

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Circuit Court of Richland County, South Carolina

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-01698

Five Thousand Forest, LLC, Appellant,

v.

Axiom Architecture, PA, Respondent.

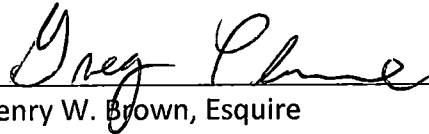
AMENDED NOTICE OF APPEAL

RECEIVED

JUL 31 2018

SC Court of Appeals

Five Thousand Forest, LLC appeals the Order Denying Plaintiff's Motion to Reconsider, which is dated June 29, 2018, and was received by Appellant on June 29, 2018. A Copy of the Order is attached to this Notice.



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D. Gregory Placone, Esquire
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July 31, 2018

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Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Circuit Court of Richland County, South Carolina

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-01698

Five Thousand Forest, LLC, Appellant,,

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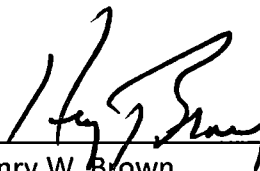
Axiom Architecture, PA, Respondent.

PROOF OF SERVICE

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SC Court of Appeals

The undersigned hereby certifies that on July 31, 2018, he caused a copy of the Amended
Notice of Appeal to be served to the following addresses through United States Mail:

Robert Lyles, Esquire
Lyles & Associates, LLC
342 East Bay Street
Charleston, South Carolina 29401


Henry W. Brown

NEXSEN|PRUET

Henry W. Brown
Member
Admitted in SC

July 27, 2018

VIA EMAIL ONLY: KAMBROZIAK@SCCOURTS.ORG

Ms. Karen E. Ambroziak
Circuit Court Reporter
1 Carol Court
Ridgeway, SC 29130

Re: Five Thousand Forest Drive, LLC v. Axiom Architecture, PA
Case No: 16-CP-40-01698

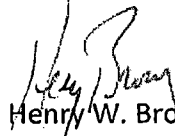
Dear Ms. Ambroziak:

Our office represented the Plaintiff in the above-referenced matter that was tried before Judge Robert E. Hood during the week of January 22, 2018. I believe you covered the final day of the trial. We are in the process of filing an Appeal with the Court of Appeals. Pursuant to Rule 207(b)(1) of the South Carolina Appellate Court Rules, we hereby requesting a copy of the entire transcript from the trial in this case.

We agree to pay the per page charge for the transcript as provided by Rule 607, SCACR.

If you have any questions, please do not hesitate contact our office.

Very truly yours,


Henry W. Brown
HWB/smr

cc: Robert Lyles, Esquire

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JUL 31 2018
SC Court of Appeals

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NPCOL1:6799066.1-LT-(HWB) 021146-00132

NEXSEN|PRUET

Henry W. Brown
Member
Admitted in SC

July 27, 2018

VIA EMAIL ONLY: KAMBROZIAK@SCCOURTS.ORG

Ms. Karen E. Ambroziak
Circuit Court Reporter
1 Carol Court
Ridgeway, SC 29130

**Re: Five Thousand Forest Drive, LLC v. Axiom Architecture, PA
Case No: 16-CP-40-01698**

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Henry W. Brown
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cc: Robert Lyles, Esquire

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NPCOL1:6799066.1-LT-(HWB) 021146-00132

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

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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.

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

Henry W. Brown
Member
Admitted in SC

July 31, 2018

BY HAND DELIVERY

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

RECEIVED
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SC Court of Appeals

Re: *Five Thousand Forest Drive, LLC v. Axiom Architecture, PA*
Lower Court Case No. 2016-CP-40-001698

Dear Ms. Kitchings:

Enclosed for filing is an original and one (1) copy of the following items:

- The Amended Notice of Appeal;
- Proof of Service on served upon Respondent Axiom Architecture, PA; and
- the Order being challenged through this appeal.

I would appreciate your returning the "clocked" copies of the above-listed items to our courier.

Pursuant to Rule 207, SCACR, we are enclosing copies of our request letters to the Court Reporters for the trial transcript.

Additionally, we have provided the required notice of this appeal to the Court of Common Pleas.

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

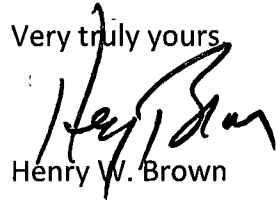
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Attorneys and Counselors at Law

The Honorable Jenny Abbott Kitchings
July 31, 2018
Page 2

If I can provide anything further at this time, please do not hesitate to contact my office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry W. Brown", written over the typed name.

Henry W. Brown

HWB/smr
Enclosure

cc: The Honorable Jeanette McBride
The Honorable Robert E. Hood (via hand delivery)
Robert T. Lyles, Esquire (via email)