RECEIVED
JUL 10 2019
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

SC Supreme Court Case No. 2019-000851

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 Wharton 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.

RESPONDENT SHOPE RENO WHARTON'S RETURN TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Paul E. Sperry
S.C. Bar No.: 68441
Tyler P. Winton
S.C. Bar No.: 77877
E-Mail: psperry@carlockcopeland.com
twinton@carlockcopeland.com
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307
Counsel for Shope Reno Wharton

TABLE OF CONTENTS

COUNTER-STATEMENT OF THE ISSUE ON APPEAL 1

COUNTER-STATEMENT OF THE CASE 1

ARGUMENT 2

I. A WRIT OF CERTIORARI IS NOT WARRANTED. 2

II. PETITIONER'S ELECTION TO ONLY PURSUE DAMAGES AFTER 2011 DOES NOT ALTER THE APPLICATION OF THE STATUTE OF LIMITATIONS. 2

III. THE COURT OF APPEALS RELIED ON APPROPRIATE AND APPLICABLE LAW IN AFFIRMING THE TRIAL COURT'S ORDER. 5

A. *Dean* and *Barr* Apply 5

B. *Holly Woods* and *McAlhany* are Inapplicable. 7

IV. PETITIONER HAS FAILED TO RAISE A QUESTION OF FACT WITH RESPECT TO THE STATUTE OF LIMITATIONS. 10

V. THE LOWER COURTS CORRECTLY APPLIED THE LAW ON THE STATUTE OF LIMITATIONS. 11

VI. THE LOWER COURTS APPLIED THE CORRECT STANDARD OF REVIEW AND VIEWED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO PETITIONER. 12

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Statutes

S.C. Code Ann. § 15-3-530 (2005).. 3

Cases

Barr v. City of Rock Hill,
330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998).................................... 5, 6, 8

Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000).................................. 14

Burgess v. Am. Cancer Soc., S.C. Div., Inc.,
300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989).. 4, 9

Dean v. Ruscon Corp.,
321 S.C. 360, 468 S.E.2d 645 (1996).. 3, 4, 5, 6, 7

Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)......................... 13

Grillo v. Speedrite Prods., Inc.,
340 S.C. 498, 532 S.E.2d 1 (Ct. App. 2000).. 4, 5, 8, 9

Holly Woods Association of Residence Owners v. Hiller,
392 S.C. 172, 708 S.E.2d 787 (Ct.App.2011)...................................... 7, 8

Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.,
377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008).. 3

Johnston v. Bowen, 313 S.C. 61, 437 S.E.2d 45 (1993).................................... 13

Kelly v. Logan, Jolley, & Smith, L.L.P.
383 S.C. 626, 682 S.E.2d 1 (Ct. App. 2009)... 3

McAlhany v. Carter,
415 S.C. 54, 781 S.E.2d 105 (Ct.App.2015).. 7, 9

Moates v. Bobb, 322 S.C. 172, 470 S.E.2d 402 (Ct. App. 1996)..............................3

Rumpf v. Mass. Mut. Life Ins. Co.,
357 S.C. 386, 593 S.E.2d183 (Ct. App. 2004)...................................... 3, 5, 10

Rules

242(b), SCACR.. 2

COUNTER-STATEMENT OF THE ISSUE ON APPEAL

1. Did the Court of Appeals err in affirming the trial court's grant of summary judgment to Respondent Shope Reno Wharton based on the statute of limitations?

COUNTER-STATEMENT OF THE CASE

Petitioner is the owner of a beach home on Kiawah Island. Over 25 years ago, Respondent Shope Reno Wharton (hereinafter "SRW") served as the architect of record for the original construction of Petitioner's beach home. (R.p.38). Construction of the home was completed on or about May 18, 1994. (R.p.295, lines 8-11). However, Petitioner did not bring her claim against Respondent until over twenty years after the last involvement by Respondent and more than 20 years after the beach home was completed. (R.pp.38-41). Moreover, Petitioner did not initiate her claim within three years after she, through counsel, put Respondent on notice of "significant deficiencies" relating to the "design/installation" of several key construction components which purportedly led to "significant damage." (R.pp.1469-70).

In lieu of a detailed discussion of this matter's extensive factual background, and out of respect for the Court's time and resources, Respondent relies on the factual recitation contained in its Memorandum in Support of its Motion for Summary Judgment submitted to the trial court, it's Final Brief to the Court of Appeals, and the facts outlined by the Court of Appeals' Opinion.

