

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

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.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT

Case No.: 2018-CP-18-01436

**ORDER GRANTING CENTEX REAL
ESTATE COMPANY, LLC'S AND
CENTEX HOMES, A NEVADA
GENERAL PARTNERSHIP'S
MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S CLAIMS**

This matter came before this Court on Defendants Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership's (hereinafter collectively "Centex"), Motion for Summary Judgment as to Plaintiff's Claims seeking to dismiss the claims of the Plaintiff Monica Brown-Gantt ("Plaintiff") against Centex in the above-

captioned action on the grounds that Plaintiff's claims against Centex are barred by the statute of repose and the statute of limitations. Centex's Motion was filed on March 21, 2019. At the April 11, 2019 hearing on this matter, Thomas Hildebrand appeared on behalf of Centex, and William Kalivas appeared on behalf of Plaintiff, Monica Brown-Gantt. After considering the record and hearing the arguments presented by counsel, the Court hereby GRANTS Centex's Motion for Summary Judgment.

UNDISPUTED FACTS

1. Plaintiff, Monica Gantt-Brown, is the owner of 109 Catbriar Court, Summerville, Dorchester County, South Carolina, 29485 ("the Residence"). (Complaint ¶ 1).
2. The Town of Summerville issued a Certificate of Occupancy for the Residence on November 14, 2005. (attached as Exhibit C to Centex's Motion for Summary Judgment as to Plaintiff's Claims filed on March 21, 2019).
3. 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 misrepresentation, on August 8, 2018. (See Complaint).

CONCLUSIONS OF LAW

Rule 56(c) of the South Carolina Rules of Civil Procedure ("SCRCP") requires the entry of summary judgment when "there is no genuine issue of material fact and . . . the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; see also Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002) (upholding trial court's grant of summary judgment where there was no genuine issue of material fact such that the moving party prevailed as a matter of law). "The purpose of summary judgment is

to obviate delay where there is no material issue of fact.” Loyd's Inc. by Richardson Const. Co. of Columbia, S.C. v. Good, 306 S.C. 450, 412 S.E.2d 441 (Ct. App. 1991) (citation omitted) (affirming trial court’s grant of summary judgment to general contractor against subcontractor); Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) (noting the purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder). The nonmoving party must specifically set forth such facts, “as would be admissible in evidence,” to show that a true jury issue exists. Rule 56(e), SCRPC. “Evidence, however, is not sufficient to overcome summary judgment if it is introduced solely in a vain attempt to create an issue of fact that is not genuine.” Cox & Floyd Grading, Inc. v. Kajima Const. Servs., Inc., 356 S.C. 512, 516, 589 S.E.2d 789, 791 (Ct. App. 2003) (citation omitted) (internal quotation marks omitted) (upholding trial court’s grant of summary judgment to general contractor as against subcontractor); George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001) (affirming trial court’s award of summary judgment where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” showed that there was no genuine issue as to any material fact).

I. PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff failed to file her Complaint against Centex within the time allowed under the applicable statute of limitations, and therefore all of Plaintiff’s causes of action are barred by the statute of limitations.

S.C. Code Ann. § 15-3-530(1) provides that a plaintiff must bring within three years “an action upon a contract, obligation, or liability, express or implied,” and S.C. Code Ann. § 15-3-530(5) provides that a plaintiff must bring within three years “an action for assault, battery, or any injury to the person or rights of another, not arising on

contract and not enumerated by law.” As a result, S.C. Code Ann. § 15-3-530 establishes a three year statute of limitations for the causes of action for negligence/gross negligence/defective construction, breach of implied warranties, breach of contract, and negligent misrepresentation asserted by Plaintiff in this case against Centex. S.C. Code Ann. § 39-5-150 provides that a claimant must bring an action under the South Carolina Unfair Trade Practices Act within three years of the discovery of the unlawful conduct which is the subject of the suit.

