

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

HONORABLE W. YOUNG, Circuit Court Judge

Case No. 2019-000148

RECEIVED
JUN 21 2019
SC Court of Appeals

Tymika Jones Alston and Harold Alston individually
And as Parents and Guardians on behalf of their minor child,
J.A., ... Appellants.

v.

Donald Richard Torres d/b/a DMT Construction Co., Inc.,
L&L Electric, Inc. and Eduardo Moreno d/b/a E.S. Moreno
Construction, Defendants,
Of which Donald Richard Torres d/b/a DMT Construction Co.,
Is the Respondent Respondent

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following exhibits be included in the Record on Appeal:

1. June 29, 2010 Summons and Complaint
2. Defendant Willow Creek Construction, Inc., Third-Party Complaint March 2011
3. Answer to Third Party Complaint by DMT Co., Inc. June 2011
4. Amended Third Party Lawsuit by Willow Creek Construction June 2011
5. Answer to Amended Third Party Lawsuit by DMT July 2011
6. October 2013 Certificate of Service from Atty G. Thomas Chase
7. Records Request August 2014 from Atty G. Thomas Chase
8. October 2011 40(j) Notice
9. September 2014 Answer to Amended Complaint by DMT
10. October 2012 Motion to Restore by Plaintiffs
11. Order to Restore dated October 2012
12. Amended Summons and Complaint by Plaintiffs August 2014
13. Answer to Amended Complaint by DMT September 2014
14. Timeline
15. Plaintiffs Motion for Leave to Amend May 2014
16. Transcript of Hearing March 2015

I certify that this designation contains no matter which is irrelevant to this appeal.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Donald Gist', with a long horizontal flourish extending to the right.

Donald Gist, Esquire
Aaron Wallace, Esquire
Gist Law Firm, PA
4400 North Main Street
Columbia, SC 29203
(803) 771-8007
Attorneys for Appellants

June 21, 2019

Exhibit 1

ious civil proceedings may be subject to sanctions pursuant to SCROP Rule 11.11.11

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON

Plaintiffs,

vs.

WILLOW CREEK
CONSTRUCTION, INC,
OSCAR TORRES, and

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

10-CP-40-04307

SUMMONS

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 JUN 29 PM 1:47

RICHLAND COUNTY
FILED

TO: Oscar Torres, P.O. Box 955, Blythewood, SC 29016

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at Gist Law Firm, 4400 N. Main Street, P.O. Box 30007, Columbia, South Carolina 29230, within thirty (30) days after the service thereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the Plaintiff shall apply to the Court for a judgment by default against you for the relief demanded in the Complaint.

GIST LAW FIRM



DeAndrea Gist Benjamin
(SC Bar#: 13597)
4400 N. Main Street
P.O. Box 30007 (29230)
Columbia, SC 29203
803.771.8007
803.771.0063 (Fax)

Attorney for Plaintiff

June 29, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

TYMIKA JONES ALSTON and)
HAROLD ALSTON)

Plaintiffs,)

vs.)

WILLOW CREEK)
CONSTRUCTION, INC,)
OSCAR TORRES, and)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

10-CP-40- 04307

COMPLAINT

2010 JUN 29 PM 1:47
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

NOW COMES the Plaintiffs, by and through counsel, for their complaint against
Defendants and state as follow:

PARTIES & JURISDICTION

1. Plaintiffs Tymika Jones Alston and Harold Alston (hereafter "Plaintiffs") are Citizens and residents of Richland County, State of South Carolina and owners of real property located at 451 Apple Branch Court, Blythewood, SC, Richland County, State of South Carolina, the residence which is the subject of this action.
2. Upon information and belief, Defendant Willow Creek Construction is and at all times mentioned here a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, State of South Carolina. Willow Creek Construction is in the business of constructing dwelling houses and constructed the residence which is the subject of this action.
3. Upon information and belief, Defendant Oscar Torres is a resident of Richland County, State of South Carolina and is the principal and owner of Willow Creek Construction. Defendant Torres was the residential contractor who built Plaintiff's home.

4. Upon information and belief, Defendants
5. Venue is proper in Richland County, State of South Carolina because at least one if not all Defendants maintains an office in Richland County and this action involves real estate in Richland County, State of South Carolina.

FACTUAL ALLEGATIONS

6. This case arises out of the construction of Plaintiffs' house located at 451 Apple Branch Court, Summer Pines Subdivision, Richland County, State of South Carolina.
7. Plaintiffs engaged Willow Creek Construction and Oscar Torres to construct their house with due care, in a workmanlike manner, and in accordance with the plans and specifications.
8. Defendant Willow Creek Construction completed the home in April 2007. Plaintiffs moved in the house on April 3, 2007.
9. On April 5, 2007, Plaintiffs' noticed that the bedroom wall was wet inside and out from the neighbor's sprinkler. Plaintiffs contacted the Defendant Construction Company regarding problem. Defendant Oscar Torres came out observed the problem and had the wall sanded and painted.
10. In July of 2007 after a heavy rain and thunderstorm, Plaintiffs once again noticed that the master bedroom wall was wet inside and out. They once again contacted the builder who in turn came back out sanded the wall and repainted it. They resealed the window and told them that everything was fine. At that time Plaintiffs were told by the builder that the problem was cured.
11. During the summer of 2007, Plaintiff Tynika Alston and the Plaintiffs'

son, Jaiden and Alston began experiencing medical problems. Specifically, swollen eyes, eye infections, bronchitis, and allergies. Plaintiff Tymika Alston and the minor child had no prior sinus or allergy issues. During this time Plaintiff Harold Alston was working out of the State and was only present in the house during the weekends. After weekend visits home, he would experience irritation in his eyes and sinus and allergy problems.

12. In November 2008, Plaintiffs' concerned about their deteriorating health and the problems that their son was experiencing hired a mold specialist to inspect the home. The Mold Specialist found that mold was airborne though out the house.

13. On December 5, 2008, Plaintiffs received a quote from CBS Builders to make repairs to window and mold treatment.

14. On February 27, 2009, Plaintiffs had the home inspected by Pinpoint Home and Commercial Inspections. The inspection revealed that the bedroom window was not the correct window and that it was a vinyl replacement window and was dissimilar from all other windows in the home.

15. On March 8, 2009, Plaintiffs notified the builder in writing of the mold problem and of the problem with the misfit window. The builder responded on March 20, 2009 and replaced the window on April 16, 2009.

16. After still experiencing significant medical problems, Plaintiffs ordered another inspection in August 2009. The inspection was performed by Southeastern Inspection Services. Numerous deficiencies, code violations and unsatisfactory work was noted. Some interior areas of the home were showing more than 30% moisture readings in the home. The inspector strongly suggested that Plaintiffs move out of the home for health reasons and concerns.

17. On September 1, 2009, Plaintiffs moved out of the house into an apartment. The house has been vacant since that time and inhabitable since that time.

18. Defendant's work was defective in all, but not limited to, the following particulars:

- a. By failing to construct the house so as to prevent leaks of water into the interior;
 - b. By failing to install the proper window in the bedroom;
 - c. By failing to seal open joints where vertical and horizontal trim intersects with brick veneer;
 - d. By failing to install a rain diverter along the front roof above the entrance;
 - e. By failing to install or to properly install flashing at windows and doors;
 - f. By failing to properly seal the window jambs and heads in the master bedroom and front windows;
 - g. By failing to seal mounted light fixtures at garage and rear entrance;
 - h. By failing to investigate his subcontractors to determine if they were competent and capable of performing the work;
-
- i. By failing to adequately supervise the work of his subcontractors;
 - j. By failing to discover defects in work performed by his subcontractors;
 - k. By failing to correct the problem regarding the misfit window after being first notified of the water leaking into the interior of the home;
 - l. By failing to correct defective work.

AS A FIRST CAUSE OF ACTION
(Breach of Contract)

19. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 18.

20. The agreement between Plaintiffs and Defendant Oscar Torres and Willow Creek Construction required Defendants to build a dwelling house in accordance with the plans and specifications, applicable building codes industry standards and free from construction and structural defects.

21. Defendant breached this contract in the particulars previously described and the deficiencies outlined in Southeastern Inspection Services report dated August 11, 2009.

22. As a proximate and foreseeable result of Defendant's breach of contract, Plaintiffs have suffered physical damage to the House, as well as diminution in its value. Plaintiffs have also suffered bodily injury, which have caused Plaintiffs, and will cause Plaintiffs in the future, to incur medical expense, to suffer tremendous pain and suffering and to lose time from work and lost wages.

AS A SECOND CAUSE OF ACTION
(Negligence and Negligent Supervision)

23. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 22.

24. Each of the aforementioned Defendants assumed the duties outlined above.

25. Defendants owed Plaintiffs a duty to exercise due care in performing their duties outlined above.

26. Defendants breached these duties in the particulars previously described.

27. As a direct, foreseeable, and proximate result of Defendants' negligence, Plaintiff's have suffered physical damage to their House, as well as diminution in its value, as well as the home being inhabitable and are entitled to recover from the Defendant's all direct, consequential and punitive damages.

AS A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service)

28. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 27.

29. When the above named Defendant's contracted to construct Plaintiff's residence, Defendants impliedly warranted to Plaintiffs that the house would be constructed in a workmanlike manner, free from defects, and in accordance with the plans and specifications.

30. Defendants breached this implied warranty in the particulars previously described.

31. As a proximate and foreseeable result of Defendants, breach of this implied warranty, Plaintiffs have suffered physical damage to the house, as well as diminution in its value.

AS A FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

32. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 31.

33. Defendants sold and installed in Plaintiff's house a vinyl replacement window.

34. The window was not merchantable at the time of the sale. As a result water was able to penetrate the interior walls of the house, thus causing moisture and mold.

Plaintiffs have suffered physical damage to the House, as well as diminution in its value. Plaintiffs have had to relocate from the home due to the air quality in the home and incur expenses related to the relocation and living expenses.

AS A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)

35. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 34.

36. Defendants at the time of the sale of the defective window had reason to know that Plaintiffs, or those who, for this limited purpose, could act for Plaintiffs, were relying on the skill or judgment of the Defendants to furnish a product that was the appropriate window for the house. Plaintiffs relied on Defendants' skill and judgment.

37. The window was not fit to be used in the House, thus causing water to be trapped in the walls of Plaintiff's house and cause moisture and mold throughout the home.

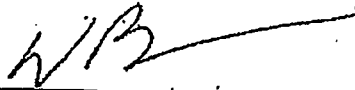
38. As a result of Defendants breach of their implied warranty, Plaintiffs have suffered physical damage to the House, as well as diminution in its value.

WHEREFORE, Plaintiff pray this Court issue an Order granting them judgment against Defendants jointly and severally, for the following relief:

1. For actual damages in an amount to be proven at trial;
2. For punitive damages;
3. For prejudgment and post judgment interest on Plaintiffs' damages;
4. For attorneys' fees and cost; and
5. For such other and further relief as this Court deems appropriate.

Signature on Next Page

Respectfully submitted,



DeAndrea Gist Benjamin #13597
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Deandreabenjamin@gistlawfirm.com

June 24, 2010

Exhibit 2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON,

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC. and OSCAR TORRES,

Defendants.

WILLOW CREEK CONSTRUCTION,
INC.,

Third Party Plaintiff,

vs.

DONALD RICHARD TORRES d/b/a
DMT CONSTRUCTION CO., INC.,
L & L ELECTRIC INC., AND EDUARDO
MORENO d/b/a E.S. MORENO
CONSTRUCTION,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-40-04307

DEFENDANT WILLOW CREEK
CONSTRUCTION, INC.'S
THIRD-PARTY COMPLAINT

NOW COMES the defendant and third-party plaintiff Willow Creek Construction, Inc. and would show unto the Court as follows:

1. Plaintiffs have filed a Complaint against third-party plaintiff alleging numerous problems and deficiencies with the construction of the subject residence and the windows that were installed at 451 Apple Branch Court, Blythewood, South Carolina, Richland County, State of South Carolina, the residence which is the subject of this action. A copy of the underlying plaintiffs' Complaint is attached hereto as Exhibit A.

2. Willow Creek has denied the allegations in the underlying plaintiffs' Complaint.
3. Third-Party Plaintiff Willow Creek Construction, Inc. (hereinafter "Willow Creek") is and at all times mentioned here a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, State of South Carolina. Willow Creek Construction is in the business of constructing dwelling houses and constructed the residence which is the subject of this action. Third-Party Plaintiff was the residential contractor who built Plaintiffs' home.
4. Upon information and belief, Third-Party Defendant Donald Richard Torres d/b/a DMT Construction Co., Inc. (hereinafter "Richard Torres") is a business entity with its principal place of business in Blythewood, South Carolina and acted as a subcontractor for the third-party plaintiffs to perform framing work on the plaintiffs' home to include the installation of windows and doors and among other things, to install and properly flash and seal the window jambs and heads.
5. Upon information and belief, Third-Party Defendant L & L Electric Co., Inc. (hereinafter "L & L") is a corporation incorporated under the laws of the State of South Carolina with its registered agent as James. L. Legrand in Lugoff, South Carolina and acted as a subcontractor for the third-party plaintiff to provide electrical services and among other things to install light fixtures in and on the plaintiffs' home.
6. Upon information and belief, Third-Party Defendant Eduardo Moreno d/b/a E. S. Moreno Construction (hereinafter "Moreno") is a business entity with its principal place of business in Charlotte, North Carolina, and doing business in Richland County, South Carolina, and acted as a subcontractor for the third-party plaintiff to perform services among other things as the roofer.

7. However, to the extent that any of Plaintiffs' allegations are true, which is denied, then the Third-Party Defendants Richard Torres, L & L, and Moreno, upon information and belief, would be liable to Willow Creek Construction for any damages asserted by Plaintiffs in the underlying action.

FOR A FIRST CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

8. Willow Creek Construction, Inc. realleges and reiterates paragraphs 1-7 above as if fully set forth verbatim herein.
9. Third-Party Plaintiff entered into various agreements with the individuals or entities identified in paragraphs 4-6 above ("Third-Party Defendants") to provide labor or services for the construction of the plaintiffs' residence.
10. The plaintiffs have alleged numerous construction deficiencies in their Complaint, a copy of which is attached hereto and incorporated by reference herein; alleging that some of the third-party defendants negligently performed the construction of the home which the third-party plaintiff has denied.
11. If it is determined that the labor or services provided by any particular third-party defendant were deficient, defective, or failed to comply with any industry custom, practice or building code, then the particular third-party defendant would be liable to the third-party plaintiff for any damages caused by the particular third-party defendant.
12. If it is determined, as alleged above, that any particular third-party defendant should indemnify the third-party plaintiff, by legal indemnity, arising by express or implied contract, or equitable indemnity, arising by operation of law, then the third-party defendants should indemnify the third-party plaintiff for any settlement or judgment

which may include, but not be limited to, the principal amount of any settlement or judgment, costs, attorneys' fees and interest associated with this action.

FOR A SECOND CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

13. Third-party plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as fully as if said matters were repeated verbatim herein.
14. The plaintiffs have alleged, *inter alia*, that the third-party defendants have failed to properly construct the plaintiffs' home as more specifically alleged in plaintiffs' Complaint which is attached hereto and incorporated by reference herein.
15. If it is determined that a particular third-party defendant breached any duties imposed by law, industry standards or customs, or applicable building codes that may have arisen in the construction of the plaintiffs' home, then the third-party defendant was negligent or negligent *per se*.
16. If it is determined that any particular third-party defendant's negligence or negligence *per se* was a proximate cause of any damages arising out of or relating to the construction of the plaintiffs' home then that third-party defendant has damaged the third-party plaintiff.
17. Third-party plaintiff is then entitled to judgment for actual damages against any particular third-party defendant in the amount of any monies the third-party plaintiff may be adjudged to owe the plaintiffs, or which the third-party plaintiff may pay the plaintiff in settlement of plaintiffs' claims.

FOR A THIRD CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

18. Third-party plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as fully as if said matters were repeated verbatim herein.

19. The plaintiffs herein have alleged, *inter alia*, that the third-party defendants breached their warranties to the third-party plaintiff and plaintiffs as more specifically alleged in the Complaint which is attached hereto and incorporated by reference herein.

20. Each third-party defendant expressly or impliedly warranted that its work would be done in a workmanlike manner complying with all applicable industry standards, customs, codes or laws.

21. If it is determined that a particular third-party defendant failed to perform its work in a workmanlike manner, then that particular third-party defendant has breached its express or implied warranty of workmanlike service.

22. If it is determined that a particular third-party defendants' breach of any warranty caused any damages then the third-party defendant has damaged the third-party plaintiff.

23. Third-party plaintiff is then entitled to judgment for actual damages against any particular third-party defendant in the amount of any monies the third-party plaintiff may be adjudged to owe the plaintiff, or which the third-party plaintiff may pay the plaintiffs in settlement of plaintiffs' claims.

FOR A FOURTH CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

24. Third-party plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as fully as if said matters were repeated verbatim herein:

25. The plaintiffs herein have alleged, *inter alia*, that the third-party defendants breached their contract to the third-party plaintiff and plaintiffs as more specifically alleged in the Complaint which is attached hereto and incorporated by reference herein.

26. The third-party plaintiff entered into agreements with the third-party defendants to provide labor or services for the construction of the plaintiffs' home.

27. The terms of the agreements with the third-party defendants specifically or implicitly required each third-party defendant to provide construction services, or labor that, among other things, would produce a home free from substantial defects and otherwise in conformance with any contract documents, building codes and industry standards and customs.

28. If it is determined that a particular third-party defendant failed to perform its contract then the third-party defendants have breached their contract with the third-party plaintiff.

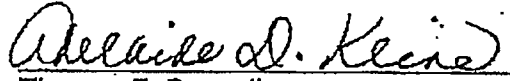
29. If it is determined that a breach of contract by a particular third-party defendant caused damages, then the third-party plaintiff has suffered damages.

30. Third-party plaintiff is then entitled to judgment for actual damages against any particular third-party defendant in the amount of any monies the third-party plaintiff may be adjudged to owe the plaintiffs, or which the third-party plaintiff may pay the plaintiffs in settlement of plaintiffs' claims.

