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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr.

Case No. 2018-CP-18-01436
Appellate Case No.: 2020-000985

MONICA BROWN-GANTT Appellant

v.

CENTEX REAL ESTATE COMPANY, LLC and CENTEX HOMES, A NEVADA
GENERAL PARTNERSHIP Defendants

And

CENTEX REAL ESTATE COMPANY, LLC and CENTEX HOMES, A NEVADA
GENERAL PARTNERSHIP Third-Party Plaintiff

v.

FLOORS, INC., successor by merger to 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

Of which CENTEX REAL ESTATE COMPANY, LLC and CENTEX HOMES, A NEVADA
GENERAL PARTNERSHIP are the Respondents

RECORD ON APPEAL

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APPEAL FROM DORCHESTER COUNTY
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The Honorable George M. McFaddin, Jr.

Case No. 2018-CP-18-01436

MONICA BROWN-GANTT Plaintiff/Appellant

v.

CENTEX REAL ESTATE COMPANY, LLC
and CENTEX HOMES, A NEVADA
GENERAL PARTNERSHIP Defendant/Respondent

NOTICE OF APPEAL

Monica Brown-Gantt hereby appeals the decision of the Court of Common Pleas, the
Honorable George M. McFaddin, Jr. presiding, rendered on June 11, 2020.

Respectfully Submitted,

SMITH | CLOSSER | WHEELER, PA



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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), SCRCP. “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

Electronically signed on 2019-10-15 14:16:45 page 19 of 19

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 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**

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.

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.
- ...

- 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.

- 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.

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

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.

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

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. McFaddin, Jr.
Presiding Judge

_____, 2020



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. McFaddin, Jr., #2759

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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.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-

SUMMONS

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is served upon you, and to serve a copy of your written response to the said Complaint on the subscribers at the law office of Smith | Closser, P.A., 7455 Cross County Road, Suite 1, Post Office Box 40578, Charleston, South Carolina, 29423-0578, within thirty (30) days after the date of service hereof, exclusive of the day of service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

SMITH | CLOSSER, P.A.

s/William K. Kalivas

William K. Kalivas – wkalivas@scnlaw.com
(SC Bar No.: 80201)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorney for the Plaintiff

August 8, 2018
18-198

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.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-

COMPLAINT
(Negligence/Defective Construction, Breach
of Implied Warranties, Unfair Trade
Practices, Breach of Contract, Negligent
Misrepresentation)

The Plaintiff, Monica Brown-Gantt, ("Plaintiff" or "Brown"), by and through their undersigned attorneys and complaining of the Defendants, hereby allege as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is the owner of real property located at 109 Catbriar Court, Summerville, Dorchester County, South Carolina, 29485 ("Home" or "Property").
2. Upon information and belief, Centex Real Estate Company, LLC is a limited liability company organized under the laws of Nevada; it conducts business in Dorchester County, South Carolina, and its acts that caused damage to the Plaintiff occurred in Dorchester County, South Carolina.
3. Upon information and belief, Centex Homes is a general partnership organized under the laws of Nevada; it conducts business in Dorchester County, South Carolina, and its acts that caused damage to the Plaintiff occurred in Dorchester County, South Carolina.
4. Therefore, subject matter jurisdiction and venue are proper before this Court, and, upon completion of service of process upon the Defendants, this Court will have proper personal jurisdiction over the parties.

FACTUAL ALLEGATION

5. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.
6. On or around May 17, 2005, the Plaintiff entered into a contract ("Contract") with the Defendants for the purchase and construction of the Home. A copy of the contract is attached hereto as Exhibit A.
7. Upon information and belief, the Defendants, their agents, employees, servants or subcontractors, obtained permits to perform a variety of construction work on the Home. As such, the Defendants owed a duty of care to the Plaintiff, as the ultimate user and purchaser of the Home, to construct the Home in accordance with all applicable building codes and industry standards, to ensure that their work was free from defects, and to perform their work in a good and workmanlike manner.
8. Upon information and belief, the Defendants, their agents, employees, servants or subcontractors, did in fact perform a variety of construction work on the Home pursuant to permits, without first obtaining necessary permits or without the need for permits. By undertaking construction work on the Home, the Defendants owed a duty of care to the Plaintiff, as the ultimate user and purchaser of the Home, to construct the Home in accordance with all applicable building codes and industry standards, to ensure that their work was free from defects, and to perform their work in a good and workmanlike manner.
9. The Plaintiff, through recent investigation, has determined that the Home's roof, windows, siding, sheathing, and floors are extensively damaged and/or improperly installed, as a result of the Defendants' defective and negligent construction. The

Damage was proximately caused by the Defendants, their agents, employees, servants and/or subcontractors. As a direct result of the Defendant's actions, the Plaintiff spent and will continue to spend substantial sums of money to repair the Home.

10. The Defendants' negligence has resulted in continual and repeated exposure to damaging events that have occurred each and every year since construction and will continue to occur until fully remedied.
11. The Defendants, their agents, representatives, and/or employees, made numerous visits to the Home in attempts to remedy some of the issues complained of, but the issues have not been remedied. Attempts to resolve the issues complained of ceased in May 2018 when the Defendants informed Plaintiff they would no longer attempt to remedy the issues addressed in the below causes of action.
12. The Defendants' conduct and assurances that it would remedy the Damage caused by its' negligence, to include numerous Home visits, email exchanges, and attempts to correct the Damage, induced the Plaintiff to reasonably believe that the Damage would be corrected and litigation would not be necessary.

**AS A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence/Defective Construction)**

13. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.
14. Upon information and belief, the Defendants, their agents, employees, servants and/or subcontractors engaged in substantial construction to the Home.
15. By undertaking construction work on the Home, the Defendants owed a duty of care to the Plaintiff, as the ultimate user and purchaser of the Home, to construct the Home in accordance with all applicable building codes and industry standards, to ensure that their

work was free from defects, and to perform their work in a good and workmanlike manner.

16. The Defendants, their agents, employees, servants and/or subcontractors were negligent, careless, reckless, willful and wanton in the construction work they performed on the Home, thereby breaching the above-referenced duty in numerous ways, including, but not limited to,

- a. Improper installation of flashing around the chimney and windows.
- b. Improper installation of siding and windows, resulting in gaps that allow for water intrusion.
- c. Improper installation of the roof, to include shingles and flashing, resulting in damage to the sheathing in the attic.
- d. Improper installation of windows and flashing.
- e. Improper installation of roof over the screen porch, to include shingles and flashing.

17. Damage to the Home has continued to occur each and every year since the Defendants performed the work to the Home, and it will continue to occur until the defects are fully remedied.

18. The damage to the home resulting from Defendants' negligence and gross negligence includes, but is not limited to:

- a. Buckling, warping, and cracking of wood floors;
- b. Significant water damage to window frames and shutters;
- c. Damage to the sheathing in the attic and around the windows;

19. As a direct, foreseeable, known and proximate result of the Defendants' negligence and gross negligence, the Plaintiff has incurred and will continue to incur substantial costs to fix the Home, for which she is entitled to recover actual, consequential and punitive damages, as may be determined by the trier of fact.

**AS A SECOND CAUSE OF ACTION
(Breach of Implied Warranties)**

20. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.

21. The Defendants, their agents, employees, servants and/or subcontractors impliedly warranted that their work would be performed using the utmost skill and attention and would be of a good and workmanlike quality, free from all defects.

22. The Defendants, their agents, employees, servants and/or subcontractors have breached the implied warranties of workmanlike service, fitness, merchantability and habitability by performing defective design and construction as set forth above.

23. By entering into the Contract with the Plaintiff, the Defendants impliedly warranted to act in good faith and also warranted that the Home was habitable; the Defendants have breached these warranties.

24. As a direct and proximate result of the Defendants' breach of these and other implied warranties, the Home required and will continue to require significant remediation work.

25. The Plaintiff is entitled to all actual, incidental, consequential, special and punitive damages as a result of the Defendants' breach of implied warranties.

**AS A THIRD CAUSE OF ACTION
(Unfair Trade Practices)**

26. The Plaintiff hereby incorporate the allegations contained in the foregoing paragraphs as if fully restated here.
27. The Defendants negligent construction of the Home constitutes unfair and deceptive trade practices, in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*
28. The Defendants' conduct is capable of repetition, adversely affecting the public interest.
29. The Defendants knew or should have known that their conduct was in violation of the Unfair Trade Practices Act.
30. As a direct, foreseeable, known and proximate result of the Defendants' unfair and deceptive trade practices, the Plaintiff has suffered an ascertainable loss of money.
31. The Plaintiff is entitled to recover actual damages, which should be trebled, together with interest and attorney's fees and costs.

**AS A FOURTH CAUSE OF ACTION
(Breach of Contract)**

32. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.
33. The parties entered into the Contract for the construction and sale of the Home.
34. The Plaintiff performed all of her conditions precedent under the Contract.
35. The Defendants breached the contract by failing to disclose or discover the defective conditions in the Home.
36. As a direct and proximate result of the Defendants' breach of the contract, the Plaintiff has incurred and will continue to incur substantial and ascertainable sums of money.

37. The Plaintiff is entitled to all actual, incidental, consequential, special and punitive damages, in addition to her attorney's fees and costs, as a result of the Defendants' breach of contract.

**AS A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)**

38. The Plaintiff hereby incorporates the allegations contained in the foregoing paragraphs as if fully restated here.

39. The Defendants' representations or nondisclosures to the Plaintiff regarding the defective construction or conditions of the Home were false and/or misleading.

40. The Defendants had a pecuniary interest in making said representations or nondisclosures.

41. The Defendants owed Plaintiff a duty of care to see that truthful information regarding the Home was communicated to the Plaintiff.

42. The Defendants breached said duty by failing exercise due care.

43. The Plaintiff justifiably relied on the Defendants' representations or nondisclosures, and she suffered a pecuniary loss as a direct and proximate result of her reliance on the Defendants' representations or nondisclosures.

44. The Plaintiff is entitled to recover actual and punitive damages from the Defendants.

WHEREFORE, having complained of the Defendants, the Plaintiff prays that this Court inquire into the matters set forth above. Plaintiff further prays that this Court enter judgment against the Defendants and in the Plaintiff's favor, in an amount to be determined at the trial but sufficient to compensate Plaintiff:

- (1) For all actual and consequential damages;
- (2) For trebled actual damages pursuant to above-cited applicable law;
- (3) For punitive damages;

- (4) For prejudgment interest;
- (5) For all attorney's fees and costs associated with prosecuting this action; and
- (6) For all other relief this Honorable Court deems just and proper.

SMITH | CLOSSER, P.A.

s/William K. Kalivas

William K. Kalivas – wkalivas@scnlaw.com

(SC Bar No.: 80201)

7455 Cross County Road, Suite 1

P.O. Box 40578

Charleston, SC 29423-0578

843-760-0220

Attorney for the Plaintiff

August 8, 2018
18-198

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT

Monica Brown-Gantt,

Case No.: 2018-CP-18-01436

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 SUMMONS

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., Distribution Holdings, LLC f/k/a
Atlantic Roofing Distributors, LLC, J.H. Lee
Masonry, Inc. a/k/a James H. Lee
Masonry, Inc., DVS, Inc., McDaniel
Construction Co., LLC, and Builders
FirstSource, Inc.; Builders FirstSource-
Atlantic Group, LLC; Builders FirstSource-
Florida, LLC; Builders FirstSource-
Southeast Group, LLC

Third-Party Defendants.

TO: THE THIRD-PARTY DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the below-signed at their office located at 200 Meeting Street, Suite 301, Charleston, South Carolina 29401, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: s/ Thomas C. Hildebrand, Jr.
Thomas C. Hildebrand, Jr.
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Attorneys for Defendants and Third-Party
Plaintiffs Centex Real Estate Company, LLC
and Centex Homes, a Nevada General
Partnership,

October 12, 2018

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., Distribution Holdings, LLC f/k/a
Atlantic Roofing Distributors, LLC, J.H. Lee
Masonry, Inc. a/k/a James H. Lee
Masonry, Inc., DVS, Inc., McDaniel
Construction Co., LLC, and Builders
FirstSource, Inc.; Builders FirstSource-
Atlantic Group, LLC; Builders FirstSource-
Florida, LLC; Builders FirstSource-
Southeast Group, LLC

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT

Case No.: 2018-CP-18-01436

**ANSWER AND THIRD PARTY
COMPLAINT OF CENTEX HOMES**
(Jury Trial Demanded)

The Defendants Centex Real Estate Company, LLC and Centex Homes, a
Nevada General Partnership (responding collectively as "Centex"), through their below

signed attorneys, answering the Complaint of the Plaintiff above-named and by way of Third-Party Complaint, allege as follows:

PARTIES AND JURISDICTION

1. It is without information sufficient to form a belief as to the allegations of Paragraph 1 and therefore denies the same and demands strict proof thereof.

2. Answering the allegations of Paragraph 2 it admits that the named entity is a Nevada Limited Liability Company but denies the remaining allegations of that Paragraph.

3. Answering the allegations of Paragraph 3 it admits that the named entity is a Nevada General Partnership and that it conducts business in Dorchester County but denies the remaining allegations of that Paragraph.

4. The allegations of Paragraph 4 state legal conclusions which require no responsive pleading.

AS TO THE FACTUAL ALLEGATIONS

5. Answering the allegations of Paragraph 5, Centex realleges its responses to the above-referenced Paragraphs as if repeated herein verbatim.

6. Answering the allegations of Paragraph 6, it craves reference to the referenced contract as amended for its exact terms and contents and denies any allegations inconsistent therewith.

7. Answering the allegations of Paragraph 7, it admits that Centex obtained permits to construction the home but it denies the remaining allegations of Paragraph 7.

8. It denies the allegations of Paragraph 8 except it admits that Centex provided construction work for the home.

9. It denies the allegations of Paragraphs 9 through 12.

AS TO THE FIRST CAUSE OF ACTION

10. Answering the allegations of Paragraph 13, Centex realleges its responses to the above-referenced Paragraphs as if repeated herein verbatim.

11. It denies the allegations of Paragraph 14 but admits that Centex through subcontractors substantially constructed the home.

12. It denies the allegations of Paragraphs 15 through 19.

AS TO THE SECOND CAUSE OF ACTION

13. Answering the allegations of Paragraph 20, Centex realleges its responses to the above-referenced Paragraphs as if repeated herein verbatim.

14. It denies the allegations of Paragraphs 21 through 25.

AS TO THE THIRD CAUSE OF ACTION

15. Answering the allegations of Paragraph 26, Centex realleges its responses to the above-referenced Paragraphs as if repeated herein verbatim.

16. It denies the allegations of Paragraphs 27 through 31.

AS TO THE FOURTH CAUSE OF ACTION

17. Answering the allegations of Paragraph 32, Centex realleges its responses to the above-referenced Paragraphs as if repeated herein verbatim.

18. Answering the allegations of Paragraph 33, it craves reference to the referenced contract as amended for its exact terms and contents and denies any allegations inconsistent therewith.

19. It denies the allegations of Paragraphs 34 through 37.

AS TO THE FIFTH CAUSE OF ACTION

20. Answering the allegations of Paragraph 38, Centex realleges its responses to the above-referenced Paragraphs as if repeated herein verbatim.

21. It denies the allegations of Paragraphs 39 through 44, being all the remaining allegations of the Plaintiff's Complaint.

22. It denies each and every allegation of the Plaintiff's Complaint not specifically admitted above.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

23. Plaintiff lacks standing to make the claims asserted against Centex in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

24. That all claims asserted against Centex are barred by the applicable statute of limitations and/or the applicable statute of repose.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

25. Plaintiff's claims, if any, are barred, or should be reduced, by Plaintiff's own comparative negligence and recklessness by Plaintiff's failure to properly maintain the property and to mitigate damages.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

26. Plaintiff's claims, if any, are the result of acts and omissions of other entities over whom Centex has no control, barring Plaintiff's claims against Centex.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

27. That all claims are barred by the doctrine of Laches, Waiver and Estoppel.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

28. That the final completion and acceptance of the work undertaken by Centex pursuant to the original contract and all modifications thereto constitutes a complete defense to all claims asserted by Plaintiff.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

29. Plaintiff's claims are, upon information and belief, barred as she has failed to make a claim against Centex within any applicable warranty period.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

30. That all claims asserted by Plaintiff are barred by the doctrine of unclean hands.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

31. That Plaintiff failed to give Centex reasonable notice of the existence of any alleged defects due to faulty workmanship and/or materials and failed to provide Centex a reasonable opportunity to correct any such alleged defects.

32. That Plaintiff's failure to give Centex notice of and an opportunity to correct any alleged defects due to faulty workmanship and/or materials constitutes a complete defense to all claims of breach of warranty.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

33. Upon information and belief, any express or implied warranties were limited in duration from the date of completion and acceptance of the project by the Owner.

34. That the failure of Plaintiff within the warranty period from the date of the completion and acceptance of the project by the Plaintiff, to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Centex constitutes a complete defense to all claims asserted by Plaintiff.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred by payment and/or release.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

36. If Plaintiff sustained injuries and damages in the manner alleged in the Complaint, which injuries and damages are specifically denied by Centex, then the alleged injuries and damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Centex nor of anyone for whose conduct Centex are anyway responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the part of Plaintiff, all of which will be shown at the trial of this case, and for which Plaintiff can have no recovery against Centex or, in the alternative, for which Plaintiff's recovery should be appropriately reduced. Plaintiff's comparative negligence includes, but is not limited, the following particulars:

- (a) In failing to exercise reasonable care to maintain the structure and to mitigate her damages.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

37. Plaintiff's claims are barred as the court lacks jurisdiction over the subject matter of the case.

FURTHER ANSWERING AND AS AN ADDITIONAL

AND AFFIRMATIVE DEFENSE

38. Plaintiff's claims fail to state facts sufficient to constitute causes of action against Centex.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

39. Centex has contractually limited its warranty and non-warranty obligations and exposure to the Plaintiff, excluding liability for many claims the Plaintiff are making, barring Plaintiff's claims and/or Plaintiff's claimed damages, including Plaintiff's claim for consequential damages, in whole or in part, against Centex.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

40. Plaintiff's claims are barred, or should be stayed, pending arbitration as there exists a valid arbitration provision in the contract between the Plaintiff and Centex.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

41. Plaintiff's claims for the unfair trade practices act should be dismissed as the alleged actions of this Centex do not have an impact on the public interest.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

42. Plaintiff's claims for breach of South Carolina's unfair trade practices act are barred pursuant to South Carolina Code §39-5-40.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

43. Venue in this action is improper.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

44. Plaintiff's claims should be dismissed as the Plaintiff failed to effect proper service of process on Centex.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

45. Plaintiff's claims should be dismissed as there is a lack of appropriate personal jurisdiction against this Centex in this action.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

46. Plaintiff's claim are barred or would be reduced as Centex provided a limited warranty to Plaintiff which was in lieu of all other warranties or obligations, express or implied, including the warranty of habitability, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. Plaintiff's claims and remedies are limited to claims and remedies under the limited warranty that was provided, and any other claims are barred.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

47. The Plaintiff's claims are barred or should be dismissed by virtue of the doctrine of spoliation of evidence, as the Plaintiff spoiled evidence and repaired alleged deficiencies without notice to Centex and without giving Centex opportunity to observe the alleged deficiencies.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

48. Plaintiffs' claims are barred and/or should be stayed or dismissed by virtue of the Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to

Cure Construction Dwelling Defects Act, South Carolina Code §40-59-810-860 (1976 as amended).

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

49. Plaintiff's claims are barred by the economic loss rule.

FURTHER ANSWERING AND BY WAY OF THIRD-PARTY CLAIMS AGAINST THE
ABOVE-NAMED THIRD-PARTY DEFENDANTS, CENTEX ALLEGES AS FOLLOWS:

50. Centex realleges the Paragraphs above as if repeated herein verbatim.

51. Plaintiff has sued Centex claiming damages caused by alleged deficient construction services provided on the Project. See Plaintiff's Complaint filed with the Court on August 8, 2018.

52. Centex contracted with the following persons and entities (herein collectively referred to as "the Subcontractor Third-Party Defendants") to perform work and provide materials as subcontractors and materialmen for the Project. Those persons and entities are as follows:

(a) framing, to include but not limited to installation of the water management system and installation of doors and windows, together with all associated waterproofings and flashings

- McDaniel Construction Co., LLC
- Builders FirstSource, Inc.; Builders FirstSource-Atlantic Group, LLC; Builders FirstSource-Florida, LLC; Builders FirstSource-Southeast Group, LLC

(b) roofing, together with all associated and related waterproofings and flashings and inspections

- Distribution Holdings, LLC f/k/a Atlantic Roofing Distributors, LLC

- Builders FirstSource, Inc.; Builders FirstSource-Atlantic Group, LLC; Builders FirstSource-Florida, LLC; Builders FirstSource-Southeast Group, LLC

(c) brick veneer and masonry installer, together with all associated and related waterproofings and flashings

- J.H. Lee Masonry, Inc. a/k/a James H. Lee Masonry, Inc.

(d) siding installer and exterior finishes, including trim, soffits, and vinyl railings, together with all associated and related waterproofings and flashings

- DVS, Inc.

(e) carpets, flooring installation, and floor covering, together with all related components

- 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.
- Builders FirstSource

AS A FIRST THIRD-PARTY CLAIM AGAINST THE SUBCONTRACTOR THIRD-PARTY DEFENDANTS:
(Indemnity)

53. Centex realleges the Paragraphs above as if repeated herein verbatim.

54. Plaintiff has sued Centex claiming damages caused alleged deficient construction services provided by the Subcontractor Third-Party Defendants on the Project.

55. Centex has denied all of the substantive allegations against it that were made by the Plaintiff.

56. To the extent, if any, that Centex is held liable to the Plaintiff in this action, such liability would be a direct and proximate result of the wrongful acts, breaches, omissions, negligence, gross negligence and/or representations of the Subcontractor Third-Party Defendants, which have damaged Centex as Centex has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

57. To the extent, if any, that the construction was defective or deficient in workmanship, installation, materials, and/or were not merchantable or fit for their particular purposes, such defects and deficiencies would be the result of the breach of the express and implied contractual obligations and warranties that the Subcontractor Third-Party Defendants provided, damaging Centex as Centex has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action.

58. Centex is entitled to full indemnification from the Subcontractor Third-Party Defendants for any liability Centex is found to have to the Plaintiff in this action, and Centex would be entitled to damages for the Subcontractor Third-Party Defendants' negligence as aforescribed and for the Subcontractor Third-Party Defendants' breach of its implied and express warranties, entitling Centex to recover from the Subcontractor Third-Party Defendants its attorney's fees, costs and other expenses incurred in defending this action, and entitling Centex to recover from the Subcontractor Third-Party Defendants any sums for which it may be held liable to Plaintiff.

59. As a result of these wrongful acts and breaches of warranties, Centex has incurred damage in the amount of any money it is adjudged to owe Plaintiff, or which it

pays or has paid Plaintiff in settlement of Plaintiff's claims, plus all costs (including expert fees) of investigating and defending this claim.

60. The Project has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of the Subcontractor Third-Party Defendants resulting in property damage which is not the work product of each of these Subcontractor Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of the Subcontractor Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

AS A SECOND THIRD-PARTY CLAIM AGAINST THE SUBCONTRACTOR THIRD-
PARTY DEFENDANTS
(Negligence)

61. Centex realleges the Paragraphs above as if repeated herein verbatim.

62. The Subcontractor Third-Party Defendants were negligent, careless and reckless in the construction, supervision, inspection and/or supplying of the work or materials outlined above and incorporated into the project.

63. As a direct and proximate result of such negligence, gross negligence, carelessness and recklessness, Centex has been damaged in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

64. Upon information and belief, Centex is entitled to judgment for actual damages collectively or individually against the Subcontractor Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiff, or which it pays or has paid

Plaintiff in settlement of Plaintiff's claims, as well as all fees and costs (including expert fees) incurred in the investigation, defense and settlement of this claim.

65. The Project has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of the Subcontractor Third-Party Defendants resulting in property damage which is not the work product of each of these Subcontractor Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of the Subcontractor Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

66. Further, Centex has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of the Subcontractor Third-Party Defendants' negligence and for which the Subcontractor Third-Party Defendants are also liable to Centex.

AS A THIRD THIRD-PARTY CLAIM AGAINST THE SUBCONTRACTOR THIRD-
PARTY DEFENDANTS
(Breach of Warranty)

67. Centex realleges the Paragraphs above as if repeated herein verbatim.

68. The Subcontractor Third-Party Defendants expressly or impliedly warranted to Centex that all work performed by them would be performed in a careful, diligent and workmanlike manner, and that any materials and/or services designed, supplied or sold by them for use on the project would be merchantable and fit for their

intended or specific purpose. The Subcontractor Third-Party Defendants breached their implied and/or express warranties of merchantability, workmanlike service, and/or fitness for a particular or intended purpose in the construction of the project.

69. As a result of these breaches of warranties, Centex has incurred damage in the amount of any money it is adjudged to owe Plaintiff, or which it pays or has paid Plaintiff in settlement of Plaintiff's claims, plus all costs (including expert fees) of investigating and defending this claim.

70. Upon information and belief, Centex is entitled to judgment against the Subcontractor Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation, defense and settlement of this claim.

71. The Project has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of the Subcontractor Third-Party Defendants resulting in property damage which is not the work product of each of these Subcontractor Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of the Subcontractor Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

72. Further, Centex has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of

the Subcontractor Third-Party Defendants' breach of warranty and for which the Subcontractor Third-Party Defendants are also liable to Centex.

