ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT

Case No.: 2018-CP-18-01436

Monica Brown-Gantt,

Plaintiff,

vs.

Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership,

Defendants.

Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership,

Third-Party Plaintiff,

vs.

Floors, Inc. successor by merger to Rice Planters Carpets, Inc. and Rice Planters Carpets, Inc. subsequently known as Creative Touch Interiors, Inc. d/b/a HD Supply Interior Solutions and now known as ISI Design and Installation Solutions, Inc., J.H. Lee Masonry, Inc. a/k/a James H. Lee Masonry, Inc., DVS, Inc., McDaniel Construction Co., LLC a/k/a McDaniel Construction, Inc., and All-American Roofing, Inc.,

Third-Party Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS CENTEX REAL ESTATE COMPANY, LLC AND CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP

RECEIVED
JUL 09 2020
SC Court of Appeals

This matter came before this Court on Plaintiff Monica Brown-Gantt's Motion to Reconsider Order Granting Summary Judgment as to Plaintiff's Claims ("Motion to Reconsider"). After considering the record, the Court hereby DENIES Plaintiff's Motion to Reconsider.

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

BACKGROUND

Plaintiff, Monica Gantt-Brown, is the owner of 109 Catbriar Court, Summerville, Dorchester County, South Carolina, 29485 ("the Residence"). The Town of Summerville issued a Certificate of Occupancy for the Residence on November 14, 2005. On August 8, 2018, Plaintiff filed her Complaint, which alleges causes of action for negligence/gross negligence/defective construction, breach of implied warranties, breach of contract, unfair trade practices, and negligent construction, against Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership (collectively "Centex").

On March 21, 2019, Centex filed its Motion for Summary as to Plaintiff's Claims. On April 11, 2019, this Court heard oral arguments on this matter. At the oral arguments, Thomas Hildebrand appeared on behalf of Centex, and William Kalivas appeared on behalf of Plaintiff. By Order dated October 18, 2019, this Court granted Centex's Motion for Summary Judgment as to Plaintiff's Claims. On October 25, 2019, Plaintiff filed her Motion to Reconsider.

CONCLUSIONS OF LAW

I. Plaintiff's claims are barred by the statute of limitations.

Plaintiff has acknowledged that a three year statute of limitations period is applicable to many of the causes of action asserted by her in the Complaint. (Motion to Reconsider at 3). Plaintiff has also acknowledged that the discovery rule—that the statute of limitations clock begins running when she knew or should have known by the exercise of reasonable diligence that she had a cause of action—is applicable to this action. (Motion to Reconsider at 3). As such, if Plaintiff knew or should have known she

had a cause of action prior to August 8, 2015—three years before she filed her lawsuit—her claims are barred by the statute of limitations. Considering Plaintiff's concessions of law and her deposition testimony, Plaintiff knew, or at a minimum should have known through the exercise of reasonable diligence, that she had a claim before August 8, 2015. Thus, Plaintiff's claims are barred by the statute of limitations.

A. Plaintiff knew she had a claim prior to August 8, 2015

In her Motion to Reconsider, Plaintiff "disputes when the applicable statute of limitations begins to run in this case based on the discovery rule . . ." While Plaintiff may dispute when the statute of limitations begins to run, the record establishes that there is no genuine issue of material fact that Plaintiff knew she had a claim prior to August 8, 2015.

The claims and complaints Plaintiff makes in her Complaint are the same problems that Plaintiff has complained of since purchasing the Residence in 2005. Plaintiff confirmed this in her December 13, 2018 deposition:

> Q. [Y]ou began experiencing problems with your home virtually right after you moved into it in 2005, correct?
> A. Yes.
> Q And they're basically the same problems then that exist now. Agreed?
> A. Yes.
> All right. And they haven't been fixed by Centex. That's why you're suing them, correct?
> A. Correct.

Depo. of M. Brown, 33:11-21.

> Q. Actually, turn to the page before that, 0033 [of Exhibit 9]. Do you see the start of that e-mail chain? It's dated April 30, 2015, at 2:31 p.m. from you.
> . . .
> A. Yes.
> Q. And this is an email from you to Centex, dated April 30, 2015, correct?
> A. Oh, okay, I see that.
> . . .

