

9 (Exhibit No. 2 was marked for
10 identification.)

11 Q. I hand you Exhibit Number 2, which is a
12 Tischler Und Sohn invoice to Bob Cowan.

13 A. Yes.

14 Q. It's dated July 17, 1998. It's for the
15 replacement of one pane bent glass. The invoice
16 is directed to Bob Cowan at the Kiawah Island
17 Community Association, 20 Kestrel Court. Was Bob
18 an officer in the Community Association or was
19 this his home address?

20 A. I don't know what Bob was, and I don't
21 remember his home address.

22 Q. Was Bob living in your house in July
23 1998?

24 A. I don't remember that.

25 Q. How long did Bob and Mary Lou Cowan live

1 in your house?

2 A. I don't remember.

3 Q. And I appreciate it. It's --

4 A. I'm sorry. I just don't remember.

5 Q. How did you know Bob and Mary Lou Cowan?

6 A. I think Cynthia Noble introduced us as
7 people that could help us with cleaning and
8 knowing other people on the island.

9 Q. Did they ask you if they could live in
10 your house while they were building a house or
11 did Cynthia or did someone else broker that?

12 A. No. It wasn't a brokered thing.

13 Q. How did that come about?

14 A. I think I offered it to them. Their
15 house was not done. They sold their house. They
16 didn't have a place to stay and certainly the
17 Kiawah house was open, and I said, well, just
18 stay there, and when we come for the one day we
19 are down here, you guys can just go stay
20 someplace else. I did that a lot. The house was
21 vacant, and I let people stay there.

22 Q. Were Bob and Mary Lou looking after the
23 property prior to that period they were living in
24 it?

25 A. I don't know.

1 Q. How frequently was the house used by
2 someone other than your immediate family?

3 A. It was not. There was immediate family
4 members staying there.

5 Q. I'm sorry. I think you just told me you
6 would offer the house to other people to use.

7 A. Yes. I offered, but nobody really did
8 it.

9 Q. So aside from the Cowans and Vice
10 President Biden --

11 A. Right.

12 Q. -- and your immediate family, no one
13 else has used the house?

14 A. Yes. That's true. My immediate family
15 -- who did you mean by immediate family? My
16 brother. Do you mean that? Relative?

17 Q. I mean, you and Mr. Allwin and your
18 three children and their families, if they had
19 them.

20 A. Oh, well, then my brother used the house
21 a few times. I think that was it. My brother
22 and his family.

23 Q. What is your brother's name?

24 A. Eddie Georgalas.

25 Q. Spell his last name.

1 A. G-E-O-R-G-A-L-A-S.

2 Q. And where does he live?

3 A. In New Jersey.

4 Q. Do you know the street address or a
5 city?

6 A. Holmdel, New Jersey.

7 Q. Do you know that this company, Tischler
8 Und Sohn referenced in Exhibit 2, do you know
9 that they manufactured the windows in your house?

10 A. Yes. I know that one.

11 Q. Were the windows under any type of
12 service agreement or did you have any type of
13 agreement with Tischler Und Sohn where they would
14 go and come back periodically to maintain --

15 A. I don't know.

16 Q. -- or inspect the windows? Let me just
17 finish. And your answer is you don't know?

18 A. Yes.

19 Q. In handwriting there's a notation, paid
20 July 23, 1998, with the check number. Do you
21 know whose handwriting that is?

22 A. I do not.

23 Q. At the bottom there are some dates and
24 some handwritten notes. Do you know --

25 A. I do not.

1 Q. Do you know why a pane of glass was
2 being replaced in 1998?

3 A. I do not remember.

4 Q. And you don't know if Tischler Und Sohn
5 or anyone was performing any type of routine
6 inspection or maintenance of the windows in 1998?

7 A. I don't remember. I don't know.

8 Q. The company you think might have
9 provided maintenance, did they also inspect the
10 house periodically?

11 A. Yes.

12 Q. How often did this company inspect the
13 home?

14 A. Gamble came out, I think once a month or
15 --

16 Q. I'm talking about pre Gamble.

17 A. Oh, I don't know. I don't know.

18 Q. This would be in the '90s?

19 A. I don't know.

20 Q. Are you confident there was a company?

21 A. Yes. I am.

22 Q. Do you think it was a property
23 management company or do you think it was just
24 some local person?

25 A. I don't remember what we did.

1 (Exhibit No. 3 was marked for
2 identification.)

3 Q. I hand you Exhibit Number 3, and you are
4 welcome to take a look at that. Have you seen
5 this document before?

6 A. No.

7 Q. I'll point out some Bates numbers at the
8 bottom. It's Allwin 3, 4 and 5. I represent to
9 you that these are documents that you produced
10 through your attorney in response to discovery
11 requests.

12 A. Okay.

13 Q. So my assumption is that these documents
14 came from your file and the letter is addressed
15 to you. Do you believe you may have seen it in
16 1998?

17 A. I may have seen it, yes.

18 Q. This is a letter from Bob and Mary Lou.
19 That would be the Cowans?

20 A. Yes.

21 Q. Do you believe they were living in your
22 house in February of 1998?

23 A. I don't know.

24 Q. There's some handwriting up at the top.
25 There's a check mark and the name Allan Shope.

1 Is he the architect?

2 A. Yes.

3 Q. Do you know why that's there or whose
4 handwriting that is?

5 A. I don't know.

6 Q. Also, there's some handwriting in the
7 right margin. Is that Mr. Allwin's handwriting?

8 A. Yes.

9 Q. Can you decipher Mr. Allwin's
10 handwriting?

11 A. Hardly.

12 Q. Can you give that a try?

13 A. Yeah. This looks something about Allan,
14 R.C. is Cowan.

15 Q. Or maybe Russ Cooper?

16 A. Russ Cooper. GM, HVAC

17 Q. You are moving to the second page?

18 A. Do you not want me to?

19 Q. No. You can do that. I'm just making a
20 note for the record, because there is a note in
21 the left margin. I think it says, Bob roofer,
22 Roofer something, mid job.

23 A. Yes. Something mid job.

24 Q. Was there a change in roofers during
25 construction of the house?

1 A. I don't know.

2 Q. How often did you come down during
3 construction of the house?

4 A. In the beginning when the house was
5 being built, are you asking then?

6 Q. Yes, ma'am.

7 A. Every few months. I went down every few
8 months.

9 Q. Where did you stay?

10 A. We rented a house. We rented something
11 on Turtle Point once. One time we stayed -- a
12 few times we stayed at the Inn. Nothing else.

13 Q. During the construction of the house,
14 how often do you think that you came down?

15 A. Maybe in the two years, five times.

16 Q. Do you remember what stages of
17 construction the house was in when you came down
18 to see it?

19 A. The first time was very fun. It was
20 just dirt, and they had dirt piles 18 feet so
21 that you could see the view. The second -- when
22 we came down, it was platformed, you know,
23 whatever it is, you can walk on it.

24 Q. There were no walls, is that what you
25 are saying?

1 A. No. Another time we came, and I think
2 the pool was going in and then once or twice when
3 the walls were up.

4 Q. How about the architect? How often did
5 the architect come during construction?

6 A. The architects I understand went every
7 month.

8 Q. Do you know what contract administration
9 is?

10 A. No.

11 Q. Obviously you hired SRW to design your
12 home.

13 A. Yes.

14 Q. But then there is a service called
15 contract administration where during the actual
16 construction the architect will make site visits
17 to perform a variety of tasks; in other words, it
18 might be to actually inspect the work, to review
19 pay applications, to confirm that the work that
20 the general contractor is billing you for has
21 been done and done correctly.

22 What type of contract administration
23 services did SRW provide?

24 MR. WINTON: Objection.

25 Q. Or did they? Because you are saying

1 they went down every month.

2 A. I assume they went down for a reason as
3 well. We got a bill from them, from Russ Cooper,
4 you know, saying whatever you owe us, and they
5 always signed it, they stamped it, and we paid
6 it.

7 Q. So you recall the architect reviewing
8 Russ Cooper's pay applications?

9 A. Yes.

10 Q. Do you recall SRW or anyone from your
11 architect ever pointing out any concerns or
12 defects --

13 A. Ah --

14 Q. You have to let me finish the question.

15 Do you recall your architect ever
16 pointing out any problems or defects in Russ
17 Cooper's work during the construction?

18 A. No.

19 Q. Is it fair to say construction went
20 smoothly?

21 A. No.

22 Q. What hiccups or bumps did you have?

23 A. We had Russ Cooper.

24 Q. Explain.

25 A. No. It was a difficult project I think

1 for everyone involved.

2 Q. You have to give me more.

3 A. No. I don't.

4 MR. LYLES: Object to form of the
5 question.

6 A. You asked me and I told you. It was
7 difficult. He's difficult.

8 Q. And is this a personality issue or did
9 he ruffle feathers with the architect? I'm
10 asking for more information.

11 A. Then let me change my answer. What was
12 your question again?

13 Q. What were the hiccups and bumps? We
14 talked about, you said, no, the construction did
15 not run smoothly.

16 A. It took a long time. I will say that.
17 One of the things was the project took a long
18 time, and that was a hiccup, a major problem for
19 us.

20 Q. Did you have an expectation as to how
21 long construction would last?

22 A. Yes. We thought it would be one year.

23 Q. And how long did it last?

24 A. More than two years.

25 Q. Was there any specific reason why?

1 A. I have no idea.

2 Q. Did that lead to cost overruns or --

3 A. Yes.

4 Q. How much?

5 A. I have no idea.

6 Q. Are we talking about tens of thousands
7 or hundreds of thousands?

8 A. I have no idea.

9 Q. Besides the delay in construction, were
10 there any other hiccups, bumps, dissatisfaction
11 that you had with the quality of the work?

12 A. No.

13 Q. Going back to Exhibit Number 3. On the
14 second page, Mr. Allwin's shorthand, can you
15 decipher any of that on the right side?

16 A. All right. Next to number 3 it says,
17 interior gutter. Allan will look at.

18 Q. Up above that by number 2, does that
19 say, folded seams, question mark?

20 A. Folded seams, something, and roofer.

21 Q. Russ and roofer?

22 A. Yeah.

23 Q. Is that probably CHAS Charleston or CHX
24 Charleston, or you don't know?

25 A. I don't know. I think it says Russ and

1 roofer, folded seams. I guess that's for the
2 roof.

3 Q. How about number 4, those notes.
4 Replace the stainless steel.

5 A. Right. Nonstructure. I don't know what
6 that is. Non something, and then Allan checking
7 or Allan something.

8 Q. This is February of 1999 and Bob Cowan,
9 this is a list of major items that I feel you
10 should be aware of as they will need addressing
11 very soon. I believe that if not corrected,
12 these problems may cause considerable damage such
13 as wood decay, related problems in the structure
14 of your home.

15 What conversations with either Mr. or
16 Mrs. Cowan did you have about problems with your
17 home?

18 A. I don't remember.

19 Q. Did you have a conversation with the
20 Cowans?

21 A. Me, personally?

22 Q. Yes, ma'am.

23 A. I don't remember.

24 Q. Did you and your husband pay the Cowans
25 for providing this inspection and notification

1 services they provided to you?

2 A. I don't remember. I don't think we paid
3 them.

4 Q. Was there a service they provided in
5 exchange for the loan of your home?

6 A. I don't know what arrangement my husband
7 ended up making with them.

8 Q. And you don't know if the Cowans were
9 living in the house in February of 1999?

10 A. I don't remember, no.

11 Q. If I am recalling your testimony
12 correctly, you said you believe you offered the
13 house to the Cowans.

14 A. Right.

15 Q. You had no further discussion about what
16 they might do if there was a problem in the house
17 that was encountered while they were in it?

18 A. No.

19 Q. Do you recall Bob or Mary Lou Cowan
20 calling you on the phone saying, Maria, we have a
21 problem?

22 A. No.

23 Q. Based on the numerous letters from the
24 Cowans, the payment of invoices that they did on
25 your behalf, letters such as Exhibit Number 2

1 where Tischler Und Sohn is writing to Bob Cowan
2 or sending invoices, the Cowans were charged with
3 inspecting and maintaining your home while they
4 lived in it.

5 MR. LYLES: Objection.

6 Q. Is that a fair statement?

7 A. No.

8 Q. But they did inspect and maintain your
9 home while they lived in there, correct?

10 A. Yes.

11 Q. And they informed you of problems that
12 they found while they lived there, correct?

13 A. Informed us of problems?

14 Q. You and your husband.

15 A. Yes.

16 Q. Again, Exhibit Number 3 came from your
17 documents. It's my understanding you don't
18 disagree that on or about February 4, 1999 Bob
19 and Mary Lou Cowan sent that letter to you and
20 your husband, right?

21 A. Yes.

22 Q. And in that letter Mr. and Mrs. Cowan
23 informed you and Mr. Allwin of problems with the
24 HVAC system, correct?

25 A. Yes.

1 Q. The system he is referring to in Exhibit
2 3 was the original system installed by Russ
3 Cooper, correct?

4 A. Yes.

5 Q. The system installed by Russ Cooper was
6 replaced in, I want to say around 2000
7 completely.

8 A. I don't remember the year.

9 Q. But it was replaced completely?

10 A. Yes. It was replaced.

11 Q. And that was by Aero Services?

12 A. Yes.

13 Q. If you will turn the page, please. In
14 February of 1999 Mr. and Mrs. Cowan informed you
15 and your husband of leaks in the roof; is that
16 correct?

17 A. Yes.

18 Q. If you will refer to paragraph number 3.
19 In February of 1999, the Cowans informed you and
20 your husband of basement leaks; is that correct?

21 A. Yes.

22 Q. And referring to paragraph number 4, the
23 Cowans informed you and your husband in February
24 of 1999 about rusting brackets in the exterior;
25 is that correct?

1 A. Yes.

2 Q. And the Cowans informed you of at least
3 two major plumbing leaks that they discovered at
4 the house; is that correct?

5 A. Yes.

6 Q. What action was taken in response to the
7 letters from the Cowans?

8 A. I don't remember.

9 Q. Did you call Russ Cooper in response to
10 this letter?

11 A. I don't remember. I know I did not.
12 Are you asking me?

13 Q. Yes, ma'am. You.

14 A. No. I did not.

15 Q. Did you personally ever call or speak or
16 have any communications with Russ Cooper after
17 the house was completed in May of 1994?

18 A. I called Russ Cooper once.

19 Q. When was that?

20 A. I think it was -- me, Maria?

21 Q. Yes, ma'am. Maria Allwin.

22 A. I called Russ Cooper in 2011.

23 Q. And what was the purpose of that call?

24 A. The purpose of that call was to ask him
25 some questions about what I had heard were going

1 on in the house, and I needed to understand more
2 fully if what I heard was possible.

3 Q. And what had you heard?

4 A. I had heard that someone who was taking
5 care of house for me to get it ready to sell took
6 the doors in the back off because they couldn't
7 open them, and then the piece of flashing that's
8 on the bottom, she took that up too, and then
9 when she looked underneath the house, it was all
10 rotted. And that the lip of the house where the
11 door is supposed to be and the water is supposed
12 to go out to the --

13 Q. To the outside?

14 A. -- to the outside world, unfortunately
15 in my case, the lip was like this (indicating)
16 and the water was going into my house. And to
17 me, that seems like Building 101, and I could not
18 believe that that's what she was saying to me.

19 Q. And we are talking about Tori?

20 A. Tori at Gamble. And I said, I'm sure
21 you made an error. That sounds fundamental. And
22 she said, no, I took off another door, and I
23 found this as well on another door. And I said,
24 okay, don't do anything else. And then I called
25 Russ Cooper.

1 Q. And I've got those documents, and we'll
2 look at that. And I think the issue in 2011 was
3 that Tori found that the flashing underneath the
4 door, the metal will have a negative slope back
5 towards the house as opposed to the outside.

6 Is that what you are talking about?

7 A. If that's what I described to you all,
8 that's what it is.

9 Q. And you called Russ Cooper and you said
10 what?

11 A. I said I heard -- I'm getting the house
12 ready for the sale. Tori took the doors off and
13 she found the pan going in instead of going out.

14 Q. And what did Mr. Cooper say?

15 A. Well, he flipped out and he started
16 yelling at me that I can't call him all these
17 years later and ask him something like this, and
18 he was very rude to me on the phone. He was
19 yelling at me. I held the phone away, and I
20 said, Russ, fuck you, and I hung up.

21 Q. I'm sorry you had to go through that.
22 That was unfortunate.

23 A. Do you have that in your papers as well,
24 that I cursed him out?

25 Q. No, ma'am. But we have it now.

1 A. Good. Thank you. I hope everyone's got
2 that.

3 MR. BEST: Score one for Maria if
4 you are keeping score at home.

5 Q. Did you ask Mr. Cooper to make a repair
6 or to do anything?

7 A. I asked him if it was possible. He
8 starts yelling at me. I listened, listened and I
9 just said, okay, I'm done with this.

10 Q. And I'm not trying to put words in your
11 mouth, but I think you did say that he said --

12 A. You can't ask me this now.

13 Q. So many years after?

14 A. So many years later.

15 Q. Was that the gist of his response in
16 addition to some flowery language?

17 A. Not on his part. He did not have
18 flowery language. He was just yelling at me.

19 Q. Did he offer to make repairs?

20 A. No.

21 Q. Did you ask him to make repairs?

22 A. No.

23 Q. Had those doors been worked on before?

24 MR. LYLES: Object to the form.

25 Q. The question, Had those doors been

1 repaired or replaced --

2 A. No.

3 Q. -- prior to 2011?

4 A. No.

5 Q. What action, if any, was taken that you
6 are aware of in response to Exhibit 3, this
7 February of 1999 letter?

8 A. I don't remember specifically. I think
9 we -- I don't remember specifically. I'm sure
10 Jim responded to it because that's just the way
11 he was.

12 Q. Responded to Mr. Cowan?

13 A. Yes.

14 Q. Do you know if your husband or Mr. Cowan
15 contacted Russ Cooper about these problems?

16 A. I don't know that.

17 Q. Do you know if they contacted the
18 architect about this problem?

19 A. I don't know that.

20 (Exhibit No. 4 was marked for
21 identification.)

22 Q. I'm going to show you Exhibit Number 4.
23 Based on the fax stamp at the top, I'm assuming
24 this was February 1999.

