THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Maria Allwin, Appellant,

v.

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

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.

Appellate Case No. 2016-000471

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge,

Opinion No. 5617
Heard May 9, 2018 – Filed January 16, 2019

AFFIRMED

Robert T. Lyles, Jr., of Lyles & Associates, LLC, of Charleston, for Appellant.

Paul Eliot Sperry and Tyler Paul Winton, of Carlock Copeland & Stair, LLP, of Charleston for Respondent Shope Reno Warton; L. Dean Best and Jenny Costa Honeycutt, of Best Honeycutt, P.A., of Charleston, for Respondent Russ Cooper Associates, Inc.

MCDONALD, J.: In this construction defect litigation, Maria Allwin appeals the circuit court's grant of summary judgment in favor of Russ Cooper Associates, Inc. and Shope Reno Wharton (collectively, Respondents). As the circuit court properly found the statute of limitations bars Allwin's claims, we affirm.

Facts and Procedural History

In July 1992, architectural firm Shope Reno Wharton (Shope Reno) issued a set of plans to Connecticut residents Maria and Jim Allwin for the construction of a second home at 133 Flyway Drive on Kiawah Island. Shope Reno completed the final plans for the 11,000 square-foot beachfront home in August 1993. In May 1994, general contractor Russ Cooper Associates, Inc. (RCA) completed construction.

The Allwins were first informed of issues with the home by Robert Cowan, who lived there as the Allwins' guest in the late 1990s and early 2000s. Cowan observed and notified the Allwins of numerous problems with the roof, chimneys, exterior walls, windows, doors, patio, and basement. He also observed and reported interior water damage to hardwood floors, drywall, wallpaper, and subfloor framing, as well as mold, mildew, peeling paint, and water stains.

From 1999 to 2002, Cowan reported numerous and repeated leaks including: at least twelve leaking roof incidents; chimney and fireplace flue leakage; leaks at wall vents, louvers, or within exterior walls; leaking windows; leaks on the beachfront side of the house; and leaks in the basement where the patio connected. In March 2001, Cowan wrote to the Allwins, "Roof leaks and painting appear to be the most important problems at this point." On September 4, 2001, Cowan prepared a moisture detection report noting unacceptable moisture meter readings.

In late 2001, the Allwins engaged Gamble Home Services (Gamble) to serve as the home's property manager. In 2001 and 2002, Gamble notified the Allwins of roof leaks at least twice. Between 2001 and 2008, Gamble reported leaks near windows and doors, air intrusion through unsealed penetrations in the building envelope, and

a patio leak causing subflooring damage. Gamble also told the Allwins of numerous and repeated instances of interior water damage, including mold and mildew, caulking cracks at windows, drywall and wallpaper damage, trim cracks at windows, ceiling damage and stains, condensation in the basement, and warped hardwood flooring.[1]

In 2003, the Allwins hired Milton Morgan to oversee repair and maintenance work performed by Dan Buffington of Buffington Homes. Morgan notified the Allwins of roof defects on at least three occasions and proposed roof repairs ranging from $15,000 to $35,000. He also reported exterior trim rot, mold and mildew. Morgan retained architect Roy Davis Smith, who recommended water testing to determine the sources of the basement, window, and door leaks; Smith also suggested taking humidity readings throughout the house to address the mold.

In June 2003, Buffington hired Campbell, Schneider, and Associates, LLC (CSA) to survey the house and determine the source of "isolated areas of damage and fungal growth." CSA's August 2003 report noted water damage and mildew throughout the home and opined "[t]he damage to this home appears to be the direct result of 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." CSA recommended the source of the water leaks be investigated from the exterior, which would require the removal of certain windows and roof sections. CSA concluded "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."

In July 2003, Buffington recommended a complete roof replacement. In addition to informing the Allwins of roof leaks and defects, Buffington reported exterior trim rot and damage to interior finishes caused by defective construction, including drywall damage, buckling and damaged hardwood floors, mold, mildew, and peeling paint. Regarding the patio and basement, Buffington recommended removing the patio tile, installing waterproofing where the patio connects to the house, and replacing the patio tile to slope away from the home.

