

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2019-000851

RECEIVED
JUL 03 2019
SC Court of Appeals

Maria Allwin..... Petitioner,

v.

Russ Cooper Homes, Inc., Buffington Homes, L.P., and Shope Reno Wharton, Defendants,

Of Whom, Russ Cooper Associates, Inc. and Shope Reno Warton are the..... Respondents.

Buffington Homes, L.P.,..... Third-Party Plaintiff,

v.

Albrecht Environmental, Inc., All Points Construction, Inc., Patriots Drywall, Inc., Picquet Roofing, Inc., Sprayseal Foam Insulation, and Tischler Und Sohn (USA) Limited,
..... Third-Party Defendants

**REPLY TO RESPONDENT RUSS COOPER ASSOCIATES, INC.'S
RETURN TO PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI**

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STATEMENT OF THE CASE

Petitioner Maria Allwin filed a Petition for Writ of Certiorari to the Supreme Court on May 20, 2019. Respondent Russ Cooper Homes, Inc. (“Respondent”) filed a Return on June 19, 2019. This Reply is submitted by Petitioner in response to Respondent’s Return, and Petitioner respectfully requests the Supreme Court grant Petitioner’s Writ of Certiorari. For additional background information, Petitioner refers the Supreme Court to her Petition.

ARGUMENTS

I. GROUND S EXIST FOR ISSUANCE OF A WRIT OF CERTIORARI.

Petitioner believes that if *Holly Woods Association of Residence Owners v. Hiller*, 392 S.C. 172, 708 S.E.2d 787 (Ct. App. 2011) is good law, then the Trial Court and the Court of Appeals clearly misapplied the law and the issue of whether the statute of limitations applies to some or all of Petitioner’s claim is a question of fact for a jury. If *Holly Woods* is not good law, then Petitioner requests the Supreme Court clarify the issue for all litigants and the citizens of South Carolina..

II. THE RESPONDENT MISSTATED THE FACTS AND MISCONSTRUES THE LAW

To briefly address the arguments of Respondent, they disregard the critical aspects of the holdings in both *Holly Woods* and *McAlhany v. Carter*, 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015) and mischaracterize the evidence that was submitted to the lower court in this case, which is directly relevant to those cases. Both of those issues are discussed below.

In both *Holly Woods* and *McAlhany*, the evidence established that the claimants knew of potential claims more than three (3) years before suit was filed, but in both cases the Court of Appeals held that the extent of what they knew, and what they were claiming, created a question of fact with respect to the statute of limitations. In *McAlhany*, suit was filed in 2011. The claimant testified under oath that he knew that the defendant had failed to do its job properly in 2007, more

than three (3) years before suit was filed. The trial court held that the claim was barred by the statute of limitations because had the claimant investigated the property when he knew the defendants had failed to do their job properly in 2007, he would have discovered the damage that gave rise to the claim. In reversing the trial court, the Court of Appeals noted that the claimant's testimony on the issue of when he knew of the property damage (mold in the home) was conflicting, with the claimant testifying that he discovered mold in both 2007 and also saying he did not discover it until 2009. Given that evidence, including the claimant's own conflicting testimony, the Court of Appeals held that when the statute of limitations began to run was a question of fact for the jury.

In *Holly Woods*, a case which is on all fours with the case before this Court, the claimant HOA brought suit in 2005 against the developer and others. Included were claims for drainage and water management problems at the project. In the circuit court, the evidence established that the HOA had been aware of water and drainage problems as early as 1991, some of which it had paid to repair without bringing any claims. The HOA claimed that it learned of other problems with drainage and water management at the project in 2002, at which time it brought suit for those claims. The critical aspect of *Holly Woods* to this case is that in affirming the circuit court's denial of a motion for summary judgment on the statute of limitations, the Court of Appeals held that, even with undisputed evidence of prior problems and unasserted claims, whether the 2002 claims were time-barred was a question of fact for the jury. That is precisely the issue in this case.


The affidavit of Mrs. Allwin established that despite spending more than \$2,000,000 (on the advice of experts) to repair her house over the years, she is not seeking to recover those repair sums now. That is money that was spent and is gone forever. It also established that she was not aware of the defects and damages that were discovered in 2011, and it is the cost for those repairs

that she seeks to recover now. The affidavit of Clements establishes that the only way he discovered the defects he found in 2011, which Mrs. Allwin has now paid to correct, was to remove all of the siding from the building, and the concrete from the exterior decks, which exposed conditions which could not have been discovered until that deconstruction in 2011. Therefore, just as in *Holly Woods*, whether or not the statute of limitations has run on her claims for the 2011 condition and damages is a question of fact for the jury.

CONCLUSION

Petitioner Maria Allwin respectfully requests that the Supreme Court grant her Petition for a Writ of Certiorari.

Respectfully Submitted:


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July 1, 2019

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Roofing, Inc., Sprayseal Foam Insulation, and Tischler Und Sohn (USA) Limited,
..... Third-Party Defendants

PROOF OF SERVICE

I certify that I have served **Petitioner's Reply to Russ Cooper Homes, Inc.'s Return to Petition for a Writ of Certiorari** on counsel for Respondents by depositing a copy in the United States Mail, First Class postage prepaid, this 1st day of July, 2019, addressed to the following:

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July 1, 2019

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
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Columbia, SC 29211

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Re: *Maria Allwin vs. Russ Cooper Associates, Inc., et al.*
Appellate Case No. 2019-000851

Dear Mr. Shearouse:

Regarding the above-referenced matter, enclosed for filing please find the original and six (6) copies of Petitioner's Reply to Respondent Russ Cooper Associates, Inc.'s Return to Petition for a Writ of Certiorari and an original Proof of Service.

Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & ASSOCIATES, LLC

Robert Lyles Jr / Marcust. Luffin
Robert T. Lyles, Jr.

RTL/cw

Enclosures

cc: Clerk, South Carolina Court of Appeals

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