25 A. Who stamped that?

1 Q. It's a fax stamp.

2 A. Yes.

3 Q. And if you look at the last page of
4 Exhibit 3, it references an attached status list.

5 A. Oh. So that's it.

6 Q. I'm pretty sure that it is.

7 A. Yeah. Okay.

8 Q. In addition to the five sort of general
9 areas that the Cowans pointed out in Exhibit 3,
10 it looks like here they were making a detailed
11 laundry list of items that they have concerns
12 about, be it something in need of repair, be it a
13 maintenance item that just needs to be handled,
14 or in some cases they are even looking out to the
15 future things that will need to be addressed into
16 the future.

17 Have you seen this document? And,
18 again, I'll point out to you that it came from
19 your records.

20 A. No.

21 Q. You don't deny that this was sent to you
22 and your husband in February of 1999?

23 A. Yes. I believe that.

24 Q. Do you believe you may have seen it in
25 1999?

1 A. I may have seen it, yes.

2 Q. Do you recall anything about plumbing
3 leaks in early 1999?

4 A. No.

5 Q. How about peeling paint in 1999?

6 A. No.

7 Q. Any conversations with you and your
8 husband about general home maintenance for this
9 house in the late '90s?

10 A. We wanted to always make sure the house
11 was up and running and that we would always do
12 whatever was suggested we do and pay for it
13 promptly.

14 Q. And who was doing the suggesting?

15 A. Whoever it was.

16 Q. Between you and your husband -- I'm
17 married, and I generally have observed that in
18 most marriages responsibilities fall under the
19 wife's category or the husband's category or
20 sometimes nobody's category.

21 Where did this house or whose category
22 did this fall into?

23 A. I think this house was Jim's
24 responsibility. Also to fund it, to get the
25 funds up to pay for it.

1 Q. How involved were you with the house as
2 far as maintaining it?

3 A. I was not involved to the extent that
4 they decided -- Jim would decide what had to be
5 done and said, okay, you know, I paid for it and
6 that was it.

7 Q. And you were not working outside the
8 home at this time?

9 A. No. I was not.

10 Q. So it's fair to say that Jim made the
11 decisions about the financial aspects, what I'm
12 going to pay for and what I'm not going to pay
13 for, with respect to this house in Kiawah?

14 A. He never decided he would not pay for
15 anything, and I don't think anything indicates
16 that he didn't.

17 (Exhibit No. 5 was marked for
18 identification.)

19 Q. Exhibit Number 5 is a collection of
20 documents, a cover letter is a note from Bob
21 Cowan to Jim where he is forwarding HVAC
22 information. Were you having HVAC problems in
23 1999?

24 A. Yes.

25 Q. What were those problems?

1 A. Well, the system did not satisfy the
2 needs of the house. It couldn't handle the
3 capacity of the house for the air conditioning.

4 Q. It couldn't keep it cool enough?

5 A. It could never keep it cool.

6 Q. What about the wintertime?

7 A. I was never there in the winter. I
8 don't know.

9 Q. Within this exhibit there's an opinion
10 letter from Mechanical Engineering Associates.
11 It's recommending that you replace the original
12 system with a 40-ton chiller.

13 A. Yes.

14 Q. And that was ultimately done, correct?

15 A. Yes.

16 Q. At a cost of about a half a million
17 dollars?

18 A. Yes.

19 Q. So the system that was installed by Aero
20 Service Corporation completely replaced the
21 original HVAC system installed by Russ Cooper
22 Associates, correct?

23 A. Yes.

24 Q. You had many, many problems with the
25 Aero Service Corp. Chiller system, correct?

1 A. Yes. We had problems with the one Russ
2 initially put in too.

3 Q. Let's talk about the -- that was
4 replaced in 2000?

5 A. Right, yes.

6 Q. So the new chiller --

7 A. Something like that.

8 Q. -- the new chiller system was installed
9 in approximately 2000?

10 A. Right.

11 Q. And it had lots of problems too,
12 correct?

13 A. Yes.

14 Q. Philip Smith has done extensive repairs
15 at your house. Did he replace the HVAC system?

16 A. We are in the process of replacing it
17 now.

18 Q. What are you doing now? What's he doing
19 with it?

20 A. Smaller units and different zones and
21 more. Apparently this one did not have the load
22 capacity -- I don't know what this is -- but I
23 heard that neither did the first one, which is
24 unfortunate because the house is built on the
25 beach on Kiawah Island. Why it couldn't be

1 correct the first time, I don't know.

2 Q. In the first page of Exhibit Number 5 --

3 A. Yes.

4 Q. -- is an invoice from Aero for 5,830
5 which was to pay for the engineering study that
6 we discussed. There is a note on there that
7 says, she's going to send Aero a check for that
8 amount.

9 A. Yes.

10 Q. Do you know that she did or do you
11 assume that she did?

12 A. I don't know what she did.

13 Q. Was that the practice with the Cowans?
14 They would pay invoices and Jim would reimburse
15 them?

16 A. Sometimes that worked. Sometimes we had
17 an account for them, and they would draw
18 directly. It was very random.

19 Q. Who was in charge of that account that
20 they could draw on?

21 A. They were.

22 Q. Who funded that account?

23 A. Oh, Jim did.

24 Q. Were you responsible at all for making
25 sure that there were funds in that account?

1 A. No.

2 (Exhibit No. 6 was marked for
3 identification.)

4 Q. Exhibit Number 5 is dated April 20,
5 1999, and then I want to show you Exhibit 6,
6 which is dated almost a year later, March 24,
7 2000, and in it too is a handwritten letter from
8 Bob Cowan to both you and your husband.

9 Do you recall seeing this document?

10 A. No. I do not.

11 Q. Again, I am pointing out to you it came
12 from your records. You don't deny that you or
13 your husband received this letter from Mr. Bob
14 Cowan in March of 2000?

15 A. No.

16 Q. Do you know why there was a one-year gap
17 in communications from the Cowans to you and your
18 husband?

19 A. No. I do not.

20 Q. Do you know if they were still living in
21 the house in March of 2004?

22 A. I do not know that. March of 2004?

23 Q. Excuse me. March of 2000.

24 A. March of 2000. No. I do not.

25 Q. Towards the bottom of the first page

1 here Mr. Cowan points out to you and your husband
2 damage from air conditioning and roof leaks.

3 Did you have any conversations with the
4 Cowans about HVAC or roof leaks in this time
5 period?

6 A. I don't recall.

7 Q. Did you have any conversations with your
8 husband about roof leaks in this time period?

9 A. No. I just don't recall.

10 Q. Were you aware of HVAC and roof leaks in
11 this time period?

12 A. I don't recall.

13 Q. Does this come as a complete shock to
14 you?

15 A. No.

16 Q. There is a long history of roof leaks at
17 the house dating back to the '90s; is that
18 correct?

19 A. Yes.

20 Q. There's a long history of HVAC problems
21 at the house dating back to the '90s; is that
22 correct?

23 A. Yes.

24 Q. Do you know if Mr. Cowan or your husband
25 or you contacted Russ Cooper or the architect

1 about the HVAC or roof leaks?

2 A. I did not contact Mr. Cowan or anybody.

3 Q. On page 2 at the bottom there is, again,
4 a reference to basement leaks. You and your
5 husband were aware of basement leak problems in
6 2000, correct?

7 A. I don't know what he was aware of.

8 Q. You were aware of basement leak problems
9 in 2000?

10 A. I don't remember.

11 Q. When did you become aware of basement
12 leak problems?

13 A. I don't remember that I was aware.

14 Q. Is the fact that Mr. Cowan is informing
15 you and your husband in March of 2000 about
16 basement leaks a surprise to you?

17 A. No. There's been a long history of
18 basement leaks.

19 Q. Give me some others.

20 A. Well, what's the question?

21 Q. There has been a long history of
22 basement leaks at the house, correct?

23 A. Yes.

24 Q. Dating back to the '90s?

25 A. Yes.

1 Q. And I'm assuming, given the longstanding
2 nature of these leaks back in the '90s, you were
3 aware of them in the '90s?

4 A. I don't recall what I was aware of.

5 Q. Did you have the house power washed?

6 A. The deck outside or what are you talking
7 about?

8 Q. Anything.

9 A. Yes.

10 Q. What did you have power washed?

11 A. We would have the boardwalk power
12 washed, the steps to the front power washed, the
13 back deck by the pool power washed a few times.

14 Q. Did you have the house power washed?

15 A. I don't recall that.

16 Q. I know the windows had been cleaned --

17 A. Yes.

18 Q. -- at times.

19 Was that done regularly or any a
20 particular schedule?

21 A. It was done whenever we would go down
22 and spend time.

23 Q. It was done before you arrived?

24 A. Yes. Before we arrived.

25 Q. And that was handled through Gamble or

1 the Cowans or someone?

2 A. Yes.

3 (Exhibit No. 7 was marked for
4 identification.)

5 Q. Exhibit 7 is an April 14, 2000 letter
6 from Dan Cartin at Aero following up with your
7 husband on his recommendation for the removal and
8 replacement of the original HVAC system. He
9 estimates a cost here of \$455,000. Do you see
10 that down there?

11 A. Yes.

12 Q. Do you recall any conversations with
13 your husband about this half million dollar
14 repair?

15 A. Yes.

16 Q. And what do you recall about this
17 conversation?

18 A. That this was a very innovative idea to
19 do this chiller system, and that this would solve
20 all our problems. It was massive. It had not
21 been done. It was -- we had to bring this
22 electric in. We had to get a different kind of
23 electric in the house, but that everybody was
24 very excited about it, because it was new for
25 Kiawah as well as residential property of the

1 size of our house.

2 Q. Was there any concern at all about the
3 cost associated with the proposal?

4 A. To the extent that it's \$455,000 on top
5 of a \$3 million house, there was concern on my
6 part, yes. Irritation, yes.

7 Q. Did your husband express the irritation?

8 A. He was never irritated.

9 Q. No conversations about the Kiawah house
10 becoming a money pit or anything like that?

11 A. He was never irritated.

12 Q. How much did it cost to build this
13 house?

14 A. I have no idea.

15 Q. You mentioned 3 million.

16 A. I threw that out.

17 Q. Russ Cooper's files are long gone, and I
18 know that you have not produced any documents
19 including a contract with Russ Cooper. Do you
20 recall, was there a written contract with Russ
21 Cooper?

22 A. I don't know.

23 Q. Your husband would have handled that?

24 A. Yes.

25 Q. As far as the construction cost, do you

1 know whether that was financed or whether your
2 husband paid cash for it?

3 A. I think he paid cash for it.

4 Q. Do you know how much you and your
5 husband paid for the lots?

6 A. I do not remember that.

7 Q. Do you have a ballpark recollection?

8 A. I have no idea. I think you asked me
9 that.

10 Q. I may have, and if I did, I apologize.

11 A. That's all right.

12 (Exhibit No. 8 was marked for
13 identification.)

14 Q. I show you Exhibit 8, which is a May 3,
15 2000 memo from Bob Cowan to your husband, and
16 this came from your records, the records that you
17 produced in response to my request for documents.

18 I'm assuming, like most folks, you've
19 got a big folder or drawers somewhere that is the
20 house file. Do you have a house file?

21 A. I did, yes.

22 Q. And you produced all that to Mr. Lyles?

23 A. Yes.

24 Q. Is there any other place there might be
25 documents relating to the Kiawah house?

1 A. No.

2 Q. Where did you keep those documents?

3 A. In a file, In a file cabinet.

4 Q. In Manhattan, in Connecticut?

5 A. In Connecticut.

6 Q. Going back to Exhibit 8, the second
7 bullet, Russ is working on water leaks at rear
8 doors.

9 Do you see that?

10 A. Yes. I do.

11 Q. Do you know what rear doors Mr. Cowan is
12 talking about?

13 A. I have no idea.

14 Q. Do you recall any discussion about water
15 leaks at the rear door --

16 A. No.

17 Q. -- in this time period? Your answer is
18 still no?

19 A. No.

20 (Exhibit No. 9 was marked for
21 identification.)

22 Q. Exhibit 9. This is your husband's
23 handwriting up at the top.

24 A. Yes. It is.

25 Q. There's a note to Susan, please fax to

1 Dan Cartin and ask him to call me about.

2 A. Yes.

3 Q. Who is Susan?

4 A. His assistant.

5 Q. Do you recall Susan's last name?

6 A. I do not.

7 Q. This was his assistant at Aetos?

8 A. Yes. Aetos.

9 Q. Aetos. Thank you.

10 At the bottom there's a CC notation.

11 Do you know who Three Oaks is?

12 A. I do not.

13 Q. And there's reference to S. Reno

14 Wharton.

15 A. Okay.

16 Q. That's Shope Reno Wharton. Do you know
17 if SRW got involved with the chiller
18 installation?

19 A. I don't remember that. I don't remember
20 that.

21 Q. Did you or your husband ask Russ Cooper
22 to ever repair the original HVAC system?

23 A. No. I don't think so.

24 Q. Why not?

25 A. I don't know.

1 Q. Did you or your husband or anyone on
2 your behalf ever ask Mr. Cooper to pay for part
3 or all of the chiller installation that was going
4 to replace his original HVAC system?

5 A. No.

6 Q. Do you know why?

7 A. My husband wasn't like that.

8 Q. And by like that, what do you mean?

9 A. He was not the kind of person who would
10 ask someone else to do something like that, to
11 pay for something on his house. It was our
12 house, it was fucked up and he was fixing it.
13 Called Russ and, you know, here we are.

14 Q. I'm sorry --

15 A. He was fixing it, he paid for it, he
16 funded it, and he paid for it.

17 Q. I'm sorry. You said he called Russ.

18 A. No. I didn't.

19 (Exhibit No. 10 was marked for
20 identification.)

21 Q. Exhibit Number 10 is a letter from Aero
22 to your husband, and I point out in the middle of
23 the second paragraph it states, Russ Cooper has
24 been directed to proceed with construction of the
25 chiller room and condenser platform.

1 Do you know if Russ Cooper did any of
2 that work?

3 A. Yes. He did.

4 Q. Did he do all of that work?

5 A. Yes. He did.

6 Q. Was he paid for that work?

7 A. Yes. He was.

8 Q. Who handled the negotiations with Russ
9 Cooper for this work?

10 A. My husband.

11 Q. Russ Cooper was not acting as a general
12 contractor for Aero and its work; is that
13 correct?

14 A. Could you clarify what you mean?

15 Q. Sure. It's my understanding that Aero
16 was charging you and your husband a half a
17 million dollars or thereabouts for the
18 installation of this chiller system.

19 A. Right.

20 Q. And that as an adjunct to that project,
21 there needed to be stands for condensing units,
22 the condenser platform, and there also needed to
23 be a space created to house the chiller and that
24 Mr. Cooper was retained to perform some or all of
25 that work.

1 A. Yes.

2 Q. Who paid him?

3 A. We paid him.

4 Q. But Mr. Cooper was not supervising or
5 inspecting Aero's work. Is that your
6 understanding?

7 A. I don't know that.

8 Q. The second page of Exhibit 10 is an
9 invoice from Aero. Mr. Cooper is not invoicing
10 you for Aero's work; is that correct? Aero is
11 doing that, correct?

12 A. Yes.

13 Q. That would lead you to believe that
14 Mr. Cooper is not supervising Aero's work.

15 A. I don't know how it went on the site. I
16 can't answer for that.

17 (Exhibit No. 11 was marked for
18 identification.)

19 Q. Exhibit Number 11. Is that your
20 husband's handwriting?

21 A. Yes. It is.

22 Q. There is someone else's handwriting on
23 the left margin, Engineer report HVAC. Whose is
24 that?

25 A. I don't know.

1 Q. It appears to me that in August 20, 2003
2 Mr. Allwin may have spoken to Dan Cartin. There
3 appears to be tabulation for the cost of this
4 project for a total of \$549,000. Can you confirm
5 any of that?

6 A. That's what this looks like, yes.

7 Q. You were aware of this project cost,
8 approximately a half a million dollars?

9 A. Yes. I was.

10 MR. BEST: Off the record.

11 (Off-the-record discussion.)

12 (Exhibit No. 12 was marked for
13 identification.)

14 Q. I am showing you Exhibit Number 12,
15 which is a fax from Bob Cowan to your husband. I
16 am noting that these faxes, sometimes there's a
17 201 area code. Is that New Jersey?

18 A. I would be surprised if there's 201.
19 It's 212 and 203.

20 Q. 212 is Manhattan?

21 A. New York, yes.

22 Q. And 203 is Connecticut?

23 A. Yes.

24 Q. And your husband's office was in
25 Manhattan?

1 A. Yes.

2 Q. Maybe the 201 didn't get there.

3 Do you recall seeing this document?

4 A. No.

5 Q. In March of 2001, Mr. Cowan is reporting
6 roof leaks over the master bedroom sitting area.

7 A. Yes.

8 Q. Do you recall roof leaks in that area in
9 2001 and before?

10 A. I recall in 2001, yes.

11 Q. Do you recall if anything was done about
12 that immediately in response to this letter?

13 A. No. I do not recall what was done.

14 Q. You don't know if anyone contacted Russ
15 Cooper?

16 A. I do not know that.

17 Q. Attached to this are some numbered pages
18 that, for lack of a better term, I'll deem an
19 inspection list that Mr. Cowan is sending to your
20 husband. Have you seen that before?

21 A. Are you referring to all this? 6, 7, 8,
22 9?

23 Q. Yes, ma'am.

24 A. No. I did not see this.

25 Q. Is it possible you saw this in 2001 and

1 don't recall?

2 A. Yes.

3 Q. When Mr. Cowan and you would refer to
4 the basement, what area are you talking about?

5 A. We're referring to the garage, but not
6 the garage, the space behind the garage.

7 Q. Not where the car is parked?

8 A. Yes.

9 Q. But there is another area that I believe
10 goes under the pool deck or is it just under the
11 house?

12 A. It's under the whole house. It's under
13 the pool deck as well to the left going in.

14 Q. If I'm standing near to the pool looking
15 at the rear of the house and I approach the house
16 and I'm walking across the stone pavers, some
17 portion of those stone pavers, as I near the rear
18 of the home, I'm on top of --

19 A. Yes.

20 Q. -- the basement?

21 A. Yes.

22 Q. There's a void underneath that pool
23 deck?

24 A. Yes.

25 Q. And it also references later on to the

1 cave. Is that area the cave or did you not use
2 that term?

