

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2300695

Milton A Gatlin et al
PLAINTIFF(S)

John M Hornbeck, III et al
DEFENDANT(S)

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), SCRCPC; Rule 41(a), SCRCPC (Vol. Nonsuit); Rule 43(k), SCRCPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- 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:

See Page 2

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/21/2019 .

Marla S Gatlin for Marla S Gatlin
 Marla S Gatlin for Marla S Gatlin
 Milton A Gatlin for Milton A Gatlin
 Milton A Gatlin for Milton A Gatlin

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 JUN 24 2019
 SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

This matter comes before the Court upon Defendants' Motion to Dismiss or for Stay of Proceedings and was heard on May 20, 2019. Aimee Leary appeared on behalf of the defendants and Milton Gatlin appeared pro se. In its Motion, Defendants assert that the Plaintiffs did not comply with the Notice provisions of S.C. Code Section 40-59-840 and therefore the action should be dismissed or stayed. The Defendants' Motion is denied on several grounds: (1) A motion to dismiss is generally governed by Rule 12, SCRPC, and requires that such a Motion be filed within 30 days after service of the Summons and Complaint on the Defendant. The Defendants filed this Motion on May 3, 2019. The Complaint was filed on February 7, 2018 and served on February 12, 2018. Defendant filed its initial Answer on March 19, 2018 and since that time, both parties have filed amended pleadings, various Motions and engaged in Discovery and at no time did the Defendants assert a defense based on S.C. Code Section 40-59-840. The Court therefore finds that the defense was waived and cannot raise it as a basis for dismissal at this time. (2) The provisions of S.C. Code Section 4-59-840 applies to an action "arising out of the construction of a dwelling" but the claim against defendant relates to the replacement of siding and roofing on an existing residence. Therefore, the Court finds that this Code section does not apply.

Based on the foregoing, the Defendants' Motion is denied.



Greenville Common Pleas

Case Caption: Milton A Gatlin , plaintiff, et al vs. John M Hornbeck III , defendant,
et al
Case Number: 2018CP2300695
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

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