

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Civil Action No. 2018-CP-23-03382

John M. Hine and Maria W. Hine,)

Plaintiffs,)

vs.)

Timothy M. McCrory, individually and as)

agent, Michael P. McCrory, Seabrook L.)

Marchant, and The Marchant Company,)

Defendants.)

ORDER

RECEIVED

AUG 15 2019

SC Court of Appeals

This matter is before the Court upon Defendants' Motion for Summary Judgment based upon the fact that Plaintiffs are time barred from bringing the present action. The Court heard oral arguments on June 18, 2019 and reviewed respective submissions, case law and statutory provisions. For the reasons set forth below, Defendants' motions are GRANTED.

I. Facts

This case arises from the sale of a single family home located in Greenville, South Carolina, that occurred on or about July 1, 2008. Agent served as the listing agent for the single family home at issue. Agent was employed by Broker and Company while serving as the listing agent for the single family home at issue. Agent, Timothy McCrory and his brother Michael P. McCrory owned the home. Plaintiffs allege that Agent knew or should have known that the single family home at issue had termite damage that had not been repaired and that the sellers of the property had misrepresented this on the property disclosure form. On April 27, 2012 Plaintiff, John M. Hine who is also a licensed attorney in South Carolina was removing shoe molding around the baseboard in the front bedroom of their home. Once that was removed he discovered extensive damage to the wood studs behind the drywall. It was discovered once a contractor was called that the rim

joists were also damaged. He wrote a letter to Defendant Seabrook Marchant of The Marchant Company seeking damages and alleging that the termite damage should have been noted by their former agent, Tim McCrory when he and his brother performed work in the basement as noted on the disclosure statement. *See Exhibit A.* The defendants denied knowledge of any undisclosed termite damage. On July 9, 2012, Attorney Hine sent a demand letter seeking damages of \$4,000., *Exhibit B.* There was some discussion back and forth and Attorney Hine ultimately decided not to pursue it. *Exhibit C, John Hine deposition, pg. 28 lines 12-14.* Plaintiff Hine apparently failed to follow-up with this claim within the appropriate statute of limitations and admitted so during his deposition. When asked “. . . why aren’t you seeking recovery for that work?” he responded “I don’t know that I have the evidence to prove that, and I don’t know that I’m still entitled to it under the statute of limitations.” *Id, pg. 24 lines 14-18.*

Plaintiff continued with renovations to his home, he remodeled a hallway bathroom without incident and then on or about February 3, 2018, while remodeling the master bathroom, he discovered additional termite damage to the subject property and he brought the present litigation on June 18, 2018. During this discovery he claims to have uncovered sheetrock in the stairwell where two 2X4’s were sistered between a wood member. The 2X4’s had a bar code stamp with a date of September 7, 2005 which was the date that the McCrory brothers purchased the home. Plaintiffs’ now claim that this should have been disclosed to them and therefore is the basis for their present litigation. The McCrory brothers were aware of a sheetrock contractor investigating the stairwell to see if the height could be raised but deny noticing any unrepaired termite damage nor were they present when the investigation into the stairway ceiling occurred. The Defendants are not aware of when the 2x4’s with the date stamp was placed at the home nor if it was placed there during their ownership.

Plaintiffs' Amended Complaint alleges the following causes of action against the McCrory brothers, Broker and Company: (1) fraud and misrepresentation; (2) conversion; (3) violation of the South Carolina Residential Property Condition Disclosure Act; (4) violation of S.C. Code Ann. § 40-57-137; (5) negligence; (6) negligent hiring, training, supervision and retention; (7) unjust enrichment; (8) unfair trade practices; and (9) breach of the covenant of good faith and fair dealing.

II. Legal Standard

“Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations.” *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct.App.2014), *cert denied*. “An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC.” *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000), *holding modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). Summary judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Id.* (quoting Rule 56(c), SCRPC). “Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* “Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” *Id.* “In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *Id.*

III. Reasoning

The Defendants specific grounds for their Motion are that Plaintiffs failed to commence this lawsuit within the applicable statute of limitations. There are no genuine issues of material fact relating to the time of the first discovery of the unrepaired termite damage by Plaintiffs in April of 2012.

The undisputed evidence shows that Plaintiffs either knew or should have known about the unrepaired termite damage on or about April 27, 2012 when Plaintiff John Hine wrote a letter to the Broker and Company, dated May 14, 2012, informing them of his discovery of unrepaired termite damage throughout the property. This letter also notes that the property disclosure form completed by the sellers was not accurate with regards to the unrepaired termite damage.¹ Plaintiffs also hired a contractor to inspect the property who found additional unrepaired termite damage.