In order to determine when a cause of action accrues, South Carolina has adopted the “discovery rule,” which provides that the “statute of limitations begins to run when the underlying cause of action reasonably ought to have been discovered.” Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011) (citation omitted) (internal quotation marks omitted). Under the discovery rule, “the three-year clock starts ticking on 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.” Id. (citation omitted) (internal quotation marks omitted). As the court in Dorman v. Campbell, 331 S.C. 179, 184–85, 500 S.E.2d 786, 789 (Ct. App. 1998) explained:

The exercise of reasonable diligence means that an injured party must act promptly where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed. The date on which discovery should have been made is an objective rather than subjective question. Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.

Id. (citations omitted).

In Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc., No. 9:17-CV-1575-RMG, 2018 WL 6790308, at *3 (D.S.C. Dec. 26, 2018), the court found that the plaintiff's correspondence to the defendant general contractor expressly stating that the plaintiff and its co-venturer were aware of a potential claim for negligence arising from water damage to the community clubhouse was sufficient to prove the plaintiff had knowledge of a cause of action to start the clock on the statute of limitations. The court rejected as immaterial the plaintiff's claim that it was unaware of the full extent of the damage and design defects until several years later. Id. The court ruled that the time when the plaintiff "discovered the cause of action is determinative," noting that although it "may be that there was additional defective construction that was unknown in 2009, yet the letter makes clear that the Plaintiff was aware of the cause of action." Id. As a result, the court held that the three year statute of limitations barred the plaintiff's only remaining claim for gross negligence regarding the community clubhouse. Id. at *4. Additionally, the court in Hampton Hall held earlier that the plaintiff's other claims arising out of the allegedly defective construction were barred by the statute of repose. See also id. at *3.

As discussed below, the documents and testimony in this case establish that Plaintiff knew or should have known she had causes of action against Centex more than three years before she filed her Complaint, and therefore, all of Plaintiff's claims against Centex in this action are time barred by the three year statute of limitations.

A. The Deposition Testimony and Documents In This Case Evidence That Plaintiff Did Not File Her Complaint Until More Than Three Years After She Knew Or Should Have Known She Had a Cause of Action.

Plaintiff filed her Complaint in this action on August 8, 2018. (See Complaint). Working backwards, the applicable statute of limitations would require Plaintiff to be on notice of an injury from wrongful conduct no earlier than August 8, 2015. The deposition testimony and documents in this case evidence that there is no genuine issue of material fact that Plaintiff was on notice of the construction deficiencies and causes of action alleged in her Complaint well before August 8, 2015.

The Plaintiff's testimony evidences that the complaints that Plaintiff made in this litigation have existed since she bought the Residence in 2005. During her deposition, taken on December 13, 2018, Plaintiff testified as follows:

- 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.
 Q. 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 (attached as Exhibit A to Centex's Motion for Summary Judgment as to Plaintiff's Claims filed on March 21, 2019).

- A. The windows, we would always see the water, you know, near the windows. . . . And that's how it started, the windows.
 Q. So there's water leakage under the windows?
 A. Well, it was brown spots under the window. . . . So it started day one with the windows, uh-huh.
 Q. But the brown spots, you knew just from common sense, that that indicated water was getting under the windows. Agreed?
 A. Yes.
 Q. And that was never fixed?
 A. Nope.
 Q. And continued?
 A. Well, they said they fixed it.
 Q. But they didn't?
 A. If it's continuing, they haven't.
 . . .
 Q. [S]o you had window leakage problems from day one, correct?
 A. Yeah.

Depo. of M. Brown, 34:2 –22, 37:24–38:1 (Ex. A to Centex’s Motion for Summary Judgment).

- 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.
- ...
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 (Ex. A to Centex’s Motion for Summary Judgment) and Exhibit 9 to Depo. of M. Brown.

The record indicates that Centex made certain limited repairs to the Residence in 2008 and 2009. However, Plaintiff claims that the repairs were not effective and did not fix the alleged problems, and Plaintiff continued to complain about them year after year since 2009. The documents and Plaintiff’s testimony demonstrate that Centex refused to and has not made any repairs since 2009. The email from Jean Barraclough at Pulte¹ to Plaintiff dated June 7, 2016, relays the history of the 2008-2009 repairs, indicates that Plaintiff continued to complain of the issues after 2009, and confirms that

¹ Centex merged with and became Pulte in August 2009.

the last repair completed by Centex was in 2009 and that Centex has refused to complete any further repairs after 2009:

Your concerns were first addressed in 2008 and the items under warranty, including the floor framing, were repaired and completed on 4/29/2008. In May of 2009 you submitted warranty items which were completed on 6/12/2009. At that visit you asked that the floor repair be re-inspected and it was found to be repaired correctly. On 11/3/2009, you requested that the flooring repairs be inspected again. We did complete that inspection on 11/20/2009 and found no construction defects.