3 A. No. We used the term the cave. That's
4 the space between the doors and going out.

5 Q. Towards the pool?

6 A. Towards the pool.

7 Q. That is also referred to as the
8 basement?

9 A. Yes.

10 Q. Is the floor in the basement or the cave
11 -- is what?

12 A. I don't think it's paved. I think it's
13 dirt.

14 Q. I think it is too. I just want to
15 confirm.

16 A. But it is not dirt now.

17 Q. Thanks to Mr. Smith?

18 A. No. We fixed it prior to that.

19 Q. What is it now?

20 A. It's some kind of waterproof thingy.

21 Q. They put plastic down; is that right?

22 A. I don't know what they did. It's some
23 kind of waterproof mat. Sorry. I don't know.

24 Q. It's okay. Do you know if any of these
25 problems in Exhibit 12 were brought to Mr.

1 Cooper's attention?

2 A. I do not know that.

3 Q. Look at the page numbered 4 at the top,
4 please.

5 A. Yes.

6 Q. There's a section Roof Leaks, paragraph
7 number 1.

8 A. Yes.

9 Q. Repeat leak in valley over master suite.

10 A. Yes.

11 Q. Notified Russ Cooper. Russ said he will
12 have valley replaced.

13 And this is, I believe, prepared by Mr.
14 Cowan?

15 A. Yes.

16 Q. And I'm assuming Mr. Cowan is contacting
17 Russ Cooper.

18 A. I don't know.

19 Q. Did you have any conversations with
20 Cowan or know anything about Mr. Cowan's
21 communications with Russ Cooper Associates?

22 A. I don't recall that.

23 Q. Did Mr. Cooper come back and make roof
24 repairs?

25 A. I don't remember that.

1 Q. Can you tell me what, if any, repairs
2 Russ Cooper or Russ Cooper Associates was ever
3 asked to make at the house?

4 A. Aside from the AC repairs, the new
5 chiller system?

6 Q. I'm sorry. I thought you told me they
7 were not asked to make those repairs.

8 A. Well, he built the deck, you know.

9 Q. Yes. And I consider that new
10 construction. That's something new.

11 A. Oh, okay.

12 Q. Original work that Russ Cooper
13 Associates or a subcontractor performed, can you
14 tell me anything they were ever asked to come
15 back for --

16 A. I don't recall.

17 Q. -- repair?

18 A. No.

19 Q. Do you know if they ever came back to
20 make any repairs? And by they I mean Russ Cooper
21 or Russ Cooper Associates.

22 A. No. I don't recall asking them to do
23 anything.

24 Q. There's a bid from Frank Leigh
25 Contractors Painting to -- looks like paint the

1 interior of your home for roughly \$98,000. Do
2 you recall anything about this proposal?

3 A. No.

4 Q. Do you know if this work was done? Was
5 your house repainted in 2001?

6 A. We did repaint. I don't recall the
7 year.

8 Q. Was it localized repainting in certain
9 rooms or was the entire interior repainted?

10 A. The public spaces were repainted.

11 Q. And you don't recall the year?

12 A. I do not.

13 (Exhibit No. 13 was marked for
14 identification.)

15 Q. Exhibit 13 is a proposal from Kiawah
16 Seabrook Painting. It's basically a labor rate:
17 \$1,000 per day with an estimate of four to seven
18 days to complete localized painting. You don't
19 recall whether that was done in this timeframe,
20 or was this the repainting of the public areas
21 you were talking about?

22 A. I don't recall.

23 Q. Was there a particular reason you and
24 your husband were receiving painting bids in
25 2001? Was there anything wrong with the paint

1 job?

2 A. No. I think it was just wear and tear.

3 Q. Were you having mold and mildew and
4 peeling paint in 2001?

5 A. I don't recall that.

6 Q. Do you recall mold or mildew or peeling
7 paint at any time in the interior?

8 A. Yes.

9 Q. Tell me about that.

10 A. I don't recall when it was. We got down
11 to the house, and the barrel ceiling was gray and
12 nobody -- never associated it with mold. I
13 didn't know what it was, and then some of the
14 other rooms had -- were just moldy and --

15 Q. Anything else? I don't want to cut you
16 off.

17 A. No.

18 Q. Did you or your husband or anyone on
19 your behalf ever contact Russ Cooper or Russ
20 Cooper Associates about this mold issue?

21 A. I don't recall.

22 Q. There was never any demand on you and
23 your husband's behalf for Russ Cooper or Russ
24 Cooper Associates to make any type of repair,
25 investigation, remedy of this mold issue; is that

1 correct?

2 A. Yes.

3 (Exhibit No. 14 was marked for
4 identification.)

5 Q. Exhibit 14 is a May 21, 2001 letter from
6 Mr. Cowan to your husband. Do you recall seeing
7 this before?

8 A. No.

9 Q. Is it possible you may have seen this in
10 2001?

11 A. Yes.

12 Q. Do you recall if Bob and Mary Lou Cowan
13 were still living in your house in Kiawah in May
14 of 2001?

15 A. I don't recall.

16 Q. In paragraph A, Roof Leaks, Mr. Cowan
17 starts off, the roof leaks have been an ongoing
18 problem from the beginning.

19 When do you recall the leak starting?

20 A. The roof leaked -- I don't recall when I
21 noticed it.

22 Q. Do you have a sense that the roof leaks
23 began within the first year of the home's
24 completion or the first three years of the home's
25 completion?

1 A. I don't recall.

2 Q. There's no doubt in your mind that as of
3 May 10, 2001, and, as we have seen sometime
4 before that, there were significant roof leaks in
5 the home?

6 A. Yes.

7 Q. And you are aware in 2001 there were
8 significant roof leaks in the home, correct?

9 A. Yes.

10 Q. Section B, Other leaks. The basement
11 wall, Mr. Cowan points out on the second line, we
12 have experienced leaks over the top of the
13 basement wall the entire length of the house.

14 And I'm assuming he's referring to go
15 down to the basement or the cave there is a wall
16 that runs parallel to the house that is between
17 the house and the pool and it's a subterranean
18 wall, correct?

19 A. Yes.

20 Q. And there's water that would come from
21 somewhere above and run down that wall.

22 A. I don't know that.

23 Q. Do you go down to the cave?

24 A. No. Would you go down there? No.
25 Nobody went down there.

1 Q. Well, obviously Mr. Cowan went down
2 there.

3 A. Yes.

4 Q. Do you know why he went down there?

5 A. No.

6 Q. You were aware --

7 A. Are you assuming that that's the length
8 of the house he's talking about?

9 Q. I think he is talking about the top of
10 basement wall, and that wall is -- is there also
11 a wall where the -- I'm standing in the cave.

12 A. Yes.

13 Q. The beach is on my left.

14 A. Right.

15 Q. And you have the pool, and then the pool
16 deck starts still to my left, and then I'm in the
17 cave. There's a wall on my left, and the pool
18 deck continues overhead, and then the pool deck
19 touches the house, correct, and there's some
20 steps going up into the rear doors?

21 A. Yes.

22 Q. Where the wall of the house comes down,
23 is there also a wall in the cave that comes down
24 on my right in the cave?

25 A. Yes. That's what made it a cave.

1 Q. The water he's referring to, again,
2 paragraph B1, we have experienced leaks over the
3 top of the basement wall the entire length of the
4 house.

5 Is he talking about the wall that is
6 underneath, directly underneath the house or is
7 he talking about the wall that's subterranean,
8 closer to the pool?

9 A. I don't know. That's what I was asking.
10 I don't know what wall he's referring to.

11 Q. What do you know about leaks in the
12 basement?

13 A. The leaks occurred. There were these
14 louver doors, windows, you know, on the bottom,
15 and so we closed them up and then we put
16 dehumidifiers in, and then we opened them,
17 because you have to let water come in, and then
18 we open them. But we put another thing -- I
19 don't know what that was. We tried a lot of
20 things to fix the leaks in the basement.

21 Q. Part of that was part of the Dan
22 Buffington repairs in 2004?

23 A. It was an ongoing repair cycle.

24 Q. So at least prior to Mr. Buffington's
25 repair, you were aware of issues with water

1 intrusion into the basement area?

2 A. Which we always fixed.

3 Q. I am not questioning that. I am just
4 more concerned about your knowledge of the
5 problem.

6 A. Well, if I knew about it, I fixed it.

7 Q. On the next page under other problems,
8 paragraph 2, Mr. Cowan refers to structural
9 settlement. He notes he has been having to trim
10 doors so that they will close properly. What do
11 you recall about this issue?

12 A. He did a very good job at that.

13 Q. Do you recall him doing that in this
14 timeframe, 2001?

15 A. I don't recall the timeframe, but I do
16 recall him doing it.

17 Q. How many doors did Mr. Cowan do?

18 A. I don't recall that.

19 Q. Did he do all that work while he lived
20 there in the house?

21 A. I don't recall that.

22 Q. Under the numbered paragraphs, Mr. Cowan
23 points out he recommends that your husband
24 contact the architect to review the situation and
25 provide their opinion. Do you know if that was

1 done?

2 A. I don't know that.

3 Q. Do you know if you or your husband
4 contacted Mark Dillon, the structural engineer,
5 or any structural engineer to review these
6 issues?

7 A. No. I do not know that.

8 Q. When your husband got letters or memos
9 from Mr. Cowan, would he share those with you?

10 A. Sometimes.

11 Q. Would he discuss the issues that were in
12 those?

13 A. Sometimes.

14 Q. Is there any question in your mind that
15 you and your husband didn't discuss the issues in
16 this exhibit in 2001?

17 A. I don't understand your question.

18 Q. Did you and your husband discuss these
19 issues, these problems that Mr. Cowan is pointing
20 out to the house, in or about May of 2001, did he
21 share these with you?

22 A. Yes.

23 Q. And that's true with this exhibit,
24 Exhibit 14, and the other reports and memos that --

25 A. No. No. I think we discussed this and

1 -- not the specifics but just the concepts.

2 Q. Of these major items here -- roof leaks,
3 basement leaks, a leak at the chiller room, HVAC
4 concerns, structural settlement, paint problems
5 and then wood rot at the cabana -- which of these
6 do you recall speaking to your husband about in
7 2001?

8 A. Conceptually all of them, but
9 specifically I can't recall.

10 Q. You may not have gone into the
11 particular calls or particular problem, but you
12 were aware that -- paragraph B2 -- there was a
13 problem with the chiller room, there was a leak
14 noted over the wall in the chiller room.

15 A. No. I was aware there were leaks in the
16 house, and that we -- I was aware that there were
17 leaks at the house, yes. Specific issues or
18 spaces, I don't remember.

19 Q. Was there a plan in 2001 or 2000 to
20 remedy these leaks that you are aware of?

21 A. I think we -- I think -- I don't recall.

22 (Exhibit No. 15 was marked for
23 identification.)

24 Q. Exhibit 15 is a May 24, 2001 letter from
25 Bob Cowan to your husband. Looking at paragraph

1 2 at the bottom -- yours is highlighted. I don't
2 mean to suggest anything. I don't know how that
3 happened. It looks like there's some painting
4 going on.

5 A. Yes.

6 Q. I'm sorry. Do you recall that?
7 Painting in the kids' bedroom, the great room,
8 basement?

9 A. Yes. I do recall.

10 Q. The painting that was done in the
11 interior, was that because of mold and mildew?

12 A. Yes.

13 Q. Did you have an understanding what was
14 causing the mold and mildew in 2001?

15 A. I think it was with the AC not working
16 right, the imbalance of the humidity in the house
17 caused the mold and mildew, or that was what I
18 had thought.

19 Q. Do you recall particular discussions
20 with Bob Cowan or any property management company
21 or your husband about that particular issue?

22 A. No.

23 Q. Do you know where you got your
24 understanding of the problem?

25 A. In my infinite wisdom of construction in

1 South Carolina, no, I have no idea.

2 Q. And that's a question I usually ask, but
3 I forgot to ask you because I was in such a rush,
4 and I'm so excited about being here.

5 A. I'm sure everything you heard about me
6 is true.

7 Q. I have heard very little.

8 Do you have any formal training or
9 on-the-job training or any construction
10 experience?

11 A. No.

12 Q. You would not deem yourself expert in
13 the fields of architecture, residential
14 construction, design, anything like that?

15 A. I am an expert in none of those.

16 Q. Look at the second page of that, please.
17 It is also highlighted, and you will see
18 paragraph J1 refers to a leak in the basement.

19 A. Yes.

20 Q. And moisture along the basement wall.
21 Then it notes, Russ -- and I'm assuming that's
22 Russ Cooper, you can help me out maybe -- is
23 scheduled to complete the work at kitchen doors
24 today. Reported to Russ other leaks. Note,
25 These are all old leaks.

1 Do you know anything about Bob Cowan
2 communicating with Russ Cooper about leaks at the
3 house --

4 A. No.

5 Q. -- specifically these?

6 You don't know whether or not Russ
7 came back and did any work at your house or not;
8 is that a fair statement?

9 A. Yes.

10 Q. Just so I have it clear in my mind, your
11 only contact -- you personally, Maria Allwin --
12 your only contact with Russ Cooper after the
13 home's conclusion was that infamous 2011 phone
14 call?

15 A. Yes. As far as I can recall, that is
16 the first and only time I called him.

17 Q. How about your husband? Did your
18 husband ever call Russ Cooper?

19 A. I don't know that.

20 Q. I get the impression your husband was
21 asking Bob Cowan to get in touch with Russ Cooper
22 back in this 2001 timeframe to make repairs. You
23 don't know anything about that?

24 A. I would agree with you on that.

25 Q. Do you know anything in particular --

1 A. I don't know anything in particular
2 other than what I'm reading here.

3 Q. Other than your review of these
4 documents and what they might suggest, did you
5 have any knowledge of Mr. Cowan's communications
6 with Russ Cooper before you reviewed these
7 documents?

8 A. No.

9 (Exhibit No. 16 was marked for
10 identification.)

11 Q. Exhibit 16 is a letter from Bob Cowan to
12 Russ Cooper.

13 A. Okay.

14 Q. At the top it says Jim A. My assumption
15 is this was forwarded to your husband because it
16 was included in your documents, you can see in
17 the Bates stamp. It's dated June 1, 2001.

18 Have you seen this before?

19 A. No.

20 Q. Is it possible you saw this in 2001, you
21 just don't recall?

22 A. Yes.

23 Q. You will agree with me that, again, in
24 June of 2001 the roof leaks, the issues with the
25 louvers on the gables that had to be --

1 A. Oh, that's what it's saying.

2 Q. And I think here he is talking about 20
3 total at the end. Are these gable louvers up
4 near the roof or are they basement louvers?

5 A. I have no idea.

6 Q. But whatever they are, they leak.

7 A. Well, whatever they are, not only are
8 they leaking, but there's no flashing installed,
9 so.

10 Q. And you were aware of that in --

11 A. No. I'm just reading it now.

12 Q. At the bottom it refers to kitchen wall
13 at corner next to service door, moisture is
14 getting into wall.

15 Do you recall mold spots and paint
16 peeling or any other problems in 2001?

17 A. Yes. Well, I recall the kitchen door
18 getting -- the kitchen wall getting wet, yes.

19 Q. Do you know what was causing that
20 kitchen wall to be wet?

21 A. I have no idea.

22 Q. But you recall it in 2001, correct?

23 A. I recall a kitchen door being wet. I
24 don't recall when it was, and I don't know what
25 caused it.

1 Q. But you recall mold spots and paint
2 peeling at the kitchen door?

3 A. Uh-huh.

4 Q. You need to say yes or no.

5 A. Yes.

6 Q. Prior to Mr. Smith doing his extensive
7 repair, do you know whether that kitchen door was
8 repaired?

9 A. The kitchen door was repaired.

10 Q. Who made that repair?

11 A. I don't recall.

12 Q. Do you know when it was repaired?

13 A. No.

14 Q. Your assumption is that it would be
15 timely with this observation in 2001?

16 A. Yes.

17 Q. Again, on the next page, the second
18 bullet, Mr. Cowan is, again, informing your
19 husband of water leaks over wall at new chiller
20 room. I'm assuming that is the chiller room that
21 Russ Cooper, at least from the Aero letter, was
22 reported to have built. Do you recall problems
23 in that chiller room?

24 A. Yes. I do.

25 Q. Tell me about those water leaks.

1 A. Water poured through.

2 Q. That is a room from -- if I'm
3 remembering correctly -- sort of on the rear
4 corner of the house that was sort of created to
5 house these --

6 A. Huge massive chillers, yes.

7 Q. Right. And how do you get into that
8 room?

9 A. It has a door.

10 Q. From the inside or the outside?

11 A. From the outside.

12 Q. And when it leaked, where within the
13 room would it leak?

14 A. It would leak on the exterior wall side
15 and then --

16 Q. Away from the house?

17 A. Away from the house.

18 -- and then it would leak over the
19 top.

20 Q. At the very top of the room, very center
21 of the room?

22 A. I don't know.

23 Q. There's a copper roof over that room.

24 A. I don't know what it is.

25 Q. Are they roof leaks or is there some

1 other problem that you are aware of that's
2 causing those leaks?

3 A. I don't know what caused it.

4 Q. You have been in that room and seen the
5 leaks or the affects of the leaks.

6 A. The affects of the leaks, yes.

7 Q. You were aware of this problem in 2001?

8 A. Yes.

9 Q. Did anyone call Russ Cooper about this?

10 A. I don't recall.

11 Q. At the very bottom, apparently in a
12 different pen, Mr. Cowan writes, Jim, I met with
13 Russ this afternoon. And I guess this confirms
14 that he is forwarding to your husband, because
15 the original is to Mr. Cooper. He notes, I met
16 with Russ this afternoon. He will start next
17 week and try to complete ASAP.

