

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
FIVE THOUSAND FOREST, LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
AXIOM ARCHITECTURE, PA and )  
MCCRORY CONSTRUCTION, LLC, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO. 16-CP-40-1698

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

**RECEIVED**

**JUL 27 2018**

**SC Court of Appeals**

This matter was tried by me the week of January 22, 2018, sitting without a jury by agreement of the parties. After hearing closing arguments on February 23, 2018, I ruled in favor of Axiom Architecture, PA ("Axiom") and requested a proposed Order which was submitted, with copy to Five Thousand Forest, LLC's ("Plaintiff") counsel, on April 13, 2018. I filed an order ruling in favor of Axiom on all claims asserted by the Plaintiff, on May 2, 2018. On May 10, 2018, Plaintiff filed a motion pursuant to Rule 59, SCRCP. On May 25, 2018, Axiom filed a response to the Plaintiff's Rule 59 motion. Having reviewed the Plaintiff's post-trial motion, and Axiom's response, I hereby deny Plaintiff's post-trial motion for the reasons stated herein.

A Rule 59(e) motion is appropriate when a party seeks to "alter or amend the judgment," or as a vehicle to seek "reconsideration" of issues and arguments. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). "Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. The Supreme Court expressed the view that there is nothing inherently unfair in allowing a party one final chance not only to call the court's attention

to a possible misapprehension of an earlier argument but also to revisit a previously raised argument. *Id.*

In conformance with the law, Plaintiff asks the Court to reconsider its prior decision and asserts that the Court committed clear error in ruling in favor of Axiom. Plaintiff listed six subjects as representing clear error. Those subjects were as follows:

1. Breach of Warranty
2. Breach of Contract
3. Approval of Code Official
4. Negligence Per Se
5. Calculation of Dew Point
6. Examples of Clear Error in Order

The basis of Plaintiff's motion with respect to each area of alleged clear error is that the Court did not view the evidence in a way that was favorable to the Plaintiff and that if the court had viewed the evidence in the ways suggested by Plaintiff, it would have found in Plaintiff's favor. However, in a case tried without a jury, the court served as the trier of fact and had the obligation, and the right, to weigh the credibility of the witnesses and other evidence. *See Brown v. Allstate Ins. Co.*, 344 S.C. 21, 542 S.E.2d 723 (2001). Where evidence conflicted, the court was entitled to decide what weight and degree of credibility to give the evidence. *See Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017).

Also, the Plaintiff had the burden of proof with respect to each element of all of its claims. *See Ford v. Atlantic Coast Line R.R.*, 169 S.C. 41, 168 S.E. 143 (1932). Regardless of the cause of action asserted, Plaintiff was required to prove that some action or inaction on the part of Axiom proximately caused damage or harm to the Plaintiff. In this case, regardless of the requirements

of contracts or warranties, and regardless of whether a code or standard of care was violated (which was vigorously disputed), the Plaintiff was required to prove that Axiom's decision not to include ventilation in the attic of Building Two proximately resulted in moisture and mold in that attic which necessitated the repairs Plaintiff contended are necessary. The evidence on those issues, particular the testimony of the witnesses and a number of experts, was directly conflicting. The Court gave due consideration to all of the witnesses and all of the evidence submitted by the parties and concluded that, based on the totality of the evidence, the Plaintiff failed to meet its burden of proof on its causes of action against Axiom. In review, that decision was not only supported by the evidence but was compelled by thoughtful consideration of the evidence.

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Honorable Robert E. Hood

Columbia, South Carolina

\_\_\_\_\_, 2018



Richland Common Pleas

**Case Caption:** Five Thousand Forest LLC vs Axiom Architecture P A , defendant,  
et al  
**Case Number:** 2016CP4001698  
**Type:** Order/Other

So Ordered

s/ R.E. Hood #2164