In September of 2013 you sent the request in again. . . . We did speak on the phone at that time and I let you know that we would not readdress unless a new inspection report was sent by you. You did copy the email from 2015 and my response was the same.

All warranties, including the structural warranty, expired on 11/08/2015. Centex completed the last repair in 2009, 7 years ago. If you have a current inspection report showing a construction defect, we would gladly review the report once we receive it. Centex will take no other action on the repairs completed in 2008 and 2009.

See Ex. 9 to Depo. of M. Brown on page 4 of 8. Further, Plaintiff's own testimony confirms that Centex has not performed any repairs since 2009:

- Q. Right. So the -- based on what you can testify under oath here today, the last time that Centex made any repairs, to your knowledge, was in 2009. Agreed?
- A. That's the last time I can recall.
- Q. Okay.
- A. Yes.

Depo. of M. Brown, 44:19–25 (Ex. A to Centex's Motion for Summary Judgment).

- Q. Let's turn to page 4 of 8 [of Exhibit 9] in the bottom right, at the very bottom. Do you see that very last paragraph? That's from Jean Barraclough you to you [sic]. Do you see that, Ms. Brown?
- A. Yeah.
- Q. It says, All warranties including the structural warranty expired on November 8, 2015. Centex completed the last repair in 2009, seven years ago. Do you have any testimony or evidence to dispute that the last repairs that Centex made were in 2009?
- A. No, I don't.

Depo. of M. Brown, 58:20–59:6 (Ex. A to Centex's Motion for Summary Judgment) and Ex. 9 to Depo. of M. Brown.

In addition, Plaintiff's testimony indicates that she continued to complain to Centex after 2009 because the alleged issues were not fixed by the 2009 repairs:

- Q. Well, then why are you complaining to Centex every year then?
 A. I'm complaining to Centex every year because it appears that nothing has been cured.

Depo. of M. Brown, 58:11–14 (Ex. A to Centex's Motion for Summary Judgment). The documents also evidence that Plaintiff continued to complain about the alleged issues after 2009 and that Centex refused to make any repairs after 2009. The documents indicate that on September 5, 2013, Plaintiff again complained to Centex about the roofs, floors, walls, and windows at the Residence, stating in all caps that this was their "LAST ATTEMPT BEFORE [THEY] SEEK LEGAL REPRESENTATION." See Ex. 8 to Depo. of M. Brown. Plaintiff testified that by this communication in 2013, she was giving Centex her final notice that if they did not fix the alleged issues, she would file 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.
 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 (Ex. A to Centex’s Motion for Summary Judgment) and Ex. 8 to Depo. of M. Brown. In response, Jean Barraclough at Pulte responded as follows on September 5, 2013:

This home is covered under a ten year structural warranty which expires on 11/18/2015. Please send me some detailed information for the issues you are experiencing with some photos. I can let you know which items are still covered as most of the warranties have expired.

See Ex. 8 to Depo. of M. Brown. The second page of the internal Pulte Contact Log reflects that Jean Barraclough made the following additional notation about the communications with Plaintiff on September 5, 2013:

Spoke to homeowner and she wanted us to relook at the inspection report from 2009 again. I declined and let her know that we had completed that in 2009 and would not readdress unless something had changed. She hung up before I could finish the sentence.

She called back and stated she dropped the phone and it disconnected and is going to send me her inspection report.

See Pulte Contact Log (attached as Exhibit B to Centex’s Motion for Summary Judgment as to Plaintiff’s Claims filed on March 21, 2019).