WHEREFORE, the Defendant and Third-Party Plaintiff, Willow Creek Construction, Inc., having asserted its third-party Complaint against the third-party defendants, Willow Creek Construction, Inc., prays that it may be dismissed from this lawsuit with prejudice, that the Complaint be dismissed with prejudice, or alternatively that it be awarded damages on its Third-party Complaint and for such further relief as the court deems just and proper.

Respectfully submitted;

DOUGALL & COLLINS



Thomas F. Dougall
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1700 Woodcreek Farms Road
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tkline@dougallfirm.com

Attorneys for Defendants and Third-
Party Plaintiff Willow Creek
Construction, Inc.

Columbia, South Carolina

March 28, 2011

CERTIFICATE OF SERVICE.

This is to certify that the foregoing **Defendants' Third-Party Complaint and three Summonses for the Third-Party Complaint** were served in the above-referenced case by depositing a copy of the same in the United States Mail, postage prepaid, on the 29th day of March, 2011, addressed as follows:

DeAndrea Gist Benjamin, Esquire
Donald Gist, Esquire
Gist Law Firm
4400 North Main Street
Columbia, SC 29203
Attorneys for Plaintiffs


Adelaide D. Kline

Exhibit 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Civil Action No. 2010-CP-40-04307

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC., AND OSCAR TORRES,

ANSWER TO THIRD PARTY
COMPLAINT
(Jury Trial Demanded)

Defendants.

and

WILLOW CREEK CONSTRUCTION,
INC.,

Third-Party Plaintiff,

vs.

DONALD RICHARD TORRES D/B/A
DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A E.S. MORENO
CONSTRUCTION,

Third-Party Defendants.

DMT Co., Inc., incorrectly identified as Donald Richard Torres d/b/a DMT Construction Co., Inc., (hereinafter "DMT") answers the Third-Party Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Third-Party Defendant would respectfully show each and every cause of action set forth in the Third-Party Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

3. Answering Paragraph 1, Third-Party Defendant admits only that Plaintiffs have filed a Complaint against Third-Party Plaintiff. As to the content of the Complaint, DMT refers to the actual Complaint by reference.

4. Paragraphs 2 and 3 are admitted upon information and belief.

5. Paragraph 4 is denied as worded. The proper Third-Party Defendant is DMT Co., Inc. DMT requests that an amended Third-Party summons and complaint be prepared identifying the proper entity and counsel agrees to accept service of the same. In the event an amended Third-Party Summons and Complaint is not prepared to reflect the proper entity, DMT retains and specifically preserves all Defenses to the Complaint, including any and all motions related to jurisdiction.

6. DMT admits paragraphs 5 and 6 upon information and belief.

7. Paragraph 7 is denied as to DMT.

8. Answering Paragraph 8, DMT submits the paragraph contains no allegation of fact requiring an admission nor denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

9. DMT denies the allegations of Paragraph 9 as specifically worded as they relate to DMT.

10. Answering Paragraph 10, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

11. Paragraphs 11 and 12 are denied as relate to DMT.

12. Answering Paragraph 13, DMT submits the paragraph contains no allegation of fact requiring an admission nor denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

13. Answering Paragraph 14, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

14. Paragraph 15 and 16 appear to be statements of law and, therefore, no response is necessary. However, to the extent the paragraph can be interpreted to include an allegation of fact against DMT, the allegations are denied and strict proof demanded thereof.

15. Paragraph 17 is denied as to DMT.

16. Answering Paragraph 18, DMT submits the paragraph contains no allegation of fact requiring an admission nor denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

17. Answering Paragraph 19, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

18. Answering Paragraph 20, DMT denies they provided any warranties not implied by law to Plaintiffs and/or Third-Party Plaintiff. As to the warranties alleged to be implied by law, DMT submits the paragraph constitutes a statement of law requiring neither an admission nor denial.

19. Paragraphs 21, 22 and 23 are denied as to DMT.

20. Answering Paragraph 24, DMT submits the paragraph contains no allegation of fact requiring an admission nor denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

21. Answering Paragraph 25, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

22. Paragraph 26 is denied as to DMT based upon defenses previously raised. Subject to those defenses, DMT admits that it entered into an agreement with Third-Party Plaintiff to perform certain labor or services associated with the home at issue.

23. Paragraph 27 is denied as to DMT as specifically worded.

24. Paragraphs 28, 29 and 30 are denied as to DMT.

25. DMT denies Third-Party Plaintiff is entitled to the prayer for relief against DMT under the facts and circumstances forming the basis of the Complaint.

FOR A FOURTH DEFENSE

26. Third-Party Defendant alleges any injuries and damages sustained by Plaintiffs and/or Third-Party Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiffs and/or Third-Party Plaintiff and, therefore, Third-Party Defendant is not liable to Plaintiffs and/or Third-Party Plaintiff for any sum whatsoever.

FOR A FIFTH DEFENSE

27. If Third Party Plaintiff is entitled to any recovery, which is denied, such recovery is due in whole or in part to acts and/or omissions of the Third Party Plaintiff and, therefore, the Third Party Plaintiff does not have clean hands and is not entitled to any indemnification from the Third Party Defendant.

FOR A SIXTH DEFENSE

28. Further answering said Third-Party Complaint, DMT would show that any injuries or damages sustained by Plaintiffs and/or Third-Party Plaintiff that Third-Party Plaintiff alleges were caused by an act or omission of DMT was either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR A SEVENTH DEFENSE

29. DMT submits that any alleged breach of contract cause of action is barred by the statute of frauds and should be dismissed.

FOR A EIGHTH DEFENSE

30. DMT states that any and all work performed by it was performed consistent with, and according to, industry standards, and, therefore, Third-Party Plaintiff cannot recover in the action.

FOR A NINTH DEFENSE

31. Further answering said Third-Party Complaint, DMT alleges, upon information and belief, that any injuries and/or damages sustained by Plaintiff and/or Third-Party Plaintiff were due to and caused by the sole and negligent acts or omissions of some other person or persons other than DMT over whom DMT neither had nor exercised any authority or control and, therefore, DMT is not liable to Third-Party Plaintiff for any sum whatsoever.

FOR A TENTH DEFENSE

32. DMT pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs and/or Third-Party Plaintiff in the following particulars:

- a) In failing to maintain the premises;
- b) In failing to mitigate damages;
- c) In failing to provide adequate notice;

- d) In failing to make appropriate repairs;
- e) In failing to provide proper materials;
- f) In failing to act as reasonable and prudent persons would in the same or similar circumstances; and
- g) Such other particulars as may be identified in the litigation.

Accordingly, Third-Party Defendant alleges the negligence and recklessness of Plaintiffs and/or Third-Party Plaintiff was greater than the negligence, if any, which might be established against Third-Party Defendant and, therefore, Plaintiffs and/or Third-Party Plaintiff are barred from any recovery in this action. Third-Party Defendant further alleges any injuries and damages sustained by Plaintiffs and/or Third-Party Plaintiff were due to and caused by the negligence and/or willfulness of Plaintiffs and/or Third-Party Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Third-Party Defendant and, therefore, any amount of recovery awarded to Plaintiffs and/or Third-Party Plaintiff for the injuries and damages alleged in the Complaint and/or Third-Party Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiffs.

FOR AN ELEVENTH DEFENSE

33. DMT submits that even assuming DMT was careless, negligent in any respect, which is expressly denied, and even if any such conduct on its part operated as a greater than 50 percent cause of the damages and the Plaintiff's/Third-Party Plaintiff's resulting damages, if any, which is also expressly denied, Third-Party Defendant is entitled to a determination as to the percentage which the Third-Party Plaintiff or any other party's negligence, grossly negligent, reckless and/or willful conduct contributed to this incident and to a reduction of any amount

awarded to it by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR AN TWELFTH DEFENSE

34. DMT asserts that any alleged remedies and/or warranties have been properly and effectively excluded, modified and are limited either by applicable contracts or by applicable law.

FOR A THIRTEENTH DEFENSE

35. Third-Party Defendant would show Plaintiffs and/or Third-Party Plaintiff failed to give Third-Party Defendant adequate notice of any applicable warranty claims or alleged deficiencies, thereby barring the claim in whole or in part.

FOR A FIFTEENTH DEFENSE

36. To the extent DMT may be liable to Third-Party Plaintiff, which liability is denied, DMT would show upon information and belief that the subject property has either been destroyed or modified as such DMT pleads the doctrine of spoliation of evidence as a complete bar to the Third-Party Complaint.

FOR A SIXTEENTH DEFENSE

37. Upon information and belief, Third-Party Defendant would show the subject property has not been inspected for defects and/or maintained or repaired in proper condition, which caused or contributed to the injuries alleged in the Complaint. As a result, Third-Party Plaintiff may not recover against Third-Party Defendant.

FOR A SEVENTEENTH DEFENSE

38. To the extent DMT may be liable to Third-Party Plaintiff, which liability is denied, DMT would show upon information and belief that Plaintiff and/or Third-Party Plaintiff failed to give DMT timely and reasonable notice of any alleged defects and/or timely and

reasonable opportunity to cure or correct any alleged defects as required by applicable law and/or contract. DMT asserts such lack of notice as a complete bar.

FOR AN EIGHTEENTH DEFENSE

39. Plaintiffs and/or Third-Party Plaintiff have failed to mitigate their damages and have incurred damages that were unnecessary or unreasonable in amount. Plaintiffs are, therefore, barred in whole or part from recovery in this case.

FOR A NINETEENTH DEFENSE

40. Third-Party Defendant would respectfully show that the applicable statute of limitations bars Plaintiffs from recovery in this action.

FOR A TWENTIETH DEFENSE

41. Third-Party Defendant asserts Plaintiffs' and/or Third-Party Plaintiff's claims are barred by the doctrine of waiver, laches and/or estoppel.

FOR A TWENTY-FIRST DEFENSE

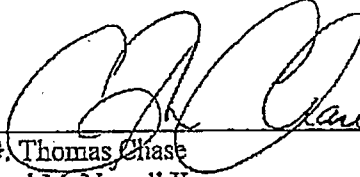
42. Third-Party Defendant would show any claim for punitive damages cannot be had because any award of punitive damages would violate the Third-Party's Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

FOR A TWENTY-SECOND DEFENSE

43. Third-Party Defendant reserves the right to assert any other defense set forth and asserted by any other Defendant and/or Third-Party Defendant to this litigation or as developed by the evidence.

WHEREFORE, having fully answered, Third-Party Defendant prays that the Third-Party Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



G. Thomas Chase
Paul M. Newell II
Post Office Box 2980
75 Beattie Place, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR THIRD-PARTY
DEFENDANT, DONALD RICHARD TORREZ
D/B/A DMT CONSTRUCTION CO., INC.

June 24, 2011

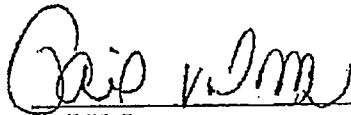
2010-CP-40-04307

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of June, 2011 served a copy of the foregoing Answer by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

DeAndrea G. Benjamin, Esquire
Gist Law Firm
5618 Colonial Drive
Columbia, South Carolina 29203
Attorney for Plaintiffs.

Adelaide Kline, Esquire
Law Office of Thomas Dougall
1700 Woodcreek Farms Road
Suite 100
Elgin, South Carolina 29045
Attorney for Willow Creek Construction, Inc.
And Attorney for Oscar Torres



Gail V. Inzero
Legal Assistant to G. Thomas Chase

Exhibit 4

DOUGALL & COLLINS
ATTORNEYS AND COUNSELOR AT LAW

THOMAS F. DOUGALL
ALSO ADMITTED IN TEXAS
CERTIFIED MEDIATOR IN SC
WILLIAM A. COLLINS, JR.

ADELAIDE DENNIS KLINE
OF COUNSEL

June 29, 2011

The Honorable Jeanette McBride
Clerk of Court for Richland County
P. O. Box 2766
Columbia, SC 29202

Re: Tymika Jones Alston and Harold Alston vs. Willow Creek
Construction, Inc. and Oscar Torres and Willow Creek
Construction, Inc. vs. DMT Construction Co., Inc., L & L Electric
Inc., and Eduardo Moreno d/b/a E.S. Moreno Construction
Civil Action No.: 2010-CP-40-04307

Dear Madame Clerk:

Enclosed please find for filing the original and one copy of Defendant's Amended Third-Party Complaint in the above-referenced matter. I am also enclosing the original and a copy of the Amended Third-Party Summons for DMT Construction, Co., Inc. Please file these pleadings in your usual course and return clocked-in copies to me in the return envelope provided for your convenience. Thank you for your assistance with this matter.

By copy of this letter I am serving all counsel of record with a copy of the same.

A Certificate of Service is also enclosed.

With kind regards,

Sincerely,

DOUGALL & COLLINS



Adelaide D. Kline

cc: Donald Gist, Esquire
G. Thomas Chase, Esquire

ADK/mh

Enclosures.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON,

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC. and OSCAR TORRES,

Defendants.

WILLOW CREEK CONSTRUCTION,
INC.,

Third Party Plaintiff,

vs.

DMT CONSTRUCTION CO., INC.,
L & L ELECTRICAL INC., AND
EDUARDO MORENO d/b/a E.S.
MORENO CONSTRUCTION,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-40-04307

**AMENDED
THIRD-PARTY SUMMONS**

TO: DEFENDANT DMT CONSTRUCTION CO., INC

YOU ARE HEREBY SUMMONED AND REQUIRED to appear and defend within thirty days from the date of service hereof and to answer the Amended Third-Party Complaint in this action. A copy of the Amended Third-Party Complaint is attached to this Amended Summons and is herewith served upon you. Your answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the

undersigned attorneys for the Third-Party Plaintiff within thirty days after the service hereof, exclusive of the day of service at 1700 Woodcreek Farms Rd., Elgin, SC 29045.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and Amended Summons within thirty days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Amended Third-Party Complaint.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall
Adelaide D. Kline
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865.8858 (TEL)
(803) 865.8944 (FAX)
tkline@dougallfirm.com

Attorneys for Defendant and Third-Party
Plaintiffs

June 28, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON,

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC. and OSCAR TORRES,

Defendants.

WILLOW CREEK CONSTRUCTION,
INC.,

Third Party Plaintiff,

vs.

DMT CONSTRUCTION CO., INC.,
L & L ELECTRIC INC., and EDUARDO
MORENO d/b/a E.S. MORENO
CONSTRUCTION,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-40-04307

DEFENDANT WILLOW CREEK
CONSTRUCTION, INC.'S AMENDED
THIRD-PARTY COMPLAINT

NOW COMES the defendant and third-party plaintiff Willow Creek Construction, Inc. and would show unto the Court as follows:

1. Plaintiffs have filed a Complaint against third-party plaintiff alleging numerous problems and deficiencies with the construction of the subject residence and the windows that were installed at 451 Apple Branch Court, Blythewood, South Carolina, Richland County, State of South Carolina, the residence which is the subject of this action. A copy of the underlying plaintiffs' Complaint is attached hereto as Exhibit A.

2. Willow Creek has denied the allegations in the underlying plaintiffs' Complaint.
3. Third-Party Plaintiff Willow Creek Construction, Inc. (hereinafter "Willow Creek"), is and at all times mentioned here a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, State of South Carolina. Willow Creek Construction is in the business of constructing dwelling houses and constructed the residence which is the subject of this action.

Third-Party Plaintiff was the residential contractor who built Plaintiffs' home.
4. Upon information and belief, Third-Party Defendant DMT Construction Co., Inc. (hereinafter "DMT Construction") is a business entity with its principal place of business in Blythewood, South Carolina and acted as a subcontractor for the third-party plaintiffs to perform framing work on the plaintiffs' home to include the installation of windows and doors and among other things, to install and properly flash and seal the window jambs and heads.
5. Upon information and belief, Third-Party Defendant L & L Electric Co., Inc. (hereinafter "L & L") is a corporation incorporated under the laws of the State of South Carolina with its registered agent as James. L. Legrand in Lugoff, South Carolina and acted as a subcontractor for the third-party plaintiff to provide electrical services and among other things to install light fixtures in and on the plaintiffs' home.
6. Upon information and belief, Third-Party Defendant Eduardo Moreno d/b/a E. S. Moreno Construction (hereinafter "Moreno") is a business entity with its principal place of business in Charlotte, North Carolina, and doing business in Richland County, South Carolina, and acted as a subcontractor for the third-party plaintiff to perform services among other things as the roofer.

7. However, to the extent that any of Plaintiffs' allegations are true, which is denied, then the Third-Party Defendants DMT Construction, L & L, and Moreno, upon information and belief, would be liable to Willow Creek Construction for any damages asserted by Plaintiffs in the underlying action.

FOR A FIRST CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

8. Willow Creek Construction, Inc. realleges and reiterates paragraphs 1-7 above as if fully set forth verbatim herein.
9. Third-Party Plaintiff entered into various agreements with the individuals or entities identified in paragraphs 4-6 above ("Third-Party Defendants") to provide labor or services for the construction of the plaintiffs' residence.
10. The plaintiffs have alleged numerous construction deficiencies in their Complaint, a copy of which is attached hereto and incorporated by reference herein, alleging that some of the third-party defendants negligently performed the construction of the home which the third-party plaintiff has denied.
11. If it is determined that the labor or services provided by any particular third-party defendant were deficient, defective, or failed to comply with any industry custom, practice or building code, then the particular third-party defendant would be liable to the third-party plaintiff for any damages caused by the particular third-party defendant.
12. If it is determined, as alleged above, that any particular third-party defendant should indemnify the third-party plaintiff, by legal indemnity, arising by express or implied contract, or equitable indemnity, arising by operation of law, then the third-party defendants should indemnify the third-party plaintiff for any settlement or judgment

which may include, but not be limited to, the principal amount of any settlement or judgment, costs, attorneys' fees and interested associated with this action.