Accordingly, as early as April 27, 2012, Plaintiffs knew or should have known that there was unrepaired termite damage that was not disclosed to them during the process of purchasing the property. The statute of limitations for Plaintiffs' causes of action is three years² and expired on April 27, 2015. Plaintiffs did not file this lawsuit until June 18, 2018, almost three years after the statute of limitations expired.

The undisputed facts show that Plaintiffs failed to commence this action within the applicable statute of limitations; accordingly, their claims must be dismissed. The Plaintiff is now attempting to make the argument that the first attempt to recover for termite damages was abandoned but now he has uncovered subsequent information to further his claim against the defendants. The statute of limitations does not purport to destroy or extinguish a cause of action,

¹ This letter is attached to this Order as Exhibit "A" and Plaintiff has admitted that he wrote this letter.

² S.C. Code Ann. § 15-3-530 provides a three year statute of limitations for Plaintiffs' claims. *See Cline v. J.E. FaulknerHomes, Inc.*, 359 S.C. 367, 370, 597 S.E.2d 27, 29 (Ct. App. 2004) (three-year statute of limitations for negligence claims); *ABN Amro Mortg. Grp., Inc. v. SAJJ, LLC*, Civil Action No. 7:05-1720-RBH, 2007 WL 840342, at *5 (D.S.C. March 15, 2007) (three-year statute of limitations for negligent misrepresentation claims); and *Moore v. Benson*, 390 S.C. 153, 160, 700 S.E.2d 273, 277 (Ct. App. 2010) (fraud action "is governed by a three-year statute of limitations period").

but simply to close the doors of the Courts to a suitor who undertakes to bring his suit upon such cause of action after the lapse of the prescribed period. *Jackson v. Plyler (S.C.1893) 38 S.C. 496, 17 S.E. 255, 37 Am. St. Rep. 782*. The fundamental test in determining whether a cause of action has accrued is whether the party asserting the claim can maintain an action to enforce it. *Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781*. Plaintiffs could have filed their suit in 2012.

Plaintiffs having missed the statute of limitations is now claiming that he has found additional evidence in a different location that allows him to start the clock over again. This novel argument is not supported by case law. A cause of action accrues at the moment when the Plaintiff has a legal right to sue on it, *Id.* Plaintiffs are claiming that the property disclosure statement was misrepresented. This was true when they wrote the demand letter in July of 2012 and it is the same with the current suit filed in 2018.

Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for the claims asserted in this action. Under the discovery rule, the statutory period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence. *Smith v. Smith, 291 S.C. 420, 426, 354 S.E.2d 36, 40 (1987)*. Under this objective test, one is charged with discovery when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim might exist. *Austin v. Conway Hosp., Inc. 292 S.C. 334, 339, 356 S.E.2d 153, 156 (Ct. App. 1987)*. One policy behind the statute of limitations is the protection of a defendant from claims where it might be difficult to disprove if not brought until after relevant evidence has been lost and witnesses have become unavailable. Plaintiffs knew a claim existed when it discovered termite damage in an area that was alleged to have been renovated by Defendants, therefore the statute began to run in 2012.

IV. Conclusion

IT IS, THEREFORE, ORDERED THAT, Plaintiffs are barred from pursuing their claims against Defendants' based upon the running of the Statute of Limitations. Defendants' Motions for Summary Judgment are granted.

IT IS SO ORDERED.

ROBIN B. STILWELL
JUDGE, THIRTEENTH JUDICIAL CIRCUIT

July ____, 2019

Greenville, SC



Greenville Common Pleas

Case Caption: John M Hine , plaintiff, et al vs. Timothy M McCrory , defendant, et al
Case Number: 2018CP2303382
Type: Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158

Reply to: Columbia
DAnderson@RichardsonPlowden.com
Direct: 803-576-3702

July 24, 2019

Honorable Paul B. Wickensimer
Greenville County Clerk of Court's Office
305 E. North Street
Greenville, SC 29601

Re: John M. Hine and Maria W. Hine v. Timothy M. McCrory, individually and as agent, Michael P. McCrory, Seabrook L. Marchant, and The Marchant Company
Case No.: 2018-CP-23-03382
File No.: 101.02875

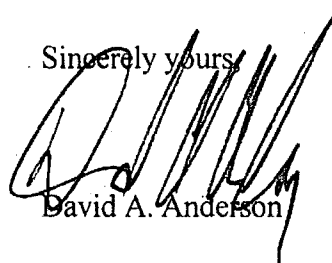
Dear Mr. Wickensimer:

I represent the Defendants Timothy M. McCrory, Seabrook Marchant and The Marchant Company in the above referenced matter. Judge Robin B. Stilwell filed an Order on July 23, 2019 at 2:47PM granting Summary Judgment. The Order references three attachments but they were not filed with the ECF submission. Judge Stillwell indicated that he was unable to attach the exhibits and asked that I coordinate with your office to have the three exhibits attached as referenced in the Courts order. I am attaching those exhibits A, B, and C electronically. Should you need any further information regarding this request please let me know.