18 A. Question mark.

19 Q. Question mark. Do you know what that
20 means?

21 A. (No verbal response.)

22 Q. We'll have to ask Mr. Cowan.

23 Russ completed the stonework below the
24 rear doors this week. Looks good.

25 What stonework below the rear doors did

1 Mr. Cooper do in 2001?

2 A. I don't know.

3 Q. Were there leaks at the rear doors in
4 2001?

5 A. I guess so if he is completing the
6 stonework. I don't know.

7 Q. This may be the basement leaks Mr. Cowan
8 was referring to earlier.

9 A. It could be, because it makes sense. I
10 don't know.

11 Q. I can ask Mr. Cowan about it.

12 Is Mr. Cowan still in the Charleston
13 area?

14 A. I have no idea.

15 Q. When was the last time you talked to Bob
16 Cowan?

17 A. I don't know. A few months ago.

18 Q. What did you talk about?

19 A. How he is feeling, how I am feeling, you
20 know.

21 Q. How long --

22 A. Social things.

23 Q. Sure. You don't know if he is still
24 there?

25 A. I have no idea where he is.

1 Q. You spoke to him a few months ago. I'm
2 assuming it was late last year, fall of last
3 year.

4 A. Uh-huh.

5 Q. You have to say yes.

6 A. Yes.

7 Q. I'm just trying to train you.

8 A. I'm not going to be trained. A lot of
9 people have tried.

10 Q. I'm getting that. We are taking baby
11 steps.

12 Prior to that conversation, when was
13 the last time you had spoken to Bob Cowan?

14 A. I really don't recall.

15 Q. Had it been months or years?

16 A. I don't -- no, not years. I don't
17 recall.

18 Q. What is the nature of the relationship?
19 Is it a friend you speak to a couple of times a
20 year or call at holidays, or are you closer to
21 Mary Lou than Bob?

22 A. I think I speak to both of them when I
23 call or when they call me to see how I am, and
24 it's -- the nature is an acquaintance.

25 Q. So fall of last year there was an

1 exchange of pleasantries. Did you discuss the
2 house at all?

3 A. No.

4 Q. Did you discuss this litigation at all?

5 A. No.

6 Q. How long was the conversation?

7 A. Just a few minutes. Oh, I do recall
8 what it was. They wanted to park their car in
9 the garage, in the driveway, because they take
10 their family to the beach, and they wanted to use
11 our beach, you know, access to the beach, and I
12 said of course.

13 (Exhibit No. 17 was marked for
14 identification.)

15 Q. Exhibit 17. This is a proposal from
16 Russ Cooper Associates for a replacement of gable
17 louvers. Do you know anything about those?

18 A. No. Are those the gables up on top?
19 Did we decide that, or are they on the bottom?
20 Do you know?

21 Q. They say gables. My assumption is they
22 are on top, but I don't know.

23 (Exhibit No. 18 was marked for
24 identification.)

25 Q. Exhibit 18 is a June 23, 2001--

1 A. Can you wait a minute?

2 Q. Sure.

3 You are going to get copies of all
4 these.

5 A. Thanks. I just had an idea. Go ahead.

6 Q. Well, I have to ask. What is your idea?

7 A. No. Just want to keep notes. It helps
8 me think. It forces me to focus on what you are
9 saying.

10 Q. I appreciate the focus.

11 Exhibit 18. Do you recall seeing
12 that before?

13 A. No.

14 Q. Is it possible that you received this
15 letter from Bob and Mary Lou addressed to both
16 you and your husband in June 2001?

17 A. Yes.

18 Q. It's possible you read it and reviewed
19 it, right?

20 A. Yes.

21 Q. It's possible that you spoke with your
22 husband about it, but you don't recall the
23 particulars, correct?

24 A. Yes.

25 Q. And I take it, again, in June 2001 you

1 were aware of paragraph number 4, roof leaks.

2 A. Yes.

3 Q. In both the vent louvers and the roof
4 valleys.

5 A. Yes.

6 Q. Paragraph 5E on the second page, again,
7 Mr. Cowan is confirming that Russ Cooper has made
8 waterproofing repairs at the rear doors.

9 A. Yes.

10 Q. But you can't tell me anything about --
11 you don't know the particulars about that?

12 A. No.

13 Q. Interior. 6E. Mr. Cowan notes there is
14 a leak at the fireplace flue west end and attic.
15 Working with Russ for solution.

16 Can you tell me anything about those?

17 A. No.

18 Q. Were you aware of this leak?

19 A. No.

20 Q. You don't know whether Russ Cooper was
21 contacted or whether he came back to make
22 repairs?

23 A. It says working with Russ. So I'm
24 assuming Russ was contacted.

25 Q. And I'm just asking what Maria Allwin

1 knows.

2 A. I do not know.

3 Q. Paragraph 8. The removal of wall
4 covering. Was this an elected thing or --

5 A. Yes.

6 Q. -- was there a problem in those rooms?

7 A. No. It's elected.

8 (Exhibit No. 19 was marked for
9 identification.)

10 Q. Exhibit 19. I think about this
11 timeframe there was a contract, which I have not
12 included in these exhibits, where you signed on
13 with Gamble Home Services to act as property
14 manager in the summer of 2001.

15 A. Yes.

16 Q. Was Amy Ziegler your primary contact at
17 that time?

18 A. I didn't remember her name. Yes, I
19 guess.

20 Q. She notes here in the second full
21 paragraph at the bottom, she's asking if you
22 would like her to have a painter take care of the
23 mildew that was formed on the vents, ceilings and
24 walls.

25 Looking back at the previous exhibit,

1 Number 18, Mr. Cowan is telling you that Mr.
2 Valentine is painting, that's paragraph 7, and
3 Exhibit 15, references painting going on in May
4 of 2001?

5 A. Okay.

6 Q. And now in Exhibit 19 Amy Ziegler is
7 asking you if you'd like her to have a painter
8 take care of mildew that has formed on the vents,
9 ceilings and walls.

10 Did the mildew come back very, very
11 quickly after they painted?

12 A. I don't recall.

13 Q. Do you recall seeing this Exhibit 19?

14 A. No.

15 Q. It's possible you may have, you just
16 don't recall.

17 A. Yes.

18 Q. The fax number 203-869-9186, do you know
19 whose fax number that is?

20 A. That is the home fax.

21 Q. So it would have been faxed to your
22 home?

23 A. Yes.

24 Q. Is it fair to say, since it was faxed to
25 your home, it was more likely than not you

1 probably would have seen it even before your
2 husband?

3 A. No.

4 Q. It's more likely that you would have
5 seen it and known about it had it been faxed to
6 his office?

7 A. Yes.

8 Q. The second page is a monthly inspection
9 report prepared by Gamble. I'm assuming they
10 sent you one of these every month; is that fair?

11 A. Yes. I think they might have.

12 Q. Would they mail these to you or would
13 they fax them to you?

14 A. I don't remember.

15 Q. It bears a fax tag at the top. Do you
16 see that?

17 A. Yes.

18 Q. Did you spend time at the house in the
19 summer of 2001?

20 A. I don't recall.

21 Q. Do you have a day planner?

22 A. Yes.

23 Q. Did you go back and look?

24 A. Did I?

25 Q. Yes. Do you have it from 2001?

1 A. No. I mean, yes, I have it. Did I go
2 back and look, no.

3 Q. Let's clean this up.

4 A. Sure.

5 Q. Do you have a calendar, either a
6 hardcopy day planner or an Outlook computer
7 program or something like it for 2001?

8 A. Yes.

9 Q. Do you have it for the years or any year
10 before 2001?

11 A. No.

12 Q. When did you start your day planner
13 system?

14 A. I don't know. Around then, the new
15 millennium.

16 Q. When you were at the house in Kiawah,
17 did you make a note of that on your calendar?

18 A. I must have, yes.

19 Q. So it's possible -- let's clean this up.
20 Is it a computer program that you use?

21 A. No.

22 Q. It's an actual --

23 A. Yes.

24 Q. -- year-to-year calendar?

25 A. Hand calendar.

1 Q. And you have those old calendars?

2 A. No. I don't think so. I moved to a new
3 house, and I started a clean, new life and got
4 rid of everything.

5 Q. How far back do you have any calendars
6 that you have yet?

7 A. 2011, maybe 2010.

8 Q. Would you mind looking through those
9 calendars and telling Mr. Lyles exactly when you
10 or any of your children or any of your relatives
11 or anyone that you might have loaned the house to
12 were in the house, it would be most appreciated.

13 A. Okay. I can do that.

14 (This page contains Requested
15 Information.)

16 Q. Are those calendars with you in
17 Manhattan?

18 A. No.

19 Q. They are back in Connecticut?

20 A. Yes.

21 Q. As quickly as you can, that would be
22 appreciated.

23 A. Okay.

24 Q. Thank you very much.

25 Gamble points out in 2001

1 condensation in bathroom vents, a window in the
2 third floor twin bedroom is leaking and mildew on
3 the wall, mildew downstairs.

4 Do you recall those issues in August of
5 2001?

6 A. No.

7 Q. You don't doubt that either you or your
8 husband received this report in 2001, correct?

9 A. Correct.

10 Q. Again, an August 20 reference of
11 additional water stains, mildew on wallpaper,
12 around windows, mildew on ceilings, various
13 reports of condensation, same answer. You don't
14 doubt that you received that information in
15 August of 2001, correct?

16 A. Correct.

17 Q. You don't know what was causing these
18 issues, but you were aware there was water
19 intrusion and mildew, particularly at HVAC vents
20 and windows in that time period, correct?

21 A. Correct.

22 (Exhibit No. 20 was marked for
23 identification.)

24 Q. Exhibit 20 is a September 4, 2001 letter
25 from Bob Cowan to your husband. Subject is

1 moisture detection. Bob Cowan, it appears, is
2 actually going around the house with something we
3 call a moisture meter. Do you know what that is?

4 A. No.

5 Q. I can tell you it's an electric device
6 with a probe, and you can insert it into wood or
7 some other material and it will give you a
8 moisture reading. Do you know anything about
9 that exercise that Mr. Cowan did?

10 A. No. I do not.

11 Q. Do you know if you received this
12 document?

13 A. I don't know.

14 Q. You were aware of a continued mold
15 problem at the house in September of 2001 as
16 referenced in his list of areas where there is a
17 mold buildup?

18 A. I don't recall.

19 Q. Back in August, on the previous exhibit,
20 19, you said you were aware of it in August of
21 2001. So I'm assuming you are aware --

22 A. Well, didn't we fix it?

23 Q. Did you? That's what I'm getting at.
24 In September it's still here, and it appears to
25 be worsening. Can you tell me anything about it?

1 A. No. I can't.

2 Q. On the next page, under other
3 miscellaneous issues, paragraph 2, Mr. Cowan
4 states, working on the rear doors. A few to go.

5 Do you know what he is referring to?

6 A. I'm not on that. Oh, working on rear
7 doors. Okay. I do not know what that is.

8 Q. Paragraph 3. Mr. Cowan refers to two
9 consultants in the Charleston area who do
10 detailed inspections to determine cause of
11 problems. Do you know who those two experts are?

12 A. No. I do not.

13 Q. Do you recall either you or your husband
14 retaining an expert in the 2001 timeframe?

15 A. No. I do not.

16 Q. How about 2002?

17 A. No.

18 Q. Towards the end of that paragraph number
19 3, Mr. Cowan writes, it is doubtful that Russ
20 will accept responsibility and make repairs as
21 necessary.

22 Do you recall conversations with your
23 husband about any dissatisfaction with Russ
24 Cooper, frustration about getting Russ Cooper
25 back to the house to make repairs?

1 A. I do recall having a conversation that
2 Russ is difficult to work with and that could we
3 go a different way, could we get somebody else to
4 help us fix it.

5 Q. And that statement was made by you or
6 your husband?

7 A. Certainly by me. I don't think my
8 husband cared about personality problems or
9 issues.

10 Q. Mr. Cooper and his company have built
11 you a house, and if there is a problem -- and
12 some of these issues are major problems, you have
13 mold appearing, you have roof leaks and you have
14 basement leaks -- and there's this suggestion,
15 okay, maybe Russ Cooper is not our favorite
16 person, maybe we don't enjoy dealing with him,
17 but if we bring someone else in to make these
18 repairs, it's going to cost, whereas Russ Cooper
19 and his company built this house, was there a
20 discussion, shouldn't we make him come back and
21 make him perform these repairs?

22 A. No. I don't recall that.

23 Q. Just a discussion that you preferred not
24 to deal with Russ?

25 A. No. No. Just that we had a problem and

1 we had to deal with it. Going back to Russ, I
2 don't recall ever -- I don't think I ever thought
3 of that, and I don't know what Jim thought.

4 Q. And that's what I am trying to get at.
5 I appreciate --

6 A. It looks like Cowan is thinking that's
7 what we should be doing. If you read it, what he
8 says here, it is doubtful that Russ will accept.
9 I don't know what that means. I don't think that
10 Jim asked. I can't say. I really shouldn't say.
11 I don't know.

12 Q. You were aware as late as 2001 that you
13 had some pretty significant issues with the
14 house. There were roof leaks and mold is
15 appearing.

16 A. Right.

17 Q. What I am trying to figure out is, how
18 does Ross Cooper factor into the dynamic at this
19 point? What were your expectations or what were
20 your husband's expectations for Russ Cooper and
21 his responsibility, if any, to come back and make
22 repairs?

23 A. I don't know what my husband's
24 expectations were with Russ Cooper.

25 Q. That's fair enough. What were Maria

1 Allwin's expectations?

2 A. Well, my expectation is that I shouldn't
3 have to call him in the first place. That you
4 build a house on the beach and it should be
5 designed accordingly to be AC load on the beach
6 in South Carolina. I had that expectation of
7 professionalism of both Russ and the Shope people
8 to design a system that would not need to be
9 repaired after a few years.

10 That's my expectation. Would I have --
11 did I call Russ back? Did I think I should have
12 called him back? Did I call him back? I don't
13 recall, but I don't think I did. When there is a
14 problem, I just deal with it, and I go get a
15 painter and get somebody else to think about what
16 has to be done. But my expectation was, and
17 still is, I should not have to do any of that.

18 Q. I appreciate that, but you're faced with
19 a situation where there's a problem.

20 A. Right. We repaired it. I don't think
21 any of these documents say, Jim, repair this, and
22 Jim said no or call Russ or --

23 Q. And that's not my suggestion. I'm just
24 trying to figure out what demands, if any, were
25 made on Russ Cooper to make these repairs, and if

1 there --

2 A. I can't answer that. The demand was
3 made to build the house perfectly to begin with.

4 Q. I appreciate that, but it is an
5 imperfect world, and we live in reality, and
6 sometimes things happen, and sometimes things
7 need to be repaired.

8 Was it your expectation that SRW and
9 Russ Cooper Associates build a house for you that
10 would never require any maintenance?

11 A. Yes.

12 Q. Was there -- I'm assuming a period of
13 time at the very beginning where there was no
14 maintenance performed on the house?

15 A. No.

16 Q. What periodic maintenance, what routine
17 maintenance was performed on the house before
18 2000?

19 A. I don't recall. I just don't recall.
20 Usual things have to be repaired, maintained, you
21 know. Cleaning, power washing. I don't know.

22 Q. Have you and your husband ever owned an
23 oceanfront house --

24 A. No.

25 Q. Let me finish my question.

1 -- owned an oceanfront house prior to
2 Kiawah, 133 Flyway?

3 A. No.

4 Q. Did you speak to anyone prior to
5 building the house about the particular
6 maintenance hassle that an oceanfront home could
7 be?

8 A. No.

9 Q. Have you come to realize that an
10 oceanfront home demands a higher level of
11 maintenance and care than an inland home; would
12 you agree with that?

13 A. Yes. I would agree with that.

14 Q. But you didn't have that knowledge when
15 you built the house in the first few years that
16 you lived in it; is that fair?

17 A. Yes.

18 MR. BEST: Off the record.

19 (Off-the-record discussion.)

20 (A luncheon recess was taken
21 from 12:30 p.m. to 1:39 p.m.)

22 (Exhibit No. 21 was marked for
23 identification.)

24 Q. Exhibit 21. Ms. Allwin, I don't think
25 there is anything new in this exhibit, but do you

1 recall seeing that document before?

2 A. No.

3 (Exhibit No. 22 was marked for
4 identification.)

5 Q. Exhibit 22. This is an October 24, 2001
6 Bob Cowan memo to your husband. Do you recall
7 seeing this?

8 A. No.

9 Q. Item number 2. The rear doors are being
10 refinished. Did you know why that's being done?

11 A. Yes.

12 Q. Why was that done?

13 A. The mahogany finish on the windows and
14 doors would break down.

15 Q. From the sunlight?

16 A. Yes.

17 Q. This is on the outside?

18 A. On the exterior, yes. So we would take
19 it down and put the mahogany finish back up. I'm
20 pretty sure that's what it is.

21 Q. Later in that paragraph, Mr. Cowan says
22 he will use Woody. Do you know who Woody is?

23 A. He was the guy who did the painting for
24 him. He was just a handyman.

25 Q. If you go down to paragraph 7, it's old

1 business. And, again, it's this ongoing issue of
2 mold, mildew, sweaty registers. Second bullet,
3 Russ Cooper never showed to verify moisture
4 readings at various locations below windows.

5 Do you know anything about that?

6 A. I do not.

7 Q. On page 2, Mr. Cowan points out to your
8 husband to be aware of the statute of limitations
9 that will end soon. Do you know what the statute
10 of limitations is?

11 A. No.

12 Q. You understand that there is a period of
13 time when you know or should have known that you
14 had a problem, that the clock starts ticking and
15 you have a certain period of time in which you
16 have to file a lawsuit.

17 A. I have just heard of this, yes.

18 Q. You've learned of it recently?

19 A. Yes. But I don't think Mr. Cowan is an
20 attorney. So I don't know if he knows anything
21 more than that.

22 Q. Sure. Did you have any discussions with
23 your husband --

24 A. No.

25 Q. Let me finish my question because you

1 have no idea what my question is.

2 A. At any point in time about the statute
3 of limitations. No. I didn't.

4 Q. That wasn't my question. Did you have
5 any conversations with your husband about
6 possibly suing Russ Cooper or Russ Cooper
7 Associates about the problems at the house?

8 A. No.

9 Q. Did you ever hear Jim mention the
10 possibility of suing Russ Cooper Associates?

11 A. No.

12 Q. Has anyone ever told you you ought to
13 sue Russ Cooper Associates?

14 MR. LYLES: Objection to form.

15 Q. I don't want to know anything your
16 attorney has told you.

17 A. You mean prior to Robert? Prior to, no.
18 Sorry. Is that what you mean?

19 Q. I mean other than Robert Lyles or his
20 staff.

21 A. No. No. I don't recall anyone telling
22 me.

23 (Exhibit No. 23 was marked for
24 identification.)