The undisputed facts in this matter justifies the trial court's Order and the Court of Appeals' Opinion affirming the dismissal of Respondent due to Plaintiff's failure to initiate its claim within the applicable statute of limitations.

ARGUMENT

I. A WRIT OF CERTIORARI IS NOT WARRANTED.

Petitioner contends this case presents a unique set of facts that conflicts with settled law. However, as detailed by the trial court and Court of Appeals, this matter falls squarely within established precedent concerning the statute of limitations. As will be detailed throughout this Return, the undisputed evidence tells the history of continuous and systematic notice sufficient to trigger the statute of limitations. The history and notice culminated in Petitioner placing Respondent on notice of a potential claim more than three years prior to filing her complaint against Respondent. The issues presented to and decided by the unanimous Court of Appeals panel are not novel, conflicting with precedent, of constitutional importance, nor do they raise any federal questions. See Rule 242(b), SCACR. Rather, this Petition seeks to challenge a rather straightforward Opinion affirming the inescapable conclusion that Petitioner's claims are time barred.

II. PETITIONER'S ELECTION TO ONLY PURSUE DAMAGES AFTER 2011 DOES NOT ALTER THE APPLICATION OF THE STATUTE OF LIMITATIONS.

Petitioner contends by virtue of her decision to only seek damages from 2011 forward, i.e. within the applicable statute of limitations period, this decision in turn renders Respondents' statute of limitations defense futile.[1] To further bolster this erroneous point, Petitioner asserts her claims can only be barred by the statute of limitations if she had notice of "all of the defects" discovered by her most recent batch of experts before their 2011 investigation. In essence, by drawing a demarcation line at or around 2011, Petitioner believes she can remedy the staleness of her claims by limiting her recovery. Petitioner contends she can thus disregard the years of

[1] Interestingly, this argument was not included in Petitioner's Final Brief or Final Reply Brief to the Court of Appeals.

actual and constructive notice of a claim by claiming she was not fully aware of every issue. This line of argument is in direct contrast to the law in South Carolina.

The statute of limitations period for a construction defect case is three years. S.C. Code Ann. § 15-3-530. Statutes of limitations are not simply technicalities. Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "On the contrary, they have long been respected as fundamental to a well-ordered judicial system." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct. App. 2008). "Statutes of limitations embody important public policy concerns as they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009). "One purpose of a statute of limitations is "to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his [or her] rights." Id. The Statute of limitations also works "to protect potential defendants from protracted fear of litigation." Id. (internal citation omitted). "Statutes of limitations are, indeed, fundamental to our judicial system." Id. (internal citation omitted).

Under the "Discovery rule," the statute of limitations period begins to run on a cause of action when it "reasonably ought to have been discovered." Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). "Under this rule, a cause of action accrues for purposes of the statute of limitations when a plaintiff has notice that he might have a remedy for a harm. Rumpf v. Mass. Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d183, 187 (Ct. App. 2004), citing Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party "either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Rumpf, 357 S.C. at 394, 593 S.E.2d at 187. Put another way, the statute of limitations commences not simply due to knowledge, but by

knowledge of facts, diligently acquired, sufficient to put a person on notice of the existence of a cause of action against another. Grillo v. Speedrite Prods., Inc., 340 S.C. 498, 503, 532 S.E.2d 1, 3 (Ct. App. 2000).

The commencement of the statute of limitations is not triggered by seeking the advice of counsel, once a full-blown theory of recovery is developed, or even when a person obtains actual knowledge of a potential claim or the facts giving rise thereto; rather, the statute of limitations commences when the party knows or should know of a claim under an objective analysis. Grillo, 340 at 503, 532 S.E.2d at 3; Burgess v. Am. Cancer Soc., S.C. Div., Inc., 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989). Moreover, "the fact that the injured party may not comprehend the full extent of the damage is immaterial." Dean, 321 S.C. at 364, 468 S.E.2d at 647 (1996).

The facts of this matter, as detailed by the trial court and Court of Appeals, provide an uncontested narrative of systematic and continuous notice of persistent and pervasive damage to Petitioner's beach home beginning as early as 1999. These known defects led Petitioner to retain several experts and contractors to inspect and implement partial repairs to the beach home. However, despite having actual and constructive knowledge of said defects, Petitioner did the very thing the statute of limitations seeks to guard against – she sat on her legal rights.