AS A FOURTH THIRD-PARTY CLAIM AGAINST THE SUBCONTRACTOR THIRD-
PARTY DEFENDANTS
(Breach of Contract)

73. Centex realleges the Paragraphs above as if repeated herein verbatim.

74. Centex Homes entered into contracts with the Subcontractor Third-Party Defendants. The Subcontractor Third-Party Defendants were to provide work and materials to the Project in question as described above.

75. The terms of the contracts required the Subcontractor Third-Party Defendants to provide construction goods and services for the Project that, among other things, would produce a quality building free from defects and otherwise in conformance with all contract documents, including all building codes and industry standards. The contracts further required the Subcontractor Third-Party Defendants to supervise and direct its work, using the best skill and attention.

76. The Subcontractor Third-Party Defendants breached their contract by failing to provide appropriate construction goods and services to the Project, by failing to perform its work in a careful, diligent and workmanlike manner, by failing to provide goods and services that resulted in a quality building free from defects and otherwise in conformance with all contract documents, and failing to provide goods and services that were in conformity with all appropriate building codes and industry standards.

77. As a result of these breaches of contract, Centex has incurred damage in the amount of any money it is adjudged to owe Plaintiff, or which it paid Plaintiff in settlement of Plaintiff's claims, plus the costs of investigating and defending this claim.

78. Upon information and belief, Centex is entitled to judgment against the Subcontractor Third-Party Defendants in the amount of any monies it is adjudged to owe Plaintiff, or which it pays or has paid Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation, defense and settlement of this claim.

79. The Project has allegedly sustained actual property damage caused by continuous exposure to the improper and negligent construction and faulty work of the Subcontractor Third-Party Defendants resulting in property damage which is not the work product of each of these Subcontractor Third-Party Defendants. In addition, the alleged faulty construction, breaches, errors, omissions and wrongful acts of the Subcontractor Third-Party Defendants were, and have resulted in, occurrences that were unintended, unforeseen, gratuitous and/or injurious events that caused property damage.

80. Further, Centex has been exposed to special damages recoverable at law in that its professional reputation has been harmed, and it has incurred and continues to incur costs reasonably necessary to defend its interests including fees and costs which are associated with its investigation of this matter which are the legal consequences of the Subcontractor Third-Party Defendants' breach of contract and for which the Subcontractor Third-Party Defendants are also liable to Centex.

WHEREFORE, having fully answered Plaintiff's Complaint, Centex prays that Plaintiff's claims be dismissed with costs, and that Centex be given judgment against the Subcontractor Third-Party Defendants in the amount of any liability Centex is found to have to Plaintiff in this action, and Centex demands judgment requiring the

Subcontractor Third-Party Defendants to defend and indemnify Centex against any liability which Centex may suffer to Plaintiff in this action, to include Centex's attorney's fees, costs and other expenses incurred in defending this action. Centex further demands judgment for actual and, if warranted, punitive damages against the Subcontractor Third-Party Defendants and to reimburse it fully for all costs, expenses, and attorneys' fees associated with the deficiencies described herein, in an amount to be determined by the trier of fact, and for such other and further relief as this Court may deem just and proper.

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: s/ Thomas C. Hildebrand, Jr.
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Attorneys for Defendants and Third-Party
Plaintiffs Centex Real Estate Company, LLC
and Centex Homes, a Nevada General
Partnership,

October 12, 2018

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

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

PLEASE TAKE NOTICE that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the Defendants Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership (responding collectively as "Centex"), by and through their undersigned counsel, hereby move for summary judgment as to 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 time barred by the statute of repose and by the statute of limitations.

The residence that is the subject of this litigation (the "Residence") was completed in and Plaintiff bought the Residence in November 2005. Plaintiff filed her Complaint against Centex in this action on August 8, 2018. Centex is entitled to summary judgment on all of Plaintiff's causes of action because Plaintiff failed to file her Complaint against Centex within the time allowed under the applicable statute of limitations. The documents and deposition testimony in this matter evidence there is no dispute of material fact that Plaintiff was aware of the alleged construction defects at the Residence and that a claim against Centex might exist before August 8, 2015, and, therefore, the three year statute of limitations bars Plaintiff's claims against Centex.

Further, Plaintiff filed her claims more than eight years after the issuance of the Certificate of Occupancy for the Residence. Therefore, her claims are barred by the applicable statute of repose.

This Motion is supported by the attached exhibits, the pleadings in this action, the controlling statutes, applicable case law, a supporting memorandum of law, any additional exhibits, any affidavits or supplemental memoranda, any additional documents filed with or required by the Court, and such supporting arguments as may be submitted in connection herewith.

Respectfully submitted,

PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

By: s/ Thomas C. Hildebrand, Jr.
Thomas C. Hildebrand, Jr.
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tomhildebrand@parkerpoe.com

Attorneys for Defendants and Third-Party
Plaintiffs Centex Real Estate Company, LLC
and Centex Homes, a Nevada General
Partnership,

March 21, 2019

Exhibit A

Deposition of Monica Brown-Gantt

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 DORCHESTER COUNTY

4 DEPOSITION OF MONICA BROWN

5 MONICA BROWN-GANTT,

6 Plaintiff,

7 Case No. 2018-CP-18-01436

8 vs.

9 CENTEX, et al.,

10 Defendants.
11

12 DEPONENT: MONICA BROWN

13 DATE: December 13, 2018

14 TIME: 10:23 AM

15 LOCATION: PARKER POE
16 CHARLESTON, SOUTH CAROLINA

17
18
19 REPORTED BY: TERI L. KENNELLY, RPR, CRR
20 CLARK & ASSOCIATES, INC.
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22 Charleston, SC 29415
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25 Teri@Clark-Associates.com

Deposition of Monica Brown-Gantt

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

SMITH CLOSSER & WHEELER
BY: WILLIAM K. KALIVAS
7455 Cross County Road, Suite 1
North Charleston, SC 29423

ON BEHALF OF THE DEFENDANTS:

PARKER, POE, ADAMS & BERNSTEIN
BY: THOMAS HILDEBRAND
200 Meeting Street, Suite 301
Charleston, SC 29401

Deposition of Monica Brown-Gantt

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EXAMINATION

BY MR. HILDEBRAND

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1 Q. We've gotten interrogatory answers that
2 your attorneys provided us.

3 A. Yes.

4 Q. Do you remember those? And you assisted
5 him with those, I would assume?

6 A. Yes.

7 Q. And we've also gotten a bunch of
8 documents from your files, some of which I
9 haven't gone through yet and some other
10 documents. And from what I can -- from what the
11 documents say, you began experiencing problems
12 with your home virtually right after you moved
13 into it in 2005, correct?

14 A. Yes.

15 Q. And they're basically the same problems
16 then that exist now. Agreed?

17 A. Yes.

18 Q. All right. And they haven't been fixed
19 by Centex. That's why you're suing them,
20 correct?

21 A. Correct.

22 Q. And what are the problems that have
23 existed from approximately 2005? List those
24 deficiencies.

25 A. Well, to start with, the windows.

Deposition of Monica Brown-Gantt

1 Q. Tell me about that.

2 A. The windows, we would always see the
3 water, you know, near the windows. And Centex
4 would come back and say, Oh, we -- we're coming;
5 we're going to cure this. And that's how it
6 started, the windows.

7 Q. So there's water leakage under the
8 windows?

9 A. Well, it was brown spots under the
10 window. And Centex indicated that there was no
11 issue, they have cured everything. So it started
12 day one with the windows, uh-huh.

13 Q. But the brown spots, you knew just from
14 common sense, that that indicated water was
15 getting under the windows. Agreed?

16 A. Yes.

17 Q. And that was never fixed?

18 A. Nope.

19 Q. And continued?

20 A. Well, they said they fixed it.

21 Q. But they didn't?

22 A. If it's continuing, they haven't.

23 Q. Right. And every time it rained, you'd
24 notice that the spots would reappear?

25 A. Not every time it rained, no. Because I

Deposition of Monica Brown-Gantt

1 Q. But you knew that was incorrect?

2 A. No, I didn't, until recently.

3 Q. Not until recently?

4 A. Until -- not in 2006, 2007, not
5 throughout, because Centex came to the house
6 several times when I complained about still
7 seeing water.

8 Ms. Brown, we've got it. We've got
9 it covered. We did fix it. We did this. We did
10 that.

11 Q. When was the last time that Centex came
12 out and worked on your house?

13 A. Centex came out -- well, he came out in
14 2016. He came out in 2017. He came out in 2009,
15 2011 or '10, and at some point, they said they
16 weren't going to come out. They had already
17 cured the problem; we're not coming back.

18 Q. If Centex's documents indicate that the
19 last -- before you -- okay.

20 When you started having
21 communications with Centex in -- all right. Let
22 me ask this -- I tell you what. Let's just go
23 through some -- before we go through all the
24 documents, so you had window leakage problems
25 from day one, correct?

Deposition of Monica Brown-Gantt

1 A. Yeah.

2 Q. What other problems?

3 A. The window could not open actually.

4 Q. Was that ever fixed?

5 A. He came out -- they came out and did
6 something to the window to cause it to open.

7 Q. So it was fixed?

8 A. Uh-huh.

9 Q. And it's fixed now?

10 A. The window can open.

11 Q. So it's fixed?

12 A. Yes.

13 Q. So what other issues exist?

14 A. Issues? From day one?

15 Q. Yeah.

16 A. The floors, when you walk into my son's
17 room, the floor would shake. The furniture would
18 shake. The --

19 Q. Was that ever fixed?

20 A. No.

21 Q. What else?

22 A. The heating unit for the third floor was
23 installed incorrectly. They came in and
24 reinstalled it.

25 Q. Was that fixed?

Deposition of Monica Brown-Gantt

1 (Exhibit No. 9 was marked for
2 identification.)

3 Q. Let's look at some other documents that
4 you have produced. They are Bates stamped 28
5 through 35, and I've marked those as Exhibit 9.

6 So I think that this is all a long
7 e-mail chain, so I think we need to start with
8 the last page and then move forward. Okay?

9 A. Uh-huh.

10 Q. You need to answer yes or no, please.

11 A. Yes.

12 Q. So do you see at the bottom of the page,
13 it says -- do you know what a Bates stamp is? Do
14 you see Brown -- at the bottom right, Brown --
15 the very last page is Brown 00035.

16 A. Okay.

17 Q. All right. Let's turn to the next page,
18 Brown 0034. Actually, turn to the page before
19 that, 0033. Do you see the start of that e-mail
20 chain? It's dated April 30, 2015, at 2:31 p.m.
21 from you.

22 A. You said the third page?

23 Q. Yeah, 0033. Do you see 0033, Ms. Brown?

24 A. Yes.

25 Q. And this is an e-mail from you to

Deposition of Monica Brown-Gantt

1 Centex, dated April 30, 2015, correct?

2 A. Oh, okay. I see that.

3 Q. Correct?

4 MR. KALIVAS: At the very bottom of
5 the page?

6 THE WITNESS: At the bottom of the
7 page?

8 MR. HILDEBRAND: Right, yes.

9 Q. And this is where you're writing Centex
10 saying, These are the problems that we're having
11 with our house. Agreed? If you look on the next
12 page, there's a listing from you in all caps
13 about the problems that you've had.

14 A. On the next page, and you're saying page
15 7 out of 8?

16 Q. Yes. This is your e-mail, isn't it --
17 is it not, Ms. Brown?

18 A. Yeah, I was listing all the problems I
19 had day one.

20 Q. Right, from day one.

21 A. Uh-huh.

22 Q. You need to answer yes, please.

23 A. Yes.

24 Q. Thank you. And the third floor had no
25 flashers and had been leaking from day one.

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1 Agreed?

2 A. Yes, based on the report.

3 Q. Right. Reading down, The entire room
4 shakes when you walk into my son's room.

5 A. Right.

6 Q. That was never fixed?

7 A. That was -- they said they never were
8 going to address that again after I keep
9 complaining about it.

10 Q. Right. So that existed from day one --

11 A. That existed from --

12 Q. -- and you were complaining again?

13 A. That existed from day one, and they came
14 out, trying to repair it. They were patching it.
15 They came out several times trying to patch it,
16 but it never cured it.

17 Q. Right.

18 A. Never cured the problem. And according
19 to Centex builders, the contractors, the floor
20 doesn't supposed to withstand a lot of weight.
21 That's what they said.

22 Q. But you -- as a homeowner, you
23 recognized that shaking of the floor was not
24 normal and was not satisfactory?

25 A. Well, you know, I'm not a contractor,

1 A. The first time, they said they've cured
2 the issue again.

3 Q. My simple question, Ms. Brown. We're
4 probably going to --

5 A. But they came out too many times.

6 Q. Right. But my question is, since
7 2009 -- they came out several times in 2009 and
8 did repairs. But no repairs have been done by
9 Centex since then. Agreed?

10 A. No, I cannot agree on that one because I
11 can't recall if they came out after and made any
12 repairs. See, I can't -- I don't remember that.

13 Q. Well, can you testify here under oath --

14 A. Uh-huh.

15 Q. -- that Centex did, in fact, make any
16 repairs to your house after 2009?

17 A. Well, this is '18. No, I cannot say
18 they came in after to make repairs.

19 Q. Right. So the -- based on what you can
20 testify under oath here today, the last time that
21 Centex made any repairs, to your knowledge, was
22 in 2009. Agreed?

23 A. That's the last time I can recall.

24 Q. Okay.

25 A. Yes.

1 seeing the water coming in?

2 A. Well, I don't see the water coming in
3 all the time.

4 Q. Not all the time, but you see it at
5 least once a year?

6 A. Well, no, because it has to --

7 Q. You don't?

8 A. No. I literally have to -- if it's a
9 hard rain, if it's a hard rain and it's water --
10 I mean, rain is blowing, then --

11 Q. Well, then why are you complaining to
12 Centex every year then?

13 A. I'm complaining to Centex every year
14 because it appears that nothing has been cured.
15 It's like you Band-Aided something because I can
16 see the difference that, okay, why am I cold in
17 the kitchen and when I sit in the kitchen it
18 feels like it's another 30 degrees colder than
19 outside. Something is wrong.

20 Q. Let's turn to page 4 of 8 in the bottom
21 right, at the very bottom. Do you see that very
22 last paragraph? That's from Jean Barraclough you
23 to you. Do you see that, Ms. Brown?

24 A. Yeah.

25 Q. It says, All warranties including the

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1 structural warranty expired on November 8, 2015.
2 Centex completed the last repair in 2009, seven
3 years ago. Do you have any testimony or evidence
4 to dispute that the last repairs that Centex made
5 were in 2009?

6 A. No, I don't.

7 Q. Let's turn to page 3 of 8. This is in
8 2016. And on --

9 A. You're on page what?

10 Q. I'm on page 3 of 8.

11 A. Okay.

12 Q. At the bottom, you're writing to Jean
13 Barraclough, correct?

14 A. Uh-huh.

15 Q. You need to answer yes or no, please.

16 A. Yes.

17 Q. And on the next page, it says, about six
18 lines down, We have reached out to you several
19 times and for several years. You never sent
20 anyone to come to our home, and that is negligent
21 on your behalf. We're still arguing about the
22 same thing. I will consult an attorney within a
23 day.

24 So you're saying that, in 2016
25 again, that you continued to have the water

1 Q. Let's talk about the -- let's talk about
2 some of the documents here.

3 (Exhibit No. 8 was marked for
4 identification.)

5 Q. Here's a document that we got from your
6 files. It's Bates stamped number 36, and I've
7 marked that as Exhibit 8. And in the middle of
8 it, do you see that you wrote -- or you sent an
9 e-mail to Jean Barraclough at Pulte on
10 September 5, 2013?

11 A. It's to customer care, yes.

12 Q. But anyway, this -- you sent an e-mail
13 to Centex on September 5, 2013, correct?

14 A. Uh-huh, yes.

15 Q. You need to answer yes.

16 A. Yes.

17 Q. All right. And what you are complaining
18 of is roofing, floors, walls, and windows,
19 agreed?

20 A. Yes.

21 Q. And that's in all caps. And then it
22 says, This is our last attempt before we seek
23 legal representation. That's what you wrote,
24 correct?

25 A. Right.

1 Q. So you're saying, Centex, we're having
2 problems, leakage problems with roofing, floors,
3 walls, and windows, and unless you fix them, as
4 of 2013, this is our last notice to you, or we're
5 going to file suit, correct?

6 A. That's what I said.

7 Q. Right. And no repairs were done by
8 Centex after that, were they?

9 A. Centex would -- Centex would attempt to
10 come out. And at that point, Jean -- because I
11 would talk to her on the telephone. And whoever
12 I spoke to on the telephone, she kept saying,
13 We're going to send someone out. We're going to
14 send someone out. And they would promise me
15 they're coming out. And, yeah, we'd have to deal
16 with this issue, and then we'll come out. But
17 he's come out. He's been out. Somebody came
18 out.

19 Q. Well, we've already talked about and
20 you're under oath saying that, to your knowledge,
21 no repairs, though --

22 A. Right.

23 Q. -- no work has been done --

24 A. Right.

25 Q. -- since --

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1 A. Yes.

2 Q. Then you are talking about the
3 complaints, the vinyl and the roofing and the
4 flashing, the fireplace, windows, and walls, and
5 you say, This is very stressful and mentally
6 debilitating that your company has caused my
7 family and I to endure for years, and now no
8 urgency at all.

9 So, there again, you're saying that
10 you've made those complaints to Centex, and you
11 had complained but nothing happened, and that had
12 been going on for years. Agreed?

13 A. Yes. And Centex promised to address the
14 issues. There was no urgency. We're coming,
15 Ms. Brown. We're coming.

16 (Exhibit No. 13 was marked for
17 identification.)

18 Q. I'm going to ask you some questions
19 about your interrogatory responses which I'm
20 handing you and which I have marked as Exhibit
21 13.

22 At the very -- on the third page of
23 this exhibit -- at the bottom it says page 2 of
24 15 -- do you see that, Ms. Brown?

25 A. Okay.

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1 Q. All right. At the very bottom, it says
2 Victor Morris. This witness was referred to
3 plaintiff by Tony Manetti and performed the
4 inspection of the vinyl of plaintiff's home.
5 When did that occur?

6 A. I want to say -- that had to have been I
7 want to say either last year or the year before
8 when Victor came out.

9 Q. That would have been after the
10 engineer's report, which is Exhibit 10?

11 A. Yes.

12 Q. On the next page, it says One Stop Home
13 Inspector. I think we've talked about that.
14 That's the one who did the report you provided to
15 Centex in 2009?

16 A. Yes.

17 Q. Do you remember that fellow's name?

18 A. No.

19 Q. Was he from Charleston?

20 A. Yeah, he was from Charleston. I don't
21 remember his name.

22 Q. Is he still in business? Do you know?

23 A. I don't know. Every time I try to look
24 the company up, I can't find it.

25 Q. Let's turn to page 7 of 15 at the

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1 inspection reports since 2009. What inspection
2 report are you talking about?

3 A. The inspection report she requested.
4 She said, Monica, I need to know what is going
5 on. And in order for us to do anything else --
6 because I hired a guy to do an inspection report
7 of the things I was complaining about, and she
8 asked me to get one.

9 Q. Where is that report?

10 A. I can't find the report, but they sent a
11 report to Jean. I can't find a copy of it.

12 Q. And that's the fellow who's listed in
13 your interrogatory responses?

14 A. No, I don't think he did that.

15 THE WITNESS: Do you see it?

16 Q. Who did that report?

17 A. The inspection report, I cannot recall
18 his name who did that inspection report.

19 Q. Was that One Stop Home Inspector?

20 A. It was One Stop -- if I can recall
21 that's the correct name, One Stop. But I
22 couldn't find a copy of my report, but they sent
23 a copy to Jean because she kept requesting for
24 one.

25 Q. So you hired a home inspector in 2009 to

Deposition of Monica Brown-Gantt

1 So when I discovered when water was getting back
2 into my house, then obviously they never cured
3 the problem that they promised me they had cured.

4 Q. In 2016, you're saying that the
5 inspection report went out in 2009. Then, in
6 your own words, I contacted you guys every year,
7 and all I get is the run-around. So you're
8 saying you contacted --

9 A. What page are you on?

10 Q. I'm on page 6 of 8, right in the middle.
11 So you're saying -- so you're saying you got an
12 inspection report in 2009, and that, since then,
13 you've contacted Centex every year, and all you
14 get is the run-around. Nothing has been fixed,
15 and you've been complaining since 2006. Agreed?

16 A. I'm reading where I say, Jean, we're
17 still waiting on your response. So I think we're
18 on a different page.

19 Q. I'm on -- I'm sorry -- 5 of 8, Bates
20 stamp 32.

21 MR. KALIVAS: It's the previous
22 page.

23 Q. That's your -- right in the middle,
24 June 6, 2016, at 3:17. Do you see where you're
25 writing Centex?

Deposition of Monica Brown-Gantt

1 A. Yes, uh-huh.

2 Q. I need you to answer yes, please.

3 A. Yes.

4 Q. And you're saying that you sent an
5 inspection report in 2009. I contacted you guys
6 every year, and all I get is the run-around. We
7 complained about the same things since 2006.

8 So in 2016, you're saying that you
9 sent the report in 2009, and you complained to
10 Centex every year since then, and it was never
11 fixed. Agreed?

12 A. To my knowledge, yep.

13 Q. Right, as the homeowner living there.

14 A. Right. Because -- but they're saying
15 they fixed it. They're saying the issues were
16 cured.

17 Q. I understand, but you knew darn well
18 that they weren't because --

19 A. I'm not the expert.

20 Q. But you're the homeowner living there,
21 and that's --

22 A. Right.

23 Q. -- why we're here, isn't it?

24 That's why -- you're the one living
25 there, and you're saying, I can tell living there

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1 structural warranty expired on November 8, 2015.
2 Centex completed the last repair in 2009, seven
3 years ago. Do you have any testimony or evidence
4 to dispute that the last repairs that Centex made
5 were in 2009?

6 A. No, I don't.

7 Q. Let's turn to page 3 of 8. This is in
8 2016. And on --

9 A. You're on page what?

10 Q. I'm on page 3 of 8.

11 A. Okay.

12 Q. At the bottom, you're writing to Jean
13 Barraclough, correct?

14 A. Uh-huh.

15 Q. You need to answer yes or no, please.

16 A. Yes.

17 Q. And on the next page, it says, about six
18 lines down, We have reached out to you several
19 times and for several years. You never sent
20 anyone to come to our home, and that is negligent
21 on your behalf. We're still arguing about the
22 same thing. I will consult an attorney within a
23 day.

24 So you're saying that, in 2016
25 again, that you continued to have the water

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1 intrusion and other problems, you complained to
2 Centex about them every year, and they were never
3 fixed. Agreed?

4 A. Yep.

5 Q. Let's turn to the first of that, if you
6 would, please. It says that -- apparently there
7 was a report that was -- that you had gotten
8 after a storm, that your insurance company gave
9 you; is that right?

10 A. Yes.

11 Q. And that was provided to Centex?

12 A. Yes.

13 Q. And Centex didn't make any repairs as a
14 result of that report, did they?

15 A. Centex promised to make repairs of that
16 report. They promised. And they haven't.

17 (Exhibit No. 10 was marked for
18 identification.)

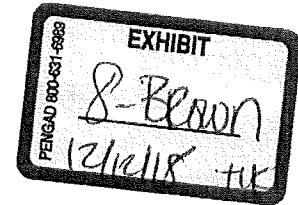
19 Q. I'm going to hand you what I've marked
20 as Exhibit 10. Is that a copy of the report your
21 insurance company did?

22 A. Yes.

23 Q. So this was done in -- if you look on
24 the second page, it's dated January 27, 2016,
25 correct?

11/7/2018

Print



Subject: RE: Service Request
From: SCR Customer Care (charleston@centex.com)
To: MONICALBROWN@BELLSOUTH.NET;
Date: Thursday, September 5, 2013 11:53 AM

Hi Ms Brown;

Thank you for your email. 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. I have attached a copy of the structural warranty for your review.



JEAN BARRACLOUGH

Warranty Agent : : Coastal Carolinas
direct (843) 740-7270 ext 552 : : fax (843) 740-7280
pultegroup.com

From: MONICALBROWN@BELLSOUTH.NET [mailto:MONICALBROWN@BELLSOUTH.NET]
Sent: Thursday, September 05, 2013 9:44 AM
To: (List) NCSL - South Carolina Coastal
Subject: Service Request

The following service request has been submitted:

Email: MONICALBROWN@BELLSOUTH.NET

Name: MONICA BROWN

Address: 109 CATBRIAR CT

City: SUMMERVILLE

State: SC

Postal Code: 29485

Phone: 843 813-2105

Service Community: CHANDLER'S CREEK @ THE BRIDGES'S OF SUMMERVILLE

Service Item: Other

Question, Request, or Comment:

ROOFING , FLOORS AND THE WALLS AND WINDOWS

THIS IS OUR LAST ATTEMPT BEFORE WE SEEK LEGAL REPRESENTATION

CONFIDENTIALITY NOTICE: This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail and delete the message and any file attachments from your computer. Thank you.