By copy of this correspondence I am notifying Plaintiffs' counsel of record pertaining to this request.

With kind regards, I am

Sincerely yours,



David A. Anderson

DAA/cml
Enclosures

Cc: John Hine, Esquire (via email)
Alexandre N. MacClenahan, Esquire (via email)
Chase Harbin, Esquire (via email)

The Hine Law Firm, LLC

John M. Hine
LL. M. in Taxation

Post Office Box 17095
Greenville, SC 29606
www.hinelawfirm.com
jhine@hinelawfirm.com

870 Cleveland St., Unit 1B
Greenville, SC 29601
Telephone (864) 331-0875
Fax (864) 331-8646

May 14, 2012

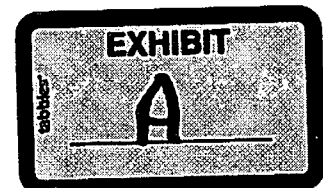
Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

Re: Property located at 416 Leyswood Drive

Dear Mr. Marchant:

I purchased 416 Leyswood Drive, Greenville, SC 29615 (the "Property") on July 1, 2008 from Michael and Timothy McCrory (collectively "Sellers"). Timothy was also the Sellers' Agent for the transaction and was employed by The Marchant Company (the "Company") at the time. Sellers signed a State of South Carolina Residential Property Condition Disclosure Statement on May 14, 2008 (the "Disclosure"). Paragraph 10 of the Disclosure indicated that there was no present infestation or damage which had not been repaired from past infestation of wood destroying insects or organisms. The comments to Paragraph 13 stated that "[t]he 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock."

On April 27, 2012 I removed the shoe molding around the baseboard in the bedroom on the front corner of the house in order to paint the baseboards. As I was removing the shoe molding, I noticed that a large gap formed as the molding got closer to the exterior corner of the house. Upon further inspection it was discovered that some sort of caulk or silicone had been injected into the gap and painted to make it less noticeable. Once the shoe molding had been removed I discovered extensive damage to the wood studs behind the dry wall. A contractor was called in to further inspect the damage and it was discovered that the rim joists were damaged too.



00010

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

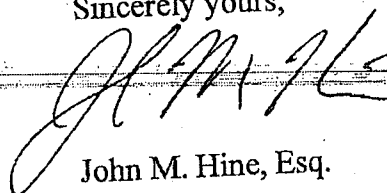
As a result of the damage discovered in the upstairs bedroom, the finished ceiling in the room of the basement located directly below the bedroom had to be removed, along with the soffit and ductwork located in that portion of the basement. As the repairs were being completed further damage was uncovered along a double joist that ran above a cinder block wall as well as damage to the headers of both windows in the upper bedroom.

This letter is being sent to you as a result of Timothy's status as the Seller's Agent and his employment by you. When the work was done in the basement as noted in Paragraph 13 of the Disclosure, the damage would have been discovered and subsequently was required to be disclosed. As a result of the failure to disclose the damage I have incurred extensive costs. Timothy owed a duty as the listing agent to disclose the damage which was not repaired. Pursuant to § 27-50-70 of the South Carolina Code the listing agent is liable for the misrepresentation.

I have attached the invoices from the contractor who has performed the repairs to the house. Please note that there are additional miscellaneous expenses for painting, baseboard, and crown molding which have not yet been calculated.

Please call my office at your earliest convenience to discuss this matter.

Sincerely yours,



John M. Hine, Esq.

Enclosures

CC: Timothy McCrory (w/ encl.)

GALT INNOVATIONS

PROPOSAL

License # RBB 48607
 310 Mills Avenue, Suite 203
 Greenville, SC 29605
 (864) 616-5326 or (864) 979-1134
 www.galtinnovations.com

eli@galtinnovations.com or mike@galtinnovations.com

BUYER/ OWNER	NAME			
	John Hine			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	ihine@hinelawfirm.com			