FOR A SECOND CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

13. Third-party plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as fully as if said matters were repeated verbatim herein.
14. The plaintiffs have alleged, *inter alia*, that the third-party defendants have failed to properly construct the plaintiffs' home as more specifically alleged in plaintiffs' Complaint which is attached hereto and incorporated by reference herein.
15. If it is determined that a particular third-party defendant breached any duties imposed by law, industry standards or customs, or applicable building codes that may have arisen in the construction of the plaintiffs' home, then the third-party defendant was negligent or negligent *per se*.
16. If it is determined that any particular third-party defendant's negligence or negligence *per se* was a proximate cause of any damages arising out of or relating to the construction of the plaintiffs' home then that third-party defendant has damaged the third-party plaintiff.
17. Third-party plaintiff is then entitled to judgment for actual damages against any particular third-party defendant in the amount of any monies the third-party plaintiff may be adjudged to owe the plaintiffs, or which the third-party plaintiff may pay the plaintiff in settlement of plaintiffs' claims.

FOR A THIRD CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

18. Third-party plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as fully as if said matters were repeated verbatim herein.

19. The plaintiffs herein have alleged, *inter alia*, that the third-party defendants breached their warranties to the third-party plaintiff and plaintiffs as more specifically alleged in the Complaint which is attached hereto and incorporated by reference herein.
20. Each third-party defendant expressly or impliedly warranted that its work would be done in a workmanlike manner complying with all applicable industry standards, customs, codes or laws.
21. If it is determined that a particular third-party defendant failed to perform its work in a workmanlike manner, then that particular third-party defendant has breached its express or implied warranty of workmanlike service.
22. If it is determined that a particular third-party defendants' breach of any warranty caused any damages then the third-party defendant has damaged the third-party plaintiff.
23. Third-party plaintiff is then entitled to judgment for actual damages against any particular third-party defendant in the amount of any monies the third-party plaintiff may be adjudged to owe the plaintiff, or which the third-party plaintiff may pay the plaintiffs in settlement of plaintiffs' claims.

FOR A FOURTH CAUSE OF ACTION AS TO THE THIRD-PARTY DEFENDANTS

24. Third-party plaintiff repeats and realleges the allegations contained in the foregoing paragraphs as fully as if said matters were repeated verbatim herein.
25. The plaintiffs herein have alleged, *inter alia*, that the third-party defendants breached their contract to the third-party plaintiff and plaintiffs as more specifically alleged in the Complaint which is attached hereto and incorporated by reference herein.

26. The third-party plaintiff entered into agreements with the third-party defendants to provide labor or services for the construction of the plaintiffs' home.
27. The terms of the agreements with the third-party defendants specifically or implicitly required each third-party defendant to provide construction services, or labor that, among other things, would produce a home free from substantial defects and otherwise in conformance with any contract documents, building codes and industry standards and customs.
28. If it is determined that a particular third-party defendant failed to perform its contract then the third-party defendants have breached their contract with the third-party plaintiff.
29. If it is determined that a breach of contract by a particular third-party defendant caused damages, then the third-party plaintiff has suffered damages.
30. Third-party plaintiff is then entitled to judgment for actual damages against any particular third-party defendant in the amount of any monies the third-party plaintiff may be adjudged to owe the plaintiffs, or which the third-party plaintiff may pay the plaintiffs in settlement of plaintiffs' claims.

WHEREFORE, the Defendant and Third-Party Plaintiff, Willow Creek Construction, Inc., having asserted its third-party Amended Complaint against the third-party defendants, Willow Creek Construction, Inc., prays that it may be dismissed from this lawsuit with prejudice, that the Complaint be dismissed with prejudice, or alternatively that it be awarded damages on its Third-party Amended Complaint and for such further relief as the court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall
Adelaide D. Kline
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865.8858 (TEL)
(803) 865.8944 (FAX)
tkline@dougallfirm.com

Attorneys for Defendants and Third-
Party Plaintiff Willow Creek
Construction, Inc.

Columbia, South Carolina

June 28, 2011

Exhibit 5



ATTORNEYS AT LAW

Reply To
G. THOMAS CHASE
Direct Dial: (864) 239-4008
tchase@mgclaw.com
GREENVILLE

July 8, 2011

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202-2766

RE: Tymika Jones Alston and Harold Alston v. Willow Creek Construction, Inc. and
Oscar Torres and Willow Creek Construction, Inc., v. Donald Richard Torres
d/b/a DMT Construction Co., Inc., L & L Electric Inc. and Eduardo Moreno d/b/a
E.S. Moreno Construction
Civil Action No. 2010-CP-40-04307
Our File No.: 20362.11008

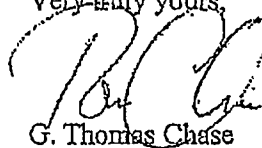
Dear Ms. McBride:

Please find enclosed for filing the original and one (1) copy of our Answer to the
Amended Third-Party Complaint in the above-captioned case. I would appreciate your returning
a clocked-in copy of the same to me in the envelope provided.

By copy of this letter, I am serving counsel of record with the above-referenced Answer.

Thanking you in advance for your assistance, I am

Very truly yours,


G. Thomas Chase

GTC/mtb
Enclosures

cc: Donald Gist, Esquire, Gist Law Firm (w/encl.) ✓
Adelaide Kline, Law Office of Thomas Dougall (w/encl.)

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Civil Action No. 2010-CP-40-04307

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC., AND OSCAR TORRES,

Defendants.

and

ANSWER TO AMENDED THIRD-
PARTY COMPLAINT
(Jury Trial Demanded)

WILLOW CREEK CONSTRUCTION,
INC.,

Third-Party Plaintiff,

vs.

DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A B.S. MORENO
CONSTRUCTION,

Third-Party Defendants.

Third-Party Defendant, DMT Construction Co., Inc., (hereinafter "DMT" and/or Third-Party Defendant") answers the Amended Third-Party Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Third-Party Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

3. Answering Paragraph 1, Third-Party Defendant admits only that Plaintiffs have filed a Complaint against Third-Party Plaintiff. As to the content of the Complaint, DMT refers to the actual Complaint by reference.

4. Paragraphs 2 and 3 are admitted upon information and belief.

5. Answering Paragraph 4, DMT admits that it is a business entity with its principal place of business in Blythewood, South Carolina. Additionally, DMT admits that it acted as a subcontractor in construction related to the Plaintiffs' home, including rough framing and setting of certain windows. DMT demands strict proof of facts inconsistent with or in addition to these specific admissions.

6. DMT admits Paragraphs 5 and 6 upon information and belief.

7. Paragraph 7 is denied as to DMT.

8. Answering Paragraph 8, DMT submits the paragraph contains no allegation of fact requiring an admission or denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

9. DMT admits the allegations of Paragraph 9, upon information and belief, as relates to specific labor or services.

10. Answering Paragraph 10, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

11. Paragraphs 11 and 12 are denied as relate to DMT.

12. Answering Paragraph 13, DMT submits the paragraph contains no allegation of fact requiring an admission or denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

13. Answering Paragraph 14, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

14. Paragraphs 15 and 16 appear to be statements of law and, therefore, no response is necessary. However, to the extent the paragraphs can be interpreted to include an allegation of fact against DMT, the allegations are denied and strict proof demanded thereof.

15. Paragraph 17 is denied as to DMT.

16. Answering Paragraph 18, DMT submits the paragraph contains no allegation of fact requiring an admission or denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

17. Answering Paragraph 19, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

18. Answering Paragraph 20, DMT denies they provided any warranties not implied by law to Plaintiffs and/or Third-Party Plaintiff. As to the warranties alleged to be implied by law, DMT submits the paragraph constitutes a statement of law requiring neither an admission nor denial.

19. Paragraphs 21, 22 and 23 are denied as to DMT.

20. Answering Paragraph 24, DMT submits the paragraph contains no allegation of fact requiring an admission or denial by DMT. Subject to and notwithstanding this response and to the extent the paragraph can be interpreted to require a response, DMT incorporates and alleges all previous responses and defenses as if fully repeated in their entirety, where relevant.

21. Answering Paragraph 25, DMT refers to the actual Complaint filed by the primary Plaintiffs and denies any factual assertions inconsistent therewith.

22. DMT admits the allegations of Paragraph 26, upon information and belief, as relates to specific labor or services.

23. Paragraph 27 is denied as to DMT as specifically worded.

24. Paragraphs 28, 29 and 30 are denied as to DMT.

25. DMT denies Third-Party Plaintiff is entitled to the prayer for relief against DMT under the facts and circumstances forming the basis of the Complaint.

FOR A FOURTH DEFENSE

26. Third-Party Defendant alleges any injuries and damages sustained by Plaintiffs and/or Third-Party Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiffs and/or Third-Party Plaintiff and, therefore, Third-Party Defendant is not liable to Plaintiffs and/or Third-Party Plaintiff for any sum whatsoever.

FOR A FIFTH DEFENSE

27. If Third-Party Plaintiff is entitled to any recovery, which is denied, such recovery is due in whole or in part to acts and/or omissions of the Third-Party Plaintiff and, therefore, the Third-Party Plaintiff does not have clean hands and is not entitled to any indemnification from the Third-Party Defendant.

FOR A SIXTH DEFENSE

28. Further answering said Third-Party Complaint, DMT would show that any injuries or damages sustained by Plaintiffs and/or Third-Party Plaintiff that Third-Party Plaintiff alleges were caused by an act or omission of DMT were either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR A SEVENTH DEFENSE

29. DMT submits that any alleged breach of contract cause of action is barred by the statute of frauds and should be dismissed.

FOR AN EIGHTH DEFENSE

30. DMT states that any and all work performed by it was performed consistent with, and according to, manufacturer recommendations, industry standards and/or state of the art, and, therefore, Third-Party Plaintiff cannot recover in the action.

FOR A NINTH DEFENSE

31. Further answering said Third-Party Complaint, DMT alleges, upon information and belief, that any injuries and/or damages sustained by Plaintiffs and/or Third-Party Plaintiff were due to and caused by the sole and negligent acts or omissions of some other person or persons other than DMT over whom DMT neither had nor exercised any authority or control and, therefore, DMT is not liable to Third-Party Plaintiff for any sum whatsoever.

FOR A TENTH DEFENSE

32. DMT pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs and/or Third-Party Plaintiff in the following particulars:

- a) In failing to maintain the premises;

- b) In failing to mitigate damages;
- c) In failing to provide adequate notice;
- d) In failing to make appropriate repairs;
- e) In failing to provide proper materials;
- f) In failing to act as reasonable and prudent persons would in the same or similar circumstances; and
- g) Such other particulars as may be identified in the litigation.

Accordingly, Third-Party Defendant alleges the negligence and recklessness of Plaintiffs and/or Third-Party Plaintiff was greater than the negligence, if any, which might be established against Third-Party Defendant and, therefore, Plaintiffs and/or Third-Party Plaintiff are barred from any recovery in this action. Third-Party Defendant further alleges any injuries and damages sustained by Plaintiffs and/or Third-Party Plaintiff were due to and caused by the negligence and/or willfulness of Plaintiffs and/or Third-Party Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of Third-Party Defendant and, therefore, any amount of recovery awarded to Plaintiffs and/or Third-Party Plaintiff for the injuries and damages alleged in the Complaint and/or Third-Party Complaint shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Plaintiffs.

FOR AN ELEVENTH DEFENSE

33. DMT submits that even assuming DMT was careless, negligent in any respect, which is expressly denied, and even if any such conduct on its part operated as a greater than 50 percent cause of the damages and the Plaintiffs'/Third-Party Plaintiff's resulting damages, if any, which is also expressly denied, Third-Party Defendant is entitled to a determination as to the

percentage which the Third-Party Plaintiff or any other party's negligence, grossly negligent, reckless and/or willful conduct contributed to this incident and to a reduction of any amount awarded to it by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A TWELFTH DEFENSE

34. DMT asserts that any alleged remedies and/or warranties have been properly and effectively excluded, modified and are limited either by applicable contracts or by applicable law.

FOR A THIRTEENTH DEFENSE

35. Third-Party Defendant would show Plaintiffs and/or Third-Party Plaintiff failed to give Third-Party Defendant adequate notice of any applicable warranty claims or alleged deficiencies, thereby barring the claim in whole or in part.

FOR A FOURTEENTH DEFENSE

36. To the extent DMT may be liable to Third-Party Plaintiff, which liability is denied, DMT would show upon information and belief that the subject property has either been destroyed or modified as such DMT pleads the doctrine of spoliation of evidence as a complete bar to the Third-Party Complaint.

FOR A FIFTEENTH DEFENSE

37. Upon information and belief, Third-Party Defendant would show the subject property has not been inspected for defects and/or maintained or repaired in proper condition, which caused or contributed to the injuries alleged in the Complaint. As a result, Third-Party Plaintiff may not recover against Third-Party Defendant.

FOR A SIXTEENTH DEFENSE

38. To the extent DMT may be liable to Third-Party Plaintiff, which liability is denied, DMT would show upon information and belief that Plaintiffs and/or Third-Party Plaintiff failed to give DMT timely and reasonable notice of any alleged defects and/or timely and reasonable opportunity to cure or correct any alleged defects as required by applicable law and/or contract. DMT asserts such lack of notice as a complete bar.

FOR A SEVENTEENTH DEFENSE

39. Plaintiffs and/or Third-Party Plaintiff have failed to mitigate their damages and have incurred damages that were unnecessary or unreasonable in amount. Plaintiffs are, therefore, barred in whole or part from recovery in this case.

FOR AN EIGHTEENTH DEFENSE

40. Third-Party Defendant would respectfully show that the applicable statute of limitations bars Plaintiffs from recovery in this action.

FOR A NINETEENTH DEFENSE

41. Third-Party Defendant asserts Plaintiffs' and/or Third-Party Plaintiff's claims are barred by the doctrine of waiver, laches and/or estoppel.

FOR A TWENTIETH DEFENSE

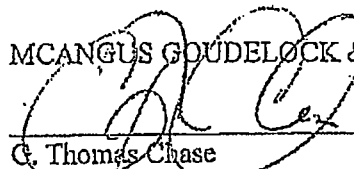
42. Third-Party Defendant would show any claim for punitive damages cannot be had because any award of punitive damages would violate the Third-Party Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

FOR A TWENTY-FIRST DEFENSE

43. Third-Party Defendant reserves the right to assert any other defense set forth and asserted by any other Defendant and/or Third-Party Defendant to this litigation or as developed by the evidence.

WHEREFORE, having fully answered, Third-Party Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



G. Thomas Chase
Paul M. Newell, II
Post Office Box 2980
75 Beattie Place, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

ATTORNEYS FOR THIRD-PARTY
DEFENDANT, DMT CONSTRUCTION CO.,
INC.

July 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of July, 2011 served a copy of the foregoing Answer to Amended Third-Party Complaint by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Donald Gist, Esquire
Gist Law Firm
4400 North Main Street
Columbia, South Carolina 29203
Attorney for Tymika Jones Alston
And Harold Alston

Adelaide Kline
Law Office of Thomas Dougall
1700 Woodcreek Farms Road
Suite 100
Elgin, South Carolina 29045
Attorney for Willow Creek Construction, Inc.
And Oscar Torres



Melinda T. Bouchillon
Legal Assistant to G. Thomas Chase

Exhibit 6

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC., AND OSCAR TORRES,

Defendants.

and

WILLOW CREEK CONSTRUCTION,
INC.,

Third-Party Plaintiff,

vs.

DONALD RICHARD TORRES D/B/A
DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A E.S. MORENO
CONSTRUCTION,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-04307

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of October, 2013 served a copy of the foregoing Interrogatories by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Donald Gist, Esquire
Gist Law Firm
5618 Colonial Drive
Columbia, South Carolina 29203
Attorney for Tymika Jones Alston
And Harold Alston

Adelaide Kline, Esquire
Law Office of Thomas Dougall
1700 Woodcreek Farms Road
Suite 100
Elgin, South Carolina 29045
Attorney for Willow Creek
Construction, Inc. and Oscar Torres

Melinda Owens

Melinda B. Owens
Legal Assistant to G. Thomas Chase

Exhibit 7



Reply To
ANGELA W. HOPE
Direct Dial: (864) 239-4011
angela.hope@mgclaw.com

August 28, 2014

CERTIFIED - RETURN RECEIPT REQUESTED
Gainesville Medical Center
14370 Lee Highway
Gainesville, Virginia 20155

RE: Tymika Jones Alston and Harold Alston v. Willow Creek Construction, Inc. and Oscar Torres and Willow Creek Construction, Inc., v. Donald Richard Torres d/b/a DMT Construction Co., Inc., L & L Electric Inc. and Eduardo Moreno d/b/a E.S. Moreno Construction
Civil Action No.: 2012-CP-40-6895R (Richland)
Date of Incident: ***Incident Date***
Carrier Claim No.: MPI80262
MGC File No.: 20362.11008

Dear Sir or Madam:

Please be advised that G. Thomas Chase represents Donald Richard Torres d/b/a DMT Construction Co., Inc., in the above-referenced case. Enclosed please find a duly executed Authorization for Release of Medical Records for a complete copy of any medical records, to include copies of any bills, that you have for the Plaintiff, Harold Alston. An Affidavit of Records Custodian is also enclosed, and you are requested to complete and return it with the records. The Affidavit should be signed in the presence of a notary.

Please forward the records to us as quickly as possible. We are happy to reimburse your office for reasonable expenses you incur in photocopying these records. If the records prove to be voluminous and the copying costs will exceed \$50.00, do not copy these without calling me to discuss exactly which records we are interested in obtaining. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, we are advising counsel of record that these records have been requested from your office.

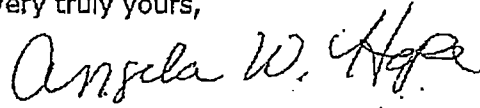
Thank you in advance for your cooperation in this matter, and with kind regards,
I am

Gainesville Medical Center

August 28, 2014

Page 2

Very truly yours,

A handwritten signature in cursive script that reads "Angela W. Hope". The signature is written in dark ink and is positioned above the printed name.