Attachments

- rwc 10 yr.pdf (209.28KB)
- image001.jpg (2.78KB)

Brown 00036

about:blank

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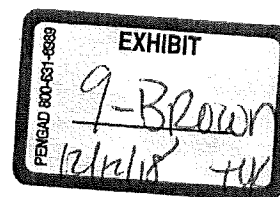
1/1

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11/7/2018

Print

Subject: RE: Service Request
From: SCR Customer Care (charleston@centex.com)
To: monicalbrown@bellsouth.net;
Date: Friday, June 17, 2016 2:51 PM



Thank you Ms Brown. I will forward your email to a supervisor for review. Thank you Jean



"PulteGroup strives to be a builder that our customers will be proud to recommend to their friends and family"

JEAN BARRACLOUGH

Customer Care Coordinator : : Coastal Carolinas

Phone (843)740-7270 : : fax (843)747-3879

Pultegroup.com

From: Monica L Brown [mailto:monicalbrown@bellsouth.net]
Sent: Friday, June 17, 2016 9:41 AM
To: SCR Customer Care <charleston@centex.com>
Subject: Re: Service Request

Hello Jean

Attach are the photos and remaining of the report. Pleas disregard first attachment.

ThankYou

Monica L. Brown- Mortgage Broker, NMLS 230020
Sea Coast Mortgage Group LLC, NMLS 29747

1940 Trolley Rd Suite E
Summerville SC 29485
843 285-7074 office
843 285-7065 fax

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From: Monica L Brown <monicalbrown@bellsouth.net>
To: SCR Customer Care <charlestonservice@centex.com>
Sent: Thursday, June 16, 2016 2:00 PM
Subject: Re: Service Request

Jean,,

Attach are the pictures and information that I can send you . As I said to you before none of this is warrant in order for your warranty department to come out to my home to replace, repair all the damages and cure the problems. .It is so unfortunate that I bought a house for about 342,000 from a company built them like this and decides what homeowners to come out and inspect the problems . You and your staff continuously ignored our request time after time and has placed me under great mental strain and hardship. I feel as though I am being discriminated against, because their is no reason for such malicious behavior . I will have an estimate for all the repairs and damages etc for you no later than next week. I expect a phone call from you ASAP . 843 813-2105

Monica L. Brown- Mortgage Broker, NMLS 230020
Sea Coast Mortgage Group LLC, NMLS 297478
1940 Trolley Rd Suite E
Summerville SC 29485
843 285-7074 office
843 285-7065 fax

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From: SCR Customer Care <charlestonservice@centex.com>
To: Monica <monicalbrown@bellsouth.net>
Sent: Friday, June 10, 2016 8:36 AM
Subject: RE: Service Request

Hi Ms Brown;

As I have asked in my prior emails. Please forward me the report. We would gladly review the report once we receive it. All prior requests have been completed. Thank you Jean

"PulteGroup strives to be a builder that our customers will be proud to recommend to their friends and family"

JEAN BARRACLOUGH

Customer Care Coordinator : : Coastal Carolinas

Phone (843)740-7270 : : fax (843)747-3879

Pultegroup.com

From: Monica [<mailto:monicalbrown@bellsouth.net>]
Sent: Tuesday, June 07, 2016 5:14 PM
To: SCR Customer Care <charlestonservice@centex.com>; Milinda <milinda@jennyhornelaw.com>; Myra Hearn Law Firm <myra.whaley@hearnlaw.net>
Subject: Re: Service Request

Jean,

You never cured the problem from when we continue to call you . You came in and stated water was coming in the house because of the were no flashing and you guys came in and said you had already repaired it and added flashing . When we went into our attic because they needed to replace our unit we immediate called in the warranty department t again , because our wall had dry rot. So if the work was corrected the wall would have been dry rotted but according to the indie tutor inspector was was already dry rotted and he indicated he was not rotted . We have gotten a an engineer report that clearly stated this was several years of damage and we don't have the proper flashing and some places no flashing and the screen porch is build on the Windows . Water is coming through our fire place . The house is extremely cold and extremely . When you guys came in again the dry rot was their but according to your guy we did not have it dry rot . So tell me . you cured the problem I don't think so . I have been reaching out over and over and one point you said someone coming in . I call and still no then I reach out then we get the same story .

Brown 00030

Second the wall trust in my son's because it is above the garage that had failed the inspection . You guys came in and check the floors you did not Check the walls . We have the report . So what you are saying is that you guys cured my problems A license engineer indicated theirs is no flashing on the house that cause the back flow of the water into the windows that basically trickle down the walls and basically no insulation dry rot in the walls and that caused the dry rot on the third floor when your guy claimed he cured the problem . We had to replaced the conductor in the attic that was total damage because of the Again we reached out to you several times and for several years .. You never sent anyone to come to home and that is negligent in your behalf . We still arguing about the same thing . Will the dry rot fix itself . Will the instillation reappear in the walls. Will the wall trust and floor trust install itself . Please tell me . I will consult and attorney within a day . Then we will have your estimate of what it will cost to repair the home .

Monica

Sent from my iPhone

On Jun 7, 2016, at 4:14 PM, SCR Customer Care <charleston@centex.com> wrote:

Hi Ms Brown;

We have never received the inspection report. Your concerns were first addressed in 2008 and the items under warranty, including the floor framing, were repaired and completed on 04/29/2008. In May of 2009 you submitted warranty items which were completed on 06/12/2009. 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. I responded "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. I have attached a copy of the structural warranty for your review." 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. Thank you Jean

<image001.jpg>

"PulteGroup strives to be a builder that our customers will be proud to recommend to their friends and family"

JEAN BARRACLOUGH

Customer Care Coordinator : : Coastal Carolinas

Phone (843)740-7270 : : fax (843)747-3879

Pultegroup.com

From: Monica [<mailto:monicalbrown@bellsouth.net>]

Sent: Monday, June 06, 2016 3:17 PM

To: SCR Customer Care <charlestonservice@centex.com>; Myra Hearn Law Firm
<myra.whaley@hearnlaw.net>

Subject: Re: Service Request

Jean , we sent out the inspection report since 2009. Jean my warranty does not warrant an inspection report when my home is under warranty. I contacted you guys every year and all I get is the run around . The last conversation I had with Manager is that you guys were dealing with your new homeowner and we will contact you . We complaint about the same thing since 2006 .

Sent from my iPhone

On Jun 6, 2016, at 3:07 PM, SCR Customer Care <charlestonservice@centex.com> wrote:

Hi Ms Brown;

As of today, I still have not received a copy of the inspection report. Please reply to this email and attach the report. Once I receive it, I will have it reviewed by a supervisor. The Centex materials and workmanship warranty was for two years from the date of closing, 11/18/2005. The 10 year structural warranty expired on 11/18/2015.

We would gladly review the report once we receive it. Thank you Jean

"PulteGroup strives to be a builder that our customers will be proud to recommend to their friends and family"

JEAN BARRACLOUGH

Customer Care Coordinator : : Coastal Carolinas
Phone (843)740-7270 : : fax (843)747-3879
Pultegroup.com

From: Monica [<mailto:monicalbrown@bellsouth.net>]
Sent: Monday, June 06, 2016 2:54 PM
To: SCR Customer Care <charleston@centex.com>; Myra Hearn Law Firm
<myra.whaley@heartlaw.net>
Subject: Re: Service Request

Jean,

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 . Are we being ignored . We have since received an engineer report. We expect to receive a call from you ASAP . My contact 843 813-2105
We would like to settle this out of court.

Thank You

Monica

Sent from my iPhone

On May 1, 2015, at 1:34 PM, SCR Customer Care <charleston@centex.com> wrote:

Hi Ms Brown;

Thank you for your email. Please forward me a copy of the inspection report. You can reply and attach it to this email. Once I receive it, I will have it reviewed by a supervisor. The Centex materials and workmanship warranty was for two years from the date of closing, 11/18/2005. The 10 year structural warranty is still in effect. Thank you Jean

<image004.jpg>

JEAN BARRACLOUGH

Warranty Agent : : Coastal Carolinas
Direct (843)740-7270 ext 552 : : fax (843)740-7280
Pultegroup.com

From: MONICALBROWN@BELLSOUTH.NET
[<mailto:MONICALBROWN@BELLSOUTH.NET>]
Sent: Thursday, April 30, 2015 2:31 PM
To: (List) NCSL - South Carolina Coastal
Subject: Service Request

The following service request has been submitted:

Email: MONICALBROWN@BELLSOUTH.NET

Name: Monica BROWN

Address: 109 CATBRIAR CT

City: SUMMERVILLE

State: SC

Postal Code: 29485

Phone: 843 813-2105

Service Community: CHANDLER'S CREEK AT THE BRIDGES OF SUMMERVILLE

Service Item: Other

Service Room: Other

Question, Request, or Comment:

THE THIRD FLOOR HAD NO FLASHERS YOU STATED THAT THERE WAS NO LEAK AND YOU INSTALLED THE FLASHERS .THE HOUSE IS GETTING A ORDOR..... OUR LIVES ARE IN DANGER FROM YOUR NEGLIGENCE.

THE WALL IN DRY ROT WITH BLACK PARTICLES POSSIBLY MOLD.

WE HAVE A SENT YOU THIS COMPLAINT SEVERAL TIMES AND NO

ONE HAS BOTHER TO ADDRESS AND WAS TOLD YOU WERE DEALING WITH NEW HOMEOWNERS AND THAT WE WERE NOT GOING TO ADDRESS THE ISSUES AGAIN

IS THIS DISCRIMINATION? IS THIS NEGLIGENCE?

IS THIS BREAKING THE LAW ?

WE PAID 350,000 FOR OUR HOME. WE EXPECT FOR THE BUILDER TO HONOR HIS WARRANTY, HIS BUILDER CODE OF ETHICS AND THE LAW.

THE ENTIRE ROOMS SHAKES WHEN YOU WALK INTO MY SON'S ROOM. THERE IS NO INSULATION IN THE ROOM ALWAYS HOT IN THE SUMMER AND COLD IN THE WINTER. YOU CAME IN AND SAID THE FLOOR WILL GIVE. THAT IS NOT TRUE. THE ROOM IS NOT PROPERLY INSTALLED ACCORDING TO THE INSPECTOR. ROOM IS NEXT TO THE OPEN FOYER. THE FOYER CEILING AND WALL JOIST IS NOT CONNECT. NO INSULATION

!!

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11/7/2018

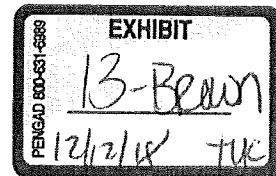
Print

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Attachments

- image001.jpg (2.66KB)



Smith | Closser, P.A.

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Charleston, South Carolina 29423-0578

William K. Kalivas
wkalivas@scnlaw.com

Office - 843-760-0220
Fax - 843-552-2678
www.smithclosser.com

November 21 2018

VIA FIRST CLASS AND EMAIL

Thomas C. Hildebrand Esquire
Olesya v. Bracey, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

RE: Monica Brown-Grantt v. Centex Real Estate Company, LLC and Centex
Homes, a Nevada General Partnership, et al.
Case No.: 2018-CP-18-01436
SJC File No.: 18-198

Dear Counsel:

Enclosed please find Plaintiff's Responses to Defendant Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership's First Set of Interrogatories and First Set of Requests for Production in the above-captioned case, together with our certificate of service. Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "W. King Kalivas".

William King Kalivas

Enclosures
18-198

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., Distribution
Holdings, LLC f/k/a Atlantic Roofing
Distributors, LLC, J.H. Lee Masonry, Inc.
a/k/a James H. Lee Masonry, Inc., DVS, Inc.,
McDaniel Construction Co., LLC, and
Builders FirstSource, Inc.; Builders
FirstSource-Atlantic Group, LLC; Builders
FirstSource-Florida, LLC; Builders
FirstSource-Southeast Group, LLC,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-01436

**PLAINTIFF'S RESPONSE TO
DEFENDANT CENTEX'S FIRST
SET OF INTERROGATORIES**

TO: THOMAS C. HILDEBRAND, JR., ATTORNEY FOR CENTEX:

The Plaintiff, pursuant to Rule 33, South Carolina Rules of Civil Procedure, hereby
responds to Defendant Centex's First Set of Interrogatories:

INTERROGATORIES

1. Identify the names, addresses, and contact information of all persons or entities that You or Your counsel know to have knowledge or information concerning the facts of the case and any claims or defenses, indicate whether or not written or recorded statements have been taken from such persons or entities, and indicate who has possession of such statements.

RESPONSE:

- William Chandler – Principal Engineer for Sdii Global Corporation; billchandler83@gmail.com; 800-454-7344; 4509 George Road, Tampa, FL 33634. Mr. Chandler inspected the Subject Property and provided a written report that is being produced to Defendant as discovery materials bates-labeled Brown 00121 through Brown 00145.
- John Etters – Customer Care Manager for Pulte Group; john.etters@pultegroup.com; 843-478-1972. Plaintiff is not aware of an address for this witness, nor whether there are any written or recorded statements. This witness was a point of contact for Plaintiff when complaining of issues with her home. This witness should be aware of all issues referenced in the Complaint.
- Teyi Lawson – Process Improvement Manager for Pulte Group; teyi.lawson@pulte.com; 843-460-9339. Plaintiff is not aware of an address for this witness, nor whether there are any written or recorded statements. This witness was a point of contact for Plaintiff when complaining of issues with her home. This witness should be aware of all issues referenced in the Complaint.
- Eric (last name unknown to Plaintiff) – warranty manager for Centex; 843-815-3544. Plaintiff is not aware of an address for this witness, nor whether there are any written or recorded statements. Upon information and belief, Plaintiff understood Eric to be based out of Hilton Head, SC. This witness was called out to Plaintiff's home by Centex to investigate warranty claims. This witness should be aware of some, if not all issues referenced in the Complaint.
- Jean Barraclough – Customer Care Coordinator for Centex; charlestonservice@centex.com; 843-470-7270. Plaintiff is not aware of an address for this witness, nor whether there are any written or recorded statements. This witness was a point of contact for Plaintiff when complaining of issues with her home. This witness should be aware of all issues referenced in the Complaint.
- Victor Morris – Plaintiff is not in possession of contact information for Mr. Morris. Plaintiff is not aware of any written or recorded statements. This witness was referred to Plaintiff by Tony Manetti and performed an inspection of the vinyl siding on Plaintiff's home.

- Donna Autry – 114 Catbriar Court, Summerville, SC 29455; 843-425-5546. Ms. Autry is the Plaintiff's neighbor and is aware of some of the damages to Plaintiff's home, as well as some of the efforts of the Defendant to remedy the issues. Plaintiff is not aware of any written or recorded statements.
- Paul Miranda – 111 Carbriar Court, Summerville, SC 29455; 843-709-1670. Mr. Miranda is the Plaintiff's neighbor and is aware of some of the damages to Plaintiff's home, as well as some of the efforts of the Defendant to remedy the issues. Plaintiff is not aware of any written or recorded statements.
- Bob Mozzarazzi – 136 Phoebe Rd., Summerville, SC 29483; 843-709-4691. Mr. Mozzarazzi was the Plaintiff's neighbor at the time that Centex attempted to make repairs, and is aware of some of the damages to Plaintiff's home, as well as some of the efforts of the Defendant to remedy the issues. Plaintiff is not aware of any written or recorded statements.
- Paul and Kerry – 110 Catbriar Court, Summerville, SC 29455; 843-323-1031. Paul and Kerry are the Plaintiff's neighbors and are aware of some of the damages to Plaintiff's home, as well as some of the efforts of the Defendant to remedy the issues. Plaintiff is not aware of any written or recorded statements.
- One Stop Home Inspector – Plaintiff is not in possession of contact information for this company, nor in possession of any written or recorded statements. However, Plaintiff believes that a written report was created and sent to Centex at the time of the inspection. This company was hired by Plaintiff to inspect her home and is likely aware of some, if not all of the issues referenced in the Complaint.
- Anthony Minniti – Coastline Builders, Inc.; 8421 Polo Pointe, North Charleston, SC 29418. Mr. Minniti came to Plaintiff's house at her request to help her determine the source of the damages. Plaintiff is not aware of any written or recorded statements.
- Victor Morris – 843-297-9549. Mr. Morris is a contractor who was referred to Plaintiff by Anthony Minniti to inspect the vinyl siding and associated issues. Plaintiff is not aware of any written or recorded statements.

2. For each person or entity known to Your or Your counsel to have knowledge or information concerning the claims, defenses, or facts of the case, set forth a summary sufficient to inform Pulte of the important facts known to or observed by such person or entity.

RESPONSE: See Plaintiff's response to Interrogatory number 1.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in Your or Your attorney's possession that relate to the Subject Property and/or to any claims or defenses in this case.

RESPONSE: The only materials relative to this Interrogatory are photographs taken by the Plaintiff and are being produced to Defendant as discovery materials bates-labeled Brown 00049 through Brown 00120.

4. Identify all experts who You may call to testify in this action, and, for each expert, set forth the following:

- a. The expert's qualifications;
- b. All opinions the expert may offer or otherwise testify to in this action;
- c. All documents, materials, reports, articles, treatises or other information the expert will rely upon in forming opinions; and
- d. A summary of the expert's prior history of consultation and/or testimony in legal matters.

RESPONSE: Plaintiff has not identified any experts at this time. Plaintiff reserves the right to retain an expert in this action and will supplement this response accordingly.

5. State whether Plaintiffs have ever made a claim for any benefit(s) under any insurance policy relating to the Subject Property and/or as a result of in relation to the events or damages alleged in this action. If so, state the name, address, and contact information of the person, firm, or corporation to whom Plaintiffs' claim was presented, the date said claim was presented, the number or numbers of policies involved, the amounts of such coverage, and the nature and amount of any payments received by Plaintiffs.

RESPONSE: Plaintiff made a claim in or around October 15, 2015 to Universal Insurance Holdings of North America (PO Box 50908, 101 Paramount Drive #220, Sarasota, FL 34232) for water damage to her floors. At the time, Plaintiff was unaware of the damage's relation to the flashing and windows. Plaintiff ultimately recovered \$2,600.00 to repair the floors in her master bedroom, and her insurance company sent out SDII to conduct an inspection of the home to determine the cause of the damage.

6. Set forth a statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Plaintiffs in this action.

RESPONSE: Plaintiff claims the following damages:

- Buckling, warping and cracking of wood floors believed to be created by water intrusion into the home from improper flashing and installation of the windows and roof;
- Water damage to window frames and shutters believed to be caused by improper flashing and installation of the windows;
- Damage to the sheathing in the attic and around the windows believe to be caused by water intrusion and leaks from improper flashing and installation of the windows and roof; and
- Other costs associated with repairs necessary to correct damage that has occurred and will continue to occur until all issues that are the subject of this action have been remedied.

7. Provide a detailed calculation of each element of damages claimed by Plaintiffs in this action and list each document that You used to provide information to calculate these damages.

RESPONSE: Plaintiff has not obtained a comprehensive estimate of the damages claimed, and therefore does not possess a detailed calculation of each element of said damages. Plaintiff reserves the right to obtain an estimate and/or quote and will supplement this response accordingly.

8. Identify all amounts claimed by Plaintiffs for loss of value or depreciation of the Subject Property, and identify any appraisals, comparatives, studies, valuations, reports, or other documents or testimony supporting Your claims.

RESPONSE: Plaintiff has not obtained an estimate or appraisal of the Subject Property, and therefore does not have a calculated amount for loss of value or depreciation. Plaintiff reserves the right to obtain an estimate and/or appraisal and will supplement this response accordingly.

9. Identify any documents requested in the accompanying Requests for Production known to You to be missing, destroyed, or otherwise disposed of and state the disposition made of each document, whether such disposition was consistent with Your policy, the person last known to have the document in his possession or subject to his control, and identify each person You have reason to believe has knowledge of its contents or received copy of such document.

RESPONSE: Plaintiff is not specifically aware of any documents that are missing, destroyed, or otherwise disposed of, but out of an abundance of caution, would respond that she changed employers since she purchased the Subject Property. When she left her prior employer, Everest Mortgage, her email account through that company was terminated. Any correspondence between parties that would be discoverable would be considered "otherwise disposed of", but Plaintiff is informed and believes that all communications related to this action would have been with the Defendants or agents of

the Defendants, and therefore accessible by them.

10. Identify what records are maintained by Plaintiffs relating to the Subject Property, including maintenance, repair, reserve accounts, escrow accounts, accounting, and payment records.

RESPONSE: Plaintiff does not maintain any specific records relating to the Subject Property.

11. Identify any repairs, alterations, additions, deletions, modifications or improvements performed on the Subject Property by, on behalf of, or at the direction of Plaintiffs, including in Your answer: (a) a description of the scope of any repair, alteration, addition, deletion, modification, or improvement, (b) the reason for repair, alteration, addition, deletion, modification, or improvement, (c) the date of such repair, alteration, addition, deletion, modification, or improvement, (d) the name and contact information for the person or entity performing such repair, alteration, addition, deletion, modification, or improvement, and (e) the amounts paid, if any, for such repair, alteration, addition, deletion, modification, or improvement.

RESPONSE: Plaintiff has made the following improvements to the Subject Property:

- Installed crown molding in 2009. This addition was merely a cosmetic improvement. Plaintiff does not recall who she used to perform the work or what she paid for the work.
- Installed tile in the downstairs bathroom in 2007. This addition was merely a cosmetic improvement. Plaintiff does not recall who she used to perform the work or what she paid for the work.
- Installed a stone façade on the wall above the fireplace inside the

home in 2006. This addition was merely a cosmetic improvement. Plaintiff does not recall who she used to perform the work or what she paid for the work.

- Installed plantation shutters/blinds in 2005. This addition was merely a cosmetic improvement. Plaintiff does not recall who she used to perform the work or what she paid for the work.
- Installed an outdoor kitchen in 2011. This addition was merely a cosmetic improvement. Plaintiff does not recall who she used to perform the work or what she paid for the work.
- Replaced the air handler and HVAC unit in 2014. Plaintiff was advised that the air handler, which was located in the attic, was damaged due to water leaking through the roof. The damaged air handler caused the HVAC unit to malfunction and need replacement. Plaintiff was referred to North Area Repair Service (843-744-3560; 7172 Bryhawke Circle, Suite 101, North Charleston, SC 29418) by a neighbor to perform the HVAC repair work.

12. List every item of maintenance or repair that has been performed on the Subject Property following the close of escrow and/or since the Subject Property was occupied, including the type of work, who performed the work, location, and cost.

RESPONSE: The only item of maintenance or repair was the replacement of the air handler and HVAC unit located in the attic. Please see Plaintiff's response to Interrogatory 11. Plaintiff was advised by Centex not to repair any of the items

complained of in this action, and therefore much of the damage remains unrepaired.

13. Identify and describe with specificity and particularity each and every alleged defect and/or deficiency in the design, development, and construction of the Subject Property of which You are aware, and for each such defect, state:

- a. Its exact location;
- b. When it was discovered;
- c. Who discovered it;
- d. The damages caused by it;
- e. Who was damaged by it;
- f. Who possesses and owns the site of the defect; and
- g. Who You contend caused the defect.

RESPONSE: Plaintiff alleges the following defects and/or deficiency in the design, development, and construction of the Subject Property:

- Improper installation of flashing around chimney and windows; Plaintiff initially saw water on the floor by the fireplace, and in the master bedroom and kitchen near the windows; although Plaintiff first noticed issues in 2005, she was not aware of the relation to improper flashing until October 2015.
- Improper installation of siding and windows, resulting in gaps that allow for water intrusion; although Plaintiff complained of hearing water dripping behind the walls, she was not aware of the relation to the siding and windows until 2016.
- Improper installation of roof, to include shingles and flashing,

resulting in damage to the sheathing in the attic; Plaintiff first noticed dry rot in the attic in 2013, but did not become aware of the relation to the roof until 2015.

- Improper installation of windows and flashing; Plaintiff initially saw water on the floor by the fireplace, and in the master bedroom and kitchen near the windows; although Plaintiff first noticed issues in 2005, she was not aware of the relation to the windows until 2015.
- Improper installation of roof over screened porch, to include shingles and flashing; Plaintiff did not become aware of this issue until 2015.
- Plaintiff owns the site of all the above defects and damage and is the party who was harmed by the damage. Upon information and belief, Plaintiff contends that the Defendant is responsible for the defects as Defendant is the party with whom Plaintiff contracted for the construction and purchase of her home.

14. For each alleged defect identified in the Subject Property pursuant to the preceding Interrogatory, identify all attempts to inspect, analyze, or repair such defect of which You are aware, including all persons associated with such, the cost and expenses of such, the dates of such, who incurred the expense and cost of such, and whether any repairs were successful.

RESPONSE: Plaintiff initially hired One Stop Home Inspector to inspect the Subject Property. Plaintiff is not in possession of any contact information from this company, nor

the cost incurred for the inspection. On or around January 4, 2016, Plaintiff's insurance company brought Sdii Global Corporation (SDII) to inspect the Subject Property. Plaintiff incurred no cost for this inspection and no repairs were made. After the SDII inspection revealed several of the issues outlined in the Complaint and above Interrogatories, Plaintiff had Victor Morris come to the Subject Property to inspect the vinyl siding. There was no cost for this inspection and no repairs were made.

15. Describe in detail the scope of remedial work that may or will be conducted by Plaintiffs or any entity on their behalf in connection with the Subject Property, including: (a) an identification of any documents setting forth the scope of remedial work; (b) specific descriptions of the work to be performed; (c) a listing of all persons or entities who will be involved with the remedial work; (d) the estimated costs of the remedial work; and (e) the estimated starting date and completion schedule.