Date: 5/1/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

- | | |
|---|----------|
| Option 1:
Demolition of sheetrock from corner of wall out approximately 7' right and 4'6" left to the ceiling. Remove rotten framing. Furnish and installation of new 2x4 framing with sheathing where possible. New R-13 insulation in walls. Plastic sheeting to be supplied to cover bed and to tape and zipper seal bedroom door. | 730.00 |
| Option 2:
Above work, plus- hang and finish new sheetrock where existing to be removed- includes hanging, tape, mud, and sand to be ready for paint, add: | 250.00 |
| Option 3:
Furnish and install 10 - 2x8-16 floor joists in basement to firm up existing floor system. Includes thru bolting to the existing joists for strength. Includes disconnecting and reconnecting wiring where necessary. Where it is not possible to get full 2x8 in place, contractor to give owner credit or attempt to install 2x6 in lieu of 2x8. | 750.00 |
| Option 4:
Demolition of downstairs ceiling, rotten bands, rotten floor joists.. New framing to include double bands at rot, new floor system sistered on to existing floor joists (spanned wall to wall). Rework HVAC pipe and soffit as necessary. Furnish and installation of new sheetrock on ceiling, mud, tape, and sand to be ready for painting. Includes removal and haul of all debris. Owner to provide painting. | 1,750.00 |

Qualifications (Original bid not to include):

- 1 Unforeseen/hidden conditions.
- 2 Additions or reductions in scope following signed contract will be handled by Change Order.
- 3 Owner to supply power and water as necessary.
- 4 No permitting included. Owner to supply plat if Greenville city permit required.
- 5 Owner to install salvaged casing at windows, base, and shoemold.

Proposed Schedule: Job is expected to require 5 working days. This is an approximation only given for convenience. Working days are defined as Monday - Friday (8am - 4pm).

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

**Galt Innovations carries full general liability and worker's compensation insurance.
 Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
 All our subcontractors carry their respective insurances as required.**

CONTRACTOR SIGNATURE:	OWNER/BUYER SIGNATURE:	DATE:
	X	

GALT INNOVATIONS

Formerly PALMETTO BUILDING AND RENOVATION

INVOICE# 1224

License # RBB 48607
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BUYER/ OWNER	NAME			
	John Hine			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	ihine@hinelawfirm.com			

Date: 5/25/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

Final bill per contract log. 3,780.00

Total: \$ 3,780.00

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will function properly for a period of 1 year(s) from the date of completion.

**Galt Innovations carries full general liability and worker's compensation insurance.
 Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
 All our subcontractors carry their respective insurances as required.**

CONTRACTOR SIGNATURE: _____ OWNER/BUYER SIGNATURE: _____ DATE: _____
 _____ X _____

GALT INNOVATIONS

PROPOSAL

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 eli@galtinnovations.com or mike@galtinnovations.com

BUYER/ OWNER	NAME			
	John Hine			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	lhine@hinelawfirm.com			

Date: 5/1/12 Proposal valid for 45 calendar days from date listed.

We propose to furnish the following work:

- | | |
|--|--------|
| Option 1: | 730.00 |
| Demolition of sheetrock from corner of wall out approximately 7' right and 4'6" left to the ceiling. Remove rotten framing. Furnish and installation of new 2x4 framing with sheathing where possible. New R-13 insulation in walls. Plastic sheeting to be supplied to cover bed and to tape and zipper seal bedroom door. | |
| Option 2: | 250.00 |
| Above work, plus- hang and finish new sheetrock where existing to be removed- includes hanging, tape, mud, and sand to be ready for paint, add: | |
| Option 3: | 750.00 |
| Furnish and install 10 - 2x8-16 floor joists in basement to firm up existing floor system. Includes thru bolting to the existing joists for strength. Includes disconnecting and reconnecting wiring where necessary. Where it is not possible to get full 2x8 in place, contractor to give owner credit or attempt to install 2x6 in lieu of 2x8. | |

Qualifications (Original bid not to include):

- 1 Unforeseen/hidden conditions.
- 2 Additions or reductions in scope following signed contract will be handled by Change Order.
- 3 Owner to supply power and water as necessary.
- 4 No permitting included. Owner to supply plat if Greenville city permit required.
- 5 Owner to install salvaged casing at windows, base, and shoemold.

Proposed Schedule: Job is expected to require 5 working days. This is an approximation only given for convenience. Working days are defined as Monday - Friday (8am - 4pm).

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will function properly for a period of 1 year(s) from the date of completion.