Angela W. Hope
Paralegal to G. Thomas Chase

/awh

Enclosures

cc: Donald Gist; Esquire, Gist Law Firm

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

TO WHOM IT MAY CONCERN:

I, Harold Alston, hereby request and authorize

Gainesville Medical Center

14370 Lee Hwy

Virginia, 20155

to release to any representative of McAngus, Goudelock & Courie, LLC, 55 East Camperdown Way, Suite 300, Greenville, South Carolina 29602 all medical records of every nature pertinent in any way to any medical treatment rendered to me, Harold Alston, including but not limited to the following:

1. All progress reports and summaries including admission histories and discharge summaries;
2. All clinical records
3. Results of all laboratory tests, including x-rays, CT scans, MRI's and EKG's;
4. Records of prescribed medications and treatments;
5. All correspondence between my doctors or their administrative staffs or the administrative staffs of all hospitals, clinics, or other medical treatment centers where I am, or have been, a patient or from whom I have received medical care;
6. All correspondence from insurance companies or their representatives concerning any claims made on my behalf for medical treatment or for benefits of any nature including, but not limited to, disability benefits, social security benefits, and Veterans Administration benefits;
7. All correspondence of any nature concerning any workers' compensation claims filed on my behalf;
8. All statements rendered for medical services and supplies;
9. All notes, correspondence, or other records of any nature made by my physicians, nurses or other persons concerning me, my condition or my treatment;
10. Copies of x-rays, CT scans and MRI films.

The purpose of the disclosure is at the request of the undersigned individual and this Authorization shall be deemed to comply with the requirements of HIPAA, specifically 45 C.F.R. §164.508. I understand that information disclosed pursuant to this Authorization may be subject to re-disclosure by the recipient and may no longer be protected by Federal law.

This Authorization shall expire upon final resolution of the pending claim. I understand that I may revoke this Authorization at any time by sending written notice to Gainesville Medical Center, and G. Thomas Chase or McAngus, Goudelock & Courie, LLC. However, I understand that revocation will not affect any disclosures made in reliance on this Authorization prior to my revocation.

Charges for copies of all records furnished shall be billed to McAngus, Goudelock & Courie, LLC.

A photocopy of the signed original of this Authorization shall be sufficient and acceptable to all persons and entities from whom these records are requested.

This is the 23 day of August, 2014.

Harold Z. Alston

Signature: Harold Alston

451 Apple Branch Ct
Blythewood, SC 29016

Address

Date of Birth: [REDACTED]

Social Security: [REDACTED]

Treatment, payment, enrollment & eligibility for benefits may not be conditioned on the signing of this authorization. HZ A. (initial here)

Exhibit 8

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4004307

Tymika Jones Alston

Willow Creek Construction Inc

Harold Alston

Oscar Torres

PLAINTIFF(S)

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
		\$
		\$
		\$

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 _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 1 November 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Deandrea Gist Benjamin
Donald Gist

Thomas Frank Dougall
Gerald Thomas Chase
Adelaide D. Kline

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeannette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON,

Plaintiffs,

vs.

WILLOW CREEK CONSTRUCTION,
INC. and OSCAR TORRES,

Defendants.

WILLOW CREEK CONSTRUCTION,
INC.,

Third Party Plaintiff,

vs.

DONALD RICHARD TORRES d/b/a
DMT CONSTRUCTION CO., INC.;
L & L ELECTRIC INC., AND EDUARDO
MORENO d/b/a E.S. MORENO
CONSTRUCTION,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2010-CP-40-4307

CONSENT ORDER TO STRIKE CASE
FROM THE DOCKET PURSUANT
TO RULE 40(J) SCRCP.

RICHLAND COUNTY
FILED
2011 NOV - 1 AM 9:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

It appears that Plaintiffs have moved, and defendants have agreed, that the Complaint herein be stricken from the docket pursuant to Rule 40(j), SCRCP, as follows:

1. The parties have the right to move on or before one year of the date of this Order giving ten days notice to all other parties, that this case be restored to the docket.

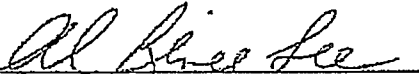
2. Upon restoration of this case, the case will be returned to the roster with a new civil action number.

3. Upon restoration of this case, the pleadings and discovery that have been filed, served, or taken up to the date of this Order shall have the same force and effect as under the previous action. The parties will not be required to refile pleadings or discovery in this matter.

4. The parties shall be allowed to conduct further discovery during such time as this case is stricken from the docket.

It is therefore ORDERED, ADJUDGED AND DECREED that this case shall be stricken from the docket pursuant to Rule 40(j), SCRCP.

IT IS SO ORDERED.

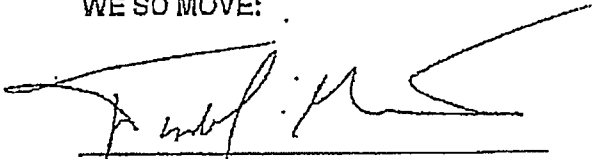

Judge Alison Renee Lee
Administrative Judge
Fifth Judicial Circuit

October 31, 2011
Dated: October *21*, 2011

Columbia, South Carolina

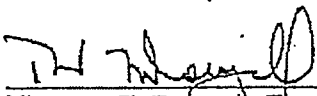
The parties hereby certify that no other parties have appeared in this action.

WE SO MOVE:


Donald Gist, Esq.
Gist Law Firm
Post Office Box 30007
Columbia, SC 29230

Attorney for Plaintiffs

WE CONSENT:


Thomas F. Dougall, Esq.
Dougall & Collins
1700 Woodcreek Farms Road
Elgin, SC 29045

Attorney for Defendant and Third-Party Plaintiff

WE CONSENT:

G. Thomas Chase (Hd by permission)

G. Thomas Chase, Esq.
McAngus Goudelock & Courie
Post Office Box 2980
Greenville, SC 29602

Attorney for Third-Party Defendant
Donald Richard Torres

Exhibit 9

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Plaintiffs,

vs.

DONALD RICHARD TORRES D/B/A
DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A E.S. MORENO
CONSTRUCTION,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-40-6895R

ANSWER TO AMENDED
COMPLAINT
(Jury Trial Demanded)

Defendant, DONALD RICHARD TORRES D/B/A DMT CONSTRUCTION CO., INC.,
answers the Amended Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

3. Defendant Donald Richard Torres d/b/a DMT Construction Co., Inc. submit the Defendant is improperly named in the litigation. The proper Defendant is DMT Construction Co., Inc. Therefore, Defendant demands that a Second Amended Complaint be prepared naming the proper Defendant and counsel agrees to accept service of the same. In the event that a

Second Amended Complaint is not prepared in the case, Defendant will move to dismiss the action for lack of jurisdiction as well as other available defenses.

FOR A FOURTH DEFENSE

4. As to Paragraph 1, Defendant is without knowledge or information sufficient to admit or deny whether Plaintiffs are citizens and residents of Richland County, South Carolina. Defendant admits, upon information and belief, that Plaintiffs are the owners of real property located at 451 Apple Branch Court, Blythewood, South Carolina.

5. As to paragraph 2, Defendant admits Jayden Alston is the minor child of Plaintiffs and that, upon information and belief, he resides with his parents. Defendant is without knowledge or information sufficient to admit or deny if he resides in Richland County, South Carolina.

6. Defendant qualifiedly admits paragraph 3 in the following particulars: (1) Defendant admits that Willow Creek Construction, Inc. was at the time of the construction of Plaintiffs home and for some period thereafter a corporation organized and existing under the law of the state of South Carolina with its principal place of business in Richland County; and (2) Defendant further admits that Willow Creek Construction, Inc. was in the business of constructing dwelling houses and that the company constructed the residence that is the subject of the action.

7. Paragraph 4 is only qualifiedly admitted in the following particulars: (1) Defendant admits that Oscar Torres is a resident of Richland County, South Carolina; (2) upon information and belief only, Oscar Torres was a partner of Willow Creek Construction, Inc.; (3) Oscar Torres was the site supervisor for the construction of the home at issue on behalf of Willow Creek Construction, Inc. and (4) Willow Creek Construction, Inc. hired, by oral contract,

DMT Construction Co., Inc. to perform certain work as a subcontractor for Willow Creek Construction, Inc. in the construction of the home purchased by Plaintiffs. As to other entities identified in the paragraph, Defendant is without knowledge or information sufficient to admit or deny the allegations. Defendant denies any allegations inconsistent with or in addition to these qualified admissions.

8. Paragraph 5 is denied based on the improper name of Defendant. Subject to and without waiving this position, Defendant qualifiedly admits that DMT Construction Co., Inc. is a framing subcontractor that was hired by Willow Creek Construction, Inc. to perform certain work in the construction of the home later purchased by Plaintiffs. Defendant admits that Oscar Torres was the site superintendent for Willow Creek Construction, Inc. and that Oscar Torres worked on site with DMT Construction Co., Inc. in the performance of its specific aspect of the construction of the home, including providing instruction and oversight of the work. As to the other named entities in the paragraph, Defendant is without knowledge or information sufficient to admit or deny the allegations.

9. Defendant submits paragraph 6 is a statement of law requiring neither an admission nor denial.

10. Paragraph 7 is qualifiedly admitted to the extent the allegations relate to the construction of the home ultimately purchased by Plaintiffs. Defendant denies allegations inconsistent with or in addition to this qualified admission.

11. As to paragraph 8, Defendant is without knowledge or information sufficient to admit or deny the allegations.

12. Paragraph 9 is denied, including based on the name of the Defendant. Subject to this response, Defendant qualifiedly admits the paragraph only to the extent that Willow Creek

Construction, Inc., by and through its agent, orally contracted with DMT Construction Co., Inc. to act as a subcontractor for certain work in the construction of the home that was later purchased and is currently owned by Plaintiffs. As to the other named entities in the paragraph, Defendant is without knowledge or information sufficient to admit or deny the allegations. Defendant denies any allegations in addition to or inconsistent with these express qualified admissions.

13. Paragraph 10 is denied as to Defendant both as to the name of the Defendant and the content of the paragraph as relates to Defendant. As to the content of the paragraph related to other named entities, Defendant is without knowledge or information sufficient to admit or deny the allegations.

14. Paragraph 11 is denied as relates to Defendant.

15. Paragraph 12 is denied as relates to Defendant.

16. As to Paragraphs 13, 14, 15, 16, 17, 18, and 19, Defendant is without knowledge or information sufficient to admit or deny the allegations.

17. Paragraph 20, including all subparts, is denied by Defendant.

18. As to Paragraph 21, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

19. Defendant submits paragraph 22 is a statement of law, in whole or in part, requiring neither an admission, nor denial. Subject to and without waiving this response, Defendant refers to any contract as the best evidence and denies any allegation inconsistent with or in addition to those provisions.

20. Paragraph 23 is denied.

21. Paragraph 24 is denied.

22. As to Paragraph 25, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

23. Paragraph 26 is denied.

24. Defendant submits paragraph 27 is a statement of law requiring neither an admission, nor denial. To the extent the paragraph may be interpreted to include a statement of fact, those facts are denied.

25. Paragraphs 28 and 29 are denied.

26. As to Paragraph 30, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

27. Defendant submits paragraph 31 is a statement of law requiring neither an admission, nor denial.

28. Defendant denies paragraphs 32 and 33.

29. As to Paragraph 34, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every

previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

30. Paragraph 35 is denied.

31. Paragraph 36 is denied.

32. As to Paragraph 37, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

33. Defendant submits paragraph 38 contains a statement of law requiring neither an admission, nor denial. As to the remainder of the paragraph, it is denied.

34. Paragraphs 39 and 40 are denied.

35. Defendant denies Plaintiffs are entitled to the relief requested in the prayer.

FOR A FIFTH DEFENSE

36. Plaintiff's breach of contract cause of action is barred by the statute of frauds and should be dismissed.

FOR A SIXTH DEFENSE

37. Plaintiffs lack standing to assert any breach of contract against Defendant because Plaintiffs were not a party to the oral contract between Defendant and Willow Creek Construction, Inc.

FOR A SEVENTH DEFENSE

38. FURTHER ANSWERING SAID COMPLAINT, Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused

by the sole and negligent acts or omissions of some other person or persons other than Defendant over whom Defendant neither had nor exercised any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR AN EIGHTH DEFENSE

39. Assuming a contract exists between Plaintiffs and Defendant, and the same is denied and expressly contradicted by the evidence, Plaintiff failed to provide Defendant with proper and/or sufficient notice and, therefore, Plaintiff's warranty claims are barred.

FOR A NINTH DEFENSE

40. Defendant pleads the doctrines of laches, waiver and/or estoppel as a complete defense to this claim against Defendant.

FOR A TENTH DEFENSE

41. FURTHER ANSWERING SAID COMPLAINT, Defendant would show that any injuries or damages sustained by Plaintiffs that Plaintiffs allege were caused by an act or omission of this Defendant was either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR AN ELEVENTH DEFENSE

42. Plaintiffs have failed to mitigate their damages and have incurred damages that were unnecessary or unreasonable in amount. Plaintiffs are, therefore, barred in whole or part from recovery in this case.

FOR A TWELFTH DEFENSE

43. Defendant would show Plaintiffs failed to give Defendant timely notice of any alleged breach of implied warranty, and therefore, Plaintiffs may not recover against Defendant.

FOR A THIRTEENTH DEFENSE

44. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs in the following particulars:

- a) In failing to take reasonable and prudent action to maintain the home;
- b) In failing to act as a reasonable and prudent homeowner would have under the same or similar circumstances;
- c) In failing to properly preserve home warranty bonds;
- d) In failing to mitigate damages; and
- e) Such other particulars as may be identified in the litigation.

Accordingly, Defendant alleges the negligence and recklessness of Plaintiffs was greater than the negligence, if any, which might be established against Defendant, and therefore Plaintiffs are barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiffs was due to and caused by the negligence and/or wilfulness of Plaintiffs combining, concurring, and contributing with the negligence and/or wilfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiffs for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or wilfulness attributed to Plaintiffs.

FOR A FOURTEENTH DEFENSE

45. Defendant asserts that Plaintiff's causes of action against Defendant are barred by the applicable statute of limitations and should be dismissed.

FOR A FIFTEENTH DEFENSE

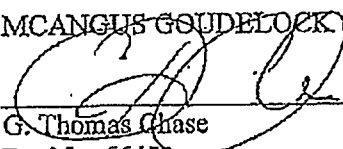
46. Defendants submit that even assuming Defendants were careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on their part operated as a greater than 50 percent cause of the damages and the Plaintiffs resulting damages, if any, which is also expressly denied, Defendants are entitled to a determination as to the percentage which the Plaintiffs or other party's negligent, grossly negligent, reckless and/or willful conduct contributed to this incident and to a reduction of any amount awarded to it by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A SIXTEENTH DEFENSE

47. The Defendant would show the claim for punitive damages cannot be had because any award of punitive damages would violate the Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.



G. Thomas Chase

Bar No: 66452

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR DEFENDANT, DONALD
RICHARD TORRES D/B/A DMT
CONSTRUCTION CO., INC.

September 2, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Plaintiffs,

vs.

DONALD RICHARD TORRES D/B/A
DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A E.S. MORENO
CONSTRUCTION,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-40-6895R

CERTIFICATE OF SERVICE

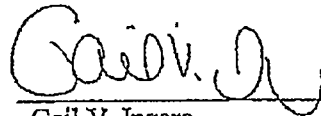
I certify that on this date, I have served a copy of Answer to Amended Complaint in this action on counsel of record by

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Donald Gist, Esquire
Gist Law Firm
4400 North Main Street
Columbia, South Carolina 29203
Attorney for Tymika Jones Alston

September 2, 2014

Date



Gail V. Inzero

Legal Assistant to G. Thomas Chase

Exhibit 10

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

TYMIKA JONES ALSTON and)
HAROLD ALSTON)

Plaintiffs,)

vs.)

WILLOW CREEK)
CONSTRUCTION, INC,)
OSCAR TORRES, and)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

10-CP-40-04307

PLAINTIFF'S MOTION TO RESTORE CASE TO
ACTIVE TRIAL ROSTER

RICHLAND COUNTY
FILED
2012 OCT 11 PM 3:39
JEANETTE W. MCBRIDE
C.C.P. & G.S.

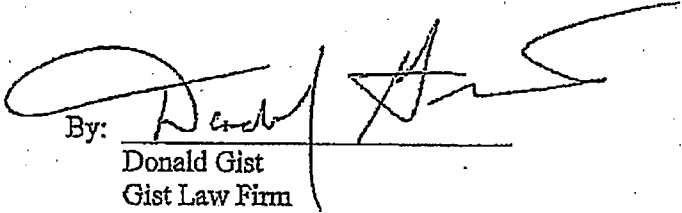
YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, moves this Court for an Order to Restore this case to the active trial roster. As grounds for this Motion, the Plaintiff would show this Honorable Court the following:

1. That Plaintiff's counsel, with consent of Defendant, moved to have this case stricken from the trial docket pursuant to Rule 40(j), SCRCP, on October 21, 2011, and Judge Alison Renee Lee signed a Consent Order striking this case from the trial roster on October 31, 2011.
2. That pursuant to Judge Lee's October 31, 2011 Order, the parties have the right to move on or before the expiration of one year after the date of the Consent Order striking this case giving ten days notice to all other parties, that this case be restored to the active trial roster.
3. That based on the foregoing, Plaintiff is informed and believes that good cause exists to restore this case to the active docket so that the final hearing can be scheduled and heard.

WHEREFORE, Plaintiff respectfully requests the following:

- A. An Order restoring this case to the active trial roster with a new civil action number.
- B.. That all pleadings and discovery that have been filed, served, or taken up to the date of this Order shall have the same force and effect as under the previous action and that the parties will not be required to refile pleadings or discovery in this matter.
- C. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By: 

Donald Gist
Gist Law Firm
Attorney for Plaintiff
4400 North Main Street
Columbia, SC 29201
(803) 771-8007

Columbia, South Carolina

October 11, 2012

Exhibit 11

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

TYMIKA JONES ALSTON and)
HAROLD ALSTON)

Plaintiffs,)

vs.)

WILLOW CREEK)
CONSTRUCTION, INC,)
OSCAR TORRES, and)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

10-CP-40-04307

ORDER TO RESTORE CASE
TO ACTIVE TRIAL ROSTER

FILED
2012 OCT 11 PM 3:39
JEANETTE W. HUBBARD
C.C.P. & G.S.