25 Q. Exhibit 23 is I believe Mr. Allwin's

1 response.

2 A. I love this. I love this one. He
3 writes this long thing and Jim writes, yes, yes,
4 agreed, yes.

5 Q. Have you seen this before?

6 A. No.

7 Q. Someone has written, aware of builder
8 liability, last page.

9 A. Right.

10 Q. Do you know whose handwriting that is?

11 A. Actually, no. I thought it was you.

12 Q. No.

13 A. No. That's not me. I don't know whose
14 that is.

15 Q. I'll represent to you that -- I can't
16 represent because I'm not sure -- I believe it's
17 Tori Martindale. Didn't her last name change at
18 some point? I forget. Do you know?

19 A. I know her as Tori Stein.

20 Q. Tori Stein.

21 A. Yes.

22 Q. I believe it's Tori Stein, and she went
23 through an exercise later on where she was trying
24 to -- as best I could tell -- create a history of
25 the services and maintenance items that had been

1 done on the house. And I think this might be --

2 A. You think that's her handwriting?

3 Q. I think it's part of her document
4 review. We'll talk about that later. Does that
5 jibe?

6 A. No. I don't know.

7 (Exhibit No. 24 was marked for
8 identification.)

9 Q. Exhibit 24 is a January 8, 2002 memo
10 from Bob Cowan to your husband.

11 A. Yes.

12 Q. Again, it's old issues. The first one
13 is moisture problems. Mr. Cowan says he spoke to
14 Russ Cooper apparently in September of 2001, and
15 Cooper replied that he would come by and test the
16 same areas. I think he's referring to the
17 moisture meter. Russ Cooper did not show. We
18 spoke a few weeks later. Same response. He
19 never showed, referring to Russ Cooper.

20 Do you know anything about this?

21 A. No.

22 Q. Roof leaks, second sentence. This is
23 the same condition as the east end or the
24 flaking, flaking and peeling paint, which has
25 been a problem from the beginning.

1 Do you know if Mr. Cowan is referring to
2 the beginning of his residence at the house or
3 the beginning of the home -- or since the home is
4 completed?

5 A. I don't know.

6 Q. Was there peeling and flaking paint
7 prior to the Cowans' residence in the house?

8 A. I don't remember when the Cowans
9 started, so I don't know.

10 (Exhibit No. 25 was marked for
11 identification.)

12 Q. Exhibit 25 is another memo to your
13 husband from Bob Cowan dated March 5, 2002. Do
14 you have a recollection of seeing this before?

15 A. No.

16 Q. It's possible you could have seen it in
17 2002, you just don't recall?

18 A. Yes.

19 Q. First paragraph, again, the master
20 bedroom sitting area there is a leak. This is
21 the same area that Mr. Russ Cooper attempted to
22 repair over the past few years.

23 You don't know anything about the
24 details of those repairs, correct?

25 A. No.

1 Q. No, I'm not correct or, no, you're --

2 A. No. I do not know anything about the
3 nature of those repairs.

4 Q. This is the last reference to Russ
5 Cooper that I see in any correspondence from Bob
6 Cowan. Do you have any information to suggest
7 that Russ Cooper ever returned to the house after
8 March of 2002 to make any type of repair to the
9 home?

10 A. No. I don't.

11 Q. With the exception of the infamous phone
12 call in 2011, you had no conversation --

13 A. Exactly.

14 Q. -- or communication with Russ Cooper?

15 A. No.

16 Q. How about Maria Cooper or anybody at
17 Russ Cooper Associates?

18 A. No. Nobody.

19 Q. After 2002, are you aware that anyone on
20 you and your husband's behalf contacted Russ
21 Cooper or Russ Cooper Associates with a demand or
22 request for repairs?

23 A. I don't recall that.

24 Q. Paragraph number 2 refers to a Tischler
25 window that was replaced about three years ago.

1 So it would have been in the late '90s. I
2 believe I asked you, but do you know why that
3 window was replaced?

4 A. Well, it leaked, so we replaced the
5 window.

6 Q. Do you know if it leaked through the
7 window or around the window?

8 A. It leaked through the window. Through
9 the window you mean like through the glass? No.

10 Q. Well, I mean --

11 A. No. It didn't leak through the glass.
12 It leaked, like, around the window.

13 Q. Well, you can have a window that is
14 performing perfectly, but if it's installed
15 correctly, the window may leak and the problem
16 may be the installation versus the window. Do
17 you understand what I'm --

18 A. Yes.

19 Q. So water could come around the window.
20 My distinction is if there's a problem with the
21 window, it may come in between the window
22 components into the house.

23 A. Right.

24 Q. Do you know where the water was coming
25 from?

1 MR. LYLES: Objection to form.

2 Q. Simple question. Do you know why that
3 window was leaking?

4 A. I do not know why at the time, no.

5 Q. Do you know now why that window was
6 leaking?

7 A. I have a guess.

8 Q. With the understanding that it's a
9 guess, you can tell me.

10 A. I think the window was not attached to
11 the wall of the house, to the frame of the house.

12 Q. What makes you think that?

13 A. Because I saw it. I saw it through the
14 wall.

15 Q. You saw the wall -- the interior of the
16 wall while Sheetrock was removed?

17 A. Yes. And I saw the beach through the
18 window, through the wall.

19 Q. There was a gap in between the window
20 and the framing?

21 A. No. There was a hole. There wasn't a
22 gap.

23 Q. When was this? During Mr. Smith's
24 repairs?

25 A. Yes.

1 Q. Specifically regarding the window that
2 was replaced in the '90s and that's referred to
3 here; was it a defect problem in the window or
4 the window's installation that required that
5 repair or do you not know?

6 A. I do not know that.

7 (Exhibit No. 26 was marked for
8 identification.)

9 (Exhibit No. 27 was marked for
10 identification.)

11 Q. Exhibit 26 and 27 is some communication
12 your husband had with some folks about potential
13 roof repairs and folks that could help you with
14 roof repairs. Do you know anything about these
15 people?

16 A. No.

17 Q. Or that exchange that your husband had?

18 A. No. I don't know who these people are.

19 Q. Do you recall in the spring of 2002
20 there continued to be roof problems and there
21 continued to be a need for roof repair?

22 A. I think we wanted to figure out how to
23 fix the roof, yes.

24 Q. Right. And no demand was ever made on
25 Russ Cooper --

1 A. I don't --

2 Q. -- for these roof repairs?

3 A. I don't know. I don't think so.

4 Q. Did you all have a termite bond on the
5 house?

6 A. I think we did, yes.

7 Q. From the moment it was completed?

8 A. I think maybe a few years after. Yes.

9 I think so. I don't --

10 Q. Do you know who it was with?

11 A. We always had Atlantic Pest. So they
12 would know best.

13 Q. I know there was an application made to
14 Atlantic Pest, I want to say 2000 -- I want to
15 say within the last five years or maybe seven
16 years, back in the '90s, early 2000. Do you
17 think it was also with Atlantic?

18 A. It was always Atlantic Pest.

19 Q. Were there periods of time where it may
20 have lapsed --

21 A. No.

22 Q. -- where there were gaps in the
23 coverage?

24 A. No. No. We always had them and the
25 same guy always came through.

1 Q. Do you recall the contact person's name?

2 A. No. I have no idea.

3 Q. When you say the guy that came through,
4 you are talking about the inspector?

5 A. Yes. The same monthly inspector came
6 all the time.

7 Q. Did they come inside to perform a
8 quarterly or monthly --

9 A. Monthly.

10 Q. -- pest control?

11 A. Yes. They still do.

12 Q. I am not concerned with the pest
13 control. I'm more concerned with the termite
14 treatment and termite bond. Do you understand
15 the difference?

16 A. Yes. They did some quarterly analysis.
17 They would come -- they would come quarterly.

18 Q. Do you know what a termite bond --

19 A. No. I don't know what it is.

20 Q. Some people have termite --

21 A. No. I don't. Oh, I don't know if we
22 did or not.

23 Q. And that's okay. In the South we have
24 lots of termites.

25 A. Yes.

1 Q. And the termite bond, it's a repair
2 bond, it's a program. You pay sometimes a very
3 hefty fee to the pest control company, and they
4 come out and they treat your house, and they come
5 out at least once a year to inspect it, to look
6 for telltale signs of termites, like mud tubes,
7 things like that. And if your house is under
8 bond, and if you have termite damage while it's
9 under bond after they treated it, they will
10 repair your house. Did you have that program in
11 place?

12 A. I don't think so.

13 Q. I will again represent to you, I think
14 within the last five, seven years you have
15 applied --

16 A. Oh, did I get it now?

17 Q. I don't know if you have it now. I'm
18 just saying that Atlantic got involved and at
19 least gave you the opportunity to purchase bonds.

20 A. Okay. Well, that was nice of them. I
21 didn't know that.

22 Q. They would think it would be nicer if
23 you wrote the check.

24 A. Well, I wrote everybody else a damn
25 check. I might have well sent them one too.

1 Q. Are you aware of your house ever having
2 termite damage?

3 A. No.

4 Q. If I told you that your house had
5 termite damage --

6 A. I would be surprised.

7 Q. If I told you your house, during the Dan
8 Buffington repair, a carpenter ant infestation
9 was found, would you be surprised?

10 A. Yes.

11 Q. You didn't know about either of those
12 infestations -- or even if I'm telling you the
13 truth, you know nothing about it?

14 A. No. Are you telling the truth? I mean,
15 I don't know that.

16 Q. Yes, ma'am. I wouldn't knowingly not
17 tell you the truth.

18 A. I wouldn't knowingly not tell you the
19 truth.

20 Q. And I'm not suggesting you would. I
21 appreciate that. Thank you for clarifying that
22 though.

23 Did we look at 27?

24 A. No.

25 Q. No. We skipped it.

1 A. Oh, here is 27. There were two things
2 about this, which I don't know either.

3 (Exhibit No. 28 was marked for
4 identification.)

5 Q. Exhibit 28. Do you recall seeing that
6 before?

7 A. No.

8 Q. You may have seen it, you may not have
9 seen it, you have no idea.

10 A. Right.

11 Q. Exhibit 30 I'm going to skip for the
12 moment.

13 A. What about 29?

14 Q. Excuse me. 29 I'm going to skip for a
15 moment.

16 How would you all get to Kiawah from
17 Connecticut or Manhattan?

18 A. We flew down.

19 Q. Would you fly commercial or -- I know
20 sometimes you flew into the Executive.

21 A. Yes. We flew into Executive Jet.

22 Q. Did your husband's business have a plane
23 or --

24 A. No.

25 Q. Just charter?

1 A. We had a company.

2 (Exhibit No. 30 was marked for
3 identification.)

4 Q. Exhibit 30. If you look on the third
5 page, there is some handwriting up at the top
6 right.

7 A. Yes.

8 Q. Do you know whose handwriting that is?

9 A. I do not.

10 Q. The first couple of pages are an e-mail
11 from Amy Ziegler at Gamble.

12 A. To me.

13 Q. To you, where she has a laundry list of
14 things that she's asking you about.

15 A. Yes.

16 Q. On the third page, just reviewing it, it
17 seems like there's a checklist she's going
18 through with items at your house, and some are
19 checked and some are not checked. And you don't
20 know whose handwriting that is?

21 A. I do not.

22 Q. The handwriting, number 4, regarding
23 roof and windows, Russ Cooper, question mark. Do
24 you have any idea what that means?

25 A. I do not.

1 Q. Did you have a conversation with anyone
2 at Gamble in 2002 or at any time about problems
3 with windows and doors and getting Russ Cooper
4 involved and were seeking a recovery or any type
5 of assistance from Russ Cooper?

6 A. I don't recall that, no.

7 (Exhibit No. 31 was marked for
8 identification.)

9 Q. Exhibit 31 is a March 4, 2003 memo from
10 Robby -- I'm assuming this is Robby Diamond.
11 This is on Buffington Homes letterhead to Dan
12 Buffington who is also with Buffington Homes,
13 correct?

14 A. Yes.

15 Q. And this appears to be preconstruction
16 notes concerning a preconstruction walkthrough
17 about where they were going to put your furniture
18 and artwork during the extensive repair that was
19 going to be performed by Mr. Buffington.

20 A. Yes.

21 Q. What led you to Mr. Buffington's
22 doorstep?

23 A. I don't remember. We interviewed a few
24 people down there, a few builders, to see who
25 could help us with the things that -- the laundry

1 list of things that were constantly presented and
2 how to get it best done. And I think we checked
3 references of people, and Dan Buffington came
4 very highly recommended, as I recall, from the
5 people he was working with down there, and he has
6 a good reputation down there.

7 Q. And I won't disagree with you.

8 What were the laundry list of things?

9 A. The things that had proven to be
10 difficult to get repaired.

11 Q. The roofs?

12 A. The roof. Figuring out the window, the
13 other window, you know, the kitchen window there.
14 You know, trying to help us figure out with the
15 doors, get the doors opening better, painting
16 perhaps, painting.

17 Q. The HVAC?

18 A. The HVAC, of course, which always was
19 the mold issue, those things, and he struck us as
20 a very calm and patient person who could help us
21 walk through those issues.

22 Q. In 2003 you were asking Mr. Buffington
23 to offer assistance with the roof and attempt to
24 diagnose and repair problems with the roofs,
25 correct?

1 A. Uh-huh.

2 Q. You have to say yes or no.

3 A. Yes.

4 Q. Were there any problems with retaining
5 walls that you asked Mr. Buffington to help with
6 that you recall?

7 MR. CANTWELL: Object to the
8 form.

9 A. What retaining walls are you referring
10 -- I don't know what you are referring to. I
11 don't recall that. I don't know what that is.

12 Q. How about chimneys? Do you recall
13 problems with the chimneys?

14 A. I don't recall that, no.

15 Q. You asked Mr. Buffington to assist you
16 in repairing and get help in diagnosing problems
17 with the exterior walls, being the windows and
18 doors and air infiltration at those locations.

19 A. We asked him to help us with the things
20 that were on our list -- were on our minds, yes.

21 Q. And that was one of the things --

22 A. That was one of the things, yes.

23 Q. Did Mr. Buffington help you with the
24 pool cabana?

25 A. I don't recall doing anything to the

1 pool cabana.

2 Q. Was the roof not replaced?

3 A. I don't think we replaced the roof, no.

4 Oh. I don't remember. I don't remember.

5 Q. Did Mr. Buffington help you with the
6 basement wall issue where the pool deck tied --

7 A. No.

8 Q. -- into the -- where the pool deck ties
9 into the house?

10 And your answer?

11 A. Are you talking about the cave area?

12 Q. No, ma'am.

13 A. The outside before that?

14 Q. I'm talking about -- I view it as a
15 single area, because the water that comes down
16 into the cave comes from somewhere. My Horry
17 County education and gravity tell me it's
18 probably coming from somewhere above and that
19 water on that pool deck is getting into the
20 basement. Does that make sense?

21 A. Uh-huh.

22 Q. And you probably follow me.

23 Where that wall is is where the pool
24 deck ties into the house; is that your
25 understanding?

1 A. Yes.

2 Q. And that's where leaks are occurring.

3 Did you ask Mr. Buffington to assist you
4 repairing or assist you in getting help to
5 diagnose the problem at that basement wall area
6 where the pool deck ties into the house?

7 A. I believe that that was something he
8 definitely -- let me rephrase that. That was one
9 of the issues we discussed, yes.

10 Q. Do you know if he performed any work in
11 that area?

12 A. Yes. He did.

13 (Exhibit No. 32 was marked for
14 identification.)

15 Q. Do you recall seeing Exhibit 32 before?

16 A. No. I do not.

17 Q. It has your Bates stamp at the bottom.
18 Is it possible that you did see this in or about
19 July 2003 and you just don't recall or are you
20 confident you never laid eyes on it?

21 A. I think I might have seen it, and I
22 don't recall it.

23 Q. Do you recall damaged hardwood flooring
24 in the office or anywhere?

25 A. Yes.

1 Q. Where have you had hardwood flooring
2 problems?

3 A. We had hardwood flooring problems in the
4 office and the back wall of the doors.

5 Q. As early as 2003?

6 A. I don't recall when.

7 Q. If Dan Buffington or someone from
8 Buffington Homes says there was damaged hardwood
9 flooring at the exterior walls of the first floor
10 office, you wouldn't disagree with that? And
11 look at paragraph 10.

12 A. Damaged hardwood flooring, yes.

13 Q. And if Dan Buffington or Robby Diamond
14 or somebody from Buffington Homes says there were
15 leaks at the rear steps or where the rear doors
16 are on the pool deck and there was rotten wood in
17 those locations, you wouldn't disagree with that?

18 A. No. I would not.

19 Q. You'd almost expect that because you
20 could see the water leaking down into the
21 basement below?

22 A. No. Because I could see the floor is
23 warped or -- warped.

24 (Exhibit No. 33 was marked for
25 identification.)

1 Q. I'm looking at Exhibit 33. Who is Milt
2 Morgan?

3 A. Milt Morgan is our contact and project
4 manager for the Buffington project.

5 Q. Is that the term you guys used, project
6 manager, or is it construction manager maybe
7 something people use? He was your representative --

8 A. He was our representative on site.

9 Q. What did he do? What did his duties
10 entail?

11 A. He served as a conduit from Jim to the
12 people on site, to the -- whoever was working,
13 and was someone Jim could bounce ideas off, I
14 think.

15 Q. So he was someone you could get a second
16 opinion from if necessary, I guess?

17 A. Uh-huh.

18 Q. That was a yes?

19 A. Yes.

20 Q. And someone who would go out to the
21 project while it was going on, actually lay eyes
22 on it because you all couldn't hop in the car and
23 drive down; is that fair enough?

24 A. Yes. That's fair.

25 Q. And obviously someone to pass

1 information to and from you and your husband and
2 Dan Buffington and his crew.