**Galt Innovations carries full general liability and worker's compensation insurance.
 Galt Innovations is a fully licensed, insured, and bonded renovation/construction company.
 All our subcontractors carry their respective insurances as required.**

CONTRACTOR SIGNATURE:	OWNER/BUYER SIGNATURE:	DATE:
	X	

GALT INNOVATIONS

Formerly PALMETTO BUILDING AND RENOVATION

Change Order # 1

License # RBB 48607

310 Mills Avenue, Suite 203

Greenville, SC 29605

(864) 616-5326 or (864) 979-1134

eli@galtinnovations.com or mike@galtinnovations.com

BUYER/ OWNER	NAME			
	John Hine			
	ADDRESS	CITY	STATE/ZIP	PHONE
	416 Leyswood Drive	Greenville	SC 29615	864-884-4051
	ALTERNATE ADDRESS (IF ANY)	CITY	STATE/ZIP	PHONE
	jhine@hinelawfirm.com			

We propose to furnish the following work:

All labor and materials to repair and shore up triple beam rot; includes electrical and HVAC work. 800.00

Total: \$ 800.00

Material Allowances:

n/a

Warranty: Contractor warrants all materials, facilities, workmanship, and equipment will be free of defects, and of specified quality, and will will function properly for a period of 1 year(s) from the date of completion.

CONTRACTOR SIGNATURE: _____

OWNER/BUYER SIGNATURE: _____

DATE: _____

X

Owner Initials _____
Contractor Initials _____
Date _____



Property Address 1158864 - 416 Leyswood Drive

**STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT**

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: MAA Seller 5/14/08 Date MAA Buyer 5/25/08 Date
 Rev. 1/03 MAA 5/14/08 MAA 5/25/08

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No Representation	No
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure 10 yrs 15 yrs <u>13 yrs</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Roof (leakage or other problem)? a. Approximate age of roof covering <u>5 yrs.</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Plumbing system (pipes, fixtures, water heater, etc)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Heating and/or air conditioning? a. Heat source: furnace <u>X</u> heat pump ___ baseboard ___ b. Cooling source: central <u>X</u> wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas <u>X</u> propane ___ oil ___ d. Approximate age of heating unit <u>?</u> /cooling unit <u>?</u> 10 yrs <u>maybe</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county <u>X</u> community system private well ___ b. water pipes are: copper <u>X</u> galvanized ___ PVC/CPVC ___ polybutylene ___	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system <u>X</u> city/county system available ___ b. Does the system require a pump? Yes ___ No ___ <u>? Don't think so</u> c. Has the septic system been serviced/pumped during your ownership?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Drainage, grading or stability of soil or retaining structure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan <u>X</u> <u>Disconnected</u> exhaust fan ___ ceiling fan <u>X</u> sump pump ___ irrigation system ___ cable tv wiring or satellite dish <u>X</u> security system ___ or other systems ___	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Initials: TSW Seller SLW Date: 5/25/08 Buyer MLH Date: 5/25/08
 Rev. 1/03
KAPA SLW MLH 5/25/08

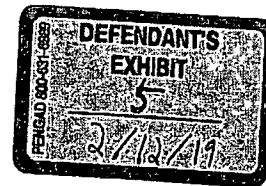
REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

	Yes?	No	No Representation
13. Room additions or other structural changes?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Previous damage caused by fire?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Violations or variances of building codes or zoning ordinances?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
18. Restrictions to property use? (covenants or deed)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
21. Owners' association fees or "common area" expenses or assessments?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
22. Flood hazards or that the property is in a federally-designated flood plain?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Is the property affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et. seq., South Carolina Code of Laws).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

13) The 2 rooms in the basement were framed out, sheetrocked in 2005. Hardwood floors added. There used to be paneling for the walls and we ripped that out to add wood studs (2x4) and sheetrock. Ask seller for all work done.

Initials: MAN Seller STR/LOS Date 5/25/18 Buyer MAN Date 5/25/18
 Rev. 1/03



The Hine Law Firm, LLC

John M. Hine
LL. M. in Taxation

Post Office Box 17095
Greenville, SC 29606
www.hinelawfirm.com
jhine@hinelawfirm.com

870 Cleveland St., Unit 1B
Greenville, SC 29601
Telephone (864) 331-0875
Fax (864) 331-8646

July 9, 2012

Mr. Seabrook Marchant
The Marchant Company
100 West Stone Avenue
Greenville, SC 29609

Sent via email only to seabrook@marchantco.com

Re: Demand Letter

Dear Mr. Marchant:

Pursuant to my previous email I am requesting that you send payment directly to me in the amount of \$4,000.00 to reimburse me for the cost of the repairs to my house. Please be advised that I have taken considerable steps to keep the cost of the repairs to my home as low as possible. I have completed a significant amount of work myself and am not currently seeking any reimbursement for my time. Please send a check to the following address within 15 days.