This matter comes before this court pursuant to a Motion to Restore filed by the Plaintiff. Plaintiff's counsel, with consent of Defendant, moved to have this case stricken from the trial docket pursuant to Rule 40(j), SCRCP, on October 21, 2011. This matter was struck from the active docket on October 31, 2011.

The Plaintiff is requesting that this matter be restored to the active trial roster and that a final hearing be scheduled in this matter.

NOW, THEREFORE, IT IS ACCORDINGLY ORDERED, ADJUDGED, AND
DECREED

1. That this matter be restored to the active trial roster with a new civil action number.
2. That all pleadings and discovery that have been filed, served, or taken up to the date of this Order shall have the same force and effect as under the previous action and that the parties will not be required to refile pleadings or discovery in this matter.
3. That a final hearing be scheduled in this matter.

AND IT IS SO ORDERED.

S/ James R. Barber III

Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

10/11, 2012

Exhibit 12

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Tymika Jones Alston and Harold Alston
individually and as Parents and Guardians on
behalf of their minor child Jayden Alston

Plaintiff(s)

vs.

Donald Richard Torres d/b/a DMT
Construction, Co. Inc., L&L Electric Inc.
and Eduardo Moreno d/b/a E.S. Moreno
Construction

Defendant(s)

Submitted By: Donald Gist, Aaron Wallace
Address: 4400 North Main Street, Columbia SC 29203

SC Bar #: 13098/100255
Telephone #: 803-771-8007
Fax #: 803-771-0063
Other:
E-mail: donaldgist@gistlawfirm.com

2010-CP - 40- 04307

RICHLAND COUNTY
FILED
2014 AUG 11 PM 1:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement, License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date:

8/8/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MOUNTAIN DATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON individually
and as Parents and Guardians on
behalf of their minor child
JAYDEN ALSTON

Plaintiffs,

vs.

Donald Richard Torres d/b/a
DMT Construction, Co. Inc.,
L&L Electric Inc. and Eduardo
Moreno d/b/a E.S. Moreno
Construction,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2010-CP-40-04307

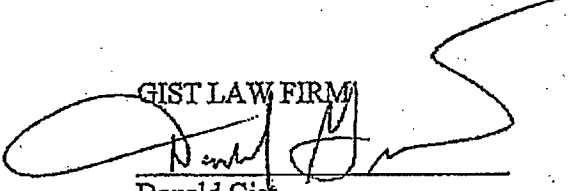
AMENDED
SUMMONS

RICHLAND COUNTY
FILED
2014 AUG 11 PM 1:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: Above Named Defendants

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at Gist Law Firm, 4400 N. Main Street, P.O. Box 30007, Columbia, South Carolina 29230, within thirty (30) days after the service thereof, exclusive of the day of such service. If you fail to answer the Complaint within that time, the Plaintiff shall apply to the Court for a judgment by default against you for the relief demanded in the Complaint.

GIST LAW FIRM


Donald Gist
Aaron Wallace
4400 N. Main Street
P.O. Box 30007 (29230)
Columbia, SC 29203
803.771.8007
803.771.0063 (Fax)
Attorneys for Plaintiffs

August 8, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

TYMIKA JONES ALSTON and
HAROLD ALSTON individually
and as Parents and Guardians on
behalf of their minor child
JAYDEN ALSTON

2010-CP-40-04307

Plaintiffs,

AMENDED
COMPLAINT

vs.

Jury Trial Requested

Donald Richard Torres d/b/a
DMT Construction, Co. Inc.,
L&L Electric Inc. and Eduardo
Moreno d/b/a E.S. Moreno
Construction,
Defendants.

RICHLAND COUNTY
FILED
2014 AUG 11 PM 1:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

NOW COMES the Plaintiffs, by and through counsel, for their complaint against
Defendants and state as follow:

PARTIES & JURISDICTION

1. Plaintiffs Tymika Jones Alston and Harold Alston (hereafter "Plaintiffs") are Citizens and residents of Richland County, State of South Carolina and owners of real property located at 451 Apple Branch Court, Blythewood, SC, Richland County, State of South Carolina, the residence which is the subject of this action.

2. Plaintiff Jayden Alston is the minor child of Plaintiff's Tymika Jones Alston and Harold Alston. Plaintiff Jayden Alston resides with his parents in Richland County, South Carolina.

3. Upon information and belief, Willow Creek Construction is and at all times mentioned here a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, State of South Carolina. Willow Creek Construction is in the business of constructing dwelling houses and constructed the residence which is the subject of this action.

4. Upon information and belief, Oscar Torres is a resident of Richland County, State of South Carolina and is the principal and owner of Willow Creek Construction. Oscar Torres was the residential contractor who built Plaintiff's home and who hired Defendant Donald Richard Torres d/b/a DMT Construction, Co. Inc., L&L Electric Inc. and Eduardo Moreno d/b/a E.S. Moreno Construction as subcontractors in the building of Plaintiff's home.

5. Upon information and belief, Defendant Donald Richard Torres d/b/a DMT Construction, Co. Inc., L&L Electric Inc. and Eduardo Moreno d/b/a E.S. Moreno Construction are building subcontractors who acted in concert with and at the direction of Oscar Torres and Willow Creek Construction in the building of Plaintiff's home.

6. Venue is proper in Richland County, State of South Carolina because at least one if not all Defendants maintains an office in Richland County and this action involves real estate in Richland County, State of South Carolina.

FACTUAL ALLEGATIONS

7. This case arises out of the construction of Plaintiffs' house located at 451 Apple Branch Court, Summer Pines Subdivision, Richland County, State of South Carolina.

8. Plaintiffs engaged Willow Creek Construction and Oscar Torres to construct their house with due care, in a workmanlike manner, and in accordance with the plans and specifications.

9. Oscar Torres engaged Defendant Donald Richard Torres d/b/a DMT Construction, Co. Inc., L&L Electric Inc. and Eduardo Moreno d/b/a E.S. Moreno Construction to act as subcontractors in the building of Plaintiff's home.

10. Willow Creek Construction and Defendant Donald Richard Torres d/b/a DMT Construction, Co. Inc., L&L Electric Inc. and Eduardo Moreno d/b/a E.S. Moreno

Construction completed the home in April 2007. Plaintiffs moved in the home on April 3, 2007.

11. On April 5, 2007, Plaintiffs' noticed that the bedroom wall was wet inside and out from the neighbor's sprinkler. Plaintiffs contacted the Defendants regarding the problem. Oscar Torres came out observed the problem and had the wall sanded and painted.

12. In July of 2007 after a heavy rain and thunderstorm, Plaintiffs once again noticed that the master bedroom wall was wet inside and out. They once again contacted the builder who in turn came back out sanded the wall and repainted it. Defendants resealed the window and told them that everything was fine. At that time Plaintiffs were told by the builder that the problem was cured.

13. During the summer of 2007, Plaintiff Tymika Alston and the Plaintiffs' son, Jaiden and Alston began experiencing medical problems. Specifically, swollen eyes, eye infections, bronchitis, and allergies. Plaintiff Tymika Alston and the minor child had no prior sinus or allergy issues. During this time Plaintiff Harold Alston was working out of the State and was only present in the house during the weekends. After weekend visits home, he would experience irritation in his eyes and sinus and allergy problems.

14. In November 2008, Plaintiffs' concerned about their deteriorating health and the problems that their son was experiencing hired a mold specialist to inspect the home. The Mold Specialist found that mold was airborne though out the house.

15. On December 5, 2008, Plaintiffs received a quote from CBS Builders to make repairs to window and mold treatment.

16. On February 27, 2009, Plaintiffs had the home inspected by Pinpoint Home

and Commercial Inspections. The inspection revealed that the bedroom window was not the correct window and that it was a vinyl replacement window and was dissimilar from all other windows in the home.

17. On March 8, 2009, Plaintiffs notified the builder in writing of the mold problem and of the problem with the misfit window. The builder responded on March 20, 2009 and Defendant Donald Richard Torres replaced the window on April 16, 2009.

18. After still experiencing significant medical problems, Plaintiffs ordered another inspection in August 2009. The inspection was performed by Southeastern Inspection Services. Numerous deficiencies, code violations and unsatisfactory work was noted. Some interior areas of the home were showing more than 30% moisture readings in the home. The inspector strongly suggested that Plaintiffs move out of the home for health reasons and concerns.

19. On September 1, 2009, Plaintiffs moved out of the house into an apartment. The house has been vacant since that time and inhabitable since that time.

20. Defendant Donald Richard Torres' work was defective in all, but not limited to, the following particulars:

- a. By failing to construct the house so as to prevent leaks of water into the interior;
- b. By failing to install the proper window in the bedroom;
- c. By failing to seal open joints where vertical and horizontal trim intersects with brick veneer;
- d. By failing to install a rain diverter along the front roof above the entrance;
- e. By failing to install or to properly install flashing at windows and doors;
- f. By failing to properly seal the window jambs and heads in the master bedroom and front windows;
- g. By failing to seal mounted light fixtures at garage and rear entrance;

- h. By failing to investigate his subcontractors to determine if they were competent and capable of performing the work;
- i. By failing to adequately supervise the work of his subcontractors;
- j. By failing to discover defects in work performed by his subcontractors;
- k. By failing to correct the problem regarding the misfit window after being first notified of the water leaking into the interior of the home;
- l. By failing to correct defective work.

AS A FIRST CAUSE OF ACTION
(Breach of Contract)

21. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 20.

22. The agreement between Plaintiffs and Oscar Torres and Willow Creek Construction required Defendants to build a dwelling house in accordance with the plans and specifications, applicable building codes industry standards and free from construction and structural defects. Defendant Donald Richard Torres d/b/a DMT Construction, Co. Inc., L&L Electric Inc. and Eduardo Moreno d/b/a E.S. Moreno Construction were subcontractors hired pursuant to this agreement.

23. Defendant Donald Richard Torres breached this contract in the particulars previously described and the deficiencies outlined in Southeastern Inspection Services report dated August 11, 2009 and is therefore vicariously liable to Plaintiff

24. As a proximate and foreseeable result of Defendant's breach of contract, Plaintiffs have suffered physical damage to the House, as well as diminution in its value. Plaintiffs have also suffered bodily injury, which have caused Plaintiffs, and will cause Plaintiffs in the future, to incur medical expense, to suffer tremendous pain and suffering and to lose time from work and lost wages.

AS A SECOND CAUSE OF ACTION
(Negligence and Negligent Supervision)

25. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 24.

26. Each of the aforementioned Defendants assumed the duties outlined above.

27. Defendants owed Plaintiffs a duty to exercise due care in performing their duties outlined above.

28. Defendants breached these duties in the particulars previously described.

29. As a direct, foreseeable, and proximate result of Defendants' negligence, Plaintiff's have suffered physical damage to their House, as well as diminution in its value, as well as the home being inhabitable and are entitled to recover from the Defendant's all direct, consequential and punitive damages.

AS A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service)

30. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 29.

31. When the above named Defendant's contracted to construct Plaintiff's residence, Defendants impliedly warranted to Plaintiffs that the house would be constructed in a workmanlike manner, free from defects, and in accordance with the plans and specifications.

32. Defendants breached this implied warranty in the particulars previously described.

33. As a proximate and foreseeable result of Defendants, breach of this implied warranty, Plaintiffs have suffered physical damage to the house, as well as diminution in its value.

AS A FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

34. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 33.

35. Defendant Donald Richard Torres sold and installed in Plaintiff's house a vinyl replacement window.

36. The window was not merchantable at the time of the sale. As a result water was able to penetrate the interior walls of the house, thus causing moisture and mold. Plaintiffs have suffered physical damage to the House, as well as diminution in its value. Plaintiffs have had to relocate from the home due to the air quality in the home and incur expenses related to the relocation and living expenses.

AS A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)

37. Plaintiffs reallege, as if fully set forth, each and every allegation in paragraphs 1 through 36.

38. Defendants at the time of the sale of the defective window had reason to know that Plaintiffs, or those who, for this limited purpose, could act for Plaintiffs, were relying on the skill or judgment of Defendant Donald Richard Torres to furnish a product that was the appropriate window for the house. Plaintiffs relied on Defendants' skill and judgment.

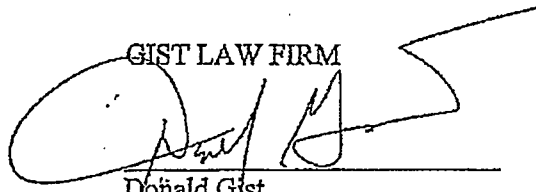
39. The window was not fit to be used in the House, thus causing water to be trapped in the walls of Plaintiff's house and cause moisture and mold throughout the home.

40. As a result of Defendants breach of their implied warranty, Plaintiffs have suffered physical damage to the House, as well as diminution in its value.

WHEREFORE, Plaintiff pray this Court issue an Order granting judgment against Defendants jointly and severally, for the following relief:

1. For actual damages in an amount to be proven at trial;
2. For punitive damages;
3. For prejudgment and post judgment interest on Plaintiffs' damages;
4. For attorneys' fees and cost; and
5. For such other and further relief as this Court deems appropriate.

GIST LAW FIRM



Donald Gist
Aaron Wallace
4400 N. Main Street
P.O. Box 30007 (29230)
Columbia, SC 29203
803.771.8007
803.771.0063 (Fax)

Attorneys for Plaintiffs

August 8, 2014

Exhibit 13

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Plaintiffs,

vs.

DONALD RICHARD TORRES D/B/A
DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A E.S. MORENO
CONSTRUCTION,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-40-6895R

ANSWER TO AMENDED
COMPLAINT
(Jury Trial Demanded)

Defendant, DONALD RICHARD TORRES D/B/A DMT CONSTRUCTION CO., INC.,
answers the Amended Complaint and respectfully asserts the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted and, therefore, the Complaint should be dismissed.

FOR A THIRD DEFENSE

3. Defendant Donald Richard Torres d/b/a DMT Construction Co., Inc. submit the Defendant is improperly named in the litigation. The proper Defendant is DMT Construction Co., Inc. Therefore, Defendant demands that a Second Amended Complaint be prepared naming the proper Defendant and counsel agrees to accept service of the same. In the event that a

Second Amended Complaint is not prepared in the case, Defendant will move to dismiss the action for lack of jurisdiction as well as other available defenses.

FOR A FOURTH DEFENSE

4. As to Paragraph 1, Defendant is without knowledge or information sufficient to admit or deny whether Plaintiffs are citizens and residents of Richland County, South Carolina. Defendant admits, upon information and belief, that Plaintiffs are the owners of real property located at 451 Apple Branch Court, Blythewood, South Carolina.

5. As to paragraph 2, Defendant admits Jayden Alston is the minor child of Plaintiffs and that, upon information and belief, he resides with his parents. Defendant is without knowledge or information sufficient to admit or deny if he resides in Richland County, South Carolina.

6. Defendant qualifiedly admits paragraph 3 in the following particulars: (1) Defendant admits that Willow Creek Construction, Inc. was at the time of the construction of Plaintiffs home and for some period thereafter a corporation organized and existing under the law of the state of South Carolina with its principal place of business in Richland County; and (2) Defendant further admits that Willow Creek Construction, Inc. was in the business of constructing dwelling houses and that the company constructed the residence that is the subject of the action.

7. Paragraph 4 is only qualifiedly admitted in the following particulars: (1) Defendant admits that Oscar Torres is a resident of Richland County, South Carolina; (2) upon information and belief only, Oscar Torres was a partner of Willow Creek Construction, Inc.; (3) Oscar Torres was the site supervisor for the construction of the home at issue on behalf of Willow Creek Construction, Inc. and (4) Willow Creek Construction, Inc. hired, by oral contract,

DMT Construction Co., Inc. to perform certain work as a subcontractor for Willow Creek Construction, Inc. in the construction of the home purchased by Plaintiffs. As to other entities identified in the paragraph, Defendant is without knowledge or information sufficient to admit or deny the allegations. Defendant denies any allegations inconsistent with or in addition to these qualified admissions.

8. Paragraph 5 is denied based on the improper name of Defendant. Subject to and without waiving this position, Defendant qualifiedly admits that DMT Construction Co., Inc. is a framing subcontractor that was hired by Willow Creek Construction, Inc. to perform certain work in the construction of the home later purchased by Plaintiffs. Defendant admits that Oscar Torres was the site superintendent for Willow Creek Construction, Inc. and that Oscar Torres worked on site with DMT Construction Co., Inc. in the performance of its specific aspect of the construction of the home, including providing instruction and oversight of the work. As to the other named entities in the paragraph, Defendant is without knowledge or information sufficient to admit or deny the allegations.

9. Defendant submits paragraph 6 is a statement of law requiring neither an admission nor denial.

10. Paragraph 7 is qualifiedly admitted to the extent the allegations relate to the construction of the home ultimately purchased by Plaintiffs. Defendant denies allegations inconsistent with or in addition to this qualified admission.

11. As to paragraph 8, Defendant is without knowledge or information sufficient to admit or deny the allegations.

12. Paragraph 9 is denied, including based on the name of the Defendant. Subject to this response, Defendant qualifiedly admits the paragraph only to the extent that Willow Creek

Construction, Inc., by and through its agent, orally contracted with DMT Construction Co., Inc. to act as a subcontractor for certain work in the construction of the home that was later purchased and is currently owned by Plaintiffs. As to the other named entities in the paragraph, Defendant is without knowledge or information sufficient to admit or deny the allegations. Defendant denies any allegations in addition to or inconsistent with these express qualified admissions.

13. Paragraph 10 is denied as to Defendant both as to the name of the Defendant and the content of the paragraph as relates to Defendant. As to the content of the paragraph related to other named entities, Defendant is without knowledge or information sufficient to admit or deny the allegations.

14. Paragraph 11 is denied as relates to Defendant.

15. Paragraph 12 is denied as relates to Defendant.

16. As to Paragraphs 13, 14, 15, 16, 17, 18, and 19, Defendant is without knowledge or information sufficient to admit or deny the allegations.