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[1] In 2006, Gamble further suggested the Allwins should investigate the cause of the interior mold.

On November 13, 2003, Morgan provided a written scope of repair that included instructions for Buffington to, among other things, "remove water damaged drywall from various bath and bedroom ceilings," "remove window and door casings[,] which display evidence of water intrusion on adjacent wall surfaces," "remove and replace window sash with broken air seals," "correct defects in roof valleys," and "explore and rework earth fill around foundation walls." Based on Morgan's advice, the Allwins proceeded with the more limited scope of repair as opposed to the complete roof replacement Buffington recommended.

In January 2004, however, Buffington again apprised the Allwins of problems with the roof and recommended a more aggressive repair plan than that suggested by Morgan. Buffington wrote:

> South Carolina has a 13-year statute of limitation[s] for water intrusion.[2] Your home is approaching that deadline. . . . [T]he roof was so poorly installed 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 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 roof replacement will be over $500,000.

Buffington proposed further investigation into the basement leaks and air and water intrusion at the windows. He again advised the Allwins of damage to the drywall and hardwood floors, as well as the problems with mold, mildew, and

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[2] Buffington was likely referring to the statute of repose which, prior to the 2005 amendment, required that construction defect actions be brought within thirteen years. *See* S.C. Code Ann. § 15-3-640 (Supp. 2018) ("No actions to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement."); *see also Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 181, 708 S.E.2d 787, 792 (Ct. App. 2011) (explaining the previous version of the statute of repose required that an action be filed within thirteen years of any substantial improvement to real property).

peeling paint.[3] He further notified the Allwins of defects in the exterior walls of the home, including rotten studs and sheathing requiring replacement of exterior siding and trim. Ultimately, the Allwins paid Buffington $359,728.21 for the 2004–05 repairs. Following the completion of Buffington's repairs, Gamble invoiced the Allwins $979 for repair work in November 2005; this work included caulking the bottom of the exterior cladding at the rear patio to prevent leaks into the subfloor.

In March 2004, the Allwins submitted a property damage claim to AIG, their hazard insurance carrier, reporting active water intrusion through the roof, windows, and doors. AIG's engineer inspected the house, photographing open and obvious defects in the roof system, window leaks, leaks in the basement, and mold and water-damaged drywall in the interior. AIG subsequently denied the Allwins' claim, citing the longstanding construction defects noted in both CSA's August 2003 report and the report prepared by AIG's engineer.[4]

In 2006, the Allwins hired realtor Cynthia Noble of Kiawah Island Real Estate, who obtained a home inspection from Complete Inspection Services (CIS) before listing the house. CIS's July 2006 report noted roof leaks, prior termite activity, damaged wood cladding, water infiltration at rear doors, water stains at rear basement walls, damaged hardwood flooring, water stains, mildew, and damaged drywall. CIS recommended repairs to the roof, investigation of termite activity, and inspection of the flashing and subflooring at the rear doors. Albrecht again inspected the home and issued a July 2006 report proposing $19,150 in mold remediation.

With the Allwins' consent, Noble requested and Buffington prepared a September 2006 estimate of repairs necessary to address the ongoing problems. Buffington proposed $282,850 in repairs to the roof, exterior walls, several windows and doors, the basement, and damaged flooring, as well as mold remediation. Noting the proposed roofing repairs were "only temporary," Buffington again recommended a complete roof replacement.

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[3] Albrecht Environmental, Inc. did a mold inspection of the home for Buffington in 2004. Albrecht recommended remediation by a certified mold contractor after finding mold in exterior walls.

[4] AIG's 2004 engineering report recognized the mold and moisture damage "resulted from long-term conditions of elevated moisture associated with the construction of the house."