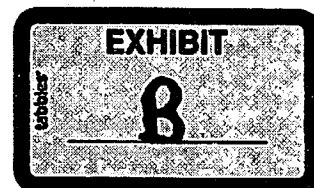
PO Box 17095
Greenville, SC 29606

Sincerely yours,

John M. Hine, Esq.

cc: Timothy McCrory (via email)

P00396



1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE

3 JOHN M. HINE and MARIA W. HINE,
4 Plaintiffs,

5 vs. C/A NO. 2018-CP-23-03382

6 TIMOTHY M. McCRORY, individually and
as agent, MICHAEL P. McCRORY, SEABROOK
7 L. MARCHANT, and THE MARCHANT COMPANY,
8 Defendants.

9
10 DEPOSITION OF: JOHN M. HINE

11 DATE: February 12, 2019

12 TIME: 1:02 p.m.

13 LOCATION: The Hine Law Firm
619 Halton Road
14 Suite 2B
Greenville, SC

15
16 TAKEN BY: Counsel for the Defendants

17 REPORTED BY: ERIC S. GLAZIER, Court Reporter
18

19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

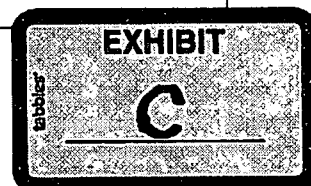
21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919

24 Asheville, NC
25 (828) 785-5699

A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com



Page 2

1 APPEARANCES OF COUNSEL:
 2 ATTORNEYS FOR PLAINTIFF
 3 JOHN M. HINE and MARIA W. HINE:
 4
 5 THE MACCLENAHAN LAW FIRM
 6 BY: ALEXANDRE N. MACCLENAHAN
 7 223 W. Stone Avenue
 8 Greenville, SC 29609
 9 (864) 382-3340
 10 alex@macclenahanlaw.com
 11 and
 12 THE HINE LAW FIRM
 13 BY: JOHN M. HINE
 14 619 Halton Road
 15 Suite 2B
 16 Greenville, SC 29607
 17 (864) 331-0875
 18 jhine@hinelawfirm.com
 19 ATTORNEYS FOR DEFENDANTS
 20 TIMOTHY M. McCRORY, SEABROOK L.
 21 MARCHANT, and THE MARCHANT COMPANY
 22 RICHARDSON, PLOWDEN & ROBINSON, P.A.
 23 BY: DAVID A. ANDERSON
 24 1900 Barnwell Street
 25 Columbia, SC 29201
 (803) 771-4400
 danderson@richardsonplowden.com

18 ALSO PRESENT:
 19 ANDREW SMITH, Legal Videographer
 20 TIMOTHY McCRORY,
 21 MICHAEL McCRORY,
 22 SEABROOK MARCHANT,
 23 ANNE MARCHANT

(INDEX AT REAR OF TRANSCRIPT)

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1 to us proceeding with them without his presence, as
 2 he had a conflict for today.
 3 THE WITNESS: And my name is John Hine.
 4 I'm also counsel for Maria Hine.
 5 VIDEOGRAPHER: May the court reporter
 6 swear the witness.
 7 JOHN HINE,
 8 being first duly sworn, testified as follows:
 9 EXAMINATION
 10 BY MR. ANDERSON:
 11 Q. John, I guess you are familiar with the
 12 civil -- rules of civil procedure as far as
 13 depositions are taken, since you're a licensed
 14 attorney in the state of South Carolina.
 15 A. Yes, sir.
 16 Q. And you sat through your wife's
 17 deposition. This is my opportunity today to ask
 18 some questions about the suit that you've brought,
 19 and we'll get started with that.
 20 Can you tell me a little bit about
 21 yourself, as far as when and where you were born
 22 and your education?
 23 A. I was born in Sumter, South Carolina,
 24 at Shaw Air Force base on February 24th, 1982. I
 25 went to Sumter High School, attended Thomas Sumter

Page 3

1 PROCEEDINGS
 2 -----
 3 VIDEOGRAPHER: We are now on the
 4 record. Today's date is February 12, 2019. The
 5 time on the monitor is 1:02 p.m. This is the video
 6 deposition of John Hine, taken by counsel for the
 7 defendant. The location is 619 Halton Road,
 8 Suite 2B, Greenville, South Carolina, 29606.
 9 My name is Andrew Smith, legal
 10 videographer, representing A. William Roberts, Jr.,
 11 and Associates. This deposition is being taken in
 12 the matter of John and Maria Hine versus Timothy
 13 McCrory, et al, Case Number 2018-CP-23-03382.
 14 Counsel, please introduce yourselves
 15 for the record.
 16 MR. ANDERSON: David Anderson, counsel
 17 for Tim McCrory, individually and as agent,
 18 Seabrook L. Marchant, and the Marchant Company.
 19 MR. MACCLENAHAN: I am Alex
 20 MacClenahan, and I represent John and Maria Hine,
 21 the plaintiffs. And I guess, David, maybe put on
 22 the record again, Chase Harbin has notified that he
 23 is representing -- I always forget which McCrory;
 24 I'm sorry -- Michael, right, and he was notified
 25 that these depositions were scheduled and consented