17. Paragraph 20, including all subparts, is denied by Defendant.

18. As to Paragraph 21, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

19. Defendant submits paragraph 22 is a statement of law, in whole or in part, requiring neither an admission, nor denial. Subject to and without waiving this response, Defendant refers to any contract as the best evidence and denies any allegation inconsistent with or in addition to those provisions.

20. Paragraph 23 is denied.

21. Paragraph 24 is denied.

22. As to Paragraph 25, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

23. Paragraph 26 is denied.

24. Defendant submits paragraph 27 is a statement of law requiring neither an admission, nor denial. To the extent the paragraph may be interpreted to include a statement of fact, those facts are denied.

25. Paragraphs 28 and 29 are denied.

26. As to Paragraph 30, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

27. Defendant submits paragraph 31 is a statement of law requiring neither an admission, nor denial.

28. Defendant denies paragraphs 32 and 33.

29. As to Paragraph 34, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every

previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

30. Paragraph 35 is denied.

31. Paragraph 36 is denied.

32. As to Paragraph 37, Defendant submits the paragraph contains no allegation of fact requiring an admission or denial. Subject to this response, but to the extent the paragraph may be interpreted to require a response, Defendant reasserts and re-alleges each and every previous defense and response to the preceding allegations as if set forth herein verbatim, where relevant.

33. Defendant submits paragraph 38 contains a statement of law requiring neither an admission, nor denial. As to the remainder of the paragraph, it is denied.

34. Paragraphs 39 and 40 are denied.

35. Defendant denies Plaintiffs are entitled to the relief requested in the prayer.

FOR A FIFTH DEFENSE

36. Plaintiff's breach of contract cause of action is barred by the statute of frauds and should be dismissed.

FOR A SIXTH DEFENSE

37. Plaintiffs lack standing to assert any breach of contract against Defendant because Plaintiffs were not a party to the oral contract between Defendant and Willow Creek Construction, Inc.

FOR A SEVENTH DEFENSE

38. FURTHER ANSWERING SAID COMPLAINT, Defendant alleges, upon information and belief, that any injury and damage sustained by Plaintiff were due to and caused

by the sole and negligent acts or omissions of some other person or persons other than Defendant over whom Defendant neither had nor exercised any authority or control, and, therefore, Defendant is not liable to Plaintiff for any sum whatsoever.

FOR AN EIGHTH DEFENSE

39. Assuming a contract exists between Plaintiffs and Defendant, and the same is denied and expressly contradicted by the evidence, Plaintiff failed to provide Defendant with proper and/or sufficient notice and, therefore, Plaintiff's warranty claims are barred.

FOR A NINTH DEFENSE

40. Defendant pleads the doctrines of laches, waiver and/or estoppel as a complete defense to this claim against Defendant.

FOR A TENTH DEFENSE

41. FURTHER ANSWERING SAID COMPLAINT, Defendant would show that any injuries or damages sustained by Plaintiffs that Plaintiffs allege were caused by an act or omission of this Defendant was either caused by an intervening efficient act, omission or event, or could not be avoided and was an unavoidable accident.

FOR AN ELEVENTH DEFENSE

42. Plaintiffs have failed to mitigate their damages and have incurred damages that were unnecessary or unreasonable in amount. Plaintiffs are, therefore, barred in whole or part from recovery in this case.

FOR A TWELFTH DEFENSE

43. Defendant would show Plaintiffs failed to give Defendant timely notice of any alleged breach of implied warranty, and therefore, Plaintiffs may not recover against Defendant.

FOR A THIRTEENTH DEFENSE

44. Defendant pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Plaintiffs in the following particulars:

- a) In failing to take reasonable and prudent action to maintain the home;
- b) In failing to act as a reasonable and prudent homeowner would have under the same or similar circumstances;
- c) In failing to properly preserve home warranty bonds;
- d) In failing to mitigate damages; and
- e) Such other particulars as may be identified in the litigation.

Accordingly, Defendant alleges the negligence and recklessness of Plaintiffs was greater than the negligence, if any, which might be established against Defendant, and therefore Plaintiffs are barred from any recovery in this action. Defendant further alleges any injury and damage sustained by Plaintiffs was due to and caused by the negligence and/or wilfulness of Plaintiffs combining, concurring, and contributing with the negligence and/or wilfulness, if any, on the part of Defendant and, therefore, any amount of recovery awarded to Plaintiffs for the injuries and damages alleged in the Complaint shall be reduced by the Court by the percentage of negligence and/or wilfulness attributed to Plaintiffs.

FOR A FOURTEENTH DEFENSE

45. Defendant asserts that Plaintiff's causes of action against Defendant are barred by the applicable statute of limitations and should be dismissed.

FOR A FIFTEENTH DEFENSE

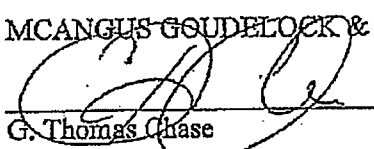
46. Defendants submit that even assuming Defendants were careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on their part operated as a greater than 50 percent cause of the damages and the Plaintiff's resulting damages, if any, which is also expressly denied, Defendants are entitled to a determination as to the percentage which the Plaintiff's or other party's negligent, grossly negligent, reckless and/or willful conduct contributed to this incident and to a reduction of any amount awarded to it by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A SIXTEENTH DEFENSE

47. The Defendant would show the claim for punitive damages cannot be had because any award of punitive damages would violate the Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.


G. Thomas Chase

Bar No: 66452

Post Office Box 2980

55 East Camperdown Way, Suite 300 (29601)

Greenville, South Carolina 29602

(864) 239-4000

ATTORNEYS FOR DEFENDANT, DONALD
RICHARD TORRES D/B/A DMT
CONSTRUCTION CO., INC.

September 2, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYMIKA JONES ALSTON AND
HAROLD ALSTON,

Plaintiffs,

vs.

DONALD RICHARD TORRES D/B/A
DMT CONSTRUCTION CO., INC., L & L
ELECTRIC INC., AND EDUARDO
MORENO D/B/A E.S. MORENO
CONSTRUCTION,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2012-CP-40-6895R

CERTIFICATE OF SERVICE

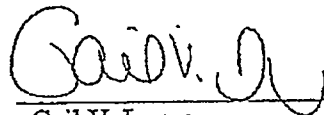
I certify that on this date, I have served a copy of Answer to Amended Complaint in this
action on counsel of record by

☒ Mailing it to him/her, at his/her last known address, by depositing it in the U.S. Mail,
in an envelope with sufficient postage affixed, addressed as follows:

Donald Gist, Esquire
Gist Law Firm
4400 North Main Street
Columbia, South Carolina 29203
Attorney for Tymika Jones Alston

September 2, 2014

Date



Gail V. Inzero

Legal Assistant to G. Thomas Chase

Exhibit 14

Chronological Time Line

Event

Date

Closing on the Home

April 3, 2007

Water Damage found in Master Bedroom

April 5, 2007

Notified Builders of the Water Damage

April 5, 2007

Builders responded and made the repairs

April 6, 2007

Medical issues started to arise- Tymika, Jaiden, and Harold

June 8, 2007

Notified Builders of additional findings

July 23, 2007

Builders responded and made the repairs

July 27, 2007

Notified Builders of additional findings

March 31, 2008

1st Mold Test by Larry Harris- Certified

November 21, 2008

CBS Builders proposal- Window Problem

December 5, 2008

PinPoint Home & Commercial Inspection

February 27, 2009

Notified builder of new findings (MOLD, Window, etc)

March 8, 2009

Builders responded finally

March 20, 2009

Builders 1st choice w/ Oscar onsite

March 25, 2009

Company Rep... Window manufacturer onsite

April 8, 2009

Builders replaced the window/ Certified Mold Insp onsite

April 16, 2009

Southeastern Inspection Services, Inc onsite

August 11, 2009

Alston Family vacated the home- 451 Apple Br Ct

September 1, 2009

Exhibit 15

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

TYMIKA JONES ALSTON AND HAROLD ALSTON)

Plaintiff,)

vs.)

WILLOW CREEK CONSTRUCTION, INC.,)
OSCAR TORRES, et. al.)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-40-04307

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

Donald Gist, Bar No. 13098

Address:

GIST LAW FIRM, PA, 4400 N. MAIN STREET
COLUMBIA, SC 29203

Phone: 803-771-8007 Fax 803-771-0063

E-mail: dtormmygist@yahoo.com Other: _____

Defendant's Attorney:

G. Thomas Chase and Thomas F. Dougall, Bar No. _____

Address:

G. Thomas Chase - McLaughlin
Goudelock & Courie, LLC, Post
Office Box 2980, 75 Beattie Place,
Suite 300 (29601), Greenville,
South Carolina 29602

Thomas F. Dougall, Esquire,
Dougall & Collins, Woodcreek Farms
Road, Elgin, SC 29045

Phone: 864-239-4000 (Chase) and 803-865-
8858 (Dougall) Fax 803-865-8944
(Dougall)

E-mail: tchase@mgclaw.com and,
tdougall@dougallfirm.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)

RICHLAND COUNTY
FILED
2014 MAY 22 PM 2:15
JEANNETTE W. HOBBS
C.C.P. & G.S.

Nature of Motion: Motion to Add Partles

Estimated Time Needed: 15 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: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ 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

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ **CONTESTED** - AMOUNT DUE: \$

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

TYMIKA JONES ALSTON and
HAROLD ALSTON

Plaintiffs,

v.

WILLOW CREEK CONSTRUCTION, INC.,
OSCAR TORRES, AND

Defendants.

WILLOW CREEK CONSTRUCTION, INC.,

Third Party Plaintiff,

vs.

DONALD RICHARD TORRES d/b/a
DMT CONSTRUCTION CO., INC.,
L&L ELECTRIC INC. and EDUARDO
MORENO d/b/a E.S. MORENO
CONSTRUCTION

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 10-CP-40-04307

PLAINTIFFS MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT ADDING PARTIES

RICHLAND COUNTY
FILED
2014 MAY 22 PM 2:45
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: Defendant Willow Creek Construction, Inc. and Thomas F. Dougall, Esquire
Attorney for Defendant and Third Party Defendant DONALD RICHARD TORRES
d/b/a DMT CONSTRUCTION CO., INC., L&L ELECTRIC INC. AND EDUARDO
MORENO d/b/a E.S. MORENO CONSTRUCTION, and G. Thomas Chase,
Esquire, Attorney for Third Party Defendants

COMES NOW Plaintiffs, by and through the undersigned counsel, and moves for
an Order granting leave for Plaintiffs to amend their Complaint to add Harold Alston and
Tymika Alston as Parents and Guardians of their minor child, Jaiden Alston, as a party
Plaintiff to this action pursuant to South Carolina Rules of Civil Procedure 15(a), 19, 20
and 21 and shows grounds as follows:

1. This matter involves mold related injuries which occurred to Harold Alston, Tymika Alston, and their minor child, Jaiden Alston, based upon the negligent construction of the family home by Defendants.
2. The parties have displayed due diligence in the pursuit of discovery and have exchanged written discovery responses and documents and also taken the depositions of the Plaintiffs, Defendants, and treating physician in this case.
3. Through the course of the discovery exchange, the Plaintiff's learned of the serious long term injuries sustained by Harold Alston and Tymika Alston as Parents and Guardians of their minor child, Jaiden Alston, as a result of Defendant's negligence in this case. The injuries received by Jaiden Alston as a result of Defendant's conduct are documented in the discovery documentation as well as the Deposition Testimony taken in this case. Therefore, Defendant's will suffer no prejudice as a result of this amendment to add Jaiden Alston as a Plaintiff in this case.
4. There were no other means by which Plaintiffs could have gained knowledge of the extent of Jaiden Alston's long term medical injuries prior to discovery being taken in this case.
5. The absence of Jaiden Alston as a Plaintiff in this case precludes complete relief from being accorded to the Plaintiffs. The Defendant would not be prejudiced in any way by adding said parties to this action.
6. A party may amend their pleading by leave of court or by written consent of the adverse party and leave shall be freely given when justice so requires and does not prejudice any other party. SCRCP 15(a).

Wherefore, Plaintiffs pray for leave to file an Amended Complaint to add Harold Alston and Tymika Alston as Parents and Guardians of their minor child, Jaiden Alston as a Plaintiff in this action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald Gist", written over a horizontal line.

Donald Gist, Esquire
Gist Law Firm, PA
4400 N. Main Street
Columbia, SC 29203
Attorney for Plaintiff

May 22, 2014
Columbia, SC

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tymika Jones Alston and Harold Alston
Individually and as Parents and Guardiands on
Behalf of Their Minor Child Jayden Alston

Plaintiff(s)

vs.

Donald Richard Torres d/b/a DMT Construction,
Co., Inc., L&L Electric Inc. and Eduardo Moreno
d/b/a E.S. Moreno Construction

Defendant(s)

Submitted By: Donald Gist, Esquire
Candice Grant, Esquire
Address: 4400 North Main Street
Columbia, South Carolina 29203

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 40- 6895R

SC Bar #: 13098/101948

Telephone #: (803) 771-8007

Fax #: (803) 771-0063

Other:

E-mail: aaronwallace.gistlawfirm@gmail

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

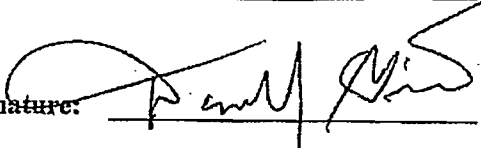
**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- - | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☒ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Memo in
Opposition to
Summary
Judgment

Submitting Party Signature: 

Date: March 11, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

EXHIBIT 16

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS

3
4)
5 TYMIKA JONES ALSTON, ET)
AL,) TRANSCRIPT OF RECORD
6 PLAINTIFFS,) 2012-CP-40-06895R
7 -vs-) MARCH 8, 2015
8 WILLOW CREEK) COLUMBIA, SOUTH CAROLINA
CONSTRUCTION, INC., ET)
9 AL, ()
10 DEFENDANTS.)
11)
12)

13 B E F O R E:

14 THE HONORABLE W. YOUNG, JUDGE.
15

16 A P P E A R A N C E S:

17 DONALD GIST, ESQUIRE
18 ATTORNEY FOR THE PLAINTIFFS

19 AARON WALLACE, ESQUIRE
20 ATTORNEY FOR THE PLAINTIFFS

21 G. THOMAS CHASE, ESQUIRE
ATTORNEY FOR DEFENDANT DONALD RICHARD TORRES,
22 D/B/A DMT CONSTRUCTION CO., INC.
23

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-1	MEDIATION AGREEMENT	6	
4	D-2	EXCERPTS OF DEPOSITION	6	
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1 (PROCEEDINGS, MARCH 18, 2015)

2 THE COURT: I believe this is Mr. Chase's motion
3 for summary judgment.

4 This is Tymika Jones Alston and Harold Alston,
5 individually as parents and guardians on behalf of their
6 minor child Jacob Alston versus Donald Richard Torres, who
7 had been doing business as DMT Construction, Incorporated, L
8 & L Electric, Incorporated, and Eduardo Moreno, doing
9 business as E.S. Moreno Construction under docket number
10 2012-CP-40-6895R.

11 This is as to the motion for summary judgment.

12 Present appearing is Mr. Donald Gist and Mr.
13 Thomas Chase and Frank Dougall and Adelaide Kline.

14 MR. CHASE: Well, I'll correct that. I'm Tom
15 Chase, Your Honor.

16 THE COURT: Okay.

17 MR. CHASE: If it please the court, at this point
18 Mr. Dougall and Ms. Kline are not present and I'll explain
19 it a little bit more about that, but there really is no
20 reason for them to be present, based on a settlement that
21 they represented one company and individual and they have
22 reached a settlement agreement with Mr. Gist and his client
23 and I'll put that kind of play into where we are in purposes
24 for the parties.

25 For the parties I do represent DMT and Mr. Donald

1 Richard Torres, and there are two other defendants in the
2 litigation at this point. I do not know the status
3 personally of whether or not they have been served or where
4 that stands, so those parties to my knowledge have not
5 actually appeared, either individually pro se or through
6 counsel and Mr. Gist can clarify that issue.

7 MR. GIST: Your Honor, with the court's
8 permission?

9 THE COURT: Yes.

10 MR. GIST: Good morning. How are you doing?

11 I would speak to L & L Electric, Inc. And Eduardo
12 Moreno. This was a lawsuit we brought against multiple
13 parties of construction of a home. We have not been able to
14 locate L & L Electric, nor have we been able to locate
15 Eduardo Moreno. All of these people were contractors for
16 a --

17 THE COURT: You have got statute of limitations
18 problems on those, don't you?

19 MR. GIST: Well --

20 THE COURT: I mean, two of the --

21 MR. GIST: We do. And to be honest --

22 THE COURT: This happened what, in 2008?

23 MR. GIST: 2008, and to be honest with you, in
24 terms of L & L Electric and Moreno, there is pretty much
25 from the -- there is no indication basically that we are

1 going to present there is any evidence that they did
2 anything wrong here, so we are not going to really proceed
3 against them. I think we are -- in the interest of judicial
4 economy not going to proceed against them. We are
5 proceeding against Donald Richard Torres, and with me this
6 morning is I have Aaron Wallace, an associate of my law
7 firm.

8 THE COURT: All right.

9 MR. GIST: Aaron is going to be arguing the motion
10 on behalf of my clients.

11 THE COURT: Okay.

12 Mr. Chase, you would be up first.

13 MR. CHASE: Yes, sir, Your Honor.

14 (Mediation Agreement marked as Defendant's Exhibit
15 No. 1 for identification).

16 (Excerpts of Deposition marked as Defendant's
17 Exhibit No. 2 for identification).

18 (Excerpts of Deposition marked as Defendant's
19 Exhibit No. 3 for identification).

20 THE COURT: I have got y'all's motion.

21 MR. CHASE: Okay.

22 MR. WALLACE: Your Honor, have you got the
23 attached copy? It may be easier for the court to use the
24 attached copy.

25 MR. CHASE: That's the additional submission that

1 was filed related to memorandum that is in addition to we
2 had a detailed motion but that is in support of that motion.

3 THE COURT: All right.

4 MR. WALLACE: Your Honor, I have got some
5 additional documents as well I would like to present that
6 are not included in the memorandum that I have got.