RESPONSE: Plaintiff has not conducted any remedial work, and therefore is not aware of the scope of any necessary remedial work or the estimated costs. The Defendant, through its agents, advised the Plaintiff not to make any repairs while they were deciding what remedial work they would provide.

16. Separately identify with specificity and in detail each warranty and/or guarantee, whether written or oral, or whether express or implied, made by Pulte and/or any other Defendant, person, or entity, relating in any manner to any materials or services provided in connection with the Subject Property, and for each such warranty or guarantee state:

- a. Who made it;
- b. To whom it was made; and
- c. The specific representations made.

RESPONSE: All express warranties made to the Plaintiff were made by the Defendant, through its agents, and are being produced to Defendant as discovery materials bates-labeled Brown 00146 through Brown 00149 and Brown 00184 through Brown 00207. Other warranties implicit in the contract between the parties include the warranties of workmanlike service, fitness, merchantability and habitability. Upon information and belief, Plaintiff contends these warranties were implied when the Defendant executed the contract with Plaintiff for the construction and purchase of her home.

17. List the names, addresses, and contact information of all persons or entities who have provided any bids, estimates, or scope of work proposals for any repair to the Subject Property.

RESPONSE: Plaintiff has not been provided with any bids, estimates, or scope of work for any repairs to the Subject Property at this time. Plaintiff will supplement this response accordingly when any of the requested information is produced.

18. List the names, addresses, and contact information of all persons or entities (to include subcontractors and materialmen) with whom You contracted for the design, development, engineering, and/or construction of any maintenance, repairs, alteration, addition, deletion, modification, or improvement of the Subject Property, whether a defendant to this action or not, the dates of Your involvement with them, and the exact nature of the duties or responsibilities of such persons or entities, listing the specific areas on the Subject Property in which they were involved.

RESPONSE: The only party with whom Plaintiff contracted concerning the Subject Property was the Defendant. A copy of the contract is being produced to Defendant as

discovery materials bates-labeled Brown 00001 through Brown 00017 and Brown 00150 through Brown 00178.

19. List the names, addresses, and contact information of any and all persons or entities retained by You or any other persons or entities to effect maintenance or repairs of any aspects of the Subject Property in this action.

RESPONSE: Plaintiff has not retained any person or entity to effect maintenance or repairs of any aspects of the Subject Property.

20. Give the names, addresses, and contact information of any attorneys, brokers, sales agents, home inspectors, and/or property inspectors involved in the sale and/or purchase of the Subject Property.

RESPONSE:

- Plaintiff's closing attorneys were Weeks Manaker & Donaldson, LLC; 8086-B Rivers Ave., North Charleston, SC 29406; 843-576-0560.
- Plaintiff's sales agent was James Hopkins of Agent Owned Realty; 100 Crowfield Blvd., Goose Creek, SC 29445; 843-572-0004.
- Upon information and belief, Plaintiff also understood that the Defendant retained a property inspector during the sale and/or purchase process, and is producing the report to Defendant as discovery material bates-labeled Brown 00020 and Brown 00208 through Brown 00210.

21. State the names, addresses, contact information, and the official capacity of all persons furnishing information used to answer these Interrogatories and Requests for Production and state the source(s) of each person's knowledge.

RESPONSE: Plaintiff furnished all information to her attorneys to answer these Interrogatories and Requests for Production.

22. Identify all persons, excluding Pulte, Pulte's counsel, and Your counsel, with whom You have discussed Your claims in the action or shared information about the alleged damages to the Subject Property. In answering this Interrogatory, please give the person or entity's name, contact information, the date of the discussion(s), and a full description of the discussion(s).

RESPONSE: Plaintiff has not discussed her claims or shared information about the damages to the Subject Property with anyone other than her counsel and the Defendant.

23. Identify with specificity and in detail when and how Plaintiffs first became aware of any alleged problems involving the condition and/or quality of construction of the Subject Property.

RESPONSE: Please refer to Plaintiff's response to Interrogatory No. 13. Plaintiff 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, but did not become aware of the specific causes of those issues until 2015.

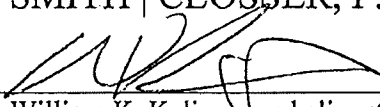
24. Identify all prior lawsuits, legal matters, or proceedings in which Plaintiffs have been a party, either as a plaintiff or a defendant. In answering this Interrogatory, please identify all parties involved in the proceeding(s), the case number(s), the court(s) in which the matter(s)

was/were pending, the nature of the matter(s), and all details regarding the disposition of the matter(s).

RESPONSE: Plaintiff has not been involved in any prior lawsuits, legal matters, or proceedings.

These Responses shall be deemed to continue from the time of service until the time of trial of this case.

SMITH | CLOSSER, P.A.



William K. Kalivas - wkalivas@scnlaw.com
(SC Bar No.: 80201)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorney for the Plaintiff

November 21, 2018
Charleston, South Carolina

18-198

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
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., Distribution
Holdings, LLC f/k/a Atlantic Roofing
Distributors, LLC, J.H. Lee Masonry, Inc.
a/k/a James H. Lee Masonry, Inc., DVS, Inc.,
McDaniel Construction Co., LLC, and
Builders FirstSource, Inc.; Builders
FirstSource-Atlantic Group, LLC; Builders
FirstSource-Florida, LLC; Builders
FirstSource-Southeast Group, LLC,

Third-Party Defendants.

**PLAINTIFF'S RESPONSE TO
DEFENDANT CENTEX'S FIRST
REQUESTS FOR PRODUCTION**

TO: THOMAS C. HILDEBRAND, JR., ATTORNEY FOR CENTEX:

The Defendants, pursuant to Rule 34, South Carolina Rules of Civil Procedure, hereby
respond to Defendant's First Requests for Production:

REQUESTS FOR PRODUCTION

1. Any and all documents identified and/or referred to in Your Answers to Pulte's First Set of Interrogatories or which were relied upon or referred to by You in answering Pulte's First Set of Interrogatories.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00001 through Brown 00237.

2. All statements or recordings of witnesses or persons who have knowledge of any facts or documents, writings or recordings that relate to the Subject Property and/or concerning the claims or defenses in this case.

RESPONSE: The only statements in the possession of the Plaintiff are through email exchanges with the Defendant and are being produced as discovery documents bates-labeled Brown 00021 through Brown 00048. In addition, the Subject Property was inspected by Sdii Global Corporation and the report produced from the inspection is being produced as discovery documents bates labeled Brown 00121 through Brown 00145.

3. Any and all photographs, plats, sketches, or other prepared documents that relate to the Subject Property and any claim or defense in this case, including, but not limited to any photographs of the interior or exterior of the Subject Property or any component thereof reflecting the alleged conditions, defects, deficiencies, or other problems complained of in this action and any photographs of the construction, maintenance, repair, remediation, warranty, other work performed on the Subject Property from original construction to the present.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00049 through Brown 00120.

4. All records of any complaints by any person concerning any damage or deficiency allegedly existing in or on the Subject Property and any response to said complaints.

RESPONSE: All complaints concerning damage were made by phone call or email. The email exchanges between the Plaintiff and Defendant concerning the Subject Property are being produced as discovery materials bates-labeled Brown 00021 through Brown 00048.

5. Any and all documents and things which Your may introduce as exhibits at the trial of this matter.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00001 through Brown 00237.

6. Any and all documents and things not produced in response to the preceding Request for Production which You may use or rely on at the trial of this matter, including all documents or things which You anticipate You may use on cross-examination or for impeachment.

RESPONSE: Plaintiff does not currently possess any documents which she intends to use or rely on at the trial of this matter that were not produced in response to Request for Production No. 5.

7. Copies of any and all insurance policies which may provide insurance coverage relating to the claims in this litigation, including, but not limited to, copies of the certificates of insurance and any additional insured endorsements, all from the time of construction of the Subject Property to the present.

RESPONSE: Upon information and belief, Plaintiff does not contend that any insurance policies in place from the time of construction of the Subject Property to the present may provide coverage relating to the claims in this litigation. Subject to the caveat, all

information requested in this Request is contained in discovery documents bates-labeled Brown 00225 through Brown 00237.

8. Any and all documents related to any warranty and/or guarantee made by any party or non-party to this action in connection with the design, development, construction, and repair services performed or materials provided at the Subject Property.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00146 through Brown 00149 and Brown 00184 through Brown 00207.

9. Any and all files, contracts, photographs, slides, videotapes, data compilations, brochures, plats, sketches, diagrams, installation instructions, product descriptions, sales literature, specifications, or reports pertaining to this action, the Subject Property, or any products utilized or installed in or on the Subject Property.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00001 through Brown 00237.

10. Any and all work orders, memos, letters, contracts, agreements or other documents relating to the design, materials, construction, maintenance, or repair of the Subject Property.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00001 through Brown 00021, Brown 00150 through Brown 00178, and Brown 00208 through Brown 00222.

11. Any and all documents related to any and all repairs, alterations, additions, deletions, renovations, upgrades, improvements, or modifications performed by, on behalf of or at the direction of Plaintiffs to the Subject Property, including, but not limited to, any scopes of

work, notes, proposals, building permits, bids, contracts, change orders, work orders, invoices, receipts, cancelled checks, estimates, photographs, or other documents.

RESPONSE: After a diligent search of all records in Plaintiff's possession in response to this Request for Production, Plaintiff does not possess any of the requested materials. See Plaintiff's response to Interrogatories No. 11 and 12 for all the information Plaintiff has on any additions, improvements or repairs.

12. Payroll records for all persons employed by You who performed maintenance or repair work on the Subject Property from the date(s) of completion to the present.

RESPONSE: Plaintiff does not possess any of the requested materials.

13. Any and all documents related to the sale and/or purchase of the Subject Property including, but not limited to, correspondence, inspection reports, contracts, deeds, sales agreements, closing statements, or other instruments or conveyance for the Subject Property, including any individual units, from the date(s) of completion to the present.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00001 through Brown 00021, Brown 00150 through Brown 00178, and Brown 00208 through Brown 00222.

14. Any and all documents used in computing and related to the damages claimed by Plaintiffs in this action.

RESPONSE: Plaintiff does not currently possess a computation of damages claimed in this case, but reserves the right to obtain an estimate and/or appraisal and will supplement this response accordingly.

15. Any and all non-privileged documents reflecting correspondence or communications, including electronic communications, between Plaintiffs and any third-party

entity or individual relating to this lawsuit, Defendants, or any of the issues or alleged defects raised in this lawsuit.

RESPONSE: Plaintiff has not corresponded with any third-party about this lawsuit, but did receive an inspection report from Sdii Global Corporation related to the issues and defects raised in this lawsuit. That report is being produced to Defendant as discovery materials bates-labeled Brown 00121 through Brown 00145.

16. Any and all non-privileged documents reflecting correspondence or communications, including electronic communications, between Plaintiffs and Defendants relating to this lawsuit or any of the issues raised in this lawsuit.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00021 through Brown 00048 and Brown 00179 through Brown 00183.

17. Any and all non-privileged notes, communications, or correspondence by, to, or from You concerning the subject matter of this litigation.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00021 through Brown 00048 and Brown 00179 through Brown 00183.

18. Any and all loan documents related to the Subject Property, including any mortgages and promissory notes.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00223 through Brown 00224.

19. Any and all reports, notes, memoranda, correspondence or other documents prepared by agents, consultants, experts, repairment, contractors, or employees of the Plaintiffs relating to maintenance, repair, renovation or alleged defects in design or construction.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00121 through Brown 00145.

20. Any and all reports prepared by architects, engineers, consultants or other experts relating to the Subject Property of the claims and defenses at issue in this litigation.

RESPONSE All information requested in this Request is contained in discovery documents bates-labeled Brown 00121 through Brown 00145.

21. Any and all notes, memoranda, correspondence or other documents relating to when each alleged defect was discovered and by whom.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00021 through Brown 00048.

22. Any and all correspondence, invoices, cancelled checks, other documents to or from Pulte.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00001 through Brown 00048 and Brown 00146 through Brown 00222.

23. Any and all punch lists, call backs, or other indications of satisfaction or dissatisfaction with the quality of the work of Pulte and materials furnished by Pulte.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00021 through Brown 00048.

24. Any and all bids, reports, estimates, scopes of work, offers, proposals, recommendations, invoices, contracts, submittals, or other materials relating to any remedial work that may or will be performed by Plaintiffs or any entity on their behalf on the Subject Property.

RESPONSE: At the insistence of the Defendant, Plaintiff has not undergone any remedial work related to the damage to the Subject Property. Plaintiff reserves the right to obtain an estimate and/or appraisal, and any remedial work. This response will be supplemented when any of the requested materials are produced to Plaintiff.

25. Provide any and all documents whatsoever related to any home inspector, home inspections and/or property inspectors or inspections at the Subject Property, including any repairs resulting from any inspections.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00121 through Brown 00145 and Brown 00208 through Brown 00210.

26. Any and all documents reflecting any requests by Plaintiffs that Pulte or Defendants perform any maintenance, warranty, repair, remediation, or other work on the Subject Property following the close of escrow.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00021 through Brown 00048 and Brown 00182 through Brown 00183.

27. Any and all documents reflecting maintenance, warranty, repair, remediation, or other work performed on the Subject Property following the close of escrow, including, but not limited to, any invoices, receipts, estimates, cancelled checks or other documents.

RESPONSE: Plaintiff does not possess any records related to the replacement of her air handler and HVAC unit. Please see Plaintiff's response to Interrogatories No. 11 and 12. No other repair or warranty work has been performed on the property as of the signing of these discovery responses. All responses will be supplemented upon the performance of any repair or remediation work.

28. Any and all documents that Plaintiffs obtained through subpoena, Freedom of Information Act requests, or other document requests You have served on any person, entity, or organization relating to the Subject Property or the claims and defenses at issues in this litigation.

RESPONSE: Plaintiff has not obtained any documents through any of the above-referenced means.

29. Any appraisals, comparatives, analyses, studies, valuations, reports or other documents relating to any loss of value or depreciation of the Subject Property as a result of the events alleged by You.

RESPONSE: Plaintiff has not obtained an appraisal or valuation of any loss of value or depreciation of the Subject Property, but reserves the right to do so and will supplement this response accordingly.

30. Any plans, specifications, drawings, revised drawings, bulletin drawings, sketches, cross-section details, or the like prepared by, on behalf of or provided to Plaintiffs relating to the Subject Property.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00014 through Brown 00016 and Brown 00222.

31. Any and all documents, reports or other materials related to any inspection, testing or investigation of any work performed on the Subject Property.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00121 through Brown 00145 and Brown 00208 through Brown 00210.

32. All investigative reports and any and all correspondence to or from any investigator or consultant retained to investigate the incidents at issue in this litigation or the damages allegedly resulting therefrom.

RESPONSE: All information requested in this Request is contained in discovery documents bates-labeled Brown 00121 through Brown 00145.

33. With regard to any expert witnesses identifies in Your answers to Pulte's First Set of Interrogatories, please produce the following:

- a. All documents prepared by the expert;
- b. All documents You sent to the expert;
- c. All documents relied upon by the expert;
- d. All documents used, consulted, or reviewed by the expert;
- e. All documents setting forth any compensation agreement with the expert;
- f. All documents that have been or will be shown to the expert prior to trial testimony; and
- g. All documents, including a current curriculum vitae, that will or may be used to establish the expert's qualifications for trial purposes.

RESPONSE: Plaintiff has not identified any expert witness at this time, but reserves the right to do so. This response will be supplement when an expert witness is identified.

34. And all documents reflecting or relating to the names of all contractors, subcontractors, materialmen, architects, and/or designers of the Subject Property and for which buildings they provided services or materials at the Subject Property.

RESPONSE: Plaintiff does not currently possess any of the requested documents.

35. Any and all documents relating to any prior lawsuits filed by any persons or entities related to the Subject Property, not to include this action.

RESPONSE: Plaintiff is not aware of any prior lawsuits related to the Subject Property.

These Responses shall be deemed to continue from the time of service until the time of trial of this case.

SMITH | CLOSSER, P.A.



William K. Kalivas - wkalivas@scnlaw.com
(SC Bar No.: 80201)
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
843-760-0220
Attorney for the Plaintiff

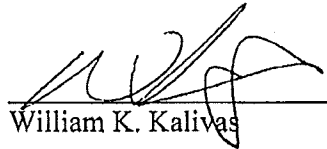
November 21, 2018
Charleston, South Carolina

18-198

CERTIFICATE OF SERVICE

I certify that on this date a copy of the Plaintiff's Responses to Defendant Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership's First Set of Interrogatories and First Request for Production were served by mailing, hand delivery, and/or electronic mail on the following:

Thomas C. Hildebrand Esquire
Olesya v. Bracey, Esquire
Parker Poe Adams & Bernstein, LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
tomhildebrand@parkerpoe.com
olesyabracey@parkerpoe.com



William K. Kalivas

March 21, 2018
Charleston, South Carolina

Exhibit B

Generated by Pulte Home Builder on: 5/17/2017 7:08:02 AM

Lot/Contact Information

Community	Bridges of Summerville Highlands-HI	Primary Contact	MONICA BROWN-GANTT
Lot/Block	03401	Phone Number	(843) 813-2105 x (Mobile)
Lot Address Edit	109 Catbriar Court Summerville, SC 29485 USA	E-mail Address	MBROWN@EVERESTMORTGAGECORP.COM (Home)
Building #		Superintendent	
Customer Relations Manager Change	Barracclough, Jean	Plan / #	
Closing Date	11/18/2005, Friday	Phase	
Closing Aging	11 Years 183 Days	Elevation	
Warranty Assigned	Legacy Centex	Handing	
Warranty # Edit	CX200510081703401		

Current Contacts

Name (Notes)	Contact Type	Address	Phone/Email	Show When Printing SR/WO
BROWN-GANTT, MONICA * (0)	Homeowner	109 CATBRIAR COURT SUMMERVILLE, SC 29485 US	(843) 875-7538 (Home) (843) 553-1771 (Other) (843) 813-2105 (Mobile) * MBROWN@EVERESTMORTGAGECORP.COM (Home)	Yes

Contact Log

Updated On	Contact Name	Source	Resolution	Performed By
06/07/2016	MONICA BROWN-GANTT	Email	General Question Answered	Barracclough, Jean WA Resolved

Hi Ms Brown; We have never received the inspection report. Your concerns were first addressed in 2008 and the Items under warranty, including the floor framing, were repaired and completed on 04/29/2008. In May of 2009 you submitted warranty items which were completed on 06/12/2009. 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. I responded "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. I have attached a copy of the structural warranty for your review." 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. Thank you Jean "PulteGroup strives to be a builder that our customers will be proud to recommend to their friends and family" JEAN BARRACLOUGH Customer Care Coordinator : : Coastal Carolinas Phone (843)740-7270 : : fax (843)747-3879 Pultegroup.com From: Monica [mailto:monicalbrown@bellsouth.net] Sent: Monday, June 06, 2016 3:17 PM To: SCR Customer Care ; Myra Hearn Law Firm Subject: Re: Service Request Jean , we sent out the inspection report since 2009. Jean my warranty does not warrant an inspection report when my home is under warranty. I contacted you guys every year and all I get is the run around . The last conversation I had with Manager is that you guys were dealing with your new homeowner and we will contact you . We complaint about the same thing since 2006 .

06/06/2016	MONICA BROWN-GANTT	Email	General Question Answered	Barracclough, Jean

Hi Ms Brown; As of today, I still have not received a copy of the inspection report. Please reply to this email and attach the report. Once I receive it, I will have it reviewed by a supervisor. The Centex materials and workmanship warranty was for two years from the date of closing, 11/18/2005. The 10 year structural warranty expired on 11/18/2015. We would gladly review the report once we receive it. Thank you Jean "PulteGroup strives to be a builder that our customers will be proud to recommend to their friends and family" JEAN BARRACLOUGH Customer Care Coordinator : : Coastal Carolinas Phone (843)740-7270 : : fax (843)747-3879 Pultegroup.com From: Monica [mailto:monicalbrown@bellsouth.net] Sent: Monday, June 06, 2016 2:54 PM To: SCR Customer Care ; Myra Hearn Law Firm Subject: Re: Service Request Jean, 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 . Are we being ignored . We have since received

an engineer report. We expect to receive a call from you ASAP . My contact 843 813-2105 We would like to settle this out of court. Thank You Monica

05/04/2015 MONICA BROWN-GANTT Email

General Question Answered Barraclough, Jean
WA Resolved

Hi Ms Brown; Thank you for your email. This home is covered under a ten year structural warranty. You can review that in your closing documents from the attorney. Please send me a copy of the inspection report and 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. Centex does not complete any inspections of the home after the two year warranty expiration. Thank you Jean JEAN BARRACLOUGH Warranty Agent : : Coastal Carolinas Direct (843)740-7270 ext 552 : : fax (843)740-7280 Pultegroup.com From: Monica L Brown [mailto:monicalbrown@bellsouth.net] Sent: Friday, May 01, 2015 1:43 PM To: SCR Customer Care Subject: Re: Service Request Someone needs to come to my house asap. Also we suppose to have the 15 year warranty according to the last time we spoke the supervisor.. Thank you Monica L. Brown- Mortgage Broker, NMLS 230020 Sea Coast Mortgage Group LLC, NMLS 297478 1940 Trolley Rd Suite E

05/01/2015 MONICA BROWN-GANTT Email

General Question Answered Barraclough, Jean

Hi Ms Brown; Thank you for your email. Please forward me a copy of the inspection report. You can reply and attach it to this email. Once I receive it, I will have it reviewed by a supervisor. The Centex materials and workmanship warranty was for two years from the date of closing, 11/18/2005. The 10 year structural warranty is still in effect. Thank you Jean JEAN BARRACLOUGH Warranty Agent : : Coastal Carolinas Direct (843)740-7270 ext 552 : : fax (843)740-7280 Pultegroup.com From: MONICALBROWN@BELLSOUTH.NET [mailto:MONICALBROWN@BELLSOUTH.NET] Sent: Thursday, April 30, 2015 2:31 PM To: (List) NCSL - South Carolina Coastal Subject: Service Request The following service request has been submitted: Email: MONICALBROWN@BELLSOUTH.NET Name: Monica BROWN Address: 109 CATBRIAR CT City: SUMMERVILLE State: SC Postal Code: 29485 Phone: 843 813-2105 Service Community: CHANDLER'S CREEK AT THE BRIDGES OF SUMMERVILLE Service Item: Other Service Room: Other Question, Request, or Comment: THE THIRD FLOOR HAD NO FLASHERS YOU STATED THAT THERE WAS NO LEAK AND YOU INSTALLED THEFLASHERS .THE HOUSE IS GETTING A ORDOR..... OUR LIVES ARE IN DANGER FROM YOUR NEGLIGENCE. THE WALL IN DRY ROT WITH BLACK PARTICLES POSSIBLY MOLD. WE HAVE A SENT YOU THIS COMPLAINT SEVERAL TIMES AND NO ONE HAS BOTHER TO ADDRESS AND WAS TOLD YOU WERE DEALING WITH NEW HOMEOWNERS AND THAT WE WERE NOT GOING TO ADDRESS THE ISSUES AGAIN IS THIS DISCRIMINATION? IS THIS NEGLIGENCE? IS THIS BREAKING THE LAW ? WE PAID 350,000 FOR OUR HOME. WE EXPECT FOR THE BUILDER TO HONOR HIS WARRANTY, HIS BUILDER CODE OF ETHICS AND THE LAW. THE ENTIRE ROOMS SHAKES WHEN YOU WALK INTO MY SON'S ROOM. THERE IS NO INSULATION IN THE ROOM ALWAYS HOT IN THE SUMMER AND COLD IN THE WINTER. YOU CAME IN AND SAID THE FLOOR WILL GIVE. THAT IS NOT TRUE. THE ROOM IS NOT PROPERLY INSTALLED ACCPRDOMG TO THE INSPECTOR. ROOM IS NEXT TO THE OPEN FOYER. THE FOYER CEILING AND WALL JOIST IS NOT CONNECT. NO INSULLATION !!

09/05/2013 MONICA BROWN-GANTT Phone Call

Follow Up

Barraclough, Jean

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

09/05/2013 MONICA BROWN-GANTT Phone Call

WA Resolved

Barraclough, Jean

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

09/05/2013 MONICA BROWN-GANTT Email

WA Resolved

Barraclough, Jean

Hi Ms Brown; Thank you for your email. 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. I have attached a copy of the structural warranty for your review. JEAN BARRACLOUGH Warranty Agent : : Coastal Carolinas direct (843) 740-7270 ext 552 : : fax (843) 740-7280 pultegroup.com From: MONICALBROWN@BELLSOUTH.NET [mailto:MONICALBROWN@BELLSOUTH.NET] Sent: Thursday, September 05, 2013 9:44 AM To: (List) NCSL - South Carolina Coastal Subject: Service Request The following service request has been submitted: Email: MONICALBROWN@BELLSOUTH.NET Name: MONICA BROWN Address: 109 CATBRIAR CT City: SUMMERVILLE State: SC Postal Code: 29485 Phone: 843 813-2105 Service Community: CHANDLER'S CREEK @ THE BRIDGES'S OF SUMMERVILLE Service Item: Other Question, Request, or Comment: ROOFING , FLOORS AND THE WALLS AND WINDOWS THIS IS OUR LAST ATTEMPT BEFORE WE SEEK LEGAL REPRESENTATION

07/12/2011 MONICA BROWN-GANTT Phone Call

WA Resolved

Barraclough, Jean

recommend smiths --lonzie and son out of business--out of warranty CALLER : Monica Brown COMPANY : n/a PHONE : (843)813-2105 ADDRESS : 109 Cat Briar Court CLOSING : 11/1/2005 MESSAGE : My a/c isn't working.