Page 5

1 for one year in high school. I went to Clemson for
 2 undergrad. Then I attended the University of South
 3 Carolina and got my JD from the University of South
 4 Carolina, graduating in December of 2003 from USC.
 5 After that I went to the University of
 6 Florida, Levin College of Law, where I received my
 7 Master of Laws in taxation. And that was in July
 8 of 2008, is when I graduated, I believe.
 9 Then I moved up to Greenville, where I
 10 worked at a small tax boutique here in town for a
 11 little less than a year, and then I started my own
 12 practice. And I've been practicing on my own since
 13 then. So that was about 2009, I opened up my own
 14 practice here in Greenville.
 15 Q. All right. When did you receive your
 16 tax degree?
 17 A. That was in 2008.
 18 Q. And your law degree was received when?
 19 A. Did I say '03? I did college in 2003,
 20 law school in 2006, December of 2006.
 21 Q. And the tax firm that you worked with
 22 here was named what?
 23 A. It was formerly Thomas and Fisher. Now
 24 it's Thomas, Fisher, Sinclair, and Edwards.
 25 Q. And your practice is primarily composed



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1 house; please note that there are additional
2 miscellaneous expenses for painting baseboard and
3 crown molding which have yet to be calculated.
4 I'm not sure if I actually included the
5 disclosure statement, but I think I did. I think
6 it was attached to it as well.
7 **Q. The Galt Innovations proposal that's**
8 **attached to it, was this work actually performed?**
9 A. I'm not sure if -- there's several
10 options listed on the first page. I'm not sure if
11 option three was actually performed or not, but
12 they did come in and repair the termite damage.
13 There was -- I had some questions about
14 the previous repairs that had been done, and asked
15 them to -- what it would cost to shore up those
16 floor joists and replace them with a full span, and
17 they didn't actually do that work.
18 **Q. They did not?**
19 A. No.
20 **Q. Was that work ever done?**
21 A. Yes.
22 **Q. Who did that work?**
23 A. I did that work.
24 **Q. So the second page of this shows a**
25 **\$3,780 repair?**

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1 **recover damages for this work?**
2 A. No.
3 **Q. And why not?**
4 A. Because I don't -- this came and went,
5 and this isn't part of the current litigation.
6 **Q. The current litigation is about termite**
7 **infestations that were withheld, correct, or**
8 **misrepresented?**
9 A. Correct.
10 **Q. And this letter was about termite**
11 **infestation that was misrepresented, correct?**
12 A. In the corner of the house, in the
13 front corner of the bedroom.
14 **Q. And so why aren't you seeking recovery**
15 **for that work?**
16 A. I don't know that I have the evidence
17 to prove that, and I don't know that I'm still
18 entitled to it under the statute of limitations.
19 **Q. All right. So you're making a separate**
20 **determination that between this work and the work**
21 **that's as a result of the suit that was filed in**
22 **2018?**
23 MR. MACCLENAHAN: Object to the form.
24 A. Can you repeat that question?
25 **Q. You're making a separate determination**

Page 23

1 A. Yes.
2 **Q. Was that done?**
3 A. Yes. It indicates that it's the final
4 bill for the contract log.
5 **Q. And the third page has three different**
6 **options again. Do you know whether that work was**
7 **done?**
8 A. Again, I think option three may have
9 been that additional work that was unrelated to the
10 termite damage that I discovered. It was more
11 related to the previous repairs that had been made.
12 **Q. Okay. And there's a change order**
13 **number one that's there, \$800, it says to shore up**
14 **a triple beam rod.**
15 A. I think that was additional termite
16 damage that they found as they were going through
17 the repair process in addition to just the corner
18 of the house.
19 **Q. All right. So as we sit here today, is**
20 **any of this work being asked to be done? Let me**
21 **rephrase that.**
22 The areas that Galt Innovations worked
23 on, do you consider those areas satisfactory?
24 A. Yes.
25 **Q. Are you recovering or attempting to**

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1 **or a separate claim as it relates to this termite**
2 **damage than the termite damage that's referenced in**
3 **your suit filed in 2018?**
4 MR. MACCLENAHAN: Object to the form.
5 A. I am saying that I have found two
6 separate instances of termite damage that were not
7 contiguous. So just because I discovered one
8 didn't mean that I knew about the other one.
9 **Q. All right. But you first discovered**
10 **termite damage in your home in April of 2015?**
11 A. I discovered --
12 MR. MACCLENAHAN: Objection to --
13 A. I discovered about \$5,000 worth of this
14 termite damage in my home in 2012.
15 MR. MACCLENAHAN: You said 2015. That
16 was my objection.
17 **Q. All right. That was April of 2012?**
18 A. Correct.
19 **Q. Now, did you ask Galt to check around**
20 **your home for any other potential damage?**
21 A. No, I did not ask them to do any kind
22 of exploratory inspection to see what else was
23 there. I just asked them to fix the termite damage
24 that was uncovered, and as they tore down drywall,
25 you know, in the ceiling of the basement room under