The next communication from Plaintiff to Centex is Plaintiff’s service request of April 30, 2015, complaining about flashing on the third floor, odor, dry rot and mold on the wall, house shaking, and no insulation, and stating in all caps that their “LIVES ARE IN DANGER FROM [CENTEX’S] NEGLIGENCE” and that 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 Ex. 9 to Depo. of M. Brown on pages 6 and 7 of 8. In response on May 1, 2015, Jean Barraclough at Pulte once again requested that Plaintiff forward her a copy of the inspection report stating that she will have it reviewed by a supervisor. See Ex. 9 to Depo. of M. Brown on page 6 of 8.

The documents reflect that the next communication from Plaintiff to Centex was on June 6, 2016, wherein Plaintiff stated:

We are still waiting for someone to contact us to repair our damage to the house. This has been on going since for several years [sic]. Are we being ignored. . . . We would like to settle this out of court.

See Ex. 9 to Depo. of M. Brown on page 6 of 8. On the same day, Jean Barraclough at Pulte responded stating she still had not received a copy of the inspection report from Plaintiff and that the ten year structural warranty expired on November 18, 2015. See Ex. 9 to Depo. of M. Brown on page 5 of 8. Plaintiff responded on the same day as follows:

Jean, we sent out the inspection report since 2009². . . . I contacted you guys every year and all I get is the run around. . . . We complaint [sic] about the same thing since 2006.”

See Ex. 9 to Depo. of M. Brown on page 5 of 8. During her deposition, Plaintiff testified as follows with respect to these communications from her to Centex in 2016, once again confirming that Plaintiff continued to complain about the alleged issues after 2009 and that Centex refused to make any repairs after 2009:

² Plaintiff testified as follows with respect to the 2009 inspection report:

- Q. I'm going to ask you some questions about your interrogatory responses which I'm handing you and which I have marked as Exhibit 13.
- . . .
- Q. On the next page, it says One Stop Home Inspector. I think we've talked about that. That's the one who did the report you provided to Centex in 2009?
- A. Yes.
- Q. Do you remember that fellow's name?
- A. No.
- Q. Was he from Charleston?
- A. Yeah, he was from Charleston. I don't remember his name.
- Q. Is he still in business? Do you know?
- A. I don't know. Every time I try to look the company up, I can't find it.

Depo. of M. Brown, 66:18–21, 67:12–24 (Ex. A to Centex's Motion for Summary Judgment), and Ex. 13 to Depo. of M. Brown. Plaintiff testified that she “can't find the [2009] report.” Depo. of M. Brown, 53:1–24 (Ex. A to Centex's Motion for Summary Judgment). Centex also has been unable to locate a copy of the 2009 report in its files to date, and Centex's counsel has been unable to locate this company in order to issue a subpoena for documents upon it.

- Q. That's your -- right in the middle [of page 5 of 8 of Exhibit 9], June 6, 2016, at 3:17. Do you see where you're writing Centex?
- A. Yes, uh-huh.
- Q. I need you to answer yes, please.
- A. Yes.
- Q. And you're saying that you sent an inspection report in 2009. I contacted you guys every year, and all I get is the run-around. We complained about the same things since 2006.
- Q. So in 2016, you're saying that you sent the report in 2009, and you complained to Centex every year since then, and it was never fixed. Agreed?
- A. To my knowledge, yep.

Depo. of M. Brown, 55:23–56:12 (Ex. A to Centex's Motion for Summary Judgment) and Ex. 9 to Depo. of M. Brown.

- Q. Let's turn to page 3 of 8 [of Exhibit 9]. This is in 2016. And on --
- A. You're on page what?
- Q. I'm on page 3 of 8.
- A. Okay.
- Q. At the bottom, you're writing to Jean Barraclough, correct?
- A. Uh-huh.
- Q. You need to answer yes or no, please.
- A. Yes.
- Q. And on the next page, it says, about six lines down, We have reached out to you several times and for several years. You never sent anyone to come to our home, and that is negligent on your behalf. We're still arguing about the same thing. I will consult an attorney within a day.
- Q. So you're saying that, in 2016 again, that you continued to have the water intrusion and other problems, you complained to Centex about them every year, and they were never fixed. Agreed?
- A. Yep.

Depo. of M. Brown, 59:7–60:4 (Ex. A to Centex's Motion for Summary Judgment) and Ex. 9 to Depo. of M. Brown.