In 2008, Maria Allwin[5] hired consultant Victoria Stein of Atlantic Builders to evaluate the home. Stein's October 2008 report summarized her investigation of water intrusion issues and offered suggestions for future action.[6] Stein's report included a timeline chronicling the home's history of longstanding water intrusion and prior repairs, along with the findings of prior consultants. Although Stein opined the heating, ventilation, and air conditioning (HVAC) system was the primary cause of the mold and mildew, she expressly noted several existing defects were unrelated to the HVAC issue, including drywall damage under roof valleys, buckled hardwood flooring, and moisture in the basement area beneath the pool deck.[7] Stein suggested Allwin make repairs and seek legal counsel. Finally, she stated "[t]he list of items that could have been laid as the responsibility of the builder are numerous but bottom line is that the Statute of Limitations ran out in May 2007."

In 2009, Allwin met with engineer Skip Lewis to discuss management of the ongoing maintenance and repair costs. Although Lewis was to perform a property condition assessment and develop a life cycle repair for maintenance of the house, this work was never completed.

Allwin retained legal representation in March 2009; counsel made arrangements for engineering firm H2L to survey the house for structural issues, including evaluating the roof and windows. On May 26, 2009, H2L presented a $45,000 proposal to conduct a building condition survey, including a visual inspection of the building envelope, windows, and cladding. Despite counsel's recommendation that Allwin move forward with the inspection, Allwin declined to conduct a forensic analysis of the home in 2009.

In a May 2010 CL-100 termite inspection report, a termite inspector noted evidence of termites, active wood-destroying fungi, and visibly damaged wood members. 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."

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[5] Jim Allwin died in 2007.

[6] From July to October 2008, Allwin paid Stein $6,978.14.

[7] Allwin concedes that HVAC problems are not RCA's responsibility.

CIS performed a second home inspection in May 2010, again noting numerous construction deficiencies, including: roof leaks, deterioration of roofing components, signs of prior termite activity, damage to siding, water infiltration at windows, water infiltration and damaged flooring at windows and doors, leaks into the basement, cupped hardwood flooring, water stains, and mildew. CIS recommended checking the flashing and subfloor near the home's rear doors and having a contractor evaluate the water intrusion problem with the windows.

In 2011, Allwin hired Fuller Consulting Engineers (Fuller) to perform a thorough forensic analysis of the home. In his preliminary report, Fuller architect Ross Clements reported a number of construction deficiencies. Due to his concern about unknown conditions, Clements suggested a comprehensive scope of repair for the house, including the removal of the roof, a large concrete deck, and all exterior siding and interior drywall so that any potential latent defects could be located and repaired. Thereafter, Allwin met with a Shope Reno representative and agreed to go forward with Fuller's removal and repair recommendations.

On August 5, 2013, Allwin brought this construction and design defect action for negligence, gross negligence, and breach of warranty against RCA. Allwin added architectural firm Shope Reno as a defendant on October 8, 2014. Allwin alleged damages resulting from latent and previously undiscoverable design and construction deficiencies, decay, and rot.

According to Clements's September 9, 2015 affidavit, the removal of the home's exterior siding, interior drywall, roof, and concrete patio exposed defects that could not have been discovered without extensive deconstruction efforts.[8] Clements stated:

> Furthermore, it is my opinion that the level of destructive testing and deconstruction required at the subject residence to uncover latent 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

[8] During his deposition, Russ Cooper agreed "it would be an extreme measure for an owner to remove all the siding on his house to determine the source of water infiltration." He also acknowledged that although the framing and Tyvek weather-resistive barrier are visible during construction, these components are no longer observable once they are covered by exterior cladding.

> based on the visual deficiencies observed. In my opinion, the root cause of many of the observed visual deficiencies could not have been 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.

Clements identified thirty-two defective conditions including defects in the installation of the roof underlayment, sheathing and framing; Tyvek weather-resistive barrier; building felt behind the stucco; windows and doors; waterproofing and flashing; and patios.

Shope Reno moved to dismiss, or in the alternative, for summary judgment, on three grounds, including the statute of limitations. RCA also moved for summary judgment based on the statute of limitations. The circuit court granted summary judgment and denied Allwin's subsequent Rule 59(e), SCRCP, motion to alter or amend.