Lot Notes

Â | Â |

<u>Updated On</u>	<u>Type</u>	<u>Updated By</u>	<u>Category</u>
10/05/2010	Internal	Conversion, Data	General Info

Corrigo Plan Name: 2963B

Previous Contacts

<u>Name</u>	<u>Type</u>	<u>Date Removed</u>	<u>Reason</u>
No records found.			

Exhibit C

CERTIFICATE OF OCCUPANCY TOWN OF SUMMERVILLE

THIS CERTIFICATE ISSUED PURSUANT TO THE REQUIREMENTS OF SECTION 10
OF THE INTERNATIONAL RESIDENTIAL CODE CERTIFYING THAT AT THE TIME OF
ISSUANCE THIS STRUCTURE WAS IN COMPLIANCE WITH THE VARIOUS ORDINANCES
OF THE JURISDICTION REGULATING BUILDING CONSTRUCTION OR USE.
FOR THE FOLLOWING:

CERTIFICATE OF OCCUPANCY NO.: 20051219

PERMIT #: 20051219

DATE: 11/14/2005

SPECIAL CONDITIONS:

NONE
11/14/05

OCCUPANCY TYPE:

RESIDENTIAL

USE CLASSIFICATION:

SINGLE FAMILY RESIDENCE

CONSTRUCTION TYPE:

V-B

AUTO SPRINKLER:

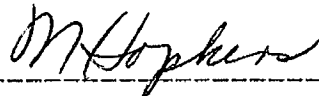
N/A

OWNER: CENTEX HOMES

MAILING ADDRESS: 2430 MALL DRIVE
NO CHARLESTON SC 29406

BUILDING ADDRESS: 109 CATBRIAR

CONTRACTOR: CENTEX HOMES



Building Inspector
(Certified as to Building Construction)

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
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-01436

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

TO: THE PARTIES NAMED ABOVE:

The Plaintiff, Monica Brown-Gantt ("Brown"), by and through her undersigned counsel, and pursuant to Rules 52 and 59, SCRCF, hereby respectfully request that this Court reconsider the Order Granting Summary Judgment in Favor of Defendant Centex Real Estate Company,

LLC and Centex Homes, a Nevada General Partnership (collectively “Centex”) dated October 18, 2019.

The Motion for Summary Judgment (“Motion”) was filed on March 21, 2019 and a hearing was held on April 11, 2019 in the Dorchester County Court of Common Pleas. The Court entered its Order granting the Motion on October 18, 2019. For the reasons set forth below, this Court should vacate its Order Granting Summary Judgment in favor of the Moving Parties, and either set this matter for a new hearing, or amend or make new findings of fact and conclusions of law, as appropriate.

BRIEF FACTS AND PROCEDURAL HISTORY

Plaintiff contracted with Centex for the purchase and construction of her home, located at 109 Catbriar Court, County of Dorchester, South Carolina. Although Plaintiff’s home was completed in 2005 and a Certificate of Occupancy issued on November 14, 2005, Plaintiff was not aware of the specific issues addressed in the Complaint until 2016. These issues were consistently raised with Centex, and until as recently as May 16, 2018 (email attached as “Exhibit B” to Plaintiff’s Memorandum in Opposition to Centex’s Motion for Summary Judgment), Centex assured the Plaintiff that they would inspect and/or repair the various issues. However, after the last offer to assist Plaintiff with the issues, Centex, through its attorney, notified Plaintiff that it would no longer offer to repair the damage to the home and offered a settlement on May 23, 2018.

After Plaintiff received that letter and it was clear Centex was not going to cure the defects, Plaintiff decided to file suit on August 8, 2018. Preliminary discovery took place following the initial pleadings, to include a deposition of the Plaintiff taken on December 13, 2018. Following the deposition, Centex served its Third Party Complaint, bringing in several

additional parties involved in the construction of Plaintiff's home. After responsive pleadings were filed, and before the filing of the Motion, Plaintiff served Centex with its initial discovery requests. Centex never produced any response to Plaintiff's discovery requests, and the Motion was argued on April 11, 2019.

I. The Court committed an error of law when it determined that Plaintiff's claims are barred by the statute of limitations.

As an initial matter, Plaintiff does not dispute the applicability of a three year statute of limitations for many of the causes of action asserted by her in the Complaint. Nor does Plaintiff dispute the applicability of the "discovery rule" for determining the when "the three-year clock starts ticking..." *Holly Woods Ass'n of Residence owners v. Hiller*, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011). However, Plaintiff does dispute when the applicable statute of limitations begins to run in this case based on the discovery rule, and the principles of equitable estoppel and equitable tolling.

From November 2005 until 2015, Plaintiff's home was under warranty. Many of the issues raised by Plaintiff to Centex were allegedly inspected and/or repaired by Centex during that timeframe. After the expiration of her warranty, when Plaintiff experienced continued issues, she filed an insurance claim for water damage. As part of the insurance company's due diligence, they hired an engineer to inspect the home. The report produced as a result of that inspection was made available to Plaintiff in early 2016. (attached as "Exhibit A" to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment). It was based on that report that Plaintiff came to realize the scope of the issues with her home, and specifically, the relation of the issues to the work of Centex and/or its subcontractors. Many of the issues uncovered by the report were not readily discoverable to someone who is not an expert in the

field, to include improperly installed flashing around windows and the chimney, and deterioration of sheathing in the attic.

Because of the limitations of discovery at this stage to determine what repairs were actually made by Centex and when, determining not only when the negligent act occurred, but when Plaintiff became aware of the damage from that negligent act is premature. Plaintiff maintains that she did not become fully aware of the issues with her home until after the inspection in early 2016, thus her claims remain within the statute of limitations. “[W]hen the parties present conflicting evidence, application of the discovery rule and determination of the date the statute began to run in a particular case are questions of fact for the jury.” *Allwin v. Russ Cooper Associates, Inc.*, 2019 WL 208925 (Ct. App. 2019).

Even if the court determines that Plaintiff knew or should have known she had causes of action prior to August 8, 2015, the statute of limitations should be tolled and Centex estopped from asserting the statute of limitations as a defense based on the actions of Centex towards the Plaintiff. “A defendant will be estopped to assert the statute of limitations in bar of a plaintiff’s claim when the delay that otherwise would give operation to the statute has been induced by the defendant’s conduct.” *Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct. App. 1985) (quoting 53 C.J.S. *Limitations of Actions* §25 at 962-64 (1948)).

In this case, Plaintiff reasonably relied upon Centex’s assurances that they would inspect and repair the issues with her home without the need to resort to litigation. Only upon receipt of the letter from counsel for Centex did Plaintiff become aware that Centex did not actually intend to repair the issues. In fact, as late as May 16, 2018, Centex made an offer to repair some of the damage to Plaintiff’s home. (email attached as “Exhibit B” to Plaintiff’s Memorandum in

Opposition to Centex's Motion for Summary Judgment). The fact that Centex made repairs when Plaintiff complained of issues, combined with the assurances of an inspection and the offer of repair in May 2018, Centex should be barred from asserting the statute of limitations as a defense. See *Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012).

While the Court found that Centex stopped making repairs after 2009, it's clear from the Plaintiff's deposition testimony that Centex continued to come out to the property to inspect for years after that, up until 2019. Depo. of M. Brown, 37: 11-17 (attached as "Exhibit A" to Centex's Motion for Summary Judgment). It's also clear from the record that Centex continued to correspond with Plaintiff about her issues, to include sending representatives out to the home to inspect her complaints. Depo. of M. Brown, 58: 11-19, 46: 7-18, 66: 9-15 (attached as "Exhibit A" to Centex's Motion for Summary Judgment). Evidence exists that would lead a reasonable person to conclude it was reasonable for the Plaintiff to rely on the conduct and assurances of Centex to remedy her issues without resort to litigation, to include an email as late as May 16, 2018 stating what repairs Centex was going to make. (email attached as "Exhibit B" to Plaintiff's Memorandum in Opposition to Centex's Motion for Summary Judgment).

During her deposition, Plaintiff raised numerous instances of her defending the decision not to bring suit in this case due to Centex's promises to inspect and/or fix the damages she claimed. Depo. of M. Brown, 36: 14-18, 47: 18-20, 48: 18-25, 57: 13-17, 61: 9-19, 69: 16-21, 70: 6-16 (attached as "Exhibit A" to Plaintiff's Memorandum in Response to Centex's Memorandum in Support of Motion for Summary Judgment). Because Centex continually promised Plaintiff that they would inspect and/or repair her claims, she was induced into believing that she did not need to resort to litigation to resolve her issues. See *Dillon County* at

215, 332 S.E.2d at 559; *Magnolia North Property Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012). Further, based on these promises and assurances from Centex, it is reasonable for Plaintiff to believe it would be counterproductive to file suit before giving Centex an opportunity to honor the representations, especially given its efforts to make some repairs. See *Magnolia North*, at 373, 725 S.E.2d at 126; email attached as "Exhibit B" to Plaintiff's Memorandum in Opposition to Centex's Motion for Summary Judgment.

For these reasons, Centex should be estopped from asserting the statute of limitations based on the principle of equitable estoppel. The statute of limitations should be tolled until the date when Plaintiff knew it was necessary to resort to litigation to resolve her issues, which, as stated above, was in correspondence from Centex in May 2018. Therefore, the Court committed an error of law in determining that Plaintiff's claims are barred by the statute of limitations.

II. The Court committed an error of law when it determined that Plaintiff's claims are barred by the statute of repose.

The statute of repose is not applicable to all of the Plaintiff's claims because "[t]he limitations provided by Sections 15-3-640 through 15-3-660 are not available as a defense to a person guilty of fraud, *gross negligence*, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement..." S.C. Code Ann. §15-3-670(A). Plaintiff alleges gross negligence in her first cause of action against Centex, and therefore the statute of repose is not an available defense in this action. The fact that Centex may have made repairs to certain of the issues complained of by Plaintiff and that those issues continue to exist is evidence of gross negligence.

In Plaintiff's deposition testimony, she points to numerous times where Centex allegedly addressed certain issues, and yet the problems persisted. *See Exhibit A*, Depo. of M. Brown, 54: 22-25, 55: 1-3. Further, Plaintiff addressed some of the specific defects that provide further evidence of gross negligence. Depo. of M. Brown, 64: 10-16, 98: 7-12 (attached as "Exhibit A" to Plaintiff's Memorandum in Response to Centex's Memorandum in Support of Motion for Summary Judgment). Recurring problems that need to be repaired repeatedly provides a *prima facie* case for gross negligence. Moreover, the issues uncovered in the January 2016 report from the insurance inspector provide a mere scintilla of evidence of gross negligence. (report attached as "Exhibit A" to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment).

Because Plaintiff can show a mere scintilla of evidence that Centex was grossly negligent in the construction of Plaintiff's home, it was an error of law for the Court to determine that Plaintiff's claims are barred by the statute of repose.

III. The Court committed an error of law in granting Centex's Motion because the parties have yet to engage in full and fair discovery.

South Carolina courts have continuously held that summary judgment is a "drastic remedy," which should be cautiously invoked to avoid severing a person's right to a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002); *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct.App.2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998).

Because it is such a “drastic remedy,” summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69 (1999) (citing *Baughman v. AT & T*, 306 S.C. 101, 410 S.E.2d 537 (1991)). See also *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001). After the initial pleadings in this case, the parties agreed to undergo “brief initial discovery”, to include Centex’s discovery requests and a deposition of Plaintiff, to see if this matter might settle prior to Centex serving the Third-Party Defendants. When a settlement was not reached after the deposition, Centex began serving the Third-Party Complaint on the individual Third-Party Defendants. The final Third-Party Defendant filed an Answer on March 19, 2019, two (2) days before the Motion was filed by Centex.

Plaintiff served her initial discovery requests on Centex on March 8, 2019, after she learned which Third-Party Defendants were going to be involved in the case. While Plaintiff acknowledges that her discovery requests could have been served earlier, she would also point out that Centex, having been served with the discovery requests, was aware they it had not produced its responses when it filed the Motion. South Carolina courts have definitively required “full and fair” discovery. At the time the Motion was argued, neither party had the opportunity to conduct full and fair discovery, as many of the Third-Party Defendants had only recently filed responsive pleadings. Discovery is critical to the merits of the Motion as many of the issues raised by Plaintiff in the Complaint may have been repaired by Centex after the original construction, and therefore the date of repair would be relevant to the applicable limiting statutes. Further, there may exist documents related to express warranties that extend the warranty period beyond the applicable statute of repose.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that this Court reconsider its Order Granting Summary Judgment, open the judgment, and either set this matter for a new hearing, or amend or make new findings of fact and conclusions of law, as appropriate.

SMITH CLOSSER & WHEELER, PA

s/William K. Kalivas

October 25, 2019

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18-198

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF COMMON PLEAS
2018-CP-18-1436

Monica Brown-Gantt,

)

Plaintiff

) TRANSCRIPT OF RECORD

-vs-

)

) April 11, 2019

Centex Real Estate Company,

)

Defendant

)

) St. George, South

) Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

A P P E A R A N C E S:

William Kalivas, Esquire
Attorney for the Plaintiff

Thomas C. Hildebrand, Jr., Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

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EXHIBITS

NO EXHIBITS INTRODUCED

1 THE CLERK: 2018-CP-18-1436, Monica
2 Brown-Gantt versus Centex Real Estate Company.
3 This is Centex's motion for summary judgment,
4 and it's No. 14 on the roster.

5 THE COURT: Okay.

6 MR. HILDEBRAND: Good afternoon, Your Honor.

7 THE COURT: How are y'all?

8 MR. HILDEBRAND: Good.

9 THE COURT: Who's first?

10 MR. HILDEBRAND: I believe it's me,
11 Your Honor.

12 THE COURT: Okay.

13 MR. HILDEBRAND: May I approach, Your Honor?

14 THE COURT: Yes, sir.

15 MR. HILDEBRAND: This is a copy of our
16 motion that I put some tabs on to make it a little bit
17 easier. We filed a memorandum in support of the motion
18 today, and that's included with that.

19 THE COURT: So do you have anything for me?

20 MR. KALIVAS: I filed a memorandum,
21 Your Honor. I do have a copy of it, if you need it,
22 but it was filed.

23 THE COURT: No. I can already tell you with
24 the thickness of this, it would definitely be an at-home
25 endeavor.

1 MR. KALIVAS: Fair enough, Your Honor.

2 THE COURT: I will be glad to hear from you,
3 though.

4 MR. HILDEBRAND: Thank you, Your Honor.
5 I'm Tom Hildebrand. I represent the Defendant, Centex,
6 in this matter. This is a case that involves a single
7 family residence. And the Plaintiff, Ms. Brown, claims
8 kind of garden-variety construction defect allegations,
9 which are, basically, that the exterior of her house
10 leaks, and it has caused damage on the inside of the
11 house.

12 Now, our motion, Your Honor, is based
13 on two grounds; one for statute of limitations and one
14 for statute of repose because this house was completed,
15 according to the certificate of occupancy, which we have
16 submitted and filed with the court, on November 14,
17 2005.

18 So, we're claiming -- the reason for this
19 motion is that, again, the statute of limitations and
20 statute of repose. And I'm clear, Your Honor, that
21 having that all I do is construction law and litigation,
22 and I know you've heard a lot of these, and I can say
23 that I typically don't file motions for summary judgment
24 in construction cases on statute of limitations because
25 they're difficult to prove. I just tell my clients

1 I don't file those typically.

2 But this is one when I got it, this is
3 the one out of 100 that I said, this is a case clearly
4 for statute of limitations and statute of repose.
5 And I would like to explain it briefly why I believe
6 that's true.

7 THE COURT: Yes, sir.

8 MR. HILDEBRAND: So, the home inspection
9 in 2005, the Plaintiff brought her case -- brought
10 this action on August 8, 2018. So, as to the statute
11 of limitations, which is a three-year statute,
12 the question is, okay, she filed the case on August 8,
13 2018, did she know, or should she have known, three
14 years or more before that date that she had a cause
15 of action that she should have brought against Centex?

16 So, the date that we're looking at, the
17 magic date, is August 8, 2015. And what I would suggest
18 to Your Honor when you've got the Saturday afternoon
19 when you -- or whenever you do it, is to read our
20 memorandum and the attachments that we have with it.

21 And as for the statute of limitations,
22 Your Honor, we have the Plaintiff's deposition, which
23 I took, we have her documents to Centex, and we have
24 her answers to our discovery in this case, all of which
25 inarguably showed that the Plaintiff knew about these

1 construction defect cases way back, and did not bring
2 a case -- bring a suit against Centex.

3 First, her deposition testimony, basically
4 -- I'm going to run through a couple of them. You can
5 read them later. "You began experiencing problems right
6 after you moved in, in 2005, agreed? Yes. And these
7 are the same problems that exists today? Yes." That's
8 her sworn testimony; that's Page 6. "The leakage
9 problems you're complaining about started on day one,
10 correct?" Answer: "Yes."

11 She writes letters to Centex, where she
12 lists all of the problems that she complains of in this
13 construction defect litigation. And this was before
14 the statute of limitations, before that critical date,
15 before August 8, 2015. She's writing Centex, listing
16 all of the problems that she had from day one, and
17 that's her testimony. All of the problems she had from
18 day one that were never addressed by Centex.

19 So following on with her deposition
20 testimony, she not only says that she -- all these
21 problems happened from day one, and they were never
22 fixed, she sends an e-mail to Centex in 2013, and that's
23 before the critical date, saying, we've got leakage
24 problems, and this is the last attempt -- the last time
25 I'm going to bring these to your attention before

1 we seek legal representation. That's in 2013.

2 So, she is saying, Centex, I have been
3 complaining about this every year, you haven't fix them,
4 I'm going to need to seek legal representation if you
5 don't fix them. She didn't file a suit until 2018.

6 Then, again in 2015, before that critical
7 date, the Plaintiff writes Centex, and says in all caps
8 and underlined, "Our lives are in danger from Centex's
9 negligence. We have sent this complaint several times,
10 and no one has bothered to address, and we've told
11 Centex about it time and again, and they have not
12 responded." So, again, I asked her, "And these are
13 the same problems you've had since day one? Yes."

14 So, we've got her deposition testimony
15 where she says that she knew about these problems
16 from day one, and they weren't fixed. There is
17 testimony in the record where she says that some
18 repairs were made by Centex in 2009, but they were
19 not effective, and they continued on from year to year
20 and were never fixed.

21 So, we have the deposition testimony
22 of the Plaintiff. We have her letters from Plaintiff,
23 saying these problems have happened from day one,
24 they were never fixed, we're going to seek legal
25 representation, and she never filed suit.

1 And then we have, Your Honor, after this
2 suit was filed, I served interrogatories on the
3 Plaintiff, written interrogatories, and I said,
4 you tell me when you discovered these problems.
5 And I was surprised that the Plaintiff very candidly
6 responded to those interrogatories, and these are on
7 Page 13 of our memo. They are attached as an exhibit.

8 We said, when did you discover problems
9 with the chimney and windows? And she answered
10 very truthfully, we first noticed them in 2005.
11 Then, we said, when did you notice problems with
12 the attic and roof? And she responds, we noticed
13 a dry rotten attic in 2013.

14 And then we asked her about other problems
15 with the roof, and she said in 2014, again before
16 the critical date, she was advised that the air handler,
17 which was located in the attic, was damaged due to water
18 leaking through the roof.

19 Then, she also states in her discovery
20 responses that she became -- here's what she said,
21 she became aware of problems with water intrusion,
22 to include water spots and mold, mildew smell,
23 almost immediately upon closing of her home.

24 So, as to the statute of limitations,
25 Your Honor, I think that there is just a plethora

1 of evidence to establish inarguably that this --
2 that Ms. Brown knew of these problems from day one,
3 they weren't corrected, she knew that she might want
4 to seek legal representation, she didn't until 2018.
5 Now, that's an issue on the statute of limitations.

6 We've also filed a motion on a second
7 ground, Your Honor, which is the statute of repose.
8 And as Your Honor knows, the statute of repose is
9 an eight-year statute that is determined from the time
10 of construction inspection. Construction was finished
11 on, according to the certificate of occupancy, November
12 11, 2005. So that eight-year statute would run on
13 November 11, 2013.

14 So, we filed our motion. We attached a copy
15 of the certificate of occupancy, saying these actions
16 are barred by the statute of repose. So, we filed
17 the motion. We supported the motion with the testimony
18 of the Plaintiff and the certificate of occupancy,
19 which says these are barred by the statute of repose.

20 What is interesting about the statute
21 of repose is there's no getting around that. You can
22 prove gross negligence and get around it, but you can't
23 toll it or anything else. It's just a flat bar.
24 Unless you can prove gross negligence and get around
25 it, it is a flat bar to any claims.

1 So after we filed the motion, we -- I think
2 it was yesterday or the day before, we got a memorandum
3 in opposition from Plaintiff's counsel. And his
4 response to our statute of repose was simply, I pled
5 in our complaint gross negligence, and that is the bar.

6 And I've cited in our brief, Your Honor,
7 when a motion for summary judgment is made and
8 supported, counsel can't simply rely on the allegations
9 of their complaint. They have to produce to the Court
10 specific evidence to overcome the summary judgment
11 motion. And here, Your Honor, there's no such evidence
12 that has been made.

13 So for those reasons, we submit that
14 Plaintiff's claims should end here. We shouldn't
15 have to go any further with any further discovery
16 or anything, and the motion should be granted.

17 THE COURT: Yes, sir.

18 MR. KALIVAS: Thank you, Your Honor.
19 May it please the Court. William Kalivas on behalf
20 of Plaintiff, Monica Brown-Gantt. We don't dispute
21 the dates. Obviously, the certificate of completion
22 -- occupancy, rather, is what it is. My client closed
23 on the house. It was finished in late 2005, and she
24 did start experiencing issues with the work of Centex,
25 and as we've come to find out, numerous third-party

1 defendants.

2 But a little bit of background, just sort
3 of procedurally, to kind of fill that in. She started
4 experiencing issues with the house in terms of seeing
5 watermarks on her windows, having a mildew smell.
6 It wasn't -- and throughout this whole time, she's
7 communicating with Centex.

8 Her house is under warranty, Centex
9 is coming out, claiming to make repairs, and her
10 deposition testimony bears this out. She doesn't
11 know whether or not they've made repairs or not,
12 because lo and behold, a year later similar issues
13 are occurring. She complains to Centex; Centex comes
14 back out. Centex made the repairs, you're going
15 to have no more issues. The issues keep persisting.

16 It wasn't until -- and I've attached this
17 as Exhibit A to my memorandum -- until a report produced
18 January 27, 2016 from an engineer hired by her insurance
19 company. So, she filed an insurance claim due to water
20 damage to her floors, and they said, do you want us
21 to bring an inspector out?

22 They bring an inspector out, who produces
23 this report, which finally clues her in that your issues
24 aren't just with water coming through -- I mean, she's
25 a homeowner. She doesn't know flashing; she doesn't

1 know all these different kinds of things. But they're
2 saying there is improperly installed flashing around
3 the house, around windows, around your chimney,
4 up on the roof, or in some cases, the complete absence
5 of flashing. These are all issues she was not even
6 fully aware of.

7 Obviously, she's experiencing the symptoms
8 of some of these issues earlier on, but she's not fully
9 aware of the issues. I mean, I know she says, or I will
10 get legal counsel. This will be the last time before
11 I get a lawyer. She never consulted with a lawyer prior
12 to that time. I think those are fairly idle threats
13 that are probably fairly common when you're dealing
14 with frustrations between a homeowner and a homebuilder.

15 But it wasn't until that report in 2016 that
16 she finally realized that she had issues -- construction
17 defect issues, as they are laid out in that report
18 as construction defects, that she could be able
19 to actually bring suit against Centex.

20 So, I think we have an issue as to when
21 her -- the discovery rule applies in terms of when she
22 determined she had a cause of action. But, regardless,
23 as to the statute of limitations, throughout this whole
24 period, up until May 2018, and I have an e-mail in there
25 as Exhibit B from Centex, Centex is hearing her

1 complaints, coming out and inspecting the property,
2 and/or making repairs.

3 The 2009 date for repairs there on the
4 deposition was a date thrown out by Centex and asking
5 my client, Ms. Brown, to admit that there were no
6 repairs made after 2019 [sic.]. And her first statement
7 is, I don't know if there were any repairs after 2019
8 [sic.]. They kept saying they were making repairs,
9 but I don't know.

10 And so whether 2009 was the last repairs
11 done or not, we don't know. We have not gotten our
12 discovery responses from Centex yet, and that's a whole
13 other issue I'll address. But my point in all this
14 is Centex has been coming out to the house, making
15 inspections, promising to make repairs up until May
16 of 2018.

17 In fact, in the e-mail, they even give
18 a list of things that they're willing to come out
19 and fix. This is -- excuse me -- May 16, 2018.
20 And my client's response to that is, saying, "This
21 is only part of the issues we've discussed." Most
22 of the conversations have taken place over the phone.
23 "But your offer to make these repairs are only part
24 of what we've discussed."

25 And it was shortly therefore she gets

1 a letter from Centex's legal counsel saying, hey,
2 we're done making offers to help you. And it was
3 at that point, she consults us, and here we are
4 in this lawsuit, Your Honor.