In addition to the documents and testimony, Plaintiff's discovery responses evidence that Plaintiff was on notice of the construction deficiencies alleged in her Complaint well in advance of the three year statute of limitations benchmark of August 8, 2015:

- With respect to the alleged issues with the chimney and windows, Plaintiff states that she "initially saw water on the floor by the fireplace, and in the master bedroom and kitchen near the windows" and that she "first noticed

issues in 2005.” See Ex. 13 to Depo. of M. Brown, Answer to Centex’s Interrogatory No. 13.

- With respect to the alleged issues with the attic and roof, Plaintiff states that she “first noticed dry rot in the attic in 2013.” See Ex. 13 to Depo. of M. Brown, Answer to Centex’s Interrogatory No. 13.
- In addition, Plaintiff also states that the air handler and HVAC unit at the Residence were replaced in 2014, and that she “was advised that the air handler, which was located in the attic, was damaged due to water leaking through the roof.” See Ex. 13 to Depo. of M. Brown, Answer to Centex’s Interrogatory No. 11.
- Plaintiff states that she “became aware of problems with water intrusion, to include water spots and a mold/mildew smell, almost immediately upon closing on the home in 2005.” See Ex. 13 to Depo. of M. Brown, Answer to Centex’s Interrogatory No. 23.

In light of the foregoing, the Court cannot find support for Plaintiff’s Complaint allegation that Centex’s conduct and assurances that it would remedy the alleged defects, including attempts to correct them, induced Plaintiff to believe that the alleged defects would be corrected and litigation would not be necessary. Instead, this Court finds the documentary and testimonial evidence reflect that the complaints that Plaintiff has made in this litigation have existed since she bought the Residence in 2005, that Centex made certain limited repairs at the Residence in 2008 and 2009, that Plaintiff thought the repairs were not effective and did not fix the alleged issues, that Plaintiff continued to complain about these issues year after year since 2009, and that Centex refused to make any repairs after 2009.

Moreover, this Court finds that the foregoing documents and testimony evidence that Plaintiff either knew or should have known by the exercise of reasonable diligence that a cause of action arose from Centex’s alleged wrongful conduct as early as the end of 2005 and as late as April-May 2015, which was before the three year statute of limitations benchmark of August 8, 2015. See Holly Woods Ass’n of Residence Owners

v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011). As the documents and Plaintiff's own testimony in this case evidence, she noticed the alleged issues almost immediately upon closing on the Residence in 2005, Centex made certain limited repairs to the Residence in 2008 and 2009, the alleged issues were purportedly not fixed and continued since 2009, Plaintiff continued to complain to Centex about the alleged issues year after year since 2009, Centex has refused to make any further repairs or address any alleged issues since 2009, and Centex again reiterated to Plaintiff in 2013 and in May 2015 that Centex will not address any alleged issues.

This Court further finds that this evidence indicates that such facts and circumstances should have and did put Plaintiff, a person of common knowledge and experience, on notice that some right of hers has been invaded and that some claim against Centex might exist. See Dorman v. Campbell, 331 S.C. 179, 184–85, 500 S.E.2d 786, 789 (Ct. App. 1998). Further, Plaintiff sent correspondence to Centex in 2013 stating this was her last attempt to get Centex to fix the alleged issues before she would seek legal representation. In addition, Plaintiff sent correspondence to Centex on April 30, 2015, specifically referring to Centex's alleged "negligence" with respect to the alleged issues. Such correspondence indicates that Plaintiff was aware that some claim against Centex might exist before the three year statute of limitations benchmark of August 8, 2015. See Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc., No. 9:17-CV-1575-RMG, 2018 WL 6790308, at *3 (D.S.C. Dec. 26, 2018) (finding that plaintiff's correspondence to defendant general contractor expressly stating that plaintiff was aware of potential claim for negligence arising from water

damage to the community clubhouse was sufficient to prove plaintiff had knowledge of claim of action to begin running statute of limitations).