Now, at this late date, Petitioner contends by limiting her damages to those incurred after 2011 she is somehow immune from years of continuous notice of a potential claim against Respondent. The statute of limitations does not sit idly by as a plaintiff works out the details of a claim or until every issue is developed, as Petitioner suggests. Rather, the law is abundantly clear commencement of the statute of limitation is triggered when a plaintiff has notice she might have a remedy for harm and "knows or should know of a claim under an objective analysis."

See Rumpf, 357 S.C. at 394, 593 S.E.2d at 187; Grillo, 340 at 503, 532 S.E.2d at 3. Deciding to only pursue damages limited to a time period in an effort to skirt the time bar does not erase Petitioner's actual and constructive knowledge of a potential claim for design related damages – which that developed as early as 1999 and continued thereafter. Nor does it erase the fact Plaintiff put Respondent on notice of a potential claim more than three years prior to filing a claim against Respondent. (R.pp.1469-70). Accordingly, Respondent respectfully submits the Court of Appeals' affirmance of the trial court's order was justified and review of the same by this Court is unnecessary.

III. THE COURT OF APPEALS RELIED ON APPROPRIATE AND APPLICABLE LAW IN AFFIRMING THE TRIAL COURT'S ORDER.

a. Dean and Barr Apply.

Petitioner takes issue with the trial court and Court of Appeals' reliance on Dean v. Ruscon, 321 S.C. 360, 468 S.E.2d 105 (1996) and Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998) and suggests alternative cases should have guided a decision in her favor. However, the Dean and Barr decisions present similar and applicable factual scenarios and legal analysis that guided the lower courts to the proper decision.

Petitioner was admittedly aware of certain issues with her beach home outside the statute of limitations period, but now contends her claims brought in the litigation are different than those previously known issues. In other words, Petitioner is only suing for issues she was not aware of prior to 2011. Under Petitioner's reasoning, this argument creates a question of fact. Respondent respectfully submits this distinction without a difference does not render Dean and Barr inapplicable, but in fact bolsters their applicability to this matter. This argument was squarely addressed by Dean and Barr.

In Dean, plaintiff noticed a crack in the facade of her structure that manifested following pile driving taking place nearby in 1984. Dean, 321 S.C. at 362, 486, S.E.2d at 646-47. Dean had the building inspected and was admittedly aware the crack was a result of the pile driving by defendant Ruscon. Id. In 1985, further pile driving occurred and the crack grew to the extent the structure was deemed structurally unsound. Id. The trial court determined and this Court agreed the statute of limitations began to run when Dean initially discovered the first crack. The Court held, "Because Dean had notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date. Dean's subsequent failure to act with reasonable diligence in pursing such a claim is no reason to toll the statute of limitations until such time as further damage evolved." Dean, 321 S.C. at 365, 486, S.E.2d at 647. (emphasis added). Further, this Court held, "the fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Dean, 321 S.C. at 366, 486, S.E.2d at 647.

In Barr, the Court of Appeals affirmed the granting of summary judgment for a defendant based on the statute of limitations. The Court determined several termite inspection reports noting moisture in the crawl space of plaintiffs' residence was sufficient notice of water damage to trigger the running of the statute of limitations. Barr, 330 S.C. at 645-46 640 S.E.2d at 160.

Both Dean and Barr involve plaintiffs with notice of issues sufficient to put them of notice of claim. The fact those plaintiffs did not comprehend the extent of the damages or were caught off guard when subsequent damages were worse than first suspected proved unpersuasive. In the case at hand, Petitioner seeks to separate her damages into two classes – pre-2011 and post-2011. Petitioner contends she should be able to pursue the post-2011 damages despite admittedly having notice of design and construction issues pre-2011 – and thus

being aware of a claim against Respondent. Accepting Petitioner's argument would be tantamount to this Court finding Dean's discovery of the first façade crack was wholly separate from the subsequent crack that ultimately rendered the structure unsound. This Court explicitly rejected that argument in Dean and should do so here.

Simply put, the statute of limitations does not deal in the artificial classifications of claims suggested by Petitioner, but rather, applies an objective analysis of when a claim accrues. Regardless of what legal gymnastics Petitioner seeks to exercise, the fact remains Petitioner was fully aware of issues with her beach home sufficient to put her on notice of a potential claim against Respondent more than three years before filing suit. The notion Petitioner did not fully comprehend the extent of the damages is immaterial. See Dean, 321 S.C. at 363-64, 468 S.E.2d at 647 (stating the fact that the injured party may not comprehend the full extent of the damage is immaterial). Despite arguing the full extent of the issues were not fully ascertainable without a complete de-clad of the home, it would be error for a court to disregard the uncontested evidence Petitioner had long been on notice of a claim against Respondent – particularly in light of Petitioner's efforts to place Respondent on notice of a claim by her February 2011 letter. (R.pp.1469-70).

b. Holly Woods and McAlhany are Inapplicable.