5 So, I would argue that this is a pretty
6 clear case of equitable tolling of the statute
7 of limitations up until that day when she realizes
8 she has no choice but to sue them. Up until then,
9 she was led to believe if you make these complaints,
10 we'll come out and inspect, and we'll fix it.

11 Now, obviously, there's a question
12 about whether or not they actually did any repairs
13 or what they fixed, but they are telling her that.
14 She's relying on them saying they're going to do that.

15 And, frankly, for her to have filed suit
16 while they're still making promises to come do these
17 repairs as late as May 2018, that may have cut off
18 any ability she had to do this without having to start
19 spending money on litigation costs and things like that.

20 So, I do think -- and I've laid that
21 out a little bit more in my memorandum. I do think
22 we have a case for equitable tolling here -- excuse me
23 -- equitable estoppel in terms of the defense raising
24 the statute of limitations.

25 And as far as the motion in total,

1 Your Honor, there's a -- as I've said, there's a number
2 of issues that I think could potentially be factual
3 disputes; when the last repairs were made on the home,
4 if those repairs are what ultimately led to some
5 of these damages. Then, that's when the statute
6 of limitations should run. There's numerous factual
7 issues, and we have served our discovery request,
8 but have not received any responses.

9 So a little procedural background.
10 When this started, we spoke, counsel for Centex and I,
11 and we agreed to do a little bit of discovery and then
12 depose my client, Monica Brown, to see if we needed
13 to go into, as Centex puts it, full-blown construction
14 defect litigation.

15 We did that, and deposition took place
16 in December. We didn't settle the matter then.
17 And so it was at that point all these third-party
18 defendants started getting served. The most recent
19 one filing their answer middle of May -- excuse me --
20 middle of March of this year.

21 So, there hasn't been -- my client is just
22 now becoming aware of some of these third parties.
23 And it isn't entirely clear what their role was in
24 the project, what specifically they did. Obviously,
25 her contract and everything was with Centex, so,

1 you know, who did the work, Centex was ultimately
2 responsible for it in her eyes.

3 But that's another issue that we're dealing
4 with here. We haven't had a chance to do a fair
5 and full discovery. I know we only filed our discovery
6 request just a little over a month ago. So, I haven't
7 even considered a motion to compel or anything at that
8 stage. I figured we would get through this and then
9 see where that leads us.

10 But that's an issue as far as whether or not
11 there's a dispute as to any material fact as it pertains
12 to the statute of limitations. And even if Your Honor
13 says, well, the statute of limitations should apply
14 regardless of discovery, I think we have an equitable
15 estoppel argument that that statute should be tolled
16 until she found out Centex said no more repairs,
17 no more offers to help, you know. Bring it on,
18 essentially.

19 THE COURT: Right.

20 MR. KALIVAS: As far as the statute
21 of repose, Counsel is correct. I mean, search
22 as I might, I couldn't find anything that says we're
23 able to toll the statute of repose. But I do know that
24 specifically by statute, exempt from that is allegations
25 of gross negligence. And I have not had a chance

1 to read their memorandum. I don't know if it's been
2 filed. If it is, I've just now got a copy of it.
3 So, I can certainly respond to that in more detail
4 with subsequent filing for Your Honor to review.
5 But we do claim gross negligence in this case.

6 And as I've said, we haven't had a chance
7 to get any discovery yet. So, I don't have the specific
8 examples. But I do, in just one sentence in my
9 memorandum, say the fact that Centex is coming out
10 and alleging they're making repairs, and we're still
11 having issues, I think does, at least, make the
12 beginnings of a case for gross negligence.

13 Obviously, if they are coming out and making
14 repairs, and they're not even going to correct their own
15 issues, it's either a greater underlying issue, or they
16 continue to build negligence on top of negligence.
17 There's also the possibility that issues like this occur
18 on other homes.

19 And one of my discovery requests is are
20 there other cases involving Centex as a defendant for
21 similarly-situated situations that there may be similar
22 allegations to where they are negligent in constructing
23 other people's home in regards to the flashing and
24 things like that, the issues that we've raised in this
25 case?

1 So, Your Honor, I think, one, it's premature
2 for a motion for summary judgment until we've had
3 all the discovery that we can review and then actually
4 be able to defend against this motion a little bit more
5 comprehensively.

6 Two, I think the statute of limitations,
7 if Your Honor says it applies, shouldn't apply until
8 that last date of May 2018. And then the statute
9 of repose, if Your Honor says that applies, I still
10 think our gross negligence claim should survive,
11 and we should be able to proceed on that.

12 THE COURT: Okay. Yes, sir.

13 MR. HILDEBRAND: Very briefly, Your Honor.

14 THE COURT: Yes, sir.

15 MR. HILDEBRAND: My esteem colleague
16 is quite articulate in arguing what -- just making
17 assertions. None of those assertions are in the record.
18 The only record that is before the Court is the
19 deposition testimony, the e-mails, and the interrogatory
20 responses, which I cited to you, where she says that she
21 knew about these problems from day one, she's complained
22 about them every single year, and they've never been
23 fixed.

24 Now, if Mr. Kalivas would like to argue
25 equitable estoppel or something else, none of that

1 is in the record. Also, on when these repairs took
2 place, and an assertion that there's some debate
3 or argument about that, there is no debate. I asked --
4 and it's on Page 8 of my brief, under oath to Ms. Brown.
5 "So based on what you can testify under oath here today,
6 the last time that Centex made any repairs, to your
7 knowledge, was in 2009, agreed? That's the last time
8 I can recall. Okay. Yes."

9 And I've also cited the e-mails in this from
10 Centex. The language is quoted where we said we made
11 repairs in 2009. We are not going to make any further
12 repairs. The warranties have expired. So, I think
13 the record is real clear on what is before the Court.

14 On discovery, very briefly, that's a red
15 herring, Your Honor. We filed our motion, and we
16 supported it before the Court here today. It's up
17 to the Plaintiff -- she could submit an affidavit on
18 her own; she could submit other evidence; she could have
19 her expert submit an affidavit on what he thinks might
20 be gross negligence. None of that is before the Court.

21 What we have here is a record in support
22 of our motion and nothing against it, except a pleading
23 in the complaint. So my suggestion to the Court is that
24 there is no evidence of gross negligence that has been
25 made before the Court. And this request for more

1 discovery is really a red herring because it comes
2 from the Plaintiff, it's not going to come from us.
3 And all she had to do to overcome the motion was submit
4 the evidence that she had or that her attorney could
5 have gotten. So, I won't take any more of your time.
6 Thank you very much.

7 THE COURT: Well ---

8 MR. KALIVAS: Your Honor, may I respond just
9 briefly?

10 THE COURT: Yes, sir.

11 MR. KALIVAS: He mentioned the only
12 thing in the record being the deposition testimony.
13 And, I guess, I mistakenly thought the entire deposition
14 was attached to his motion. It's not. But I printed
15 out before I came here today some other shots from
16 the deposition that I think support my arguments about
17 Centex promising to make repairs, saying they're coming
18 out, and I'm happy to hand those up if Your Honor wants
19 or file them.

20 As I've said, I just received their
21 memorandum today. So, I would appreciate it if Your
22 Honor would allow us -- Plaintiff a chance to respond
23 to that. I don't know if there's anything new in that
24 from the motion. I haven't had a chance to read it.

25 THE COURT: Do you mean the rest of the

1 deposition?

2 MR. KALIVAS: What's that?

3 THE COURT: The balance of the deposition.

4 MR. KALIVAS: I don't have the balance
5 of it, Your Honor. But I have pages that -- he produced
6 pages that support his argument. I have pages that
7 support mine that I can hand up.

8 THE COURT: Do you mind?

9 MR. KALIVAS: I can hand a copy over.

10 MR. HILDEBRAND: Well, Your Honor, we filed
11 our motion back in at least -- all of our supporting
12 -- all I did for today was file our memorandum, which
13 is our argument. All the supporting data was filed
14 with the motion, which was done back on March 21.

15 THE COURT: Okay. So you want to ---

16 MR. KALIVAS: Yes, I would ask that
17 Your Honor -- if Your Honor is going to review certain
18 snippets of the deposition, that Your Honor review
19 the entire deposition testimony in full.

20 THE COURT: Do y'all have any photographs
21 of this house with you? Just curious.

22 MR. KALIVAS: We do have photographs,
23 Your Honor, and I've submitted them with our discovery.

24 THE COURT: That's okay. I don't need
25 to see it. All right, gentlemen. I promise you

1 it won't be this Saturday. Might be a day or two after
2 that, okay.

3 MR. KALIVAS: Thank you, Your Honor.

4 THE COURT: Bear with me, please.

5 Thank you for your patience.

6 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

State of South Carolina)

County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 11th of April, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 28, 2020



Yvestre Torres

Circuit Court Reporter

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
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-01436

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT CENTEX
REAL ESTATE COMPANY, LLC AND
CENTEX HOMES, A NEVADA
PARTNERSHIP'S MOTION FOR
SUMMARY JUDGMENT**

**TO: THOMAS C. HILDEBRAND, JR., ESQUIRE, ATTORNEY FOR DEFENDANT
CENTEX REAL ESTATE COMPANY, LLC AND CENTEX HOMES, A NEVADA
PARTNERSHIP:**

The Plaintiff, Monica Brown-Gantt ("Brown" or "Plaintiff"), by and through its undersigned counsel, hereby submits this Memorandum in Opposition to the Defendants' Motion for Summary Judgment ("Motion"), filed by Defendants Centex Real Estate Company, LLC and

Centex Homes, a Nevada General Partnership (“Centex” or “Defendant”, collectively). For reasons set forth below, the Motion should be denied.

I. BRIEF FACTS AND PROCEDURAL HISTORY

For the purposes of the Motion and this Memorandum, the facts are simple. Plaintiff contracted with Defendant for the purchase and construction of her home, located in Dorchester County. Although Plaintiff’s home was complete in 2005, Plaintiff was not aware of the specific issues addressed in the Complaint until 2016. However, since Plaintiff moved into the home in 2005, she has experienced issues with the work of the Defendants. These issues were consistently raised with Centex, and until as recently as May 2018, Centex assured the Plaintiff that they would inspect and/or repair the various issues. However, after the last offer to assist Plaintiff with the issues, Centex, through its attorney, notified Plaintiff that it would no longer offer to repair the damage to the home and offered a settlement on May 23, 2018. After Plaintiff received that letter and it was clear Centex was not going to cure the defects, Plaintiff decided to file suit. On August 8, 2018, Plaintiff filed her Complaint against Centex, leading the Defendant to file the Motion. In addition, Plaintiff has served Defendant with its initial discovery requests.

II. STANDARD OF REVIEW

A trial court should grant a motion for summary judgment 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." S.C.R.C.P. 56(c); *see also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party.

Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). More importantly, “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801 (2009).

III. ARGUMENT

A. The Defendant’s Motion should be denied because the parties have yet to engage in full and fair discovery.

South Carolina courts have continuously held that summary judgment is a “drastic remedy,” which should be cautiously invoked to avoid severing a person’s right to a trial of the disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. P’ship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003); *Baril v. Aiken Reg’l Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct.App.2002); *Trivelas v. South Carolina Dep’t of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct.App.2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct.App. 1998).

Because it is such a “drastic remedy,” summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69 (1999) (citing *Baughman v. AT & T*, 306 S.C. 101, 410 S.E.2d 537 (1991)). See also *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439

(2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001).

After the initial pleadings (Summons/Complaint and Answer) in this case, attorneys for both sides agreed to undergo “brief initial discovery”, to include Centex’s discovery requests and a deposition of Plaintiff, to see if this matter might settle prior to Centex serving the Third-Party Defendants. After the deposition, a settlement was not reached, and Centex began serving the Third-Party Complaint on the individual Third-Party Defendants. The final Third-Party Defendant filed an Answer on March 19, 2019, two (2) days before the Motion was filed by Centex.

Plaintiff served her initial discovery requests on Centex on March 8, 2019, after she learned which Third-Party Defendants were going to be involved in the case. While Plaintiff acknowledges that her discovery requests could have been served earlier, she would also point out that Centex, having been served with the discovery requests, was aware they it had not produced its responses when it filed the Motion. South Carolina courts have definitively required “full and fair” discovery. At this point, neither party has had the opportunity to conduct full and fair discovery, as many of the Third-Party Defendants have only recently filed responsive pleadings. Discovery is critical to the merits of this Motion as many of the issues raised by Plaintiff in the Complaint may have been repaired by Centex after the original construction, and therefore the date of repair would be relevant to the applicable limiting statutes. Further, there may exist documents related to express warranties that extend the warranty period beyond the applicable statute of repose.

For these reasons, the Motion should be denied.

B. Despite a lack of discovery, the Statute of Limitations does not bar Plaintiff's claims.

Defendant Centex's Motion alleges that Plaintiff's causes of action are barred by the applicable statute of limitations and statute of repose. Specifically, Centex argues that because the Plaintiff closed on her home and a Certificate of Occupancy was issued in November 2005, and there is no dispute that Plaintiff was aware of the alleged construction defects prior to August 8, 2015, her claims fall outside any applicable statute limiting civil actions. Plaintiff does not dispute the date of issuance on the Certificate of Occupancy, but there is evidence that she was not aware of the magnitude and specifics of the issues with her home until January 2016.

From November 2005 until 2015, Plaintiff's home was under warranty. Many of the issues Plaintiff complained of to Centex were allegedly inspected and/or repaired by Centex during that timeframe. After the expiration of her warranty, when Plaintiff experienced continued issues, she filed an insurance claim for water damage. As part of the insurance company's due diligence, they hired an engineer to inspect the home. The report produced as a result of that inspection was made available to Plaintiff in early 2016, and is attached hereto as "Exhibit A". It was based on that report that Plaintiff fully understood the scope of the issues with her home, and specifically, the relation of the issues to the work of Centex. Many of the issues uncovered by the report were not readily discoverable to someone who is not an expert in the field, to include improperly installed flashing around windows and the chimney, and deterioration of sheathing in the attic.

"The courts of South Carolina have adopted the 'discovery rule' in determining when a cause of action accrues." *Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985). Because of the limitations of discovery at this stage to determine what repairs were actually made by Centex and when, determining not

only when the negligent act occurred, but when Plaintiff became aware of the damage from that negligent act is premature. Plaintiff would argue that she did not become fully aware of the issues with her home until after the inspection in early 2016, thus her claims remain within the statute of limitations. “[W]hen the parties present conflicting evidence, application of the discovery rule and determination of the date the statute began to run in a particular case are questions of fact for the jury.” *Allwin v. Russ Cooper Associates, Inc.*, 2019 WL 208925 (Ct. App. 2019).

Even if the court determines that Plaintiff was aware of the damage prior to August 2015, as Centex alleges, the statute of limitations should be tolled and Centex estopped from asserting the statute of limitations as a defense based on the actions of Centex towards the Plaintiff. “A defendant will be estopped to assert the statute of limitations in bar of a plaintiff’s claim when the delay that otherwise would give operation to the statute has been induced by the defendant’s conduct.” *Dillon County*, at 218, 332 S.E.2d at 561 (quoting 53 C.J.S. *Limitations of Actions* §25 at 962-64 (1948)). In this case, Plaintiff reasonably relied upon Centex’s assurances that they would inspect and repair the issues with her home without the need to resort to litigation. Only upon receipt of the letter from counsel for Centex did Plaintiff become aware that Centex did not actually intend to repair the issues. In fact, as late as May 2018, Centex made an offer to repair some of the complained of damage in an email attached hereto as “Exhibit B”. The fact that Centex had made repairs when Plaintiff complained of issues, combined with the assurances of an inspection and the offer of repair in May 2018, Centex should be barred from asserting the statute of limitations as a defense. See *Magnolia North Property Owners’ Ass’n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012).

C. Statute of Repose does not bar Plaintiff's claims for gross negligence.

“The limitations provided by Sections 15-3-640 through 15-3-660 are not available as a defense to a person guilty of fraud, *gross negligence*, or recklessness in providing components in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement...” S.C. Code Ann. §15-3-670(A). Plaintiff alleges gross negligence in her first cause of action against Centex, and therefore the statute of repose is not an available defense in this action. The fact that Centex may have made repairs to certain of the issues complained of by Plaintiff and that those issues continue to exist is evidence of gross negligence

IV. CONCLUSION

For all of the above-stated reasons, the Defendant Centex's Motion for Summary Judgment should be denied.

SMITH | CLOSSER | WHEELER, P.A.

s/William K. Kalivas

William K. Kalivas – wkalivas@scnlaw.com

(SC Bar No.: 80201)

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P.O. Box 40578

Charleston, SC 29423-0578

843-760-0220

Attorney for the Plaintiff

April 8, 2019
Charleston, South Carolina

18-198



Claim Number: 1501SC24000440

Project Number: 8074305

Brown-Coulter Residence
Residential Damage Assessment
109 Catbriar Court, Summerville, South Carolina 29485



Prepared For:
Ms. Marina Rivera
Universal Insurance Holdings of
North America
Post Office Box 50908
101 Paramount Drive #220
Sarasota, Florida 34232

Prepared By:
Sdii Global Corporation
4509 George Road
Tampa, Florida 33634
South Carolina Certificate of
Authorization #3227

Digitally signed by H. William
Chandler, P.E.
DN: cn=H. William Chandler, P.E.,
email=billchandler83@gmail.com
'Date: 2016.01.27 23:15:21 -05'00



Digitally signed by:
H. William Chandler, P.E.
Principal Engineer (Civil/Structural)
South Carolina License Number 12268

Report (6 Pages)
Representative Site Photographs
(34 Photographs on 17 Pages)



Brown 00121
RECORD ON APPEAL - 168



January 27, 2016

Ms. Marina Rivera
Universal Insurance Holdings of North America
Post Office Box 50908
101 Paramount Drive #220
Sarasota, Florida 34232

Re: Residential Damage Assessment
Brown-Coulter Residence – Summerville, South Carolina
Claim No.: 1501SC24000440
Date of Loss: October 3, 2015
SDII Project No.: 8074305

Dear Ms. Rivera:

In accordance with your November 10, 2015 request, Sdii Global Corporation (SDII) conducted a Residential Damage Assessment at the Brown-Coulter residence. Mr. H. William Chandler, P.E., Principal Engineer (Civil/Structural), performed the site visit on January 4, 2016. SDII was requested to evaluate the damage reported to the kitchen, living room, master bedroom, shutters, and the chimney leak inside the house. Additionally, SDII was requested to evaluate the damage to the rock veneer on the outdoor patio. This report provides a summary of the observed conditions as well as our evaluation and conclusions regarding the reported damage.

Engineering Evaluation Activities

SDII performed the following tasks to investigate the reported damage at the Brown-Coulter residence:

- Conducted a visual, non-destructive assessment of the affected portions of the structure to document, photograph, and evaluate the site conditions;
- Interviewed the owner Ms. Monica Brown-Coulter to establish a timeline of the conditions and develop an understanding of the primary concerns;
- Researched weather data recorded in the general vicinity of the project site to understand conditions during the time of primary concern;
- Performed an engineering evaluation of the information provided and gathered at the site to assess the observed conditions; and
- Prepared this report summarizing the results of the field investigation along with our evaluation, conclusions, and recommendations.

Site Description and Background Information

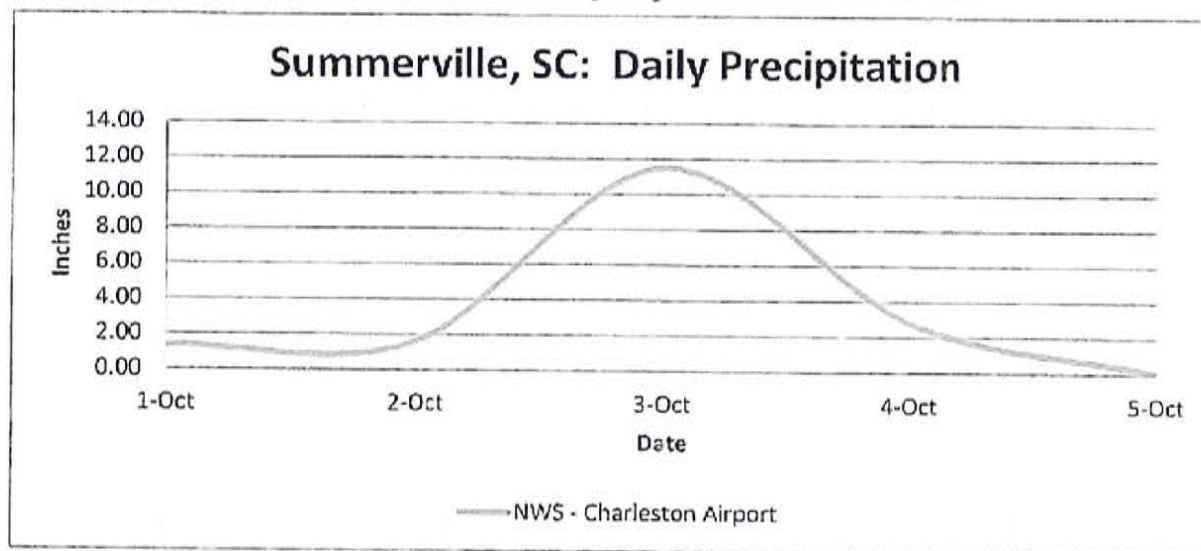
The Brown-Coulter residence is located at 109 Catbriar Court in Summerville, South Carolina. According to information obtained from the Charleston County Property Appraiser's website, owner, the two-story structure was built in 2004 for the current owner. The building is constructed of wood-framed exterior load-bearing walls with a soil-supported, concrete slab on grade. The main roof is gable in configuration and covered with asphalt composition shingles. For the purposes of this report, SDII references the east wall elevation of the structure as the front elevation. The right, rear, and left wall elevations proceed counter-clockwise, respectively, from this elevation.

Overviews of the building elevations are presented in Photographs 1 through 4. The remaining photographs represent conditions observed during the site inspection. All photographs and other information obtained by SDII will be retained in the project folder in accordance with SDII's document/file retention policies.

Ms. Brown-Coulter was present during the field portion of the assessment and provided access to the property, information regarding the timeline of the damage, and the primary concerns. Ms. Brown-Coulter indicated that she noticed water dripping in the fireplace during the storm. She then went to the attic and noticed water on the outside wall. She indicated that there was no water present on the veneer of the fireplace during the rain. It was reported that the area of primary concern was the leaking chimney, windows and damaged floor in the master bedroom, the leaking windows in the den and kitchen, and the damage to the rock pavers on the outdoor porch and kitchen.

Researched Weather Data

Rainfall data was collected from the National Weather Service at the Charleston International Airport, located approximate 8 miles northwest of the Brown-Coulter residence. The Charleston International Airport recorded 11.50 inches of precipitation on the date of loss.



The Brown-Coulter residence is located in Summerville, South Carolina. Wind speeds were observed at the National Weather Service station located approximately 8 miles from the site at Charleston International Airport. Preliminary reported data states that maximum sustained winds

of approximately 28 miles per hour (mph) was recorded, with peak winds gusts of approximately 36 mph.

Summary of Observed Conditions

The following is a summary of the conditions observed during our site visit to investigate the reported damage at the Brown-Coulter residence:

- The exterior wall sheathing in the attic was deteriorated from the top to the bottom of the exposed area and deteriorated materials were accumulated on the bottom plate (Photographs 5 and 6). This wall is common between the house framing and chimney. The overview of the face of the fireplace was observed. There was no evidence of staining, discoloration or wet materials on the face of the veneer (Photographs 7 and 8). The upper face of the inside of the firebox was stained from water intrusion (Photograph 9);
- There was a reported leak in the south side window in the master bedroom (Photograph 10). The moisture from the leak wet the louver shutters, which are delaminating (Photograph 11). The hardwood floor was buckled out to approximately 4 feet from the exterior wall (Photograph 12);
- The windows in the den on the west side of the structure also leaked (Photograph 13). Staining was observed at the top of the window and the owner reported that the leak had also damaged the floor, which was covered with furniture. The windows were protected by the screen porch with a shed roof;
- The chimney flashing was missing the kick out flashing at the bottom of the chimney (Photograph 14 and 15). The chimney was intact and no apparent gaps, breaches, or defects were observed (Photograph 16);
- A single story shed roof extended out about 4 feet from the main structure on the north elevation. The J-Channel on the chimney terminated in the corner molding above the flashing (Photograph 17). The flashing had gaps and cavities at the changes in direction on the chimney (Photograph 18). The shingles were not adhered and the flashing was loose and not attached in several areas (Photograph 19). The J-Channel for the siding terminated approximately 4 inches short of the end of the shed roof (Photograph 20). The flashing was cut into the siding without any sealant;
- The shed roof on the south side of the structure had a 4:12 pitch with windows above the roof line and under the ceiling of the screened area (Photograph 21). The windows were not flashed evidenced by exposed sheathing, and several sections of the siding were short of the J-channel around the window casing (Photograph 22 and 23). The J-Channel was modified to fit under the window to fit into the window channel;
- The shingles on the south side shed roof over the screen porch were loose and unadhered (Photograph 24 and 25). The flashing was cut to fit below the bottom of the window casings. There were several exposed nails without sealant (Photograph 26);
- The master bedroom window was observed to have similar defects as the windows over the shed roof at the den (Photograph 27);

- There were observable gaps in the flashing on windows on the front of the structure (Photographs 28 and 29); and
- The patio on the south side of the structure is covered in a thin rock veneer. The grout between the pavers was soft and had never set properly. The grout never developed its strength and could be easily dug out between the pavers using a pocket knife in several locations. (Photographs 30 through 34).