Importantly, the fact that Plaintiff may not have comprehended the full extent of the damage and defects before August 8, 2015, is immaterial. See Dorman, 331 S.C. at 184–85, 500 S.E.2d at 789. Just because Plaintiff may not have been aware of all of the alleged construction defects or the exact cause of each such alleged defect does not change the fact that she was aware of a cause of action before August 8, 2015. See also Hampton Hall, 2018 WL 6790308, at *3 (ruling that time when plaintiff “discovered the cause of action is determinative,” noting that although it “may be that there was additional defective construction that was unknown in 2009, yet the letter makes clear that the Plaintiff was aware of the cause of action”).

In light of the foregoing, the Court concludes there is no genuine issue of material fact that Plaintiff was aware of the alleged construction defects and that she knew or should have known she had causes of action against Centex before August 8, 2015, and, therefore, the three year statute of limitations bars Plaintiff’s claims against Centex, including Plaintiff’s claim for gross negligence, regarding the Residence.

II. PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTE OF REPOSE.

There is a significant difference between a statute of limitations and a statute of repose. “A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time.” Langley v. Pierce, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993) (emphasis added) (citation omitted) (internal quotation marks omitted). As the South Carolina Supreme Court explained:

A statute of repose is typically 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. A statute of repose is a statute

barring any suit that is brought after a specified time since the defendant acted . . . even if this period ends before the plaintiff has suffered a resulting injury. Statutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists.

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (emphasis added) (citations omitted) (internal quotation marks omitted). Further, a statute of repose, unlike a statute of limitations, cannot be defeated by estoppel, waiver, or claims of tolling. See, e.g., G & P Trucking v. Parks Auto Sales Serv. & Salvage, Inc., 357 S.C. 82, 89, 591 S.E.2d 42, 45 (Ct. App. 2003). While the statute of repose may sometimes lead to a harsh result, the statute of repose nonetheless creates an absolute time limit beyond which any liability is completely extinguished and no longer exists.

A. The Eight-Year Statute of Repose Applies In This Action.

In South Carolina, the statute of repose applicable to allegations of construction defects is set forth in S.C. Code Ann. § 15-3-640, which provides: “No actions to 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.” A prior version of the statute of repose, which was applicable to buildings substantially completed prior to July 1, 2005, set the time limitation at thirteen years. The eight-year statute of repose applies to homes where substantial completion occurs after July 1, 2005. Under S.C. Code Ann. § 15-3-640, a Certificate of Occupancy issued by a municipality is proof of the date of substantial completion.

On November 14, 2005, the Town of Summerville issued a Certificate of Occupancy for the Residence. See Certificate of Occupancy (Ex. C to Centex’s Motion

for Summary Judgment). As a result, because the Residence was substantially completed after July 1, 2005, the eight-year statute of repose applies to this action.

B. Plaintiff Filed Her Complaint More Than Eight Years After the Issuance of the Certificate of Occupancy for the Residence.

The Town of Summerville issued a Certificate of Occupancy for the Residence on November 14, 2005, for purposes of the statute of repose, construction of the Residence reached substantial completion on November 14, 2005. See S.C. Code Ann. § 15-3-640 (“For any improvement to real property, a certificate of occupancy issued by a county or municipality, in the case of new construction . . . shall constitute proof of substantial completion of the improvement . . .”). Plaintiff was required to file her Complaint within eight years of the date of substantial completion but did not. Instead, Plaintiff filed her Complaint on August 8, 2018, almost thirteen years after substantial completion of the Residence. As a result, Plaintiff is barred from recovering damages for alleged defective conditions at the Residence pursuant to the applicable statute of repose. See S.C. Code Ann. § 15-3-640.

This Court finds that Plaintiff did not file her Complaint against Centex until after the absolute deadline provided by the statute of repose and therefore, the statute of repose also bars Plaintiff’s claims against Centex.

In consideration of the above, it is hereby **ORDERED** that Centex’s Motion for Summary Judgment is **GRANTED** on the grounds that Plaintiff’s claims are barred by the applicable statute of limitations because there is no genuine issue of material fact regarding when Plaintiff knew or should have known she had causes of action against Centex, and Plaintiff’s claims are barred by the applicable statute of repose because

Plaintiff filed her action over eight years after the Residence was substantially completed.

AND IT IS SO ORDERED.

The Honorable George M. Mcfaddin, Jr.
Presiding Judge

_____, 2019



Dorchester Common Pleas

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

So Ordered

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