In an effort to side-step the holdings of Dean and Barr, Petitioner points to Holly Woods Association of Residence Owners v. Hiller, 392 S.C. 172, 708 S.E.2d 787 (Ct.App.2011) and McAlhany v. Carter, 415 S.C. 54, 781 S.E.2d 105 (Ct.App.2015). In Holly Woods, the Court of Appeals considered evidence presented by Plaintiffs that drainage problems in a neighborhood identified in 2002 and formed the basis of the litigation were different than problems found in

other parts of the neighborhood addressed several years prior. Holly Woods, 385 S.C. at 178-85, 682 S.E.2d at 791-94.

When comparing Holly Woods and the case at hand, the differences and nuances are inescapable. While Petitioner has put forth her own affidavit and that of her expert Ross Clements, the affidavits fail to create an issue of fact, nor do they erase the years Petitioner was aware of a potential claim against Respondent. For starters, and as aptly pointed out in co-respondent Russ Cooper's Return to the Petition, the affidavits presented by Petitioner reveal Mr. Clements' investigation was intended to determine the "root cause" of the defects Petitioner had long been aware of. (R.p178; p.192). While the Affidavits note the "nature and pervasiveness" of the defects found in the 2011 investigation were previously unknown, such affirmation is not tantamount to Petitioner being unaware of defects or her potential claim against Respondent, nor does it serve as evidence the defects discovered in 2011 are unrelated to those Petitioner was aware of for many years prior. No such evidence has been presented.

As previously discussed, the statute of limitations is not tolled until the full extent of the issues or damages are known to a plaintiff. See Barr, 330 S.C. at 645, 500 S.E.2d at 160. Rather, the clock of the statute of limitations begins ticking when a plaintiff know or should know of a potential claim. See Grillo, 340 S.C. at 503, 532 S.E.2d at 3. In this instance, Petitioner was tasked with filing suit against Respondent within three years of notice of a potential claim of design or design related services. That clock began ticking long before April 2011 – particularly given the issues Petitioner began experiencing with her home date back as far as 1999.

Petitioner also claims the Court of Appeals failed to properly consider the McAlhany case. In McAlhany, plaintiff filed suit for property damage and a personal injury claim relating

to mold found in his residence. McAlhany, 415 S.C. at 57-62, 781 S.E.2d at 107-110. The Court of Appeals overturned the trial court's summary judgment order finding a question of fact concerning plaintiff's notice of an alleged defect was created by plaintiff's inconsistent testimony. Id., 415 S.C. at 63-66, 781 S.E.2d at 110-112. In discussing plaintiff's personal injury claim, the court discussed Dean and determined the personal injury claim created enough of a factual difference to distinguish the cases. Id., 415 S.C. at 66-69, 781 S.E.2d at 112-114. The McAlhany opinion does not discredit the analysis in Dean. Moreover, the same factual distinctions in McAlhany and Dean also renders McAlhany inapplicable to the present case as the record is clear that Petitioner was full aware of a potential claim against Respondent long before her claims were filed. Accordingly, the lower courts did not err in their reliance on Dean nor did they err in their analysis of McAlhany.

Petitioner seeks to bend the facts of the case toward the nuances found in Holly Woods and McAlhany; however, the undisputed facts established by the trial court and detailed by the Court of Appeals paint a picture far more in line with Dean and Barr. While the full extent of the damages may well have been undiscoverable absent a complete de-clad of her beach home, that point alone does not change the fact Petitioner was on notice of a potential claim against Respondent more than three years before filing suit. As correctly determined by the Court of Appeals, Petitioner's knowledge of a claim against Respondent was on full display in its letter to Respondent detailing her claim for design deficiencies and resulting damages. (R.pp. 1469-70). Petitioner's efforts to disregard the years of notice and her actions in response cannot, and should not, be disregarded simply because Petitioner claims she did not know the "root cause" of the issues experienced. See Grillo, 340 at 503, 532 S.E.2d at 3; Burgess v. Am. Cancer Soc., S.C. Div., Inc., 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989) (stating commencement of

the statute of limitations is not triggered by seeking the advice of counsel, once a full-blown theory of recovery is developed, or even when a person obtains actual knowledge of a potential claim or the facts giving rise thereto; rather, the statute of limitations commences when the party knows or should know of a claim under an objective analysis).