Engineering Evaluation

The shingles were flat without curled edges and were not damaged from excessive foot traffic, blisters or creases. There were several shingles that were loose or were never adhered, or fully adhered since their installation that are identified by their section on the roof in later paragraphs. These shingles were not damaged by wind or excessive rain.

The chimney has leaked in the past and evidence of deterioration to the sheathing was present. Based on the discoloration and deterioration of the sheathing, the chimney has been leaking for more than 6 months to a year. There was no evidence of moisture or efflorescence on the interior veneer on the chimney. There was evidence of a waterline, behind the veneer, on the top of the firebox in the location identified by the owner.

The window in the master bedroom on the second level of the structure leaked and evidence of moisture intrusion was evident. The louvered shutters were delaminating with the delamination more visible at the bottom. The hardwood laminate veneer flooring was buckled. The amount of buckling was more prominent along the exterior wall and extended out from the wall approximately 4 feet and approximately 14 feet wide. The window frame was not properly flashed and the siding was too short inside the "H" channel, leaving a small gap. The gap in the siding and the missing flashing were construction defects and not a result of wind or rain damage.

The windows in the den on the main level showed signs of moisture intrusion near the top of the frame. These windows are under the roof of a screen porch. There was no evidence of delamination of the louvered shutters. The owner reported the floor was wet under the windows on the date of loss, but there was no evidence of buckling of the hard wood floor directly below the windows. A portion of the floor was covered with furniture and was not accessible.

The chimney was wood framed with vinyl siding attached directly to the exterior sheathing and flashed at the top of the roof and on the shed roof on the north side of the structure. The flashing was loose and in some locations was not properly installed. Based on the observations, the flashing was not damaged by wind. The flashing on the lower shed roof has gaps at the chimney corners, which is a construction defect. The flashing at the top of the chimney and the lower shed roof is missing kickout flashing. The shingles on the top of the house were attached while several of the shingles on the lower shed roofs were not adhered or were partially adhered. The adhesion is a construction defect and not from wind damage. The vinyl siding starter strip terminated inside the outside corner molding.

The shingles over the screen porch were not adhered or partially adhered without any evidence of wind damage. The flashing did not extend up past the bottom of the window frame and the starter strip for the siding. The siding was cut short of the "H" channel for the window leaving a gap between the siding and the window. There was no evidence of window waterproofing wrap (window waterproofing tape) or window flashing around the window frames.

The windows on the front of the house were similar in construction as the back of the house. There were gaps between the siding, windows and sheathing, and missing flashing and waterproofing from improper construction and defects in the installation of the windows. There was no evidence of deterioration in the sheathing.

The outdoor kitchen and patio on the south side of the structure was constructed on a concrete slab on grade, with a brick edging and steps and rock veneer pavers as a wearing surface. The rock was installed and the joints between the pavers were grouted. The individual pavers were tapped with a metallic handle and approximately half of the pavers were hollow sounding, indicating a cavity under the paver.

Conclusions

Based on the observations at the Brown-Coulter residence and our subsequent engineering evaluation, it is SDII's professional opinion that:

- The overall roof was in satisfactory condition and was wearing normally for shingles in the middle third of their life expectancy. There were a few blemishes on the wearing surfaces, but none that would cause damage or leakage, nor are the blemishes attributed to wind.
- The flashing around the chimney and windows was improperly installed with loose sections of flashing and gaps adjacent to the siding. Additionally, several of the shingles were not adhered on the screen porch roof. These construction defects were the cause of the water entering the house and damaging the shutters and flooring. These defects were not a result of wind damage.
- The pavers and the grout joints were improperly installed on the outdoor patio/outdoor kitchen area. The rainwater volume nor the weight of the water was not the cause of the damage pavers or joints.
- The roof was leaking prior to the date of loss based on the deterioration of the sheathing in the attic. Each of the areas where the owner reported leaks corresponds with defective installation of flashing or siding around windows and around the roof.
- The cause of the leaks was the inadequate and improperly installed flashing around the chimney and windows. The envelope of the house (roofing, siding, and ancillary flashing) provided adequate protection during most rainfall events. The excessive rainfall from the storm on the date of loss overloaded its capacity to shed the rainfall. The flashing around the chimney had failed in the past as evident of the deterioration of the sheathing in the attic.

Limitations

The conclusions, analysis, and opinions expressed herein have been prepared within a reasonable degree of engineering certainty. They are based on the results and interpretations of the testing and/or data collection activities performed at the site, the information available to SDII at the time the report was issued, and the education, training, knowledge, skill, and experience of the author and licensed professional engineer.

The contents of this report are confidential and intended for the use of Universal Insurance Holdings of North America and its representatives or clients. Contents of this report may also be privileged or otherwise protected by work product immunity or other legal rules. SDII assumes no liability for the misuse of this information by others and reserves the right to update this report should additional information become available.

This document has been signed and sealed in accordance with applicable state statutes. If not signed and sealed by the licensed professional named and shown as its author, the findings, conclusions, and opinions cannot be relied upon; as such, the document has been provided for information purposes only. This report was technically reviewed in accordance with SDII's standard practice.

Sdii Global Corporation appreciates this opportunity to be of service to you. If we can be of further assistance in this or other matters, please do not hesitate to contact us.

Sincerely,

SDII GLOBAL CORPORATION

4509 George Road, Tampa, Florida 33634
South Carolina Certificate of Authorization #3227

Subject: Re: 109 Catbriar Ct - Repair items
From: Monica L Brown (monicalbrown@bellsouth.net)
To: Teyi.Lawson@Pulte.com;
Cc: John.Etters@PulteGroup.com;
Date: Wednesday, May 16, 2018 4:02 PM

Teyi,

This is partial what we discussed. The age of the home has nothing to due with this. This is a builder's construction mistakes that has caused other problems as well. The house was not built properly and has caused more damage. .

We expect the all siding to removed from the house and inspect for other damages and replace. All Windows to be replaced and installed correct. The roof to be replace. The brick in the front on the house will need to be removed to get the my son's room that is hot in the summer and cold in the winter. The insulation in the house to be replaced and the sheet rock to be replaced.

We will not patch my house because you need to save money . I spent over thousands of dollars a year trying to keep us out of harms way and stress of dealing centex/pulte for years. There is no bargaining tool here. you had several attempts in the pass and you failed and thought I would disappear to make this easier.

Monica L. Brown- Mortgage Broker, NMLS 230020
Sea Coast Mortgage Group LLC, NMLS 297478
1940 Trolley Rd Suite E
Summerville SC 29485
843 285-7074 office
843 285-7065 fax

Confidentiality Notice: The information contained in this electronic mail message is private and confidential intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any copying, forwarding, dissemination, or other distribution of this message and/or its attachments is strictly prohibited. If you have received this message in error, please immediately notify us by telephone and delete the message and any attached files.

From: Teyi Lawson <Teyi.Lawson@Pulte.com>
To: "monicalbrown@bellsouth.net" <monicalbrown@bellsouth.net>
Cc: John Etters <John.Etters@PulteGroup.com>; Teyi Lawson <Teyi.Lawson@Pulte.com>
Sent: Wednesday, May 16, 2018 12:54 PM
Subject: 109 Catbriar Ct - Repair items

Good afternoon,

about:blank



Brown 00021

RECORD ON APPEAL - 175

1/2

I hope all is well. I left a message on your husband phone on Monday afternoon. I reviewed the inspection and we will address the items below.

- Inspect and repair roof flashing
- Correct fireplace flashing and water damaged sheathing (plywood)
- Correct windows flashing and repair water damaged sheathing (plywood)
- We will replace damaged vinyl siding in case damaged during the siding removal. Due to the age of the home, We will be unable to guarantee color match on the replacement.

We will like to start the repairs next week or week after next. Please advise. Thank you



Teyi Lawson

Process Improvement Manager :: Coastal Carolinas

direct (843) 460 9339 :: Cell (843) 247 7565

pultegroup.com

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Attachments

- image003.jpg (1.94KB)

Pulte

Headquarters told me to reach out
Sally Toston

April 28

V.P

Charlie

Tyrone

April 16

(843) 296-2006

Warranty Manager from Hilton Head.

ERIC → Came out in May 2017

B) 460-9301

From Hilton Head → Called

(843) 815-3544

Sat estimate never heard back.

Sherris

Came took Pictures Agreed that

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

**CENTEX REAL ESTATE COMPANY,
LLC'S AND CENTEX HOMES, A
NEVADA GENERAL PARTNERSHIP'S
MEMORANDUM OF LAW IN
SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S CLAIMS**

The Defendants Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership (responding collectively as "Centex"), by and through their below signed attorneys, hereby respectfully submit this Memorandum of Law in Support of Centex's 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. As discussed below, Centex respectfully requests that the Court grant its Motion for Summary Judgment as to Plaintiff's Claims.

BACKGROUND

This is a construction defect case. The residence that is the subject of this litigation (the "Residence") was completed in and Plaintiff bought the Residence in November 2005. Plaintiff alleges that construction defects exist at the Residence resulting in water intrusion and property damage. Plaintiff filed her Complaint against Centex in this action on August 8, 2018. In her Complaint, Plaintiff alleges causes of action for negligence/gross negligence/defective construction, breach of implied warranties, breach of contract, unfair trade practices, and negligent misrepresentation.

As discussed below, all of Plaintiff's claims against Centex are time barred both by the statute of limitations and the statute of the repose.

LEGAL STANDARD

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), SCRCP. "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).

LEGAL ARGUMENTS

I. CENTEX IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF'S CLAIMS BECAUSE PLAINTIFF'S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Centex is entitled to summary judgment on all of Plaintiff's causes of action because Plaintiff failed to file her Complaint against Centex within the time allowed under the applicable 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. Recall that, as discussed above, the court in Hampton Hall held earlier that the plaintiff's other claims arising out of the allegedly defective construction were barred the statute of repose. See also id. at *3.

As discussed below, 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 Centex Is Entitled to Summary Judgment Because 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. 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 are replete with 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.

It is clear from the testimony and documents in this case that the complaints that Plaintiff has 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.

Exhibit A, Depo. of M. Brown, 33:11–21 (emphasis added), which is attached 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.

Ex. A, Depo. of M. Brown, 34:2 –22, 37:24–38:1 (emphasis added).

- 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.

Ex. A, Depo. of M. Brown, 49:18–51:9 and Exhibit 9 to Depo. of M. Brown (emphasis added).

Evidence 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. Further, the documents and Plaintiff's testimony unequivocally demonstrate that Centex refused to make 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 (emphasis added). 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.

Ex. A, Depo. of M. Brown, 44:19–25 (emphasis added).

- 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.

Ex. A, Depo. of M. Brown, 58:20–59:6 and Ex. 9 to Depo. of M. Brown (emphasis added).

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.

Ex. A, Depo. of M. Brown, 58:11–14 (emphasis added). 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 (emphasis added). 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.

Ex. A, Depo. of M. Brown, 45:5–46:6 and Ex. 8 to Depo. of M. Brown (emphasis added).

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 internal Pulte Contact Log, a copy of which is attached hereto as Exhibit B, 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.

Ex. B, page 2 (emphasis added).

The next communication from Plaintiff to Centex, which the documents reflect, 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 (emphasis added). 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 (emphasis added). 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 2009**². . . . 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 (emphasis added). During her deposition, Plaintiff also 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:

- 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.

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.

Ex. A, Depo. of M. Brown, 66:18–21, 67:12–24, and Ex. 13 to Depo. of M. Brown. Plaintiff testified that she "can't find the [2009] report." Ex. A, Depo. of M. Brown, 53:1–24. 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. 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.

Ex. A, Depo. of M. Brown, 55:23–56:12 and Ex. 9 to Depo. of M. Brown (emphasis added).

- 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.

Ex. A, Depo. of M. Brown, 59:7–60:4 and Ex. 9 to Depo. of M. Brown (emphasis added).

In light of the foregoing, Plaintiff's unsupported assertion in her Complaint 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 is without merit. Instead, documentary and testimonial evidence clearly 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.

Plaintiff's discovery responses further 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 (emphasis added).
- 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 (emphasis added).
 - 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 (emphasis added).
- 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 (emphasis added).

As a result, the foregoing documents and testimony show 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 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, there is no dispute of material fact that Plaintiff was aware of the alleged construction defects and that a claim against Centex might exist 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. For these reasons, the Court should grant Centex’s Motion for Summary Judgment.

II. CENTEX IS ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFF’S CLAIMS BECAUSE PLAINTIFF’S CLAIMS ARE BARRED BY THE STATUTE OF REPOSE.

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.” (emphasis added). 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 Exhibit C. 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 and, Therefore, Her Claims Are Barred.

Because 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 filed her Complaint in this action on August 8, 2018, which is almost thirteen years after substantial completion of the residence on November 14, 2005. As a result, because Plaintiff filed her lawsuit more than eight years after the Residence was substantially completed, 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.

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).

As a result, 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. In this case, Plaintiff did not file her Complaint against Centex until after the absolute deadline provided by the statute of repose. Therefore, the statute of repose bars Plaintiff's claims against Centex, and the Court should grant Centex's Motion for Summary Judgment.

III. CENTEX'S MOTION FOR SUMMARY JUDGMENT IS ESSENTIALLY UNCONTESTED.

Plaintiff's Memorandum in Opposition to Centex's Motion for Summary Judgment is not supported by any evidence and essentially amounts to Centex's Motion being uncontested. Rule 56(e), SCRPC ("[A]n adverse party may not rest upon the mere allegations or denials of his pleadings, but his response . . . must set forth specific facts showing there is a genuine issue for trial."); *Gilmore v. Ivey*, 290 S.C. 53, 58-60, 348 S.E.2d 180, 184 (Ct. App. 1986) (without supporting evidence the court may not consider the mere argument of counsel).

Plaintiff has presented no evidence to support its position that there is a genuine issue of fact for trial. For example, Plaintiff's opposition to dismissal of this action pursuant to the statute of repose is, "Plaintiff alleges gross negligence in her first cause of action against Centex, and therefore the statute of repose is not an available defense in this action." (Pls' Mem. In Opp'n to Def. Centex Real Estate Co., LLC and Centex Homes, A Nevada P'ship's Mot. for Summ. J. at 7.) However, this assertion is merely argument of counsel, based on the pleadings, and is unsupported by any evidence. It is Plaintiff's burden to make a *prima facie* case for gross negligence, yet Plaintiff cites not a scintilla of evidence—an affidavit, document, or testimony—to show that there is genuine issue of fact for trial. Without any form of evidence to support Plaintiff's position, Centex's Motion for Summary Judgment is essentially uncontested and should be granted.

CONCLUSION

Based on the foregoing, Plaintiff's claims are barred by the statute of repose and by the statute of limitations and, therefore, Centex is entitled to summary judgment pursuant to Rule 56, SCRCP, as to all causes of action asserted by Plaintiff against Centex. As a result, Centex respectfully requests that the Court grant Centex's Motion for Summary Judgment.

Respectfully submitted,

PARKER POE ADAMS & BERNSTEIN LLP
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Attorneys for Defendants and Third-Party
Plaintiffs Centex Real Estate Company, LLC
and Centex Homes, a Nevada General
Partnership,

April 11, 2019

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
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2018-CP-18-01436

**PLAINTIFF'S MEMORANDUM IN
RESPONSE TO CENTEX REAL ESTATE
COMPANY, LLC'S AND CENTEX
HOMES, A NEVADA GENERAL
PARTNERSHIP'S MEMORANDUM
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

The Plaintiff, Monica Brown-Gantt ("Brown" or "Plaintiff"), by and through its undersigned counsel, hereby submits this Memorandum in Response to Centex Real Estate Company, LLC's and Centex Homes, a Nevada General Partnership's ("Centex" or "Defendant", collectively) Memorandum in Support of its Motion for Summary Judgment ("Memorandum" and "Motion", respectively). Because Centex's memorandum was not filed until sixteen (16)

minutes before the scheduled motion's hearing, Plaintiff did not have a chance to adequately respond to the arguments raised in that memorandum. For reasons set forth below, the Motion should be denied.

I. BRIEF FACTS AND PROCEDURAL HISTORY

For the purposes of the Motion and this Memorandum, the facts are simple. Plaintiff contracted with Defendant for the purchase and construction of her home, located in Dorchester County. Although Plaintiff's home was complete in 2005, Plaintiff was not aware of the specific issues addressed in the Complaint until 2016. However, since Plaintiff moved into the home in 2005, she has experienced issues with the work of the Defendants. These issues were consistently raised with Centex, and until as recently as May 2018, Centex assured the Plaintiff that they would inspect and/or repair the various issues. However, after the last offer to assist Plaintiff with the issues, Centex, through its attorney, notified Plaintiff that it would no longer offer to repair the damage to the home and offered a settlement on May 23, 2018. After Plaintiff received that letter and it was clear Centex was not going to cure the defects, Plaintiff decided to file suit. On August 8, 2018, Plaintiff filed her Complaint against Centex, leading the Defendant to file the Motion. In addition, Plaintiff has served Defendant with its initial discovery requests.

II. STANDARD OF REVIEW

A trial court should grant a motion for summary judgment 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." S.C.R.C.P. 56(c); *see also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). More importantly, “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801 (2009).

III. ARGUMENT

A. Statute of Limitations

In support of Centex’s claim that Plaintiff’s causes of action are barred by the statute of limitations, it points to snippets from the testimony of Plaintiff taken at her deposition on December 13, 2018. Pursuant to argument of counsel at the hearing on the Motion, Plaintiff is providing the deposition transcript in its entirety as Exhibit A to this memorandum. In that testimony, there are numerous instances of Plaintiff defending her decision not to bring suit in this case due to Centex’s promises to inspect and/or fix the damages she claimed. *See Exhibit A*, Depo. of M. Brown, 36: 14-18, 47: 18-20, 48: 18-25, 57: 13-17, 61: 9-19, 69: 16-21, 70: 6-16.

Because Centex continually promised Plaintiff that they would inspect and/or repair her claims, she was induced into believing that she did not need to resort to litigation to resolve her issues. *See Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985); *Magnolia North Property Owners’ Ass’n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012). Further, based on these promises and assurances from Centex, it is reasonable for Plaintiff to believe it would be

counterproductive to file suit before giving Centex an opportunity to honor the representations, especially given its efforts to make some repairs. *Magnolia North*, at 373, 725 S.E.2d at 126. For these reasons, and the reasons discussed in Plaintiff's Memorandum in Opposition, Centex should be estopped from asserting the statute of limitations based on the principle of equitable estoppel.

B. Statute of Repose

In Centex's argument that Plaintiff's claims are barred by the statute of repose contained in its Memorandum, Centex argues for the first time that Plaintiff's claim for gross negligence should be barred because Plaintiff did not make a *prima facie* case for gross negligence. That, however, is a new argument not asserted in the motion for summary judgment. Centex does not address Plaintiff's gross negligence claim in its Motion. Further, and as more fully discussed in Plaintiff's Memorandum in Opposition, discovery has not yet been completed in this case. In fact, the Third-Party Defendants have only just filed responsive pleadings within the last month. Therefore, it would be premature to consider whether Plaintiff has evidence creating a genuine issue of material fact regarding the elements of gross negligence.

Regardless, Plaintiff would argue that there is a mere scintilla of evidence of gross negligence contained in her deposition testimony. Numerous times throughout her testimony, Plaintiff states that Centex allegedly addressed certain issues numerous times, and yet the problems persisted. *See Exhibit A*, Depo. of M. Brown, 54: 22-25, 55: 1-3. Further, Plaintiff addresses some of the specific defects that provide further evidence of gross negligence. *See Exhibit A*, Depo. of M. Brown, 64: 10-16, 98: 7-12. Recurring problems that need to be repaired repeatedly provides a *prima facie* case for gross negligence.

IV. CONCLUSION

For all of the above-stated reasons, the Defendant Centex's Motion for Summary Judgment should be denied.

SMITH | CLOSSER | WHEELER, P.A.

s/William K. Kalivas

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Attorney for the Plaintiff

April 12, 2019
Charleston, South Carolina

18-198

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 DORCHESTER COUNTY

4 DEPOSITION OF MONICA BROWN

5 MONICA BROWN-GANTT,

6 Plaintiff,

7
8 Case No. 2018-CP-18-01436

9 vs.

10 CENTEX, et al.,

11 Defendants.

12 DEPONENT: MONICA BROWN

13 DATE: December 13, 2018

14 TIME: 10:23 AM

15 LOCATION: PARKER POE
16 CHARLESTON, SOUTH CAROLINA

17
18
19 REPORTED BY: TERI L. KENNELLY, RPR, CRR
20 CLARK & ASSOCIATES, INC.
21 P.O. Box 73129
22 Charleston, SC 29415
23 843-762-6294
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25 Teri@Clark-Associates.com

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

SMITH CLOSSER & WHEELER
BY: WILLIAM K. KALIVAS
7455 Cross County Road, Suite 1
North Charleston, SC 29423

ON BEHALF OF THE DEFENDANTS:

PARKER, POE, ADAMS & BERNSTEIN
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Charleston, SC 29401

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EXAMINATION

BY MR. HILDEBRAND

4

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1 MONICA BROWN,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. HILDEBRAND:

6 Q. Would you state your full name for the
7 record, please.

8 A. Monica Laverne Brown.

9 Q. Ms. Brown, we met just a moment ago. My
10 name is Tom Hildebrand. I represent Pulte in
11 this lawsuit that you have filed and just want to
12 go through some of the preliminary instructions
13 and things, kind of tell you how the deposition
14 will go.

15 First off, now that the deposition
16 has started, under our Rules, you're admonished
17 not to discuss or communicate anything relative
18 to this action until the deposition has been
19 completed. Okay?

20 A. Okay.

21 Q. So that would include texts or e-mails
22 or calls or discussions with your attorney or
23 anything like that. I don't think it'll go
24 particularly long, so I don't think there'll be a
25 lot of breaks or anything like that. But if you

1 do need to take a break, just let me know, and
2 we'll stop and do so.

3 A. Okay.

4 Q. Now that the deposition -- oh, strike
5 that.

6 As I said earlier, if you have any
7 questions or comments or aren't clear about a
8 question and would like for me to rephrase it,
9 just let me know, and I'll be glad to. Okay?

10 A. Okay.

11 Q. Are you feeling well today?

12 A. Oh, yeah.

13 Q. Are you under the influence of any
14 medications or other substances that might affect
15 either your ability to understand my questions or
16 to respond to them?

17 A. No.

18 Q. How old are you?

19 A. I'm 48.

20 Q. This case, I think, is in Dorchester
21 County, so the jury, if we get that far, will be
22 selected from people who reside in Dorchester
23 County. Do you have any family residing in
24 Dorchester County, 18 years of age or older?

25 A. No. The only person I have is my son,

1 and he's at USC college. My husband is there,
2 and that's it.

3 Q. How long have you been married?

4 A. Since my son was about three, so I would
5 say 15 years.

6 Q. What is your husband's name?

7 A. Isaac.

8 Q. Last name is Brown?

9 A. Coulter. I keep going by Brown because
10 that's what I want to do based on my job.

11 Q. So that's C-O-U-L-T-E-R?

12 A. Yes.

13 Q. Where does he work?

14 A. He's retired Air Force. He works with
15 Rick Hendrick's Jeep Chrysler Dodge.

16 Q. In North Charleston?

17 A. Yes.

18 Q. How long has he been with them?

19 A. 25 years.

20 Q. How far did your husband go in school?

21 A. I'm not sure. I'm thinking associate's
22 degree.

23 Q. From where?

24 A. Baptist College, I believe. I think
25 it's Baptist.

1 Q. And what year is your son at USC?

2 A. First year.

3 Q. How far did you go in school?

4 A. I went to technical school. I didn't
5 get my associate's, but I got certificates.

6 Q. And where was that?

7 A. That was at Charleston Cosmetology
8 Institute.

9 Q. So what are your certificates in?

10 A. Licensed nail technician.

11 Q. Okay. Any other certificates?

12 A. For mortgage broker, sales certificates.
13 So I went to different, you know, schools,
14 training, for different things in my field,
15 financial field.

16 Q. Okay. But not with a formal educational
17 institute beyond the --

18 A. Right.

19 Q. -- cosmetology school; is that correct?

20 A. Right.

21 Q. Where did you go to high school?

22 A. Baptist Hill High.

23 Q. Where is that?

24 A. Hollywood.

25 Q. South of Charleston?

1 A. Yes. It's near -- it's off of Savannah
2 Highway, near Stono Ferry area.

3 Q. How about your husband? Do you know
4 where he went to high school or where he's from
5 originally?

6 A. St. Matthews.

7 Q. What other lawsuits, if any, have you
8 brought besides this one?

9 A. None.

10 Q. Have you ever been arrested for
11 anything?

12 A. No.

13 Q. So have you -- prior to purchasing the
14 house that we're here about, 107 Catbird --

15 A. Catbriar.

16 Q. -- Catbriar, have you owned any homes
17 prior to this?

18 A. Yes.

19 Q. Did you own any homes that had been
20 constructed by Pulte or Centex?

21 A. No.

22 Q. So how did you come to buy this house?

23 A. Because I bought a house in the same
24 neighborhood that was built by Beazer, so it's
25 about maybe, I want to say 2 miles away on

1 Beverly Drive.

2 And so Pulte, Centex, was building
3 in another community in the same area. It's the
4 Bridges of Summerville, so Beverly Drive is the
5 main street in the Bridges of Summerville. So I
6 bought -- I built a house on Catbriar, so they're
7 in the same subdivision.