7 THE COURT: Yes, sir, Mr. Chase.

8 MR. CHASE: May it please court, Your Honor?

9 THE COURT: Yes.

10 MR. CHASE: By way of background, although it
11 is -- I will submit that it is detailed in my motion itself
12 and then a little bit less detailed in the memorandum, this
13 case arises out of allegations of defective construction of
14 a home. That home was purchased by the Alstons, whom Mr.
15 Gist represents. They purchased that home from Willow Creek
16 Construction and one of the owners of that company is Oscar
17 Torres.

18 Her home was finished and purchased in 2007, April
19 of 2007, and there is a detailed chronology of events that
20 occurred literally from that point forward of problems that
21 the Alstons had with the home. They began with water
22 penetration, water leak at the window. There were further
23 problems with -- there was -- a contractor came in, this
24 Willow Creek Construction through Oscar Torres, came back in
25 and looked at it. They continue to have problems. There

1 is --

2 THE COURT: November of 2008 that they called a
3 specialist?

4 MR. CHASE: They did call a specialist in. That's
5 correct, Your Honor.

6 THE COURT: There was a mold issue?

7 MR. CHASE: Yes.

8 And there is actually one of the exhibits to the
9 motion, if you look back at it, there is actually a timeline
10 that was prepared by the Alstons, and that is Exhibit 11 to
11 our motion for summary judgment. And then the actual
12 reports of these individual contractors that have come out
13 there are detailed in earlier exhibits.

14 But essentially what you have, Your Honor, is
15 complaints of -- complaints and treatment for alleged
16 medical conditions as early as the summer of 2007.

17 You have complaints to the general contractor,
18 which is Willow Creek and Oscar Torres, being made in the
19 summer of 2007.

20 Those complaints continued through 2008. And as
21 Your Honor correctly pointed out, based on additional
22 problems that they identified, they brought in not just one
23 expert to evaluate for inspection, but they brought in
24 multiple inspectors to look at the property to see what the
25 deal was with water penetration, issues with the

1 construction itself, including related to how the windows
2 were put in the --

3 THE COURT: Let me ask you. Have y'all come up to
4 an agreed date of incident?

5 MR. CHASE: Of --

6 THE COURT: I know these type of cases are
7 different from a car accident that happened on the 3rd of
8 March of 2000, whatever.

9 In mold cases, as with other type of cases where
10 things are progressive, what date is it to that point? Have
11 y'all come to an agreement by any chance?

12 MR. WALLACE: Well, Your Honor, we haven't agreed
13 on a date. It's our position that as of the date of the
14 inspection, CBS building inspection. If you look on the
15 chronology, that was December 5th, 2008. They are
16 indicating that there is some construction defects with
17 regard to the window.

18 DMT and Donald Torres was actually the
19 subcontractor who framed and installed the windows. With
20 respect to DMT, any acknowledge that our clients would have
21 accrued regarding damages to the window would have accrued
22 the time --

23 THE COURT: But the mold tests were in November of
24 2008.

25 MR. WALLACE: The mold test.

1 THE COURT: They realized there was some mold in
2 the house.

3 MR. WALLACE: Yes, Your Honor, but there was no
4 way for them to realize that in November the exact cause of
5 the mold. It was one --

6 THE COURT: When was that report issued by Mr.
7 Larry Harrison?

8 MR. WALLACE: That was December 2008.

9 MR. CHASE: December 5th of 2008.

10 MR. WALLACE: December 5th, 2008.

11 THE COURT: So that's when you knew there was mold
12 problems?

13 MR. WALLACE: Caused by the windows.

14 MR. CHASE: That's when -- that's when they have a
15 third party come in --

16 THE COURT: Right.

17 MR. CHASE: -- and confirm their concerns about
18 that they had a problem.

19 So December the 5th of 2008, it sounds like that
20 is at least the date that can be agreed on for purposes of
21 this motion.

22 THE COURT: Okay.

23 MR. CHASE: From that point forward there is a --
24 there are continued evaluations, and this really all
25 revolves around the same problems, continued issues with

1 allergic reactions, the allegations are, and then continued
2 looking at how to repair it and what the conditions are with
3 multiple inspectors coming in, but it all continues to
4 follow that same line of complaint related to the
5 construction of the home, whether it be water intrusion or
6 the method that the windows were put in, or how it was
7 framed.

8 So in 2010, as Your Honor knows for the purposes
9 of the court file, that in 2010 the plaintiffs pursue their
10 litigation against Willow Creek Construction Company and
11 Oscar Torres as the owner and also a person who was on site
12 on a daily basis for purpose of how this construction was
13 done.

14 And I have actually got just for Your Honor's
15 review, if there is any question about that, this is Exhibit
16 No. 2, those are excerpts from Oscar Torres' deposition
17 wherein he set forth that "yes, I'm a part of Willow Creek
18 Construction Company," and, "yes, I was the site
19 superintendent, and I was there every day." And so that's
20 really the purpose of that to clarify.

21 So there is an action --

22 And I will submit that the original action brought
23 against this Willow Creek Construction, Incorporated and
24 also Oscar Torres was timely, was within the statute of
25 limitations. That's not the issue that we are dealing with.

1 THE COURT: Okay.

2 MR. CHASE: The issue then becomes my client,
3 which is DMT Construction, they are brought in as a
4 third-party defendant in March of 2011. The only action
5 pending against my client is Willow Creek Construction,
6 Incorporated versus DMT Construction.

7 There is also -- incidentally, just for your
8 knowledge, the previous caption was DMT Construction
9 Company, Incorporated, L & L Electrical, and also Eduardo
10 Moreno, doing business as E.S. Moreno Construction.

11 So if Your Honor looks back at the original
12 complaint and then the third-party complaint, you will see
13 that the third-party defendant from that action are now the
14 ones that you see as primary defendants in this action.
15 It's a little bit of context for that.

16 So my client is brought in in March of 2011 only
17 as a third-party defendant. So the only actions pending
18 against them are between Willow Creek Construction and my
19 client DMT. There is no direct action by the plaintiffs.

20 There is an amended third-party complaint that is
21 then filed in July of 2011. We respond, obviously, to the
22 first complaint, third-party complaint. We respond to the
23 second third-party complaint, or the amended third-party
24 complaint. So now we are in July of 2011.

25 And just for purposes of -- for Your Honor's

1 clarification, if there is a question about the role that my
2 client played, which is Donald Torres and DMT Construction
3 Company, Incorporated, I do have excerpts under Exhibit
4 No. 3 that outline the role that he played in this
5 construction. We don't contest he did frame and he did do
6 window work in this home. That's not the issue that we are
7 dealing with.

8 THE COURT: Okay.

9 MR. CHASE: Give me one second, Your Honor. I
10 want to make sure I provide copies to counsel that I have,
11 what I have given you.

12 So, Your Honor, DMT Construction proceeds in this
13 litigation with its only causes of action against them in
14 indemnity and an untimely contribution claim is essentially
15 what we are dealing with. I think that the third-party
16 complaint, which is again part of the court record, to
17 comply with the court, they outline that very clearly.
18 There is never any action pursued by the plaintiffs directly
19 against my client DMT Construction.

20 So there are -- there is a mediation that was held
21 in July of last year. In that mediation there was an
22 agreement reached. And for purposes --

23 THE COURT: Yes.

24 MR. WALLACE: I would like to add, I'm going to
25 object to the mediation agreement, Your Honor. That's not

1 admissible.

2 THE COURT: This is a motion. We are not at
3 trial.

4 MR. WALLACE: Okay.

5 MR. CHASE: So this is the mediation agreement
6 that was reached, that -- I'll tell you, Your Honor, that
7 that copy came from the Attorney Thomas Dougall, who
8 represented Willow Creek Construction and also Oscar Torres
9 in litigation.

10 So in July of last year, of 2014, this agreement
11 is reached wherein, as Your Honor will see, there is a
12 mediation agreement where it talks about that -- and you see
13 these, the original caption is actually a part of this
14 mediation agreement. And in it the only causes of action
15 are Alston and Alston against Willow Creek, and then Willow
16 Creek against these third-party defendants. And in it the
17 plaintiffs, they state and they have executed it, they say
18 that they agreed to dismiss the above-captioned lawsuit with
19 prejudice, and that they agreed in a full and complete
20 release of all claims to be prepared by the attorney for
21 Willow Creek. And what it comes down to is they enter
22 into -- and Your Honor certainly can read it, but it's a
23 confession of judgment. And they reach an agreement where
24 there are -- they acknowledge that there are issues in the
25 home that need to be corrected and that they are going to

1 agree to send out an expert and to evaluate those. And then
2 they are going to have those repaired and that there would
3 be a confession of judgment in the value of those repairs.
4 And then when they do the actual repairs, the confession of
5 judgment will then be ripped up and it will be finished.

6 So as of right now there has not been a formal
7 submission to the court, I'll submit, of a stipulation of
8 dismissal with prejudice as to the lawsuit.

9 What happens is that there then is a motion to --
10 there's a motion to amend the pleadings, and the motion
11 relates to now the caption that you are seeing.

12 So in August of 2014, plaintiffs then say "we're
13 dropping Willow Creek because we have reached this
14 settlement agreement with them and now we want to move these
15 third-party defendants. We want to move them into the
16 primary defense position."

17 And so what was agreed was that I would accept
18 service of that complaint, subject to us reserving all
19 affirmative defenses that were available to us, including
20 the statute of limitations and latches, among others.

21 So in August of 2014 is the first time that my
22 client now has an action pending against them directly by
23 the plaintiffs. And clearly when you use a December 5th of
24 2008 time frame for the statute of limitations, three years
25 from that we are in 2011. Even if you say -- even if that

1 date is further back -- I mean, a little bit forward in
2 time, 2009, I mean, they move out of the house in 2009.
3 There is no question about that. We are still dealing with
4 a 2012 Statute of Limitations. And so my client is then for
5 the first time faced with direct cause of action against
6 them completely different than what they were involved with
7 previously in litigation where they are only -- the only
8 claim against them was potential indemnification claim,
9 where I will tell you, Your Honor, when you look at and
10 talking about change in it, when you have got testimony of
11 Oscar Torres saying "I was out there of every day," there is
12 no contract, there is no written indemnity. There is really
13 no -- they are not going to be able to collect because they
14 don't have clean hands, that changes dramatically to then
15 going to being a primary defendant and now with them saying
16 "well, we are not even going to pursue the other defendants,
17 we are just going to pursue you", seven years -- six years
18 after they were on full notice of the issues that they were
19 dealing with at this home.

20 So the question then to clearly, for purposes of
21 the record, I think that through the exhibits that we have
22 presented, and also I will tell you that the testimony of
23 the claimant sits directly in line with their knowledge of
24 the conditions, and those are also Exhibits 1 and 2 to my
25 motion, that they know about what the problems are with the

1 home in that same time frame that we have discussed and has
2 been conceded.

3 We also, Your Honor, the pleadings themselves
4 actually support that statute of limitation time frame also,
5 when you look back to the original complaint that is filed
6 against Willow Creek and their response to it.

7 So then we are in a position of since there is a
8 clear violation of the statute of limitation, is there any
9 way for the plaintiffs to then say "well, we can bring you
10 into the litigation, despite the fact that the statute of
11 limitations is technically run." And we will submit that
12 the only method that the rules would potentially provide
13 would be under Rule 15, where you could relate -- the
14 argument is you could relate back to these pleadings.

15 Your Honor, we have -- in our brief we have laid
16 out the standard for Rule 15 (C), but it is abundantly clear
17 in this case the question is are they just substituting a
18 party? In other words, well, really, it should have been --
19 it shouldn't have been Willow Creek. It should have been
20 DMT Construction, or are they attempting to add a party.

21 Well, I think that when you look at the pleadings,
22 and then especially when you look at the mediation
23 agreement, this is not a case where the plaintiffs have
24 alleged mistake, so we are not dealing with corporate name
25 or there is some sort of an issue with how it's designated

1 and how it's not designated. We are dealing with them
2 reaching an agreement with a party, then seeking to bring
3 other people in, add them as parties, to see if they can
4 then collect from those parties. Well, if that is the
5 standard, we are adding parties in that manner, you would
6 have indefinite ability to settle, bring one third-party
7 defendant in, settle, bring another third-party defendant
8 in, settle, and on and on and on.

9 THE COURT: The purpose of the statute of
10 limitations is so that entities can move on, is that
11 correct? That after a certain point they know that they can
12 move on with their business without fear of a subsequent
13 lawsuit if something happened.

14 MR. CHASE: Absolutely.

15 And in this case where after the three years
16 statute of limitations has run, the plaintiffs have, for
17 whatever reason --

18 There are good strategic reasons not to move those
19 third-party defendants into the primary defendant situation.
20 And I will submit, Your Honor, for example, I had a case
21 where plaintiff's counsel said "I placed extreme pressure on
22 the general contractor under circumstances where I keep him
23 as the primary defendant, he's a viable defendant, he has
24 got his insurance, and it's all on him and he's going to
25 have to put the pressure on third-party defendants." That

1 happens all the time. So there are good reasons for doing
2 that.

3 And in this situation my client is proceeding for
4 three years -- over three years in the litigation without
5 their only exposure. And so they don't have the ability to
6 move on if this is allowed. They are actually four years
7 into -- now we are approaching four years into them being
8 into the litigation and now their circumstances having
9 completely changed. They are clearly prejudiced by that
10 change in position, and it's in direct contradiction to the
11 purpose of the statute of limitations, which we have
12 obviously, as Your Honor put, it does allow the parties --
13 in very basic terms, it allows them to move on, and the
14 public policy is there to support this. It is not --

15 You know, oftentimes you will hear the complaint,
16 "well, it doesn't allow my clients to be able to fully
17 recover." Well, that may be true, and the courts have said
18 that's really -- that doesn't really matter when you are
19 evaluating the statute of limitations. We have already
20 weighed that and we know that this is a situation where it
21 does allow people to move on. They have had their
22 opportunity and if they sit on that, then that's where we
23 are, but in this case we don't even have that, because they
24 have reached a full settlement agreement with the defendant
25 they have actually reached. So even if you consider equity

1 for some reason, for -- if that comes into play, they
2 actually are in a position where they have recovered. They
3 are going to get their house fixed. They have got someone
4 who is on the hook for that. They are just looking for
5 additional avenues after the statute of limitations to say
6 "hey, maybe we can get something else from someone else,
7 something else from someone else at this time."

8 I will submit that there is case law that is clear
9 that there is some that relate to, you know, the question is
10 well, they are in the litigation. Well, there is case law
11 that talks about if you don't bring a counterclaim within
12 the prescribed time for statute of limitations purposes, you
13 are barred. Well, they are in litigation. You know, that
14 doesn't relate back. How can this relate back? I mean,
15 this is even further removed, because in that case there is
16 direct litigation between those two parties. Here there is
17 no litigation between them. The only litigation was between
18 Willow Creek and my clients.

19 We also have some circumstances where, I would
20 submit, Your Honor, that laches at least for consideration,
21 because this is a classic example of sitting on your
22 potential rights under the circumstances, but we would
23 submit that that's really kind of a secondary issue,
24 because -- or basis, because the statute of limitations is
25 so clear under the circumstances and the methodology that is

1 being used to try to bring my client in as a primary
2 defendant at this time can't be allowed simply because of
3 the statute of limitations requirement that we have in the
4 State and the public policy that stand behind them.

5 THE COURT: All right.

6 MR. CHASE: Thank you, Your Honor.

7 THE COURT: Yes.

8 You are itching to get up.

9 MR. WALLACE: Your Honor, thank you.

10 Just as a preliminary matter, just to give the
11 court some background on the case, I actually wasn't
12 involved in the initial filing of the lawsuit. I came into
13 the law firm in 2012.

14 Initially at the time the lawsuit was originally
15 commenced, Judge Benjamin, I call her Judge Benjamin. I was
16 her former law clerk was involved in the case, as well as
17 Mr. Donald Gist appearing today.

18 Your Honor, initially -- and really I just want to
19 address at first the excerpts which were provided by Mr.
20 Chase to the court. Your Honor, the only probative value
21 for purposes of this hearing today of these excerpts is with
22 regard to the date of the statute of limitations of when my
23 client discovered damage to the house and we have already
24 agreed on the dates.

25 THE COURT: Y'all agree that December 5th is

1 the --

2 MR. WALLACE: Yes, Your Honor, 2008.

3 THE COURT: Operative dates where the dates start
4 with.

5 MR. WALLACE: Yes, Your Honor, we have no dispute
6 with regard to that.

7 But I do want to address that in August of 2014 we
8 did amend the complaint, and in that amendment we changed
9 the caption to include -- it was Tymika Jones Alston and
10 Harold Alston, individually, and as parents and guardians of
11 the minor child, Mr. Jayden Alston, Your Honor, and Jayden
12 Alston is this ten-year old, is now ten year old son of Mr.
13 Harold and Tymika Alston. He was essentially injured as a
14 direct result of the defendants actions in this case.

15 And, Your Honor, I have submitted to the court and
16 also provided to Mr. Chase a copy of the statute in South
17 Carolina, specifically Statute -- Your Honor, a few moments,
18 but Statute 15-3-40, Your Honor. And essentially what this
19 statute says, it says "if a person entitled to bring an
20 action mentioned in Article 5 of this chapter," which
21 includes this current action, "or an action under Chapter 78
22 of this Title, except for a penalty or forfeiture against
23 the sheriff or other officer for an escape, is at the time
24 the cause of action accrued either within the age of
25 18 years." That statute applies directly to Mr. Jayden

1 Alston in this case. He was a minor then. He's a minor
2 now.

3 We can go on in reading the statute, it says "the
4 time of the disability is not a part of the time limited for
5 the commencement of the action, except that the period
6 within which the action must be brought cannot be extended
7 more than five years by any such disability, except
8 infancy," and infancy is a disability at issue in this case,
9 "nor in any case longer than one year after the disability
10 ceases."

11 The disability being infancy, that means that we
12 have actually got until Mr. Jayden Alston was 19 years old
13 to bring a claim on Jayden Alston's behalf.