3 A. Yes.

4 Q. And Mr. Morgan was paid for his
5 services, correct?

6 A. Yes.

7 Q. Do you know if you signed a contract
8 with Mr. Morgan?

9 A. I don't recall that.

10 Q. How did you hear about Mr. Morgan?

11 A. I don't recall. Somebody told us about
12 him. I don't recall.

13 Q. It looks like this might be -- Exhibit
14 33 might be an introduction of sorts from Pat
15 McKinney?

16 A. Yes.

17 Q. Does that ring a bell?

18 A. Yes. That would definitely make sense.

19 Q. Do you recall that prior to Mr.
20 Buffington actually performing work on your house
21 there was an effort to enlist the aid of expert
22 engineers, other design professionals to diagnose
23 the problems with your house?

24 A. I don't recall.

25 Q. Did you and your husband ask Dan

1 Buffington to assist you in repairing,
2 preserving, maintaining your home and enlist the
3 assistance of those types of experts?

4 A. No. I don't think we would have done
5 that.

6 (Exhibit No. 34 was marked for
7 identification.)

8 Q. Let me show you Exhibit 34, which is a
9 Campbell Schneider & Associates report prepared
10 by an engineer -- his name is Larry Elkin --

11 A. Right.

12 Q. -- to Dan Buffington, and it's dated
13 August 15, 2003. And the subject of this report
14 is, your home, Kiawah. Have you seen this
15 document before?

16 A. No. I have not.

17 Q. Do you recall Dan Buffington discussing
18 the engineer's report or the Elkin report about
19 problems with your home?

20 A. No. I do not.

21 Q. On page 6 of 9 there is a conclusion
22 section.

23 A. Conclusion.

24 Q. Conclusion. The damage to this home
25 appears to be a direct result of the numerous

1 sources of unconditioned air infiltration, steep
2 thermal gradients on finished interior surfaces
3 and ongoing water intrusion around windows and
4 roof valleys and at several subgrade locations,
5 referring to the basement.

6 Do you recall Dan Buffington or Robby
7 Diamond or anyone on behalf of Buffington Homes
8 referring to this engineering report?

9 A. No. I don't.

10 Q. On page 7 of that, the gist of what I
11 just read, the air infiltration -- and you hit on
12 this earlier -- where moist, humid air from the
13 outside infiltrates the conditioned living space
14 and that moist area then creates condensation on
15 your walls, what have you, and you end up with
16 mold. Do you think this report is where or maybe
17 conversations with Dan Buffington is where you
18 got that knowledge?

19 A. I don't know.

20 Q. Page 7, please, the last paragraph at
21 the bottom talking about the sources of water
22 intrusion.

23 A. Wait. Are you on 7 of 9?

24 Q. 7 of 9, yes, ma'am.

25 A. The local --

1 Q. The localize moisture damage. Here they
2 are talking about sources of liquid water
3 intrusion, and you've got top of the main
4 stairway. Are you familiar with the leak there?

5 A. No.

6 Q. The roof valley of the safari bedroom.

7 A. Yes.

8 Q. Which bedroom is the safari bedroom?

9 A. It's the safari bedroom. It's the one
10 that had the print of the safari.

11 Q. I think maybe when I was there there was
12 no safari. I think I missed that.

13 A. You missed it.

14 Q. Where in the house would it be?

15 A. It's on the second floor, the first room
16 from the media room.

17 Q. The media room side. All right.

18 A. It had that same angle shooting through
19 it.

20 Q. The very last page, 9 of 9, the last one
21 page of text, I should say. Larry Elkin
22 recommends that the source of the liquid water
23 leaks be investigated from the exterior to
24 identify a possible pass of water leakage. He is
25 recommending additional research.

1 Do you recall Dan Buffington or anyone
2 suggesting destructive testing, let's pull off
3 pieces of the siding or the roof, to track these
4 leaks?

5 A. No. Did they suggest it? Do you have
6 anything on it?

7 Q. They suggested it in the letter. I
8 mean, Larry Elkin suggested it. I don't know
9 about Dan Buffington. I'm not suggesting. I'm
10 asking you. What I'm hearing from you is you had
11 no meeting with Dan Buffington where he came and
12 sat down with you and said, here's this report
13 from Larry Elkin, Exhibit 34, and this is serious
14 and this is bad and this is what we need to do
15 about it.

16 A. No.

17 (Exhibit No. 35 was marked for
18 identification.)

19 Q. Exhibit 35 is a fax from Milt Morgan to
20 Mr. Allwin, and the first paragraph he talks
21 about a gentleman by the name of Roy Smith who I
22 will represent to you is an architect in
23 Charleston. Do you know or know of Mr. Smith?

24 A. I never heard of him, no.

25 Q. Never had any conversations,

1 communications with him. You don't know what he
2 did with respect to your house or didn't do?

3 A. No.

4 Q. Ever heard his name before ever?

5 A. No.

6 Q. Mr. Smith, the architect, and Milt
7 Morgan intended to speak with Bob Cowan and Dan
8 Buffington regarding their assignments and
9 observations. Why is -- I'm on the second
10 paragraph here -- why is Bob Cowan being pulled
11 back? Was he still living in the house?

12 A. I don't recall that. I don't recall
13 when he was living there. And it says
14 assessments and observations. So I don't know
15 what --

16 Q. I'm sorry. I misread that. Thank you.

17 A. I don't know what that was. I don't
18 know why they would call Bob again.

19 (Exhibit No. 36 was marked for
20 identification.)

21 Q. Exhibit 36 is an invoice from Larry
22 Elkin's firm, Campbell Schneider, to Buffington
23 Homes for the work involved in preparing the
24 report we just looked at, Exhibit 34. I'm
25 assuming Dan Buffington paid Campbell Schneider,

1 and I'm assuming Dan Buffington passed on that
2 cost to you and your husband. Do you know?

3 A. I'm assuming you assume that. I do as
4 well, but I don't know it.

5 (Exhibit No. 37 was marked for
6 identification.)

7 Q. Exhibit 37 is a letter from Amy Ziegler
8 addressed to you and your husband at the
9 Greenwich, Connecticut address forwarding the
10 Campbell Schneider report that we just looked at
11 previously, Exhibit 34. Does this refresh your
12 recollection as to whether you received or ever
13 saw the Campbell Schneider report?

14 A. No. It doesn't, but I don't know how
15 they got it.

16 Q. Well, Gamble was your property manager,
17 correct?

18 A. Yes.

19 Q. Was Gamble working with Buffington to
20 try to identify and resolve the problems with
21 your house?

22 A. They were ushering Buffington in and out
23 of the house. I think they, you know, gave them
24 access. I don't know that they were helping
25 them. No. I don't know that.

1 Q. Do you know if Dan Buffington asked
2 Gamble to send this to you on his behalf?

3 A. I have no idea.

4 Q. In the second paragraph Amy Ziegler
5 points out, the Elkin report does not address the
6 roof which there continues to be serious problems
7 with, and asks you and your husband if you would
8 like an independent roof assessment, and that
9 they would be willing to engage an expert to do
10 that.

11 Do you recall any conversations about an
12 engagement of a roof expert or performance of
13 roof assessment in the 2004 timeframe?

14 A. No. I don't.

15 Q. You will agree with me that Dan
16 Buffington and Gamble Home Services are acting as
17 your agents in this process to identify and
18 diagnose problems with your home?

19 MR. LYLES: Objection.

20 MR. CANTWELL: Object to the
21 form.

22 Q. They were acting on your behalf?

23 A. Well, Buffington is repairing the house.
24 Is that what you are asking me? Yes.

25 Q. I'm asking you in the process -- it's

1 clear that Dan Buffington has gone out and
2 procured this report from Larry Elkin.

3 A. Right.

4 Q. And he paid for it and both of us assume
5 that you ultimately paid for it.

6 A. Right.

7 Q. Dan Buffington is acting on behalf of
8 you and your husband in an effort to diagnose and
9 remedy the problems your home is suffering.

10 A. Yes. That makes sense.

11 Q. And you are paying him to do that.

12 A. I paid him.

13 Q. Likewise, Gamble, as property manager,
14 their job is to inspect and to maintain, to
15 notify you if there are problems, to make
16 suggestions for repairs, to assist you in
17 identifying the people who can diagnose and make
18 repairs and you pay them for that service.

19 A. I paid everybody.

20 (Exhibit No. 38 was marked for
21 identification.)

22 Q. Exhibit 38. This is more communication
23 from Milt Morgan. I think it's faxed to a 212
24 number. Would that be Manhattan?

25 A. Yes.

1 Q. And there is some more information about
2 what Milt Morgan and Roy Smith are doing to
3 address the issues with the house, and this
4 letter talks about a proposal to call in a local
5 and mold testing firm, Albrecht Environmental.
6 Is that name familiar to you?

7 A. No.

8 Q. Do you know if Albrecht ever came into
9 your house?

10 A. I don't know. But they're local.

11 Q. Yes, ma'am.

12 A. So they might have. They also have a
13 good reputation. So it's possible.

14 Q. This is a letter or actually a proposal
15 from Mr. Davis to Milt Morgan, and I understand
16 Milt Morgan's role during Mr. Buffington's
17 ultimate repair, which we are going to get to,
18 he's your project manager, he's out there, he's
19 your eyes on the ground, the conduit liaison
20 transferring information back and forth. But
21 here in the fall of 2003, it looks like they are
22 still trying to identify what exactly needs to be
23 repaired. Is that a fair statement?

24 A. Uh-huh.

25 Q. You have to say yes or no.

1 A. Yes.

2 Q. And just to put one more rung on
3 Mr. Morgan's ladder, he's also helping you in
4 that process to retain the experts you need, give
5 the advice you need to diagnose the problems with
6 your home; is that fair?

7 A. I don't know what Jim asked further of
8 him.

9 (Exhibit No. 39 was marked for
10 identification.)

11 Q. Have you seen this proposal, Exhibit 39,
12 before?

13 A. No. I have not.

14 MR. BEST: Off the record.

15 (Off-the-record discussion.)

16 (Exhibit No. 40 was marked for
17 identification.)

18 Q. Exhibit No. 40 is an October 2003
19 estimate, proposal from Picquet Roofing to Milt
20 Morgan. Have you seen this document before?

21 A. No. I have not.

22 Q. Did you ever meet or talk with Milt
23 Morgan?

24 A. I met Milt Morgan, yes.

25 Q. At the house or --

1 A. Yes. I meet Milt Morgan at the house
2 once or twice.

3 Q. While he was coming out to do his
4 inspections or --

5 A. I don't recall in what capacity he might
6 have come by if he heard I was in town. I don't
7 know. I do remember meeting him.

8 Q. Was it, oh, Maria is in town, Let me go
9 by there and meet my clients? That type of
10 thing?

11 A. I don't recall why he came by.

12 Q. Do you recall any communications with
13 Milt Morgan or Gamble or Dan Buffington or
14 anybody involved in the repair or potential
15 repair of your house in this time period about a
16 roof assessment or roof inspection performed by
17 Mr. Picquet or anyone?

18 A. No. I don't.

19 Q. Does the name De Veaux Picquet sound
20 familiar?

21 A. Not at all.

22 Q. Or excuse me. De Veaux Picquet.

23 A. No. No pronunciation sounds familiar.

24 Did I pay for this too?

25 Q. I think that may have been a freebee,

1 because he wanted to fix your roof --

2 A. Oh.

3 Q. -- he was willing to do an assessment,
4 but don't hold me to that.

5 (Exhibit No. 41 was marked for
6 identification.)

7 Q. Exhibit 41, and feel free to move these
8 clips, Ms. Allwin, if you need to.

9 Do you recall seeing Exhibit 41, this
10 October 12, 2003 letter from Milt Morgan to both
11 you and your husband?

12 A. I do not.

13 Q. He is talking about a proposal from
14 Albrecht with a price range of 2,500 to \$5,000 to
15 perform an indoor air quality test, basically a
16 mold test. Does any of this ring a bell to you?

17 A. No.

18 Q. There's also the last full paragraph of
19 the letter on the first page, a reference to Mr.
20 Picquet's inspection report that we looked at a
21 moment ago that you weren't familiar with.
22 That's still not ringing a bell?

23 A. No. It is not.

24 MR. BEST: Let's take a
25 one-minute break.

1 (A recess was taken.)

2 (Exhibit No. 42 was marked for
3 identification.)

4 Q. Ms. Allwin, Exhibit 42 is an October 19,
5 2003 letter from Milt Morgan to you and your
6 husband regarding Dan Cartin's contact with an
7 engineering firm in Columbia regarding HVAC
8 repairs. Do you know anything about that?

9 A. No. I don't.

10 Q. He also references costs that Picquet
11 Roofing has provided for replacement of the roof.
12 Do you recall conversations about that?

13 A. No. I don't.

14 Q. All this is news to you?

15 A. Yes. It is.

16 (Exhibit No. 43 was marked for
17 identification.)

18 Q. Exhibit 43, have you seen this before?

19 A. No. I haven't.

20 Q. Do you know who Christopher Walker is?

21 A. He is the Tischler guy.

22 Q. Have you met Christopher or spoken with
23 him before?

24 A. I have spoken with him, yes.

25 Q. This is on October 31, 2003 -- you may

1 have noticed I'm trying to go chronologically --
2 he is sending information about a rear entry
3 door. Were you replacing doors at this time or
4 were you contemplating replacing doors at this
5 time?

6 A. Yes.

7 Q. Why?

8 A. Because these doors that we have are the
9 tilted doors. They tilt in and out, and they
10 tilt up and down.

11 Q. So you can clean them or --

12 A. No. Just to get in and out of the
13 house, and so you can't -- they're not meant to
14 be entry/exit doors to the extent that this is in
15 the kitchen, and so they are so hard to open.

16 Q. You mean they actually tilt like a
17 Bahama shutter?

18 A. The top tilts.

19 Q. To let air in?

20 A. No. You lift the latch up, the top will
21 tilt down.

22 MR. DUKES: Like a transom?

23 A. Like a transom, right. But, you know,
24 it's very dopey for a main kitchen door, pool
25 entry/exit with a hundred kids and people who

1 don't get the idea if you move the handle this
2 way (indicating), the door is going to come
3 falling on you.

4 Q. Got you.

5 A. So we tried to see if we couldn't get,
6 you know, just a normal door.

7 Q. Sure.

8 A. But we couldn't.

9 Q. Why didn't you -- made by Tischler, you
10 mean?

11 A. Made by Tischler, yes.

12 Q. And ultimately you went with a different
13 product, I think, that Tory put in.

14 A. No. No. We still have the original
15 doors. I don't know what you are referring to.

16 Q. Okay. We'll get there.

17 (Exhibit No. 44 was marked for
18 identification.)

19 Q. Exhibit 44.

20 A. Yes.

21 Q. Is sending to Mr. Allwin from Milt
22 Morgan. Have you seen this November 9, 2003
23 letter before?

24 A. No. I haven't.

25 Q. Is it possible you saw it in 2003 and

1 you don't recall or are you --

2 A. Yes.

3 Q. -- adamant?

4 (Exhibit No. 45 was marked for
5 identification.)

6 Q. Exhibit 45. And I'll point out to you
7 it's faxed to Mrs. Allwin, you, at one number and
8 Mr. Allwin at a different number. Have you seen
9 Exhibit 45 before?

10 A. No. I haven't.

11 Q. This is a proposed scope of work to be
12 performed by Buffington Homes that Mr. Morgan
13 prepared. Do you understand that?

14 A. Yes.

15 Q. Is that not ringing a bell?

16 A. No.

17 Q. Do you recall Mr. Morgan or anyone
18 suggesting or doing water testing at the rear
19 deck steps and rear wall? What I am looking at
20 is number 16. On the second page of the letter
21 there's a proposal -- or actually a directive
22 from Mr. Morgan, if his scope of work is to be
23 followed, that water pressure tests be performed
24 at the rear deck steps and the rear wall where
25 they adjoin the great room exterior wall. This

1 is that balcony leak area we were talking about.

2 Do you know anything about that?

3 A. I do not.

4 (Exhibit No. 46 was marked for
5 identification.)

6 Q. Exhibit 46. November 17, '03 memo to
7 J. Allwin -- actually this is the same -- Mr.
8 Morgan is resending the same information he's
9 already sent out. But you don't recall.

10 (Exhibit No. 47 was marked for
11 identification.)

12 Q. Exhibit 47 is an estimate from Tischler
13 Und Sohn to Buffington Homes to replace two panes
14 of glass -- excuse me, actually two windows. Do
15 you know which windows these are?

16 A. I do not, but it says bent glass.

17 Q. I'm sorry if I said something different.

18 A. So if this was bent, I think --

19 Q. On the turret?

20 A. One of the turret glasses, I would
21 think.

22 Q. Do you recall windows being replaced --
23 I suspect they were taken out and maybe some work
24 done in the rough openings. Do you know --

25 A. I don't know.

1 Q. You don't know what they did to work on
2 those windows?

3 A. I do not.

4 Q. You don't know which two windows you
5 were considering replacing?

6 A. It was the windows that were -- were not
7 stationary. It was the opening windows.

8 Q. Are those in a certain area on the
9 turrets?

10 A. One of the turrets, they open. The
11 other three are stationary. There's one on the
12 third floor and one on the second floor.

13 Q. So it would be the turret towards the --
14 one of the two turrets?

15 A. I'm sorry. There's only one turret in
16 the house, and there's first floor and second
17 floor, the master bedroom and the kitchen, they
18 each had one window that opened, that was not
19 stationary. Those windows are the windows that
20 were faulty, in my humble opinion, and I believe
21 when you say bent glass -- you can look up what
22 number they are.

23 Q. Sure.

24 A. This is 224 and this is 128. I have no
25 idea.

1 Q. And these are diagrams that show --

2 A. You have it somewhere.

3 Q. It's in here somewhere.

4 Within the turret, and if you are
5 standing in the middle of the turret looking
6 outside, where in the row is the operable window?

7 A. It's right in front of you.

8 Q. It's in the center of the turret.

9 A. Yes.

10 Q. If you are in your breakfast area, how
11 many windows are in the turret?

12 A. I don't know. There are one, two --
13 four.

14 Q. And it's one of the two middle ones?

15 A. It's the middle one that opens. It's
16 the larger window and it opens.

17 Q. It's distinct and obvious?

18 A. Yeah. Well, I guess it wasn't so
19 distinct. They didn't take a picture of it. Oh,
20 here it is. It's this (indicating).

21 MR. BEST: Off the record.

22 (Off-the-record discussion.)