IV. PETITIONER HAS FAILED TO RAISE A QUESTION OF FACT WITH RESPECT TO THE STATUTE OF LIMITATIONS.

Petitioner argues a question of fact exists concerning her knowledge of the claims she asserts now (as opposed to those she may have asserted much earlier). Once again, Petitioner is seeking to separate her claims into different classifications (pre-2011 and post-2011); however, the classifications are immaterial in view of the statute of limitations and when Petitioner was aware of a potential claim against Respondent.

Petitioner seeks to side-step the statute of limitations and resurrect her expired claims by only seeking recovery of damages incurred within three years of prosecuting her claim. This argument ignores the settled law on the statute of limitations and the discovery rule. As discussed hereinabove, the statute of limitations is not premised on a subjective analysis of when all facts or issues are known by a plaintiff. Rather, the discovery rule employs an objective analysis focused on when an injured party "either knows or should have known by the exercise of reasonable diligence that a cause of action arises. . . ." Rumpf, 357 S.C. at 394, 593 S.E.2d at 187. "Under this rule, a cause of action accrues for purposes of the statute of limitations when a plaintiff has notice that he *might* have a remedy for a harm." Id. (emphasis added).

Accordingly, Petitioner's effort to only seek recovery of damages incurred post-2011 does not erase Petitioner's notice of a claim against Respondent that accrued before 2011. Petitioner knew or should have known as a result of the litany of open and obvious defects and

reports of issues that a potential claim existed against Respondent as early as 1999. The decision to only pursue damages purportedly incurred three year before filing suit does not change that fact. The key for the statute of limitations is not when Petitioner was aware of the issues discovered in 2011, but when – under an objective analysis – Petitioner should have been aware of a potential claim for design and construction related issues with her beach home. The trial court and Court of Appeals correctly applied the law to the facts at hand and properly disposed of Petitioner's time-barred claims.

V. THE LOWER COURTS CORRECTLY APPLIED THE LAW ON THE STATUTE OF LIMITATIONS.

Petitioner takes issue with the Court of Appeals' reliance on Petitioner's retention of counsel in 2009, and its conclusion the statute of limitations ran, at the latest, in 2012. The irony of this argument should not be lost on the Court. By finding the statute limitations expired at the latest in 2012, the Court of Appeals is doing nothing more than viewing the facts in the light most favorable to Petitioner as the record makes clear the statute of limitations lapsed long before 2012.

The Court of Appeals did not rely solely on Petitioner's retention of counsel to reach its conclusion. In addressing the letter from counsel putting Respondent on notice of a claim in February 2011, the court found Petitioner "had notice of her potential claims many years before her counsel sent the 2011 letter." The Court of Appeals also placed weight on the 2011 letter to Respondent that detailed "significant deficiencies . . . relate[d] to the design/installation" of various components that led to "significant damage" and was sent with the purpose of notifying Respondent of a potential claim.

The Court of Appeals also aptly recounted between 1999 and 2002 Petitioner was notified by houseguest Robert Cowan of numerous defects in the roof, chimneys, exterior walls, windows, doors, patio and basement, as well as a litany of interior issues. Further the Court of Appeals properly considered the evidence of the various experts and professionals retained between 1999 and 2011 the investigate and remedy the issues with the beach home. The Court of Appeals also relied on the fact professionals retained by Petitioner recommended she consult with counsel about the issues with the home despite prior repairs. (R.p.746, lines 13-14; p.748, line 4-p.749, line 20; p.750, line 20-p.751, line 2; p.1381).

Petitioner's criticism of the Court of Appeals' reference to the retention of counsel in 2009 was improper and in Respondent's view meritless. The Court of Appeals did not reach its conclusion in a vacuum or rely solely on the retention of counsel as the linchpin to their ultimate conclusion. Rather, the Court of Appeals Opinion presents a significant collection of facts to support their decision the statute of limitations expired at the latest in 2012 and likely long before.

VI. THE LOWER COURTS APPLIED THE CORRECT STANDARD OF REVIEW AND VIEWED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO PETITIONER.