Standard of Review

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011). "The judgment sought shall be rendered forthwith 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), SCRCP. "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). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). "Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014); *see Kreutner v. David*, 320 S.C. 283, 286–87, 465 S.E.2d 88, 90 (1995) (affirming the

circuit court's order granting summary judgment because the statute of limitations had run).

Law and Analysis

Allwin argues the circuit court erred in granting Respondents' motions for summary judgment because conflicting evidence exists as to whether the statute of limitations bars her construction defect claims. Specifically, Allwin alleges the circuit court failed to view the evidence in the light most favorable to the nonmoving party, made impermissible findings of fact, relied on inapplicable law, and ignored evidence showing that she acted with due diligence.

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" *Id.* (quoting *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." *Id.* "The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005).

The three-year statute of limitations applies to this case. *See* S.C. Code Ann. § 15-3-530(1) and (5) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied" and "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law"); *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 371–72, 597 S.E.2d 27, 29 (Ct. App. 2004) (holding the three-year statute of limitations began to run on homeowner's negligence claim when he discovered his newly purchased modular home was damaged during delivery).

"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, 644, 500 S.E.2d 157, 159–60 (Ct. App. 1998) (quoting *Grooms v. Medical Soc'y of S.C.*, 298 S.C. 399, 402, 380 S.E.2d 855, 857 (Ct. App. 1989)). However, the "discovery rule," as discussed in *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), may toll the accrual of the statute of limitations:

> Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is *objective* rather than subjective. Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Id. at 525–26, 787 S.E.2d at 489–90 (citations and quotations omitted); *see also* S.C. Code Ann. § 15-3-535 (2005) ("[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."). Our supreme court has "interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness" when on notice of a potential claim. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363–64, 468 S.E.2d 645, 647 (1996). "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial." *Id.* Nevertheless, when the parties present conflicting evidence, application of the discovery rule and the determination of the date the statute began to run in a particular case are questions of fact for the jury. *See Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (when testimony conflicts regarding time of discovery of a cause of action, it becomes an issue for the jury to decide); *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993) ("Whether a claimant knew or should have known that they had a cause of action is question for the jury."); *Brown v. Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) ("The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide.").

Here, the circuit court found "[t]he statute of limitations bars [Allwin]'s claims against [Respondents] because the facts establish that [Allwin] was well aware of the alleged defects in both RCA's construction of and [Shope Reno]'s design of the residence more than three years before she asserted claims against them." The court further determined, "[Allwin] failed to act with 'reasonable diligence' in pursuing her claims against RCA and [Shope Reno]."

A. Evidence and Findings of Fact

Initially, Allwin argues the circuit court failed to view the evidence in the light most favorable to the nonmoving party and made impermissible findings of fact. We disagree.

Allwin's February 2011 letter to Shope Reno reported that Allwin retained legal counsel in connection with "significant deficiencies" at the home; an investigation uncovered deficiencies "relate[d] to the design/installation" of various building components including the "doors and windows, waterproofing and sealant, flashing installation and other deficiencies;" and the deficiencies "have led to significant damage" to the home. Allwin's counsel further wrote that "[a]s a result of these deficiencies and the damages to property resulting therefrom, Ms. Allwin faces a signification 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."

The 2011 letter warned Shope Reno that if it refused to "investigate and correct the conditions at the project in a suitable manner," she would address the issues on her own and specifically "reserve[d] any and all legal rights and remedies she may have against [Shope Reno] as a result." Additionally, Allwin's Letter instructed Shope Reno to "forward this letter to [its] attorney and to [its] insurance agent/broker and any known liability insurance carriers." Thus, Allwin's letter notified Shope Reno of her potential claim against it for design deficiencies and the resulting damages. *See e.g.*, *Johnston*, 313 S.C. at 65, 437 S.E.2d at 47 (1993) (finding that even in viewing the facts in the light most favorable to the plaintiff, the only reasonable inference is that she knew or should have known that she had a possible claim against her physician no later than 1987, when she continued to have problems with her knees and sought legal advice regarding a claim against him). In fact, in her brief to this court, Allwin admits she had knowledge of her potential claims in 2011.[9] Because she failed to file this matter against Shope Reno until October 8, 2014, the circuit court correctly granted summary judgment.