23 A. It's this window here, and it's that
24 window.

25 Q. We are looking at Exhibit 1 on page 181,

1 the last page of the exhibit, and looking at the
2 turret on the right. It's the window directly in
3 front of the person taking the picture.

4 A. Right there, right.

5 (Exhibit No. 48 was marked for
6 identification.)

7 Q. 48 is a proposal from Designs and Brick.
8 This is to Dan Buffington's company and they
9 propose to take up stone --

10 A. Take up existing stone.

11 Q. -- on the terrace. I'm assuming it's
12 what we have been referring to as the pool deck.

13 A. Yes.

14 Q. Stone on the two long steps leading into
15 the two French doors. Where would that be? Is
16 that leading into the great room, the --

17 A. Yes.

18 Q. Do you know why that work is being done?

19 A. No. I don't.

20 Q. Would it have anything to do with leaks
21 into the basement?

22 A. It makes sense, yes.

23 (Exhibit No. 49 was marked for
24 identification.)

25 Q. Exhibit 49 is a letter from Dan

1 Buffington to you and your husband. Have you
2 seen this before?

3 A. No. I haven't.

4 Q. What interaction did you have with Dan
5 Buffington about relaying the information --
6 obviously he is out there working to find a
7 solution that's going to be effective and remedy
8 the problems you are having.

9 How did he get information about what he
10 was finding? His thoughts, his hunches, his
11 fears about your home, how did he convey that to
12 you?

13 A. I don't know. Did he -- I don't
14 remember.

15 Q. When you say you don't recall seeing it,
16 are you telling me you are adamant you never laid
17 eyes on this document or you just don't recall?

18 A. I don't recall seeing it. As I don't
19 recall seeing many of the others.

20 Q. Sure. And I'm not trying to be
21 presumptuous. It just seems to me that you've
22 got a tremendous investment in this home in
23 Kiawah and there are pretty serious problems
24 going on, and you are about to pay -- you and
25 your husband are about to pay some pretty serious

1 money; not just to Dan Buffington, but you have
2 all these problems and paid money to have repairs
3 done that haven't worked frankly, and you are
4 paying consultants to attempt to find yet another
5 new solution that hopefully will work. It's
6 seems to me -- I'm not saying you are
7 disinterested or don't recall. I'm just saying
8 that it would be seem to me you would be keenly
9 aware of what's going on and keenly interested in
10 working with Dan and what he had to say with
11 respect to fixing your house.

12 MR. LYLES: Objection to form.

13 A. But what's your question?

14 Q. Were you not keenly interested in what
15 Dan Buffington had to say about your house?

16 A. I was very -- yes. I was keenly
17 interested in what he had to say. I don't recall
18 how he communicated that to me or my husband.

19 Q. Did he communicate it to you?

20 A. I don't recall.

21 Q. Do you recall Dan Buffington telling you
22 that -- or your husband that you needed to
23 replace your roof, that a patch of the roof would
24 not be permanent and would fail down the road?

25 A. There were a lot of conversations about

1 the roof. I don't recall specifically what he
2 thought, but he says here -- I don't know.

3 Q. Do you recall Mr. Buffington reminding
4 you and your husband about the statute of
5 limitations?

6 A. I see it here in the letter. I don't
7 recall it specifically.

8 Q. Did Mr. Buffington ever suggest to you
9 that you need to seek the advice of an attorney
10 or that you ought to sue Russ Cooper or somebody
11 or try to get an attorney to at least ask Russ
12 Cooper or the subcontractors who built your house
13 to assist with the repairs?

14 A. No. No one ever said that. I don't
15 think anyone would ever say that to my husband.

16 Q. I'm looking at the first page, 1C. You
17 see here about the middle of the paragraph, I
18 strongly recommend?

19 A. I strongly urge you to contact the
20 building roofer who installed the roof.

21 Q. If he is unwilling to accept
22 responsibility and replace the roof, I would
23 suggest enlisting legal counsel.

24 Do you recall any kind of conversation
25 with Dan Buffington about that?

1 A. No, I don't. And I don't -- I don't.

2 Q. I meant to ask you this earlier, and I
3 don't mean to completely change subjects, but --
4 and I'm not trying to pry. I only ask to the
5 extent that it affects this litigation. How is
6 your health? I hope it's well. But how is your
7 health?

8 A. My health is fine.

9 Q. I understand you were diagnosed with
10 cancer.

11 A. Well, you know, it's very interesting
12 you raise that subject. How do I look to you?

13 Q. You look great.

14 A. Do I? How do I look to each of you?

15 MS. McINTOSH: Great.

16 Q. You look great.

17 A. Thank you. So when you go for a routine
18 mammogram, you are asked to try and find
19 something, and then you go to somebody else, and
20 then you go to somebody else. And then finally
21 you find somebody who says to you, yes, you've
22 got a problem, you have breast cancer. I'm my
23 house. I knew if there's a problem, we go, we
24 find, we ask, we ask, we ask, and then we find
25 somebody who says, yes, we can help you, we'll

1 fix this, we'll take out that cancer, we'll fix
2 the wall. That's me. I am living proof of my
3 house in South Carolina.

4 Q. And it sounds like you are doing well.

5 A. I'm fine. I have some other things I
6 have to take care of upcoming, but my hair is
7 growing back, but I'm good. But thank you so
8 much for asking.

9 Q. And I hope your prognosis continues --

10 A. Thank you so much.

11 Q. -- to be great.

12 A. But you gave me a chance to tell you. I
13 appreciate it. It was a slow pitch, and I
14 appreciate it.

15 Q. That's okay. And, again, I am asking
16 this for the right reason. You don't anticipate
17 any hurdles or complications from your treatment
18 or prognosis that will impact the litigation in
19 the future?

20 A. I'm on.

21 Q. I am not trying to be callous.

22 A. I understand. I'm on. I'm in.

23 Q. From a logistical point, I want to make
24 sure you're ready to move forward. Thank you.

25 A. Unless they find something else.

1 Another leaky roof in each case.

2 Q. I have got a bunch of other documents
3 that I can ask other people about and --

4 A. I'd like to hear what other people have
5 to say.

6 Q. Well, we'll probably have to find out
7 what other people have to say, but is there
8 anything in these documents from 2003, 2004,
9 2005, 2006 and 2007 that if I show you, you are
10 going to have any clear recollection of?

11 A. No. Probably not.

12 And then my husband was diagnosed and
13 that was -- it was really --

14 Q. And that was tragic.

15 A. -- a blur. Those few years were just a
16 blur.

17 Q. I can't imagine. And I understand that,
18 and, again, I'm not trying to be insensitive.
19 I'm just trying to understand how things worked.

20 When was your husband diagnosed?

21 A. He was -- he became ill in '05. He was
22 diagnosed in '06 and passed away in '07, October.

23 Q. In 2004 you made a claim with your home
24 owner's insurance, AIG

25 A. Yes.

1 Q. That was not the lightning strike,
2 correct? It was just a mold claim?

3 A. Well, I tried it.

4 Q. And they said thanks, but no thanks.
5 They said this is the responsibility of the
6 original general contractor.

7 A. I don't know what they said.

8 MR. BEST: For those of you
9 playing at home, I am skipping a ton of exhibits.
10 I am going to 163.

11 (Exhibit No. 163 was marked for
12 identification.)

13 Q. This is an April 2004 report prepared by
14 a gentleman by the name of David Horn. He is an
15 engineer that your insurance company hired to
16 come and inspect your house. Do you recall
17 seeing this report?

18 A. No. I don't.

19 (Exhibit No. 165 was marked for
20 identification.)

21 Q. Exhibit 165 is entitled a weekly
22 progress report prepared by Buffington Homes
23 reporting on the status of the work, and there
24 are a few of these in the file. Did you review
25 these as they came in?

1 A. Yes. I did.

2 Q. So do you recall seeing this one?

3 A. No.

4 Q. Was it your routine to review these
5 weekly progress reports as they were submitted by
6 Buffington Homes?

7 A. I don't know that they were submitted
8 weekly, and I don't recall seeing it.

9 Q. And I appreciate that, and I will
10 concur. I don't think they were submitted weekly
11 every week either. But do you recall reviewing
12 these documents entitled weekly progress reports
13 that Buffington Homes periodically sent to you
14 and your husband about the status of the repairs?

15 A. I'm sure I read them, yes.

16 (Exhibit No. 166 was marked for
17 identification.)

18 Q. Exhibit 166 is an invoice from Albrecht
19 Environmental to Buffington Homes for \$3,700 for
20 mold assessment. You don't know anything about
21 this?

22 A. Number 166. No. I don't.

23 Q. 166. Thank you.

24 (Exhibit No. 167 was marked for
25 identification.)

1 Q. 167 is an indoor air quality study, or
2 in layman's terms, it's a mold report. Have you
3 ever seen that document?

4 A. No.

5 (Exhibit No. 170 was marked for
6 identification.)

7 Q. Exhibit 170 is another Albrecht
8 Environmental report that discusses the
9 hydrostatic vents, the Blueberg vents at the
10 ground level that provide stress relief in the
11 event of a flood. Do you recall seeing that
12 report?

13 A. No. I don't.

14 Q. Do you recall that Buffington Homes made
15 repairs or changes to the original flood vent
16 layout?

17 A. They repaired them, yes. I don't know
18 what they did. I don't remember.

19 (Exhibit No. 172 was marked for
20 identification.)

21 Q. Exhibit 172 is a memo from Robby Diamond
22 to Milt Morgan explaining budget overruns. Do
23 you recall budget overruns?

24 A. I do.

25 Q. Do you recall the source of those

1 overruns?

2 A. I do not.

3 Q. Did you ultimately -- or your husband
4 ultimately pay Buffington Homes invoices in their
5 entirety?

6 A. Yes.

7 Q. Do you recall any conversations with
8 Milt Morgan, Dan Buffington or anybody from
9 Buffington Homes about more rot being found than
10 was anticipated?

11 A. No.

12 Q. You see in the first paragraph that the
13 -- page one -- that the pool roof was replaced,
14 you just don't recall that?

15 A. Right.

16 Q. Bottom paragraph on number 1, the last
17 sentence, also the carpenter ant infestation of
18 the breakfast room, the turret, caused us to
19 remove more trim than expected.

20 That's all news to you as well?

21 A. Yes. It is.

22 Q. But it was reported to your agent Milt
23 Morgan, the project manager?

24 A. Well, it says to Milt Morgan.

25 Q. You don't question that this document

1 actually made it to Milt Morgan's hands.

2 A. I can't answer that. I mean --

3 Q. I'll have to ask Milt Morgan. I
4 understand.

5 A. No. I mean, I think that's an insulting
6 question. If it says to, it went, you know. Are
7 you saying -- I don't know.

8 Q. That's what I'm saying. You have no
9 reason to doubt that it made it to Milt Morgan?

10 A. I have no reason to doubt anything, no.

11 (Exhibit No. 174 was marked for
12 identification.)

13 Q. Exhibit 174 is a letter from AIG dated
14 June 7, 2004 to you and your husband. Have you
15 seen this letter before?

16 A. Yes. I have.

17 Q. And this is where AIG is denying your
18 claim to repair mold and mildew at the home,
19 correct?

20 A. Right.

21 Q. In the third paragraph on the first
22 page, they specifically reference the report
23 prepared by Larry Elkin with Campbell Schneider &
24 Associates that we looked at earlier.

25 A. I see that, yes.

1 Q. Does this refresh your recollection as
2 to whether you had seen that report before?

3 A. No. It doesn't.

4 Q. Did you not go look at this Campbell
5 Schneider & Associates report when you received
6 this letter?

7 A. I might have. I don't recall.

8 Q. In the third paragraph there is also
9 reference to the David Horn report. That's the
10 engineer that AIG sent out to inspect your house.
11 Does this refresh your recollection as to
12 whether, upon receiving this letter, you would
13 have requested a copy of this report and read it?

14 A. I don't recall.

15 Q. Did Milt Morgan take photographs of the
16 Buffington project and send them to you and your
17 husband?

18 A. I don't remember.

19 (Exhibit No. 178 was marked for
20 identification.)

21 Q. 178. Have you seen that before, ma'am?

22 A. I don't recall seeing this.

23 Q. Was your front door ever replaced?

24 A. No.

25 (Exhibit No. 211 was marked for

1 identification.)

2 Q. 211 is an invoice from Gamble Home
3 Services dated July 25, 2005 for the replacement
4 door, shipping, lodging, flight charges and labor
5 for three laborers. And I will represent to you
6 Tischler Und Sohn flew down and you are paying
7 for all of this for them to replace a door. Do
8 you know what door is referred to in this
9 invoice?

10 A. I do not. I wish I did.

11 (Exhibit No. 213 was marked for
12 identification.)

13 Q. Exhibit 213, I think Mr. Buffington's
14 work had been done and completed quite some time
15 before December of '05. I could be absolutely
16 wrong, but why this was printed, I don't know.
17 It's an invoice of sorts, of course. The balance
18 that's due is zero, but it summarizes your prior
19 payments, the last invoice being referenced in
20 January of '05. And, again, this is printed
21 December of '05. I'm not asking you why this was
22 printed, but simply is the 359 -- almost \$360,000
23 referenced in the document the total that you
24 paid Buffington Homes for the repairs to your
25 house?

1 A. It was at the very least amount. I
2 believe it was a little bit more.

3 Q. And by and large the repairs that Dan
4 Buffington made were made to correct original
5 construction problems, problems in Russ Cooper
6 Associates' work?

7 A. They were made to replace -- repair
8 problems that we had observed, yes.

9 Q. Okay.

10 A. Yes.

11 (Exhibit No. 214 was marked for
12 identification.)

13 Q. Exhibit 214, well --

14 A. Yes.

15 MR. DUKES: What was the last
16 exhibit before that one?

17 MR. BEST: Before, 213.

18 THE WITNESS: 211.

19 MR. DUKES: That answer needs to
20 be clarified.

21 Q. Let's clarify. Let's go back.

22 As you sit here today, do you have a
23 clear understanding, can you provide examples of
24 what Russ Cooper did wrong that required Dan
25 Buffington's repair? Was the roof one?

1 A. Yes. The roof was one.

2 Q. Were windows and doors one?

3 A. Windows and doors.

4 Q. The basement wall leak at the steps at
5 the rear doors.

6 A. Yes.

7 Q. The HVAC had already been repaired and
8 replaced by Aero --

9 A. Correct.

10 Q. -- right?

11 I know that Mr. Buffington had to
12 remove the cedar shakes in areas to make repairs.

13 A. Yes.

14 Q. Do you know if that was because of the
15 defects?

16 A. I have no idea.

17 Q. How about chimney repairs? Do you know
18 if Mr. Buffington made any chimney repairs?

19 A. I don't know about chimney repairs.

20 Q. And you pointed out earlier that the
21 roof was replaced on the pool cabana.

22 A. Yes. I saw that.

23 Q. Do you know why that was done?

24 A. No. I'm assuming it was a leak.

25 Q. The better question is, do you know if

1 that was a result of any defects in Russ Cooper's
2 work?

3 A. I have no idea.

4 Q. Now, 214. This is an e-mail exchange
5 between John Nelson at Gamble and Cynthia Noble
6 about a meeting at your house. Are you
7 considering selling your house at this point?

8 A. Yes.

9 Q. And why are you considering selling it?
10 the kids are gone?

11 A. Yes.

12 Q. You are not using the house as much?

13 A. Right.

14 Q. In the 2004, '05, '06 timeframe, and
15 granted, there were some health issues going on
16 with your husband during that time, how often are
17 you using the house?

18 A. Rarely.

19 Q. Once a quarter, once a year?

20 A. You can check that. I don't know what
21 it is.

22 Q. And you'll know looking at your
23 calendar?

24 A. Yes.

25 Q. And we should refer to your calendar.

1 Do you think your calendar is pretty accurate?

2 A. I have no idea.

3 (Exhibit No. 215 was marked for
4 identification.)

5 Q. Exhibit 215 is a home inspection report
6 prepared by a company called Complete Inspection
7 Services. Usually the way this gentleman
8 prepares his report, if there is a buyer, he'll
9 point it out. But the buyer's agent is listed as
10 Cynthia Noble. I'm speculating -- maybe you can
11 tell me -- that Ms. Noble wanted this report done
12 before you put the house on the market so if
13 there were any -- she didn't want there to be any
14 surprises. Is that a fair statement?

15 A. I don't know.

16 Q. You don't know why this report was
17 prepared?

18 A. I do not.

19 Q. You don't know if there was an offer
20 associated with this report?

21 A. I don't recall.

22 Q. On the third page of that report is a
23 summary. My assumption is that that report was
24 given to Cynthia Noble, because we'll see a
25 little bit later on she gave it to Buffington.

1 You will note the Buffington Bates stamp at the
2 bottom, because they completed the repairs more
3 than a year before this.

4 Ms. Noble was acting as your agent at
5 this time?

6 A. Yes.

7 Q. Your real estate agent?

8 A. Yes.

9 Q. The third page is the summary. You'll
10 note item number 1, signs of prior termite
11 activity. It's been a long day. I'm sorry. I'm
12 just as tired as you are. You don't recall
13 seeing this document?

14 A. No.

15 Q. So the termite is news to you, you are
16 surprised by that?

17 A. Yes.

18 Q. Do you know if anyone contacted the
19 holder of the termite bond, Atlantic Pest
20 Control, or anyone else who may provide a termite
21 bond on your behalf?

22 A. I don't know that.

23 Q. Do you know if there was a termite bond
24 in place in 2006?

25 A. I think we said I don't know if I had a

1 termite bond, but I wrote it down to check.

2 Q. Water stains at rear basement walls.

3 Indications of water infiltration at rear doors,
4 check flashing and subfloor in area, and, again,
5 this is dated July 2006. You were already aware
6 of that issue, correct?

7 A. Yes.

8 Q. And had been for some time, correct?

9 A. I don't recall how long.

10 Q. Is it fair to say that in July of 2006
11 you had been well aware of this rear basement
12 wall pool deck to rear door interface leak for
13 some time?

14 A. I had been aware. Not well aware.

15 Q. The next line item is humid under house,
16 dehumidifier installed and operational, very wet
17 under rear patio. I'm assuming he's referring to
18 the cave here. Were you familiar with those
19 humid and wet conditions in the cave in this
20 timeframe?

