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SC Court of Appeals

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From: **Maddox, J. Cordell Law Clerk (David Thompson)** <cmaddoxlc@sccourts.org>
Date: Tue, Feb 4, 2020 at 1:48 PM
Subject: RE: Napier, et al. v. Mundy Construction; Case No. 2016-CP-02-0263 / Post Submission Follow-up to Proposed Final Order & Judgment
To: David Anderson <DAAnderson@richardsonplowden.com>, Lee Weiland <lweiland@lucey-law.com>, Justin Lucey <jlucey@lucey-law.com>, Maddox, J. Cordell <CMaddoxJ@sccourts.org>
Cc: Maddox, J. Cordell Secretary (Cynthia Hicks) <cmaddoxsc@sccourts.org>, Jennifer Zambriczki <jzambriczki@lucey-law.com>, Collin Fuller <cfuller@lucey-law.com>, James Robey <JRobey@richardsonplowden.com>

Good Morning,

Judge Maddox is prepared to rule on the case of *Robin Napier v. Mundy Construction*/Case No. 2016-CP-02-00263. Therefore, he is requesting that the Plaintiff's attorney draft a proposed order for his review that conforms to the following specifications:

- 1) There were only two witnesses who testified before the court at trial: the Plaintiff's expert Dr. Whitlock and Defense witness, Tony Mundy, Sr. Dr. Whitlock presented testimony to the court that the reason for the home damage was due to subsurface consolidation resulting in settlement of the buildings and causing cracks. Trial Tr. 9:14-9:19. Dr. Whitlock testified to a reasonable degree of certainty in his field that the consolidation occurred because of "consolidation of the soil that was poorly prepared during the construction of the building pads. That is the installation of the earth in the fill areas or the preparation of building pads and the cut areas." Trial Tr. 10:1-10:4. Based on the billing statements presented by the Plaintiff and Dr. Whitlock evidencing Mundy Construction's participation in preparing the soil for future building pads, as well as Tony Mundy, Sr.'s own admission that he inspected the pads when the lifts were coming up (Trial Tr. 142:21-143:3), the Court finds Defendant Mundy Construction liable for negligence. However, the Court finds Mundy Construction's actions do not rise to the level of gross negligence or intent.
- 2) Because no gross negligence or intent is being found on behalf of the Defendant, the Statute of Repose will bar recovery for the 62 units that have produced certificates of occupancy dated beyond the Statute of Repose time period.
- 3) Unless there is a non-disclosure agreement in place, please include the amounts of the previous settlements for each party that has contributed to the prior settlements.

4) As for the exact amount of recovery—Judge Maddox is still determining an exact figure and requests that the order leave any amounts blank as they relate to the actual monetary award.

5) Finally, he would like language included that tracks the following sentiment: “While difficult to decipher what damage resulted from construction defects and what is from general depreciation, the Court finds that 14 years’ worth of use and depreciation acts to reduce the amount of damages attributed to Defendant Mundy Construction.”

Finally, since a Rule 59(e) motion is expected from both parties, make sure it is mailed to our office to protect both of your rights to appeal. If you have any questions please do not hesitate to email or call me at the number listed below.

Thank you for your patience in resolving this matter,

David Thompson

Law Clerk for the Honorable Judge J. Cordell Maddox, Jr.

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