The circuit court's grant of summary judgment to RCA was likewise proper. Allwin was on notice of her potential claims against RCA as early as February 1999. *See Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*,

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[9] For reasons stated throughout this opinion, it is clear Allwin had notice of her potential claims many years before her counsel sent the 2011 letter.

332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998) ("The statute of limitations . . . runs from the date the injury is discoverable by the exercise of reasonable diligence."); *id.* at 208, 503 S.E.2d at 767 (finding the plaintiff "had sufficient information . . . to put it on inquiry notice, which, if developed, would have revealed the defects"). Between 1999 and 2002, Cowan observed and notified the Allwins of numerous defects in the roof, chimneys, exterior walls, windows, doors, patio, and basement. He further notified the Allwins of interior water damage to hardwood floors, drywall, wallpaper, and subfloor framing, as well as mold, mildew, peeling paint, and water stains. Between 1999 and 2011, the Allwins engaged numerous experts and professionals to investigate and remedy the various construction defects. Significantly, Allwin admitted Buffington's 2004–05 repairs were intended to remedy defects in RCA's original construction. In October 2008, Stein notified Allwin of defects in RCA's construction and the likelihood that her construction defect claims against RCA had expired. Allwin retained counsel in March 2009.

At the very latest, the statute of limitations applicable to Allwin's claims against RCA ran in March 2012. *See e.g.*, *Johnston*, 313 S.C. at 65, 437 S.E.2d at 47 (finding plaintiff knew or should have known that she had a possible claim against her physician when she continued to have problems with her knees and sought legal advice regarding a claim against him). Her claims against RCA are time-barred as a matter of law, and summary judgment was proper. *See Stokes-Craven Holding Corp.*, 416 S.C. at 526, 787 S.E.2d at 489–90 ("Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.").

B. Inapplicable Case Law

Allwin further contends the circuit court erroneously relied on *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996) and *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998), because these cases did not involve latent defects.[10] We find no error.

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[10] Latent defects have been defined as:

> Latent defects are hidden defects generally involving the material out of which the thing is constructed. Latent defects are those which a reasonably careful inspection

In *Dean*, the appellant purchased real property in downtown Charleston in September 1984, after a contractor had inspected it and determined it to be structurally sound. 321 S.C. at 362, 468 S.E.2d at 646. Two months later, the appellant observed a fine crack approximately three feet in length at the front right corner of the building and concluded it was attributable to a construction company's pile driving at a nearby construction site for Charleston Place. *Id.* The appellant immediately hired expert consultants to examine and repair the crack. *Id.* In August 1985, the appellant noticed the original crack had expanded and the facade was beginning to bulge and buckle. *Id.* at 362, 468 S.E.2d at 646–47. Further, she observed that a second crack had appeared at another location. *Id.* at 362, 468 S.E.2d at 647. After being informed the building was no longer structurally sound, the appellant brought suit against the construction company in 1991. *Id.* At trial, the circuit court directed a verdict against the appellant, finding as a matter of law that the statute of limitations had expired prior to the filing of her lawsuit. *Id.* at 363, 468 S.E.2d at 647.

This court reversed the circuit court, finding a question of fact existed as to whether the appellant was reasonably diligent in determining whether the construction company caused the damage to her building, thereby triggering the statute of limitations in 1984. *Id.* On appeal to our supreme court, the appellant argued the 1984 crack and the 1985 bulging of the bricks presented two distinct harms and, thus, two different dates of accrual existed for statute of limitations purposes. *Id.* at 364, 468 S.E.2d at 647. Our supreme court disagreed, holding the circuit court correctly directed a verdict for the construction company. *Id.* at 366, 468 S.E.2d at 648. Finding the statute of limitations began to run in November 1984—when appellant initially discovered the first crack—the court explained,

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> will not reveal or those which could not have been discovered by such an inspection. A latent defect is [unknown] and, in the exercise of reasonable care, could not have [been] discovered.