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

Q. And this is where you're writing Centex saying, These are the problems that we're having with our house. Agreed? If you look on the next page, there's a listing from you in all caps about the problems that you've had.
A. On the next page, and you're saying page 7 out of 8?
Q. Yes. This is your e-mail, isn't it -- is it not, Ms. Brown?
A. Yeah, I was listing all the problems I had day one.
Q. Right, from day one.
A. Uh-huh.
Q. You need to answer yes, please.
A. Yes.
Q. Thank you. And the third floor had no flashers and had been leaking from day one. Agreed?
A. Yes, based on the report.
Q. Right. Reading down, The entire room shakes when you walk into my son's room.
A. Right.
Q. That was never fixed?
A. That was -- they said they never were going to address that again after I keep complaining about it.

Depo of M. Brown, 49:18-51:9 and *Exhibit 9* to Depo of M. Brown.

While Centex did make a few limited repairs in 2008 and 2009, Plaintiff complained of the same issues in September 2013 and April 2015. In an email dated September 5, 2013, Plaintiff reiterated her complaint to Centex about the roofs, floors, walls, and windows at the Residence, stating in all caps " THIS IS LAST ATTEMPT BEFORE WE SEEK LEGAL REPRESENTATION." *See Exhibit 8* to Depo. of M. Brown. Plaintiff testified this was her giving final notice to Centex before she filed suit:

Q. Here's a document that we got from your files. It's Bates stamped number 36, and I've marked that as Exhibit 8. And in the middle of it, do you see that you wrote -- or you sent an e-mail to Jean Barraclough at Pulte on September 5, 2013?
A. It's to customer care, yes.
Q. But anyway, this -- you sent an e-mail to Centex on September 5, 2013, correct?
A. Uh-huh, yes.
Q. You need to answer yes.
A. Yes.
Q. All right. And what you are complaining of is roofing, floors, walls, and windows, agreed?
A. Yes.
Q. And that's in all caps. And then it says, This is our last attempt before we seek legal representation. That's what you wrote, correct?
A. Right.

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

Q. So you're saying, Centex, we're having problems, leakage problems with roofing, floors, walls, and windows, and unless you fix them, as of 2013, this is our last notice to you, or we're going to file suit, correct?
A. That's what I said.

Depo. of M. Brown, 45:5–46:6 and *Exhibit 8* to Depo. of M. Brown.

Despite giving her "final notice" and threatening to file suit, Plaintiff took no action. Instead, Plaintiff waited almost two years and wrote Centex again on April 30, 2015 stating in all caps, "LIVES ARE IN DANGER FROM [CENTEX'S] NEGLIGENCE" and "[THEY] HAVE SENT [CENTEX] THIS COMPLAINT SEVERAL TIMES AND NO ONE HAS BOTHER [sic] TO ADDRESS AND WAS TOLD . . . THAT [CENTEX] WAS NOT GOING TO ADDRESS THE ISSUES AGAIN." *See Exhibit 9* to Depo. of M. Brown.

Here, there is no dispute as to the evidentiary facts and no alternative reasonable conclusion could be drawn from the facts. *McAlhany v. Carter*, 415 S.C. 54, 62, 781 S.E.2d 105, 110 (Ct. App. 2015). The record is clear that Plaintiff knew, or should have known through the exercise of reasonable diligence, that she had a claim as early as September 5, 2013 and certainly no later than April 30, 2015. Indeed, Plaintiff's own words establish that she believed that she had a claim for Centex's "negligence" and that she would "seek legal representation." Furthermore, the law is well established that it was immaterial whether or not Plaintiff knew the full extent of her damages. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). Plaintiff only had to be on notice that a claim against another party might exist. *Id.* Plaintiff's knowledge of a claim is evident from the facts, and thus, this Court affirms its finding that Plaintiff's claims are barred by the statute of limitations.

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

B. The doctrines of equitable tolling and equitable estoppel are not applicable to this action.

Plaintiff asserts Centex's statute of limitations defense should be estopped by the doctrines of equitable tolling or equitable estoppel. Neither of these doctrines are applicable to this action.

Equitable Tolling

Equitable tolling is a doctrine that is rarely applied in South Carolina. *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008). "[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Hooper v. Ebenezer Sr. Services and Rehabilitation Center*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). "[E]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Id.* (internal citations omitted) (tolling the statute of limitations when the defendant failed to properly list its registered agent for service of process with the Secretary of State).