21 A. Yes. We had a lot of dehumidifiers in
22 there, mobile ones, and we were always drying it.

23 Q. If you jump down a few where it says 5A,
24 support wood flooring at right side of office.

25 I think we saw some documentation and

1 talked about that before. You were aware of the
2 hardwood flooring cupping or otherwise
3 discoloration of hardwoods at the ocean side
4 windows in July of 2006; is that correct?

5 A. Yes.

6 Q. Again, July of 2006, you were aware of
7 an ongoing problem, even back before Buffington
8 performed its repair of water stains, mildew and
9 damaged Sheetrock.

10 A. No. I don't recall that. Certainly not
11 before. I don't recall.

12 Q. You don't recall mold and mildew before
13 the Buffington repair?

14 A. Oh, yes. I recall mold and mildew
15 before the Buffington repairs.

16 Q. And that's what I am pointing out. Were
17 you aware of mold and mildew in July of 2006
18 after the Buffington repairs?

19 A. After, no. I don't recall.

20 Q. Okay. That's fair. Did you ever go in
21 the attic of that house?

22 A. No.

23 Q. Number 7, indications of roof leaks
24 noted at right side valleys, water stains at
25 ceilings at valleys and bedrooms at right side.

1 Valley should be resealed by roof contractor.

2 Were you aware of roof leaks and damaged
3 Sheetrock in the summer of 2006?

4 A. No.

5 Q. Did you stay --

6 A. No.

7 Q. Did you stay in the house the summer of
8 2006?

9 A. No.

10 Q. How about 2005?

11 A. On and off.

12 Q. How about 2004? They may have been
13 doing repairs at that time.

14 A. Yes. Buffington was still doing his
15 repairs, as I recall, and I said he had to stop
16 and leave.

17 Q. Was he happy about that?

18 A. No. It was the Fourth of July I think,
19 and we were having a party. I do remember that.

20 Q. 8A, wood damage to lower cedar shakes by
21 electric meters at low front post shakes at
22 ground.

23 A. I don't know.

24 Q. Do you know anything about this shake
25 damage?

1 A. No.

2 Q. How about the handrails? Do you recall
3 problems with the handrails, meaning rotten
4 spindles?

5 A. Yes.

6 Q. Do you recall that in the 2006
7 timeframe?

8 A. We replaced those handrails a lot of
9 times.

10 Q. It was an ongoing problem?

11 A. Well, because the original handrails
12 were not weather treated.

13 Q. They weren't treated wood?

14 A. They weren't treated wood.

15 Q. When was the first time you replaced
16 them?

17 A. I don't recall, but it would seem to me
18 that if you are putting handrails outside,
19 chances are they should be weather treated. It
20 was -- whatever the expression is, and so we
21 replaced those. That was -- I think that was a
22 small job.

23 Q. The last item refers to the poolhouse,
24 again, wood damage to lower trim at outside
25 shower stalls --

1 A. Yeah.

2 Q. -- and rear wood supports. Minor items.

3 A. Minor.

4 Q. Did you or your husband or anybody on
5 behalf of you contact Russ Cooper, Russ Cooper
6 Associates, and ask for assistance, demand these
7 be repaired, threaten litigation, anything?

8 A. No.

9 (Exhibit No. 216 was marked for
10 identification.)

11 Q. Exhibit 216 is a July 19, 2006 appraisal
12 of your house. The appraisal or value in 2006
13 was \$17,500,000. Have you seen this document
14 before?

15 A. Yes.

16 Q. Why did you have this appraisal done?

17 A. I wanted to sell the house.

18 Q. It states in here it was done for
19 potential sale. Okay. Very good.

20 Did you take exception to that value
21 or were you pleased with it?

22 A. It is what it is. I don't have an
23 opinion.

24 Q. You took it for face value. Did you
25 have an opinion in 2006 what you thought the

1 house might be worth? Did you have an asking
2 price in mind?

3 A. No.

4 Q. Was the house ever actually listed and
5 put up for sale in 2006?

6 A. Not in 2006.

7 Q. When was the first time it was ever put
8 up for sale, actually listed publicly for sale?

9 A. I don't know that it was listed per se.
10 She had it as a pocket sale so that if people
11 came and they were interested, she would show
12 them the house, and I would sign a one-time
13 showing agreement.

14 Q. And we'll see later that happened
15 several times.

16 A. Yes.

17 Q. Was that sort of an ongoing thing as of
18 2006?

19 A. Yes.

20 (Exhibit No. 217 was marked for
21 identification.)

22 Q. Exhibit 217 is a July 26 proposal by,
23 again, Albrecht Environmental to do yet another
24 mold test assessment at your house. And it says
25 here under the purpose of the site visit --

1 excuse me. Actually it's not a proposal, but
2 they are actually at the house and are proposing
3 some action be taken, repairs. But they were
4 asked by Ms. Noble to come. Do you recall that?

5 A. No. I don't.

6 Q. Did you grant her sort of blanket
7 authority and say, hey, do what you need to do
8 within reason to get the house ready to sell or
9 give her any kind of budget?

10 A. No.

11 Q. I'm assuming you paid for this report
12 and recommendations or -- excuse me. It looks
13 like they went to your house. On the fourth page
14 you will see a menu, a scope of work with
15 charges. Do you recall discussing any of these
16 options with Ms. Noble or anybody from Albrecht?

17 A. No. Are you saying I paid this?

18 Q. No, ma'am. This is their proposal and
19 we will provide these services for that cost.

20 A. Right. Okay.

21 Q. That was solicited by Ms. Noble on your
22 behalf, but you don't recall any discussion with
23 her or Albrecht about this; is that fair?

24 A. I do not.

25 Q. They did do a mold assessment, but you

1 don't know anything about the findings, whether
2 it was good, bad, high, low?

3 A. I do not.

4 (Exhibit No. 218 was marked for
5 identification.)

6 Q. Exhibit 218 is a handwritten note from
7 Cynthia Noble to Dan Buffington, and I know it's
8 to Dan Buffington, because it says, Dear Dan, and
9 these documents were pulled from Buffington's
10 documents. It says, thank you for helping us
11 with this. And then the last paragraph, please
12 do not call the Allwins at this time. Maria will
13 call you directly.

14 Do you have any idea what she's talking
15 about?

16 A. I do not.

17 Q. Do you know if it's about potentially
18 making repairs to the home in order to prepare it
19 for sale?

20 A. I don't know.

21 Q. Do you have any knowledge of Dan
22 Buffington being involved with your home prior
23 to, I believe March of 2005 when he completed the
24 repairs?

25 A. You mean prior or after? Right. Aren't

1 you asking me if he came after he did the
2 repairs?

3 Q. I hope I am. I probably didn't, but,
4 yes, did he come to your house after he completed --

5 A. I don't recall him coming back. No.

6 Q. Or being involved in any way with
7 repairs to your home?

8 A. No.

9 Q. Did you ever ask him to come back and he
10 failed to?

11 A. No.

12 (Exhibit No. 220 was marked for
13 identification.)

14 (Exhibit No. 221 was marked for
15 identification.)

16 Q. If you look at 220 and 221 together,
17 there is an e-mail exchange between you and John
18 Nelson at Gamble.

19 A. Yes.

20 Q. You are telling him, I do want to keep
21 up with maintenance. Get estimates as soon as
22 need. He asks, should I have the mold situation
23 looked at? That's in 2. At 2.1, he goes, ah-ha.
24 Cynthia has already beaten me to the mold
25 remediation experts.

1 What is the mold situation as of
2 September 2006?

3 A. I have no idea.

4 (Exhibit No. 222 was marked for
5 identification.)

6 Q. Exhibit 222 is a scope of work prepared
7 by Dan Buffington apparently at Ms. Noble's
8 request. Scope one is to remedy all the things
9 he points out. That's mold remediation, some
10 roofing repairs in the valleys, more basement
11 ventilation, flooring at the office, a lot of the
12 things we've already talked about for a cost of
13 two hundred -- almost \$283,000. Have you seen
14 this document before?

15 A. No. I haven't.

16 Q. You don't recall discussing any
17 potential repairs or Ms. Noble's desire to have
18 any repairs made to the home while you had it on
19 the market?

20 A. She wanted to do things to get the house
21 up and make it look nice for potential
22 purchasers, which I did not fault her for, but I
23 don't recall seeing this or the extent of -- I
24 don't recall knowing the extent of this.

25 Q. Did she ever tell you or ask you that

1 you needed to spend or you ought to spend
2 hundreds of thousands of dollars in repairs for
3 your house?

4 A. No.

5 Q. AIG performed an annual inspection on
6 your house.

7 A. Yes.

8 Q. Who did that? Would they hire a company
9 or would an AIG adjuster come out?

10 A. I have no idea.

11 Q. When Gamble had somebody make a repair
12 to your house, obviously, it's America, there's
13 capitalism, everybody needs to make a living, a
14 property or a general contractor or the
15 subcontractor, who will mark it up, there's
16 add-on, and they are providing a service by
17 marshalling those forces and supervising,
18 inspecting. When Gamble or Tori Stein with
19 Atlantic had work done, do you know what their
20 markup was?

21 A. I have no idea.

22 Q. Were you ever concerned about that
23 markup? Did you question it?

24 A. I asked what it was.

25 Q. What did they tell you?

1 A. Sort of mumbo jumbo.

2 Q. Were you ever concerned that you were
3 being overcharged or maybe could have gotten more
4 work performed? And I'm not suggesting you could
5 have. I'm just asking the question, because
6 there is a sort of urban legend or myth that
7 there's -- around Charleston, there's the
8 Charleston price and there's the Kiawah price.

9 A. Oh, I agree.

10 Q. And you bought into that phenomenon?

11 A. I have.

12 Q. And you've felt you've been gouged at
13 times because of your Kiawah address.

14 A. Yes.

15 Q. I'm not asking you to name names, but --

16 A. I would.

17 Q. I know you would. Did you ever feel
18 like Gamble or Tori Stein gouged you?

19 A. I felt like I was taken advantage of,
20 because we always did what everybody said to do,
21 and because my husband in particular was so
22 responsive to doing things and trying to fix
23 things that he never said no to anybody's idea.
24 That often -- and we were not there. We were,
25 you know, absentee owners, that people would

1 suggest something, and they knew that Jim would
2 say, yes, I want to fix my house, so please do
3 that, or yes.

4 So, yes, I think that people did see us
5 as absentee owners of a house that needed some
6 things done, and we wouldn't let it -- you know,
7 we always said yes, we always tried to fix it.
8 And I think that was taken advantage of and
9 mocked by a lot of people.

10 (Exhibit No. 228 was marked for
11 identification.)

12 Q. Do you recall seeing Exhibit 228 before,
13 which is another letter from AIG?

14 A. No. I don't. Who wrote this? Where is
15 this from?

16 Q. Paul Avery with AIG

17 A. No. I mean whose handwriting is this?

18 Q. Again, I believe it's Tori Stein, but
19 I'll probably have to ask her about that. You
20 were referring to Buffington before this report.
21 I think this was part of her history and document
22 review, but I can't swear to that.

23 A. Okay.

24 Q. I'm sorry. You have not seen this
25 document before?

1 A. I don't recall seeing it.

2 Q. And I can imagine it's probably a busy
3 and difficult time in your life. Did you have
4 anybody that you were delegating to during this
5 time? Did you have an assistant or did Mr.
6 Allwin have an assistant that was helping you
7 keep the plate spinning?

8 A. There were a lot of people involved in
9 our lives.

10 Q. Sure. Did you have somebody helping you
11 with the Kiawah house specifically?

12 A. No.

13 (Exhibit No. 235 was marked for
14 identification.)

15 Q. 235 is an e-mail exchange between John
16 Nelson and Tori Stein, here Tori Martindale. In
17 about the middle, Tori Martindale wrote, Maria
18 Allwin called Buffington this morning. He is
19 pissed. Allwin is sending him a copy of the AIG
20 report.

21 And I'm assuming that's the AIG report
22 we just looked at, Exhibit 228?

23 A. Oh, well, this is 2008 and that's 2007,
24 so I don't know.

25 Q. Is there another --

1 A. I don't know.

2 Q. You don't know what AIG report Tori is
3 referring to?

4 A. I do not.

5 Q. Do you recall calling --

6 A. No.

7 Q. -- Mr. Buffington in July of 2008?

8 A. No. I do not.

9 Q. Do you have any recollection of calling
10 Dan Buffington after he completed the repairs to
11 your house?

12 A. I do not recall calling him at all.

13 Q. I'll have to ask Tori about her
14 recollection of this.

15 A. You are welcome to do so.

16 (Exhibit No. 236 was marked for
17 identification.)

18 Q. 236. I'm not trying to trick you. I
19 see now that this follows this. Exhibit 236 is
20 an e-mail exchange between you and John Nelson
21 and Tori Martindale -- or actually she's
22 forwarding it on to John Nelson. Do you see
23 where you state you sent Dan Buffington a copy of
24 the inspection?

25 A. Yes.

1 Q. Do you know what inspection report?

2 A. I do not.

3 Q. He will talk to Aero to see if
4 dehumidifiers can be used. Do you see that?

5 A. Yes.

6 Q. I'm assuming that's the dehumidifiers in
7 the attic or in the cave or in both.

8 A. I don't know.

9 Q. You state, I do not understand how the
10 mold around fixtures, et cetera, escaped
11 inspection until this point.

12 Is this a criticism of Gamble?

13 A. No. I don't think so.

14 Q. Your house was still under contract with
15 Gamble in 2008, correct?

16 A. Yes.

17 Q. So they were coming out -- based on the
18 monthly reports, there is usually an entry every
19 week -- did they come out weekly and look at the
20 house?

21 A. I don't recall.

22 Q. Going back to 228, the AIG report. Back
23 in 2007, and, again, on a personal level, I
24 appreciate this was a difficult time for you and
25 your family, but my question is simply this. Was

1 any action taken as a result of this report that
2 you recall?

3 A. I don't recall any action.

4 Q. Does it make sense that, referring to
5 236, where you state -- you sent a copy of the
6 inspection to Buffington that some time had
7 passed and you had sent the AIG report to
8 Buffington?

9 A. That's what I say I did. So it makes
10 sense that I did that.

11 Q. It says a copy of the inspection, and I
12 thought you said you weren't sure what report you
13 sent to Buffington.

14 A. I couldn't imagine what I sent to
15 Buffington. That's my comment.

16 (Exhibit No. 241 was marked for
17 identification.)

18 Q. Okay. Exhibit 241 is a fax cover sheet
19 from you to Tori and it says, there are 19 pages.
20 This is the only page that I could find. I can't
21 find pages 2 through 18.

22 What I'm more interested in is the
23 handwriting at the bottom. Whose handwriting is
24 that?

25 A. I don't know. It's not mine. I don't

1 know whose handwriting that is.

2 (Exhibit No. 244 was marked for
3 identification.)

4 Q. Exhibit 244 is an invoice from -- the
5 name switches at some point. Before it was
6 Gamble Home Services, and I kind of got the
7 impression that Tori had her own building,
8 Atlantic Builders, Inc., and then she would
9 invoice Gamble and then Gamble would mark her
10 invoice up and send it to you. But now there is
11 sort of a combination Gamble-Atlantic. Do you
12 know if there was a merger of sorts?

13 A. I don't know.

14 Q. The service didn't change. Is that fair
15 enough?

16 A. That's fair. But Roy Smith is still on
17 here.

18 Q. Well, I don't think Roy Smith is doing
19 work. I think, if you look at the invoice,
20 services are rendered by Tori Martindale, and
21 then throughout July of 2008 you will note that,
22 for example, on the 14th of July, she reviewed
23 reports and there are various reports or
24 documents, and then she's talking on the phone
25 with Roy Smith and Al Schweickhardt and John

1 Albrecht. Why is she reviewing all this material
2 and talking to all these people?

3 A. I don't know.

4 Q. Is she doing it to try to bring all the
5 pieces of the puzzle together to try to figure
6 out what's still wrong with the house?

7 A. I don't know.

8 Q. Was she doing this for purposes of
9 potential litigation?

10 A. No.

11 Q. You don't know. I need to ask Tori.

12 A. I never brought up litigation. So I
13 don't know what that means to you, and I don't
14 know why she was making all those calls.

15 Q. Do you know if you paid her the \$1,800
16 she invoiced you?

17 A. Whatever I was invoiced, I paid.

18 Q. It's not like you would question her
19 work. Is that a fair statement?

20 A. Unfortunately, yes, it's true.

21 (Exhibit No. 245 was marked for
22 identification.)

23 Q. Maybe this is what I was thinking of.
24 Exhibit 245. It's a proposal from Tori Stein to
25 replace the sliding glass door and remove two

1 French doors and replace it with a sliding glass
2 door manufactured being Jeld-Wen. Was this done?

3 A. This was not done.

4 Q. Do you know if it was not done because
5 of the price or not done because you didn't want
6 a sliding glass door or --

7 A. I didn't want a sliding glass door, and
8 I didn't want to start bringing outside products --

9 Q. You didn't want to mix and match?

10 A. -- into the Tischler product.

11 Q. Do you recall a problem in 2008 in the
12 pool cabana where there was this unknown
13 substance growing on the floor or present on the
14 floor?

15 A. No.

16 Q. Larry Elkin went back out there and
17 performed tests on the substance.

18 A. No. Was there?

19 MR. LYLES: What was it?

20 MR. BEST: Off the record.

21 (Off-the-record discussion.)

22 (Exhibit No. 254 was marked for
23 identification.)

24 Q. We looked at the \$1,800 estimate. Tori
25 Stein was going through all these documents. Now

1 there's almost a \$5,100 invoice, Exhibit 254,
2 where she is continuing her document review and
3 investigation. And you can't tell me why she's
4 now billed you almost \$7,000?

5 A. No. I can't.

6 Q. And that's fine.

7 MR. BEST: Off the record.

8 (Off-the-record discussion.)

9 (Time noted: 4:01 PM)

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MARIA ALLWIN

Subscribed and sworn to
before me this day
of , 2015.

NOTARY PUBLIC CERTIFICATE

I, Carol Vilardi, a Shorthand Reporter
and Notary Public of the State of New York,
do hereby certify:

That, Maria Allwin, the witness whose
examination is hereinbefore set forth, was
duly sworn, and that such examination is a
true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of
this matter.

Carol Vilardi