Nunnery v. Brantley Const. Co., 289 S.C. 205, 213, 345 S.E.2d 740, 745 (Ct. App. 1986) (citations omitted); *see also Latent Defect*, *Black's Law Dictionary* (10th ed. 2014) ("*See* Hidden Defect."); *Hidden Defect* ("A product imperfection that is not discoverable by reasonable inspection and for which a seller or lessor is generally liable if the flaw causes harm.").

> 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'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. 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. at 365–66, 468 S.E.2d at 648.

Like the appellant in *Dean*, Allwin discovered issues with her home which led her to investigate the problems and perform multiple repairs between 1999 and 2011. However, despite actual knowledge of her potential claims for this damage—and repeated repair recommendations—Allwin failed to pursue her claims in a timely manner. As Allwin was repeatedly put on notice of the home's design and construction defects, her failure to comprehend the magnitude of the water intrusion and other defective conditions is immaterial. *See id.*

In *Barr*, the appellants purchased a home from the Rock Hill Economic Development Corporation (RHEDC), which had purchased the house from the City of Rock Hill (the City) in February 1985. 330 S.C. at 642, 500 S.E.2d at 158. From May 1987 through May 1990, four annual termite inspections revealed excessive moisture under the appellants' home. *Id.* Termite inspectors suggested several repairs. *Id.* In March 1992, Mrs. Barr contacted the City and requested an inspection and report, which found several problems in the home's crawl space. *Id.* at 640, 500 S.E.2d at 159. In August 1992, the appellants received a structural engineering report disclosing numerous defects in the house, several of which were unrelated to the moisture problem. *Id.* at 643, 500 S.E.2d at 159. The appellants filed suit in March 1994. *Id.* On appeal, this court affirmed the circuit court's grant of summary judgment in favor of the City and RHEDC based on the statute of limitations. *Id.* at 646, 500 S.E.2d at 160. Despite the fact Mrs. Barr did not realize "the magnitude of the problem" until August 1992, this court held the circuit court correctly ruled the termite inspection reports were sufficient notice to trigger the running of the statute of limitations. *Id.* at 645–46, 500 S.E.2d at 160.

Allwin contends *Barr* is inapplicable here because the appellants there failed to act upon information regarding moisture in the crawlspace, whereas Allwin took

action over several years to investigate and repair the home. But Allwin's completion of some of the recommended repair work for her home does not alter the fact that, like the *Barr* appellants, she was on notice of her potential claims for some time and failed to timely file suit.

Santee Portland Cement Co. v. Daniel International Corp., which Allwin cites to support her summary judgment opposition, does not support a different result. 299 S.C. 269, 384 S.E.2d 693 (1989), *overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 462 S.E.2d 858 (1995). There, a cement plant owner (Santee) brought suit against the general contractor (Daniel) responsible for the construction of the plant. Over a period of many years, the plant facility showed two cracks in its façade, which eventually collapsed, killing two people. *Id.* at 270–71, 384 S.E.2d at 693–94. The circuit court concluded Santee knew or should have known it had a cause of action against Daniel when the first crack appeared in 1969, or at least when the second crack appeared in 1975. *Id.* at 271, 384 S.E.2d at 694. Our supreme court rejected the circuit court's conclusion, determining the following evidence went to the reasonableness of Santee's actions, which was an issue to be decided by the jury:

> Santee introduced expert testimony that the defects in the silos were latent; the defective placement of the steel reinforcements was not detectable because the rods were inside the concrete walls. Although Santee did experience cracks in Bin # 12 prior to the 1980 collapse of Bin # 13, experts testified that small cracks are *common* in cement structures. Repairs of Bin # 12 totaled approximately $11,000 and were characterized as *relatively small* for the $2,000,000 project. Further testimony was introduced that Daniel's subcontractor characterized the repairs to # 12 as *permanent* and inspected the remaining silos and found them to be in good condition. Santee also introduced evidence that the silos were inspected visually by employees and periodically checked by the Mine Safety and Health Administration.