14 With respect to Mr. Jayden Alston, we argue that
15 the statute itself provides -- the statute by itself means
16 that the statute of limitations hasn't run with respect --

17 THE COURT: What's your opinion on that?

18 MR. CHASE: Yes, sir, Your Honor.

19 I'm glad -- I'm actually glad that that's raised,
20 because I will agree, and it's actually a valid point, and
21 what we would say is this comes back to if we are just
22 talking about the individual personal injury claim of --

23 THE COURT: Jayden.

24 MR. CHASE: -- Jayden. Jayden has no ownership in
25 this home. I mean, he does not have the -- that has nothing

1 to do with him. And so for purposes of a construction
2 defect claim, if you look, the cause of action is then
3 individually in his parents.

4 I would agree, Your Honor, that as to certain
5 elements of Jayden's claim, and we may have to deal with
6 that at a later date because that has not been fully fleshed
7 out, that if he has, for example, some sort of ongoing issue
8 that it may allow for that personal injury claim to
9 continue.

10 But we would also submit that as to at a minimum
11 medical bills, those are the -- we would submit that those
12 are actually the parents, those are their responsibility,
13 and that they have at a minimum that the statute of
14 limitations come back in on that issue, but they have
15 certainly sat on their rights as relates to that child as to
16 any expenses that they may have accrued. So laches is a
17 huge issue.

18 So I -- Your Honor, I would agree that as to
19 certain aspects of the claim related to the interests of
20 Jayden Alston, that that claim may -- would remain viable,
21 but I have not seen how that has been laid out yet.

22 THE COURT: Well, with that being the case,
23 wouldn't you think that maybe summary judgment at this point
24 is a little premature then?

25 MR. CHASE: Only --

1 THE COURT: Because -- well, I mean -- I mean, I
2 don't want to start parsing the case out and cutting out
3 "okay, I'm granting summary judgment on this part, but I'm
4 not going to grant it on this part," isn't it kind of --
5 wouldn't the wisdom be put -- we always get -- every time I
6 grant summary judgment I get reversed. Not really, but
7 those -- when you have some valid points in there, wouldn't
8 the better wisdom be to leave the case moving until you go
9 through some further discovery?

10 MR. CHASE: Judge --

11 THE COURT: -- to see if it works?

12 MR. CHASE: I apologize for starting --

13 THE COURT: No problem.

14 MR. CHASE: Judge, this is a case where we are
15 looking to get a date certain.

16 THE COURT: Okay.

17 MR. CHASE: I mean, one -- the defects in the home
18 clearly, one, they have had a recovery on.

19 THE COURT: Well, I mean -- that's what I mean.
20 If you get a day certain and have any more -- at least once
21 they present it, it may be a directed verdict.

22 MR. CHASE: Well, and that's where -- when there
23 is clarity on certain issues, there is no -- there is not
24 going to be any additional evidence that is generated as
25 relates to the home, the claim for personal injury by the

1 parents. I mean, that's abundantly clear. You can't wrap
2 that up with --

3 THE COURT: I don't know -- what I'm saying,
4 though, is they filed an amended complaint last August. Is
5 this thing on the trial roster? Is it --

6 MR. WALLACE: No.

7 MR. CHASE: It could be placed any time. That's
8 what we -- I mean, it's -- we are basically -- is it
9 potentially --

10 THE COURT: I mean, now because of that, isn't
11 this claim subject to the mandatory mediation too?

12 MR. CHASE: We have mediated it.

13 THE COURT: Y'all have mediated it?

14 MR. CHASE: We have mediated it.

15 THE COURT: Well, I'm talking about with Donald --
16 DMT.

17 MR. CHASE: We mediated it -- we actually --

18 THE COURT: Y'all a party to that?

19 MR. CHASE: We participated in the mediation
20 because we had to because we were a third-party defendant.

21 THE COURT: Okay.

22 MR. CHASE: We actually mediated this case twice,
23 Your Honor. The first time a settlement was reached and
24 then the plaintiffs backed out of it.

25 MR. WALLACE: Well, Your Honor --

1 MR. CHASE: And then -- and then we mediated it
2 again last summer and that's when this mediation agreement
3 was actually reached with the primary defendant in the
4 litigation. So the case has been mediated twice and it's
5 still under the same -- obviously it's under the same
6 number, so -- and all of the --

7 I will submit for purposes, just so there is at
8 least an understanding, that their claims relate to their
9 personal injuries, the parents personal injury.

10 If you look through the excerpts from the mother,
11 Tymika Alston, she's talking about "I had this, I had these
12 problems, I had --" there was issues where I "had /HO --

13 Harold Alston, the same thing. "I had these
14 personal injuries claims."

15 You look at the amended complaint, that is what
16 they are alleging. So for purposes of -- I don't think it's
17 parsing out inappropriate manner, because under
18 circumstances where if they were to amend the complaint and
19 say that they are merely bringing a personal injury claim on
20 behalf --

21 THE COURT: You have to have --

22 MR. CHASE: -- Jayden Alston --

23 MR. WALLACE: Well, Your Honor, it's our position
24 that summary judgement is absolutely premature at this point
25 and there's evident that regarding the minor child.

1 I have got some e-mails I would also submit to the
2 court and in those e-mails on July 15th, 2014, I actually
3 discussed with Mr. Chase this very issue regarding the minor
4 child and regarding engaging in additional discovery. And I
5 did indicate "what's your position on consenting to my
6 amending the complaint and moving to having a hearing on the
7 matter," because we had originally filed a motion to amend
8 the complaint. The hearing date was approaching and we
9 consulted with Tom Chase to try to find out what his
10 client's position was and what his position was on us
11 amending the complaint and he indicated July 18th, 2014
12 "Aaron, we will consent to the amendment, provided we are in
13 agreement that the parents deposition may be reopened as to
14 the minor's claim. Let me know."

15 I come back and I replied "Dear Tom, we have no
16 objection to what you have proposed. If we have your
17 consent to the amendment of the complaint, we will inform
18 the court the matter has been resolved.

19 You have my consent."

20 Your Honor, we have not engaged in extensive
21 discovery regarding the minor child at this point.

22 Your Honor, Mr. Chase mentioned being involved in
23 this case, or being involved in mediation even prior to
24 2014, Your Honor. It's no dispute that his client has been
25 involved in this case since 2010.

1 THE COURT: Well, but he's then in a drastic
2 different position in that one. He was only on the hook if
3 somebody was else was on the hook. Now you are asking him
4 to be primarily on the hook.

5 MR. WALLACE: And he consented to that and with
6 prior amendment. He had every opportunity to come to the
7 hearing, to object to our amending the complaint. He didn't
8 do so. He consented to our amendment. We withdrew the
9 hearing request, so I would say he's waived any right --

10 MR. CHASE: Judge, let me -- I have let him be an
11 advocate, but that is -- let me -- let's just back it up.

12 The original motion, if you will look in the
13 pleadings, the motion was filed in the spring to add the
14 child as a plaintiff. That was the proposed amendment, to
15 add the child. At that time Willow Creek and Oscar Torres
16 are in the suit. We are only a third-party defendant.

17 This did not come up -- what happened is the
18 hearing gets set, so it's going to be heard and he says
19 "well, we are going to need to have a hearing on this."

20 And I said "no, we are not going to have a hearing
21 on it, because we don't need to have a hearing on it,
22 because, as Tom Dougall had said, he would agree to it also.
23 It was going to be granted because it was the minor's claim
24 and the statute of limitations would not have run.

25 But then what we do is he then -- he then changes

1 the pleadings to add us as a primary defendant and takes out
2 Willow Creek and Oscar Torres. And so what we are said was
3 "we will accept your service of this."

4 The amended complaint, if you go back to March, it
5 never proposed to put us as the primary defendant and that's
6 in the court record. It was to add the minor as a
7 plaintiff.

8 So then we get the pleadings and it says "we have
9 removed Willow Creek, we have removed Oscar Torres, and we
10 have moved you up in."

11 Now, when he sends me that, the only thing that
12 I'm consenting to as a third-party defendant to allow -- to
13 the motion that was filed before any of this came up was to
14 allow that to happen. I then get the amended -- this
15 pleading where we are moved into a primary defendant and
16 what I say is "I will accept service, but only if we
17 preserve every affirmative defense." And I could submit --
18 I can show you that -- that's probably a part of the record.
19 I can show you I had to personally hand write on that and I
20 communicated that to them. So they moved the goalposts.
21 And when they moved the goalposts by changing the pleadings,
22 I said "if you are going to move the goalposts, we preserve
23 every defense that we have in this suit."

24 THE COURT: Which is statute of limitations.

25 MR. CHASE: Which is statute of limitations, which

1 is our answer.

2 So if plaintiffs counsel is saying the only action
3 that is viable is related to -- if they agree and the only
4 action that is viable is the claim of the minor -- and we
5 are not talking about defects in the home. We are only
6 talking about --

7 THE COURT: His personal --

8 MR. CHASE: His personal injury claim, then that
9 is a completely different picture, and that makes -- that
10 actually would make sense, but they are not saying that.
11 They are saying let's drag this out further.

12 We're the ones who said well, we were going to
13 take the parents deposition. Well, you know what? We
14 haven't moved to take their deposition. That's our
15 decision, not their decision.

16 We have their minor's -- the minor's medical
17 records. We have pursued that. They have provided those
18 over to us.

19 We have taken the doctor's deposition as it
20 relates to not only Tymika Alston, but Harold Alston, but
21 also the child.

22 So for them to say that it hasn't been extensive
23 discovery performed, well, that's up to us to decide whether
24 or not we want to pursue any additional information related
25 to the minor's personal injury claim. So, I mean, I don't

1 understand that argument at all.

2 So if we are here and it's a matter of them saying
3 that's all we were going to pursue, then they have an
4 amended complaint that actually sets that out, arguably
5 would be appropriate, but not to continue -- I mean, we talk
6 about judicial economy. If we go to a trial -- just so you
7 know, Your Honor, if we try all this stuff and we wait until
8 directed verdict, I mean, you're -- this -- this thing is
9 much larger, as opposed to the minor's claim, personal
10 injury claim, from a judicial economy standpoint, when there
11 is no more evidence, they are saying -- even their argument
12 is hey, all we have got is -- all we have left is just some
13 minor's discovery. Okay. Well, that limits what we do in
14 front of the court. Now we are talking about maybe two days
15 of a trial. Otherwise, we are going to have huge motions
16 that are going to be in play. We will be right back here
17 doing the same -- we will be making the same arguments
18 related to the statute of limitations as it relates to the
19 construction defect, personal injury claim of Tymika Alston,
20 personal injury claim of Harold Alston.

21 THE COURT: All right.

22 Yes, sir.

23 MR. WALLACE: Your Honor, Mr. Chase's contention
24 that somebody moved the goalposts, Your Honor, nobody moved
25 the goalposts. The court has an e-mail right here. Nowhere

1 in this e-mail did he indicate that he is preserving the
2 statute of limitations.

3 Your Honor, it's our position that this was an
4 active waiver. If you look at my e-mail, I indicated --

5 THE COURT: Do you have a copy of that?

6 MR. WALLACE: Yes, Your Honor. I have a copy.
7 It's the packet that starts with the statute. And after the
8 statute I have got my e-mail correspondence there.

9 And I indicate many of these issues that we are
10 talking about today. I stated on the second sentence "Tom
11 Dougall indicated to me this morning that he has no problem
12 consenting to our amendment, but that he has no intention on
13 appearing at the hearing, as the case is settled with
14 respect to his client."

15 There was no issue of DMT not being aware that the
16 case was settled and that Willow Creek was no longer a party
17 to the action when he consented to the amendment of the
18 complaint. I think that's clear. It's clear in writing,
19 black and white --

20 THE COURT: Okay.

21 MR. WALLACE: -- in the e-mail that we have
22 provided.

23 MR. CHASE: Your Honor, I would refer to the
24 motion filed on May 22nd, 2014. This is the motion that was
25 on the court's docket. It was filed May 22nd, 2014, and I

1 can show it is "plaintiffs, by and through undersigned
2 counsel, move for an order granting leave for plaintiffs to
3 amend their complaint to add Harold Alston and Tymika Alston
4 as parents and guardians of their minor child Jayden Alston
5 as a party plaintiffs to this action pursuant to Rule 15(a)
6 19, 20 and 21," and they show the above ground.

7 It only relates to adding the minor as a party to
8 the case. That is what we consented to. That is not what
9 we got, what he sent to us.

10 And if I have to pull out the correspondence, I
11 certainly will, where I submit that to back to them where I
12 say we will accept it because they changed it. This is not
13 what their motion says. And they then changed who is going
14 to be a primary defendant. That was not their motion. And
15 so that is --

16 THE COURT: Do y'all have a copy of that motion,
17 because --

18 MR. CHASE: I do. I have it right here, Your
19 Honor.

20 MR. WALLACE: And, Your Honor, our position is
21 that -- I mean, this -- this is extremely clear. That
22 motion, which we withdrew based on Mr. Chase's
23 representation, was back in the early part of 2014.

24 With regards to the information when the statute
25 of limitations accrued, he pulled that out of a 2011

1 deposition of our plaintiff.

2 If he was going to bring a motion based on the
3 statute of limitations, he had -- and that amendment wasn't
4 right, he had six months to do so. But, nevertheless, we
5 participated in the continued discovery after the amendment
6 of the complaint. It's our position that this was a clear
7 waiver of the complaint.

8 And I have actually got some case law on that
9 issue, if I may approach.

10 THE COURT: What I'm going to do is I'm going to
11 take this matter under advisement, because there are some
12 real issues here. What I'm going to do is I'm going to let
13 you file briefs within ten days --

14 MR. WALLACE: Yes, Your Honor.

15 MR. CHASE: Yes, Your Honor.

16 THE COURT: -- and I'll rule on it. And you may
17 bring me whatever you need to.

18 MR. CHASE: Thank you, Your Honor.

19 For purposes of it, I'm going to add the
20 correspondence that I sent back to them saying the only way
21 that I will accept this is with these amendments, and they
22 sent it where I was accepting on behalf of all defendants.
23 I was --

24 THE COURT: It's a pretty specific motion was just
25 to add Jayden, and I agree that he should -- that I'm not so

1 sure about the other party, so -- but I'll give you ten days
2 to file your briefs on that.

3 MR. WALLACE: Thank you, Your Honor.

4 MR. CHASE: And, Your Honor, just so I know that
5 the briefs relate to the -- you want the additional
6 briefs --

7 THE COURT: No question, I think that for purposes
8 of the parents that I think the statute of limitations has
9 probably run, but it's really concerning Jayden and those
10 issues, but I think the parents in bringing your guy is a
11 real problem here.

12 MR. WALLACE: And, Your Honor, just to clarify on
13 the record --

14 THE COURT: What y'all are doing is trying to take
15 conversations that happened outside of court to make those
16 part of the court records.

17 MR. WALLACE: Well, Your Honor, we have some case
18 law that support the waiver.

19 THE COURT: Yeah, you all have got a waiver
20 argument.

21 MR. WALLACE: Yes, Your Honor.

22 MR. CHASE: And that's what I wanted to make sure
23 of is what Your Honor is looking for. Is it related to just
24 the waiver issue, or is it that is one of issue that you
25 want to address?

1 THE COURT: That is the main issue.

2 MR. CHASE: Okay.

3 THE COURT: That is the main issue in this case as
4 to whether -- but I think the dates tend to go along with
5 your argument. It's clear dates on this and if you have any
6 law that says that if you replaced a third-party defendant
7 and they are still involved with it, then I will be glad to
8 read that. I'm not sure there is any out there.

9 MR. WALLACE: Yes, Your Honor, a quick question.
10 As it relates to this, just with regard to the parents, or
11 if you made a decision --

12 THE COURT: I think the parents have a real
13 problem, but I will let you argue it.

14 MR. WALLACE: Okay.

15 THE COURT: I think they have got a real problem.

16 MR. WALLACE: But you are not making a position on
17 the minor child at this time?

18 THE COURT: No, I think the minor child, I think
19 they consented that the minor child is actually a party to
20 the matter.

21 MR. WALLACE: Thank you, Your Honor.

22 THE COURT: I mean, he can have his own lawsuit
23 and that's really what I think it's paring down to is that
24 Jayden can go after anybody he wants to --

25 MR. WALLACE: Thank you.

1 MR. CHASE: Submit something?

2 THE COURT: Submit something in ten days, but I
3 will wait and give y'all an opportunity to talk.

4 MR. CHASE: Your Honor, could I ask just one thing
5 for your preferences? Do you want those sent in a -- would
6 you prefer it to be sent by paper?

7 THE COURT: I hate to do that, because I travel so
8 much I need to have the document..

9 MR. CHASE: Send it to your office?

10 THE COURT: In Sumter.

11 MR. CHASE: In Sumter, so that you will have it?

12 THE COURT: Yes.

13 MR. WALLACE: Okay. Thank you, Your Honor.

14 THE COURT: Thank you, gentlemen.

15 (END OF REQUESTED TRANSCRIPT OF RECORD)
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Richland County, South Carolina, on the 18th day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 10, 2019

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

HONORABLE W. YOUNG, Circuit Court Judge

RECEIVED

JUN 21 2019

SC Court of Appeals

Case No. 2019-000148

Tymika Jones Alston and Harold Alston individually
And as Parents and Guardians on behalf of their minor child,
J.A., ... Appellants

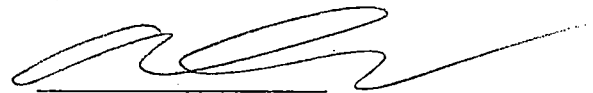
v.

Donald Richard Torres d/b/a DMT Construction Co., Inc.,
L&L Electric, Inc. and Eduardo Moreno d/b/a E.S. Moreno
Construction, Defendants,
Of which Donald Richard Torres d/b/a DMT Construction Co.,
Is the Respondent Respondent

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants and Designation of Matter to be included in
Record on Appeal on Geoffrey Gibbon, Esquire and Helen F. Hiser, Esquire via email at
ggibbon@mgclaw.com and helen.hiser@mgclaw.com respectively.

Respectfully Submitted,



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June 21, 2019