Petitioner contends the Court of Appeals, as well as the trial court, failed to consider the evidence in the light most favorable to the nonmoving party. Specifically, Petitioner asserts the lower courts did not consider favorable portions of the CSA report (R.pp.000017; R.pp.001155-001171) that noted "slight interior negative pressure" and "air infiltration issues" that are outside the realm of the claims against Respondent. In addition, Petitioner argues the Court of Appeals failed to properly consider "favorable" evidence found within the October 2008 report by Ms.

Stein that noted a "major contributing factor" to the humidity in the home was the "40-ton chiller system" which is unrelated to the claims against Respondent. (R.pp.001440-001449).

In order to defeat summary judgment the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 518-19, 595 S.E.2d 817, 822 (Ct. App. 2004). See also Johnston v. Bowen, 313 S.C. 61, 65, 437 S.E.2d 45, 47 (1993) (stating when there is no conflicting evidence, or when only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that she has a claim is a matter of law to be decided by the trial court).

The "favorable" evidence Petitioner contends creates a question of fact is not dispositive of the issues presented. The key focus of the case is the determination of when Petitioner was aware she may have a claim against Respondent. While Petitioner's experts may well have presented opinions of unrelated contributing factors to issues within her beach home (i.e. the mechanical system), this alone does not create a question of fact.

The purported "favorable" evidence undergirding Petitioner's argument is irrelevant to the issue at hand. The CSA report recited instances of "ongoing water intrusion around windows, at roof valleys, and at several sub-grade locations." The CSA report calls for the removal of certain windows and portions of the roof to investigate the source of water leaks. (R.pp.1157-61, p.1164). Accordingly, even if the CSA report explained some issues may be related to the mechanical system, the undisputed evidence – as detailed by the Court of Appeals – is the CSA report placed Petitioner on notice of a potential claim against Respondent. Further, the Stein report that referenced the HVAC system also presents a list of "numerous" defects which Stein deemed were construction related and were time bared by the statute of limitations

(R.p.1449). It also bears mentioning the CSA and Stein reports followed years of notice of issues with the home from Cowen, Gamble and others.

Petitioner's squabble with the Court of Appeals' reliance on "selective evidence" is simply a by-product of a case devoid of favorable facts leaving no question for jury determination. The Court of Appeals consideration and inclusion of facts Petitioner deems unfavorable and the purported disregard of "favorable" facts is not indicative of the Court of Appeals' disregard for the proper summary judgment standard of viewing facts in the light most favorable to the non-moving party. Rather, the Court of Appeals was presented with an abundance of uncontested evidence that, even when viewed in the light most favorable to Petitioner, failed to create a reasonable inference necessary to survive summary judgment. Moreover, viewing evidence in the light most favorable to the nonmoving party does not mean a court should turn a blind eye to unchallenged evidence, simply because it may not benefit the party opposing the motion. A court "cannot ignore facts unfavorable to [the non-moving] party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000).

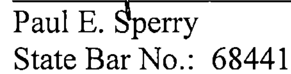
Accordingly, Petitioner's disagreement with the facts relied upon and cited by the Court of Appeals does not equate to an instance of disregarding the appropriate standard of review for a summary judgment motion. The Court of Appeals evaluated this case under the proper standard and correctly determined no question of fact for a jury existed. Accordingly, the Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits the Court of Appeals' affirmance of the trial court's grant of summary judgment was proper and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP



By:____________________________

Paul E. Sperry
State Bar No.: 68441

Tyler P. Winton
State Bar No.: 77877

Counsel for Respondent Shope Reno Wharton

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

RECEIVED
JUL 10 2019
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

SC Supreme Court Case No. 2019-000851

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 Wharton 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

CERTIFICATE OF SERVICE

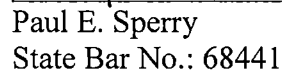
I hereby certify that I have this day served a copy of the within and foregoing **Respondent Shope Reno Wharton's Return to Petitioner's Petition for Writ of Certiorari** upon all parties to this matter via electronic mail and/or U.S. Mail, pre-paid postage properly addressed to counsel of record as follows:

Dean Best, Esq.
Best Honeycutt, P.A.
P.O. Box 13466
Charleston, SC 29422
Email: dean@besthoneycutt.com
Attorney for Respondent Russ Cooper Associates, Inc.

Robert T. Lyles, Jr., Esq.
Lyles & Associates, LLC
342 E. Bay Street
Charleston, SC 29401
Email: rtl@lylesfirm.com
Attorney for Petitioner Maria Allwin

July 8, 2019

CARLOCK, COPELAND & STAIR, LLP



By:________________________
Paul E. Sperry
State Bar No.: 68441

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307