Id. at 274, 384 S.E.2d at 696 (emphasis added).

The record here establishes Allwin's longstanding knowledge of multiple construction defects. Cowan observed and repeatedly notified the Allwins of defects between 1999 and 2002. Between 1999 and 2011, the Allwins engaged experts and professionals to both investigate and remedy some of the defects. Not one of these professionals found these defects to be "common" or "relatively small." In fact, in January 2004, Buffington informed the Allwins "the only way to properly repair the roof is to replace it. . . . [, which] will necessitate removing and replacing much of the siding, thus, the cost for roof replacement will be over $500,000." In September 2006, Buffington prepared a $282,850 estimate for mold remediation and repairs necessary to address other ongoing problems with the home, including repairs to the roof, certain exterior walls, certain windows and doors, the basement, and damaged flooring. Buffington noted his 2006 proposed roofing repairs were "only temporary," and again recommended the complete replacement of the roof.

Allwin also complains the circuit court's order failed to address *Holly Woods Association of Residence Owners*, 392 S.C. 172, 708 S.E.2d 787, in which this court affirmed the circuit court's denial of the developers' directed verdict motion based on the statute of limitations. *Id.* at 185, 708 S.E.2d at 794. In *Holly Woods*, the minutes from HOA board meetings indicated the HOA was aware of certain problems with the development including a pool leak, drainage problems, and termite issues in 1991; additional problems appeared between 1998 and 2000. But the damages the HOA claimed in the 2005 lawsuit involved a different location within the neighborhood, unrelated to the previous defects. *Id*. By contrast, the record here establishes Allwin failed to present any evidence that the defects she claims to have discovered in 2011 were unrelated to those she had notice of as early as February 1999.

Finally, Allwin complains the circuit court failed to address this court's holding in *McAlhany v. Carter*, which reversed the circuit court's granting of defendants' statute of limitations-based motions for summary judgment. 415 S.C. 54, 54, 781 S.E.2d 105, 107 (Ct. App. 2015). The circuit court granted summary judgment based on the plaintiff's deposition testimony that he discovered the mold within his residence in 2007. *Id.* at 59, 781 S.E.2d at 108. However, later during the same deposition, the plaintiff expressed confusion about when he discovered the mold and whether his discovery occurred at late as 2009. *Id.* at 61, 781 S.E.2d at 109. In the present case, Allwin has failed to present conflicting evidence with respect to the timing of her discovery of the various defects in the home. Indeed, the chronology of Allwin's defect discoveries is fully established in this record. Thus, *McAlhany* is unpersuasive.

C. Due Diligence

Finally, Allwin argues the circuit court ignored evidence that she acted with due diligence. We disagree.

Although the record reflects a lengthy history of maintenance and repairs, such does not negate the fact that Allwin was on notice of her potential claims as early as February 1999 but failed to bring suit against RCA and Shope Reno until August 5, 2013, and October 8, 2014, respectively. *See Dean*, 321 S.C. at 363–64, 468 S.E.2d at 647 (stating an injured party "must act with some promptness" when they are on notice of a potential claim); *id.* ("Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.").

Allwin asserts a jury could find she was "reasonable in pursuing a conservative but conscious course of action in response to conflicting opinions." But the question is not whether Allwin reasonably elected between conflicting professional recommendations as to the scope of necessary repairs. The issue here is when Allwin discovered her potential claims, thus triggering the statute of limitations. Cowan, Buffington, CSA, and Stein independently and repeatedly notified Allwin of original design and construction defects. Buffington and Stein went so far as to inform Allwin of the possible expiration of her claims against RCA. Thus, the circuit court properly granted summary judgment.

AFFIRMED.

HUFF and GEATHERS, JJ., concur.