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1 Ansley's bedroom, and as they took down the wall in
2 the bedroom upstairs, whatever we discovered, they
3 repaired, and then when they stopped, you know,
4 uncovering termite damage, they stopped tearing
5 down the walls.

6 **Q. Would it have been reasonable to ask**
7 **them to look at other areas of the home?**

8 MR. MACCLENAHAN: Object to the form.

9 A. I think that would have been beyond
10 what was necessary at that point.

11 **Q. When Century Termite came out, you**
12 **asked them to review or to look around your home to**
13 **see whether there was any other damage?**

14 MR. MACCLENAHAN: Excuse me. I think
15 you mean Sargent.

16 A. You mean Sargent Pest?

17 **Q. Sargent. Excuse me.**

18 A. I asked him to look around. I think he
19 conducted a search to see if he saw any termite
20 damage, but he did not see any signs of termite or
21 termite damage other than what was uncovered by
22 removing the drywall in the bedroom.

23 **Q. Was there any response to your letter**
24 **that was Exhibit Number 1?**

25 A. Yes.

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1 A. I don't recall specifically, but it's
2 my signature, on my letterhead.

3 **Q. All right. You were demanding 4,000 at**
4 **that point?**

5 A. Yes. According to the letter, yes.

6 **Q. And where did you get that figure from?**

7 A. I believe it's from what I paid the
8 contractor, and probably what I paid in materials.
9 I painted the room myself and put the trim work up
10 myself and that kind of thing to try to save some
11 money. As my wife mentioned, I'm stingy.

12 **Q. So you did not pursue that further**
13 **after that letter was written?**

14 A. I don't believe so.

15 **Q. What -- when was the next time that you**
16 **saw issues with the home?**

17 MR. MACCLENAHAN: Object to the form.

18 A. The next time that I saw issues with
19 the home was when I was doing the demolition for my
20 master bathroom. I removed the subfloor in the
21 master bathroom and there was a -- two floor joists
22 that were sistered together, and there was damage
23 in the middle of those two floor joists. So that
24 was the next time that I saw termite damage.

25 **Q. Who do you think sistered those two**

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1 **Q. What was that response?**

2 A. There was some back-and-forth about
3 whether or not the McCrorys knew about the termite
4 damage. They indicated that they had no knowledge
5 of any termite damage. And I believe I was
6 informed that Nathan Galbreath was going to be --
7 or represented Seabrook Marchant at that point, and
8 I asked him if he would accept service for his
9 client, and I was told that I believe Tim McCrory
10 was also going to have a lawyer at that point.

11 But I decided not to move forward after
12 those -- we had tried to plan a meeting to sit down
13 and talk about everything, and I believe Tim was
14 the one that said, I don't think it's -- we're not
15 going to agree; it's not necessary to have that
16 meeting. And that's just kind of where it ended.

17 **Q. Did you have a complaint drafted at**
18 **that time?**

19 A. No, I did not.

20 **Q. Exhibit Number 5 is a letter that you**
21 **wrote in July of 2019?**

22 (DFT. EXH. 5, 7/9/2012 DEMAND LETTER,
23 was previously marked for identification.)
24 BY MR. ANDERSON:

25 **Q. Do you recall that letter?**

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1 **floor joists together?**

2 A. I believe when the home was originally
3 constructed, I think it was just a double beam that
4 was put in.

5 **Q. Now, was that the next renovation or**
6 **the next work you did on your home or...**

7 A. No.

8 **Q. What was the first -- correction. Let**
9 **me rephrase that.**

10 **After your daughter's room was**
11 **renovated and Galt did their work, you determined**
12 **to do some additional renovation work with your**
13 **home; is that correct?**

14 A. Yes. I renovated the hall bathroom.

15 **Q. And during that renovation process did**
16 **you note any termite issues?**

17 A. No, I did not.

18 **Q. All right. And so when did you**
19 **complete that work?**

20 A. That work was completed prior to the
21 demolition of the master bathroom, but I don't
22 recall the exact date that that was completed.

23 **Q. All right. And then it was during the**
24 **time frame that you were renovating the master**
25 **bath, is when you discovered some additional**