Here, none of Centex's actions precluded Plaintiff from filing suit. Indeed, in 2013 Plaintiff acknowledged she would "seek legal representation" if Centex did not take action thus any failure to timely file suit was Plaintiff's choosing and not because of any conduct on the part of Centex.

Equitable Estoppel

Similarly, equitable estoppel is only appropriate when some conduct or representation by the defendant has induced the plaintiff to delay in filing suit. *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001). "An inducement for delay may consist of either an express representation

PPAB 5358576v1.docx

that the claim will be settled without litigation or other conduct that suggests a lawsuit is not necessary." *Id.*

Centex made no such inducements, and in fact, the Plaintiff acknowledged this in an email she wrote to Centex. Plaintiff's own April 30, 2015 email states "WE HAVE SENT YOU THIS COMPLAINT SEVERAL TIMES AND NO ONE HAS BOTHER [sic] TO ADDRESS AND WAS TOLD . . . THAT [CENTEX] WAS NOT GOING TO ADDRESS THE ISSUES AGAIN." *Exhibit 9* to Depo. of M. Brown. This email as well as other portions of the record indicate Plaintiff was fully aware, at least as of April 30, 2015, that Centex had stated it "was not going to address the issues again." This express acknowledgment by Plaintiff evidences there was no inducement or representation by Centex to delay Plaintiff in filing suit. As such, Centex's statute of limitations defense cannot be equitably estopped.

II. Plaintiff's claims barred by the statute of repose.

This Court's finding that the statute of limitations bars all of Plaintiff's claims is dispositive of this entire action. However, as an additional sustaining ground this Court affirms its finding that Plaintiff's claims are also barred by the statute of repose.

The statute of repose applicable to allegations of constructions defect claims is eight years. S.C. Code Ann. § 15-3-640. The eight year statute of repose applies to all homes where substantial completion occurs after July 1, 2005. Issuance of a certificate of occupancy by a municipality is proof of the date of substantial completion. *Id.* The statute of repose bars all claims brought after the eight year period has expired except claims of fraud, gross negligence, or recklessness, when the defendant has been found guilty of the same. S.C. Code Ann. § 15-3-670.

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

Here, the certificate of occupancy for Plaintiff's home was issued on November 14, 2005 meaning the statute of repose bars all claims, except as described above, made after November 14, 2013. Plaintiff did not file suit until August 8, 2018, thus Plaintiff's claims are barred by the statute of repose.

III. Further discovery is not needed to dispose of Plaintiff's claims

Additional discovery would be futile effort, which would not change the fact that Plaintiff's claims are barred by the statute of limitations and/or statute of repose. *See Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991) (the party asserting the need for additional discovery as a basis to deny summary judgment must demonstrate a likelihood that further discovery will uncover additional evidence relevant to the specific issue before the court). The main issue before this Court was whether Plaintiff's knew or should have known that she had a cause of action against Centex before August 8, 2015—three years before the date she filed suit. As discussed above, Plaintiff's testimony establishes that she knew of a cause of action before August 8, 2015, and as such, further discovery would not be fruitful.

Additionally, Plaintiff asserts that further discovery may unearth documents that "extend the warranty period beyond the applicable statute of repose." This is impossible. The statute of repose "creates a substantive right in those protected to be free from liability after a legislatively determine period of time." *Capco of Summerville, Inc. v. J.H. Gayle Const. Co. Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). The statute of repose is "an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Id.* Further, the plain language of the statute states, "No actions to

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property may be brought more than eight years after substantial completion of the improvement. For purposes of this section, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes . . . an action in contract or in tort or otherwise. S.C. Code Ann. § 15-3-640. Thus, further discovery would serve no purpose in "extending" the statute of repose.

In consideration of the above and the entire record before this Court it is it **ORDERED** that Plaintiff's Motion to Reconsider Order Granting Summary Judgment in Favor of Centex is **DENIED**.

AND IT IS SO ORDERED.

____
The Honorable George M. McFadden, Jr.
Presiding Judge

________________________, 2020

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436

Dorchester Common Pleas

Case Caption:	Monica Brown-Gantt VS Centex Real Estate Company, Llc , defendant, et al
Case Number:	2018CP1801436
Type:	Order/Other

So Ordered

S/George M. McFadden, Jr., #2759

ELECTRONICALLY FILED - 2020 Jun 17 9:55 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801436