8 Q. I'm with you. And the -- is the house
9 only in your name?

10 A. Yes.

11 Q. Why is that?

12 A. Because I bought it only in my name.

13 Q. I'm sorry?

14 A. Because I bought it only in my name.

15 Q. So your husband doesn't contribute to
16 the payments or otherwise?

17 A. He does contribute to the payments.

18 Q. I mean, that's just a little unusual.
19 Usually, when husband -- when people are married
20 and they buy a house, they do it together. I'm
21 just curious as to why you did not do that with
22 your husband.

23 A. Because I always have better credit, so
24 I'm going to make sure I get the best interest
25 rate.

1 Q. I'm sorry. You always had --

2 A. I have better credit than he does, so it
3 was -- it's beneficial for me not to buy it with
4 him. That's why.

5 Q. Okay. It looks like this house that
6 we're talking about was completed in 2005; is
7 that correct?

8 A. Yes.

9 Q. Who has lived in the house since that
10 time?

11 A. Me. I haven't sold it to no one.

12 Q. So you and your husband?

13 A. And my son and then my other son that
14 doesn't live here. He lives in North Carolina.

15 Q. Okay. So your other son who lives in
16 North Carolina, what is he doing there?

17 A. He lives with my aunt, and he works as a
18 truck driver.

19 Q. Where in North Carolina is that?

20 A. Fayetteville.

21 Q. What is his name?

22 A. Clevonne.

23 Q. Clevonne Brown?

24 A. Moultrie.

25 Q. Moultrie. How old is he?

1 A. Clevonne should be about 28.

2 Q. I'm sorry, 28?

3 A. 28.

4 Q. And your son who's in the first year of
5 college -- is it at Carolina?

6 A. Yes.

7 Q. How old is he?

8 A. He's 18.

9 Q. So Clevonne lived in the house from when
10 to when?

11 A. He lived in it day one until he was 18.

12 Q. So when did he move out?

13 A. When he was 18. It had to have been --
14 when was that -- ten years ago, but I can't tell
15 you exactly when he moved out.

16 Q. So he lived there for about three years?

17 A. He lived there until he graduated high
18 school, and he graduated high school, I want to
19 say it was maybe -- I want to say 2008, 2009. I
20 can't remember that.

21 Q. And your son who's 18, what is his name
22 again, please?

23 A. Cameron Gantt.

24 Q. So he has lived --

25 A. He's been there day one.

1 Q. And was he three when --

2 A. When we moved over at that house, he was
3 five.

4 Q. And your husband's lived there
5 full-time?

6 A. Yes.

7 Q. But nobody else --

8 A. No.

9 Q. -- has lived there? Okay.

10 I've gotten some documents from --
11 that your attorney produced in response to
12 requests for production that I've done.

13 Okay. This is something that I got
14 from your file. Do you recognize that as a
15 building permit that I marked as **Exhibit 1**?

16 (**Exhibit No. 1** was marked for
17 identification.)

18 A. I recognize it.

19 Q. Right. These are pretty perfunctory
20 questions. I'm just trying to establish some
21 dates and authenticity of these documents. This
22 is something we got from your file. It appears
23 that the building permit was issued on June 9,
24 2005. Do you see that?

25 A. Yeah, I see that, but I wasn't aware it

1 was issued until I pulled it, until I received a
2 copy of it when I pulled it myself.

3 Q. So you got this from the local building
4 department?

5 A. Yes.

6 (Exhibit No. 2 was marked for
7 identification.)

8 Q. Okay. Next document I'd like to hand
9 you, which is Bates number 220 from your file, is
10 marked as Exhibit 2. It's a copy of the
11 certificate of occupancy for your house, and it
12 looks like that was issued on November 14, 2005;
13 is that correct?

14 A. Yes, that is correct.

15 Q. Okay. And this is another document that
16 you got from the Town of Summerville?

17 A. Yes.

18 Q. And does that comply --

19 A. Uh-huh.

20 Q. That comports with your recollection as
21 well about the time that the house was finished?

22 A. Yes.

23 (Exhibit No. 3 was marked for
24 identification.)

25 Q. Here's yet another document I got from

1 your file, which is Bates stamped number 18. I'm
2 going to mark that as **Exhibit 3**. And this is a
3 certificate of occupancy, but it's dated 11/18 --
4 this is another one, Ms. Brown.

5 A. You can't have two certificates.

6 Q. Yeah. That's the oddity that I'm -- it
7 says --

8 A. Let's see here.

9 Q. Oh, maybe that's what it is. I just
10 noticed. I think this is -- no, it's 109
11 Catbriar, building address at the bottom.

12 A. Wait. Let's see something here. One of
13 them is saying 109 Catbriar. It doesn't have
14 city and state on it. It just says, 109
15 Catbriar, Centex Homes.

16 And this -- this is the same date.
17 That looks like a 14.

18 Q. I'm sorry?

19 A. I said, These are the two same dates.
20 It's 14. You're saying you gave me two different
21 dates. This is 14, and this is 14.

22 Q. For 203, it looks like one of my --

23 A. No. That's 14, and that's 14. It's
24 just one is clear, and the other one is not
25 clear.

1 THE WITNESS: Are you looking at
2 it? See it? That's 14.

3 MR. KALIVAS: Uh-huh.

4 Q. What are you talking about?

5 A. When you're saying the dates are
6 different --

7 Q. Right --

8 A. Right. These both are 14.

9 MR. KALIVAS: He's referring to the
10 permit date there.

11 A. I thought you were talking the date it
12 was issued.

13 Q. Right, the certificate of occupancy.

14 A. It was issued on the 14th, and it was
15 issued on the 14th. They're both the same dates,
16 just one is clearer than the other one.

17 Q. No. This one says, 11 -- it says,
18 11/14/2005.

19 A. Right. And that's --

20 Q. This one says, 11/18/2015.

21 A. It says -- it still references the same
22 date here. You're talking the permit date. See,
23 the certificate of occupancy only can be issued
24 once.

25 Q. Right.

1 A. Right.

2 Q. What I'm trying to -- there's a
3 contradiction here though. The dates are -- this
4 one, you have a permit date of -- and there's a
5 permit number and a date on one document that
6 says 11/18/2015. Then the other one says --
7 you've got a permit number -- the same permit
8 number, and for Exhibit 2, it has a date of
9 11/14/05.

10 So that's what I'm asking you
11 about. Do you have any explanation of why there
12 are two building permits issued for different
13 dates?

14 A. No. I mean, I didn't build the house,
15 so I don't know that.

16 Q. Well, but you've owned it.

17 A. I've owned it, but if it's two different
18 permits -- my closing was after these dates. My
19 closing was after the permit dates.

20 Q. Right.

21 A. Right. So the only person that's going
22 to get these permits, the only person that asked
23 for these, went and applied for these, was
24 Centex, the builder.

25 Q. What I'm trying to --

1 A. I'm confused what you're trying to ask
2 me, if I'm aware of the two different dates, no.
3 Because I did not go to be aware of the two
4 different dates, sir. I just got the permit. I
5 don't know where you got this or which one you
6 received on your own, but I did not apply for the
7 permits.

8 Q. No. Here's my simple question,
9 Ms. Brown. These are documents I got from your
10 files.

11 A. Right.

12 Q. And they show that there was a permit
13 issued in November '05.

14 A. Uh-huh.

15 Q. Then there's another one that seems to
16 say that there was either a permit or a
17 certificate of occupancy issued in November of
18 2015. And I'm just curious if you know why there
19 is a document on file showing 2015 and how that
20 came about.

21 A. I mean, this document right here, I
22 mean, I can't tell you where that -- why '15 is
23 there. Maybe someone typed that differently.

24 Q. If you don't know, you don't know.
25 That's what I'm saying.

1 A. Yeah, I don't know that.

2 Q. But all you do know is that the correct
3 date is in Exhibit 2 because it shows
4 November 2005, and that's when you moved into the
5 house, correct?

6 A. Right.

7 Q. Okay.

8 A. So maybe someone -- that's a typo there.

9 Q. Yeah, I don't know what it is either.
10 I'm just -- like I said, I just noticed that
11 distinction and was curious if you knew.

12 A. No. Because the same -- Centex applied
13 for it, correct?

14 Q. I have no idea.

15 A. No. It's saying, Centex, contractor.

16 Q. Right, they were the contractor. But it
17 doesn't say who applied for that second document,
18 but anyway, all right.

19 (Exhibit No. 4 was marked for
20 identification.)

21 Q. The next document I want to hand you is
22 also from your files. It's Bates stamp 223, and
23 this one is Exhibit 4, Mrs. Brown. And it's a
24 copy of your settlement statement, and it says
25 the settlement date is November 18, 2005; is that

1 correct?

2 A. That should be, if my signature is here.

3 Q. You recognize your signature at the
4 bottom?

5 A. My signature is not there.

6 Q. Okay. It's not there? Do you dispute
7 that the settlement or the closing date for your
8 house was November 18, 2005?

9 A. Yeah, no, I don't dispute that at all.

10 Q. And the contract sales price, as
11 indicated on this, was \$347,296?

12 A. That sounds about right.

13 (Exhibit No. 5 was marked for
14 identification.)

15 Q. I'm going to hand you what I have marked
16 as Exhibit 5, which is another document from your
17 files Bates stamped 151, and it is the real
18 estate sales agreement. Do you recognize that?

19 A. I recognize that, but there's a part of
20 this agreement that's missing.

21 Q. Yeah, there are a lot of different pages
22 to it.

23 A. No. I mean, it's a part of it missing
24 that would bring the price, the sales price, to
25 the 347, anything -- I went to the sales center

1 where you add on different items to your house,
2 that part of this is missing.

3 Q. Right. But this is the basic --

4 A. Yeah, this is the basic --

5 Q. This is the basic document.

6 A. Yeah.

7 Q. But it was added to --

8 A. Yeah. It's a basic -- the base house.

9 Q. Right.

10 A. Right.

11 Q. What I'm getting at, though, is this is
12 the contract that you signed for the purchase of
13 your house. Agreed?

14 A. This is part of the contract.

15 Q. Right.

16 A. Right.

17 Q. There were various addenda do it, but
18 this is the --

19 A. The base model.

20 Q. -- base stuff?

21 A. The base model price.

22 Q. In your Complaint in this action, you've
23 sued for breach of written warranties. Are you
24 familiar with that, the Complaint that you filed?

25 A. Breach of written warranties? There was

1 several complaints in there.

2 Q. One of them was for breach of express
3 warranties.

4 A. Right.

5 Q. The -- on page 3 of this document,
6 paragraph 12, do you see that, about two-thirds
7 of the way down? It says, Warranty provisions.
8 Do you see that, Ms. Brown?

9 A. I'm going to read it. Okay.

10 Q. It says -- these are the warranty --
11 I'll synopsise it. This is the warranty
12 provision of your contract, and it says that
13 the -- that Centex will provide you and you agree
14 to accept a written warranty that will be
15 supplied to you as part of this agreement, and
16 that's the warranty that comes with your purchase
17 of the house. Do you agree with that paraphrase?

18 A. Yeah. I mean, they provided a two/ten
19 warranty.

20 Q. Are there any warranties that you're
21 aware of other than that warranty?

22 A. What, the two/ten warranty?

23 Q. Right.

24 A. No.

25 Q. So when you sued in your Complaint for

1 breach of warranty, that's the warranty that
2 we're talking about. Agreed?

3 A. They have several warranties. The
4 two/ten warranty, but it does not explain the
5 type of warranty here.

6 (Exhibit No. 6 was marked for
7 identification.)

8 Q. So what we have with that is -- I'll
9 hand you a copy of what I've marked as Exhibit 6,
10 which I got from your files from your attorney,
11 and it's the residential warranty that references
12 up at the top your name and was in your file. So
13 can we agree that this is the written warranty
14 that you were provided for your home?

15 A. It was in the file.

16 Q. Can we agree that this was the warranty
17 that you were provided?

18 A. Yeah, we can, right.

19 Q. So when we're looking for the specific
20 terms for where you say that Centex breached its
21 warranty, this is the warranty that you're saying
22 was breached. Agreed?

23 I'm not asking you about all the
24 provisions, Ms. Brown. I'm just --

25 A. Yeah, I was reading it. This is the

1 warranty they provided. This is the ten-year
2 written warranty. We have a two-year warranty as
3 well.

4 Q. Right. But there are provisions in here
5 for -- whatever it says, this is the warranty
6 that you were provided and that you are suing
7 for. Agreed?

8 A. There's another part of the warranty
9 missing. Two/ten -- the two-year warranty as
10 well.

11 Q. I think it says in here -- it has
12 provisions for what's covered for two years and
13 what's covered for ten years.

14 A. Okay.

15 Q. But when we're talking about the written
16 warranty that you're suing under, it's this one?

17 A. Okay.

18 Q. Correct?

19 A. Uh-huh.

20 Q. And that you're saying that Centex
21 breached, correct?

22 A. Correct.

23 (Exhibit No. 7 was marked for
24 identification.)

25 Q. I'm going to hand you what's been marked

1 as Exhibit 7. And that's, I think, one of the
2 things you -- you mentioned that there were some
3 addenda to your contract, and this is a document
4 that we got from your files. It's Bates stamped
5 165 through 177. Do you recognize these
6 documents?

7 A. I don't have a copy of this.

8 Q. They came from your documents. They --
9 you produced these to us. Are those your --

10 A. Let me look at it. Okay. Now I see it,
11 yep.

12 Q. If you'll look on the fourth page of
13 this -- of Exhibit 7, there's a paragraph 18. Do
14 you see that, the warranty?

15 A. You said what page?

16 Q. On the fourth page of this, paragraph
17 18. Do you see the paragraph that's labeled 18,
18 warranty?

19 A. Right, and I'm reading it.

20 Q. My simple -- I'm not going to ask you
21 about all the terms of it. My simple question
22 is, this is another part of the contract that you
23 were provided that tells you what warranty is
24 being provided. Agreed?

25 A. Yeah. But it's a workmanship warranty,

1 so it is describing two different types of
2 warranty.

3 Q. For whatever it might say -- the terms
4 can speak for itself -- but you would agree this
5 is one of the warranty provisions applicable to
6 your house that you're -- that's the subject of
7 this action. Agreed?

8 A. Yes.

9 Q. And the initials on -- right under that
10 are your initials?

11 A. It looks like it.

12 Q. And the signature is your signature?

13 A. Yes.

14 Q. Let me go back just for a few minutes,
15 Ms. Brown. You said that you're 48. Where are
16 you currently employed?

17 A. Seacoast.

18 Q. Seacoast what?

19 A. Seacoast Mortgage.

20 Q. Where is that?

21 A. Summerville.

22 Q. What is your position there?

23 A. I'm the mortgage broker.

24 Q. You're "the" or "a"?

25 A. "The," the only mortgage broker there.

1 Q. Who owns that company?

2 A. My husband and I.

3 Q. And how long have you owned that?

4 A. I want to say ten years.

5 Q. And your husband works there also?

6 A. Yeah. He works, but he -- yeah, he
7 works there as well. I mean, he just fills in.

8 Q. So does he work both there and at the
9 car dealership?

10 A. He volunteers at my office, so he --
11 volunteer work there when he's available.

12 Q. Do you have any other employees?

13 A. No.

14 Q. How old is your husband?

15 A. He is 72.

16 Q. And what does Seacoast Mortgage do?

17 A. We finance homes. We finance homes.

18 Q. You actually --

19 A. Basically, what I do is, if a person
20 applies for a loan through us, I broker the loan
21 out wholesale.

22 Q. So you don't actually provide the
23 financing?

24 A. No.

25 Q. You're just a facilitator?

1 A. Wholesale.

2 Q. I'm sorry?

3 A. We go out and we deal with the lenders
4 wholesale. So, basically, I'm a mortgage broker
5 that brokers it out to different companies.

6 Q. And you've been doing this for about ten
7 years with Seacoast, your own company, right?

8 A. Right.

9 Q. And before that, where were you?

10 A. At Everest Mortgage.

11 Q. So you left them in about 2008?

12 A. Yes.

13 Q. And where is Everest Mortgage?

14 A. Well, they're in North Carolina at this
15 point. I haven't been in contact with them. The
16 office here is no longer open.

17 Q. When did it close?

18 A. 2008, I believe.

19 Q. So where is its office now in North
20 Carolina?

21 A. I can't tell you that. I don't know.

22 Q. Who owns Everest Mortgage?

23 A. Mark Eskew.

24 Q. Can you spell his last name, please?

25 A. E-S-K-E-W.

1 Q. And Mr. Eskew, is he -- does he live in
2 North Carolina, to your knowledge?

3 A. You know, the last time I knew, he lived
4 there. As of now, I don't know where he lives.

5 Q. Why did you leave them?

6 A. Because it was time for me to leave.

7 Q. Why so?

8 A. Because I wanted to do it on my own.

9 Q. How long were you with Everest Mortgage?

10 A. I want to say 2001 -- I want to say six
11 years. I think it was six years.

12 Q. So from 2002 to 2008?

13 A. I would say about 2002 to 2008.

14 Q. Is that correct?

15 A. It sounds about right.

16 Q. And where were you before you were with
17 Everest Mortgage?

18 A. First Federal.

19 Q. First Federal of what?

20 A. First Federal of Charleston.

21 Q. And how long were you with them?

22 A. I was there, I want to say -- not
23 long -- from 2001 until 2002.

24 Q. How long have you been -- when did you
25 get started in the mortgage business?

1 A. Well, we were doing mobile homes at
2 GreenPoint Credit, Bank of America. That was in
3 the '90s.

4 Q. Approximately when in the '90s?

5 A. I want to say maybe '98, '97.

6 Q. Okay.

7 A. Yeah, I'm thinking it was maybe '98,
8 '97.

9 Q. So you've been in the mortgage business
10 now for about 20 years?

11 A. Yes.

12 Q. Do you have a computer at home?

13 A. A laptop.

14 Q. Are any of the -- what I'm trying to
15 look for are e-mails that you might have sent or
16 responded to or other documents that we have --
17 or that might have been relevant to this matter.
18 And I've gotten some documents from your
19 attorney, but they basically only are from 2013
20 forward.

21 So can you explain to me where --
22 what happened to e-mails and other documents that
23 were -- I'm sorry -- the e-mail chain and the
24 e-mail documents are from 2013 forward. Can you
25 explain to me what happened to the e-mails from

1 the time that you signed the Centex contract in
2 2005 up until 2013?

3 A. No. Most of the times, I have been
4 talking to Centex on the phone. I can't
5 locate -- I can't recall if we did a lot of
6 e-mails in my personal e-mail, and I pretty much
7 pulled everything I could find. But I used to
8 always make the phone calls.

9 Q. That's not my question. My question is,
10 we have e-mails from 2013 forward.

11 A. Uh-huh.

12 Q. Are you saying that there were no
13 e-mails prior to 2013?

14 A. I can't find any of them.

15 Q. Where are they? What happened to them?

16 A. They -- it may have been from a
17 different e-mail account, maybe from Everest. I
18 don't know because these are the only ones that
19 will come up in my e-mail. And a lot of times, I
20 did not e-mail Centex. I would pick up the phone
21 and call.

22 Q. Right. Yeah, I'm not asking about
23 telephone calls. I'm just asking about e-mails.

24 A. Right. But I'm answering your question.
25 You're asking me, where are the other e-mails.

1 And what I'm saying to you is, I retrieved the
2 ones I could find in my e-mail address.

3 Now, it could have been in another
4 e-mail address I had from Everest, but I don't --
5 I don't have access to it. It doesn't exist
6 anymore.

7 Q. Okay.

8 A. But --

9 Q. But you left Everest in 2008, so we
10 should have your e-mails from your new company,
11 Seacoast Mortgage, from 2008 forward, should we
12 not?

13 A. You're saying you should have what?

14 Q. If any e-mails exist after 2008, you
15 should have them on your -- with the Seacoast
16 Mortgage e-mail address. Agreed?

17 A. Right. But what I'm saying is, there is
18 no other e-mails. My computer can pull every
19 e-mail. And it may have been to different
20 people. I spoke to too many people at Centex.

21 And when I noticed I needed to
22 started e-mailing, that's what I'm saying, I
23 pulled the names that I could recall, and I put
24 in a general search, and those are what came up.

25 Q. So are you telling me that, from your

1 documents, there are no e-mails, to your
2 knowledge, that exist -- that you wrote or that
3 exist prior to 2013 with Centex relative to this
4 matter?

5 A. That's all I can find.

6 Q. Do you know -- can you testify here one
7 way or the other as to whether there had been
8 prior e-mails and they just have been --

9 A. See, I just don't know. I don't know
10 that. I don't know that because a lot of the
11 times I spoke to Centex on the phone.

12 Q. Okay.

13 A. I don't know. And, you know, when I
14 bought the house, I could have been e-mailing the
15 salespeople, but they change. Their names --
16 they're no longer there. And if they're not --
17 if it's not being identified by Centex, then I
18 can't retrieve them because I'm looking for
19 Centex and the people's names I could remember.

20 Q. I've read your -- we've gotten
21 interrogatory responses from your attorney. Do
22 you know what I'm talking about there?

23 A. (Witness nodded.)

24 Q. You need to answer yes or no.

25 A. You're asking me what?

1 Q. We've gotten interrogatory answers that
2 your attorneys provided us.

3 A. Yes.

4 Q. Do you remember those? And you assisted
5 him with those, I would assume?

6 A. Yes.

7 Q. And we've also gotten a bunch of
8 documents from your files, some of which I
9 haven't gone through yet and some other
10 documents. And from what I can -- from what the
11 documents say, you began experiencing problems
12 with your home virtually right after you moved
13 into it in 2005, correct?

14 A. Yes.

15 Q. And they're basically the same problems
16 then that exist now. Agreed?

17 A. Yes.

18 Q. All right. And they haven't been fixed
19 by Centex. That's why you're suing them,
20 correct?

21 A. Correct.

22 Q. And what are the problems that have
23 existed from approximately 2005? List those
24 deficiencies.

25 A. Well, to start with, the windows.

1 Q. Tell me about that.

2 A. The windows, we would always see the
3 water, you know, near the windows. And Centex
4 would come back and say, Oh, we -- we're coming;
5 we're going to cure this. And that's how it
6 started, the windows.

7 Q. So there's water leakage under the
8 windows?

9 A. Well, it was brown spots under the
10 window. And Centex indicated that there was no
11 issue, they have cured everything. So it started
12 day one with the windows, uh-huh.

13 Q. But the brown spots, you knew just from
14 common sense, that that indicated water was
15 getting under the windows. Agreed?

16 A. Yes.

17 Q. And that was never fixed?

18 A. Nope.

19 Q. And continued?

20 A. Well, they said they fixed it.

21 Q. But they didn't?

22 A. If it's continuing, they haven't.

23 Q. Right. And every time it rained, you'd
24 notice that the spots would reappear?

25 A. Not every time it rained, no. Because I

1 didn't go and look for it every time it rained,
2 right, no, so --

3 Q. But it was continuous. From the time
4 you moved in until now, water leakage has been
5 through the windows. You've already told me
6 that, correct?

7 A. What you asked me is when I noticed day
8 one, I saw the water -- I mean, I didn't see the
9 water.

10 Q. Saw evidence of the water?

11 A. I saw, yeah, evidence of the water, and
12 Centex was aware of that day one when I saw it.

13 Q. Right.

14 A. So every time it rained, I didn't see
15 it.

16 Q. But it was never fixed?

17 A. Centex said they fixed it.

18 Q. But you knew that they hadn't, because
19 it --

20 A. No, I didn't know that. I didn't know
21 it did not fix it until we had a hard rain, and
22 the water started protruding into the house.

23 Q. Right.

24 A. So -- right. So that's when I knew.

25 Q. Right. But every year --

1 A. -- that Centex didn't do it. But any
2 time I saw a problem, I would always call Centex.

3 Q. Right. But every -- you would have a
4 hard rain at least once a year, wouldn't you?

5 A. No.

6 Q. You would not have a hard rain --

7 A. Not a hard rain, not like a storm, no.
8 Like I mean constant, constant raining, like we
9 had the storm, no, you wouldn't -- we didn't have
10 that every year.

11 Q. But regardless of how often you'd have
12 it, you knew that that problem existed from day
13 one and was never fixed. Agreed?

14 A. No, I didn't know it wasn't fixed
15 because Centex is telling me they fixed it.
16 That's what I'm saying. I'm saying, Centex said
17 that they fixed it. Then I'm believing what
18 Centex says.

19 Q. Well, you're telling me two different
20 things because, just a moment ago -- and we can
21 have the court reporter go back and read it if
22 you want to -- I said, Did Centex ever fix that,
23 and you said no.

24 A. Centex had -- as of my knowledge now, it
25 was never fixed, but Centex stated they fixed it.

1 Q. But you knew that was incorrect?

2 A. No, I didn't, until recently.

3 Q. Not until recently?

4 A. Until -- not in 2006, 2007, not
5 throughout, because Centex came to the house
6 several times when I complained about still
7 seeing water.

8 Ms. Brown, we've got it. We've got
9 it covered. We did fix it. We did this. We did
10 that.

11 Q. When was the last time that Centex came
12 out and worked on your house?

13 A. Centex came out -- well, he came out in
14 2016. He came out in 2017. He came out in 2009,
15 2011 or '10, and at some point, they said they
16 weren't going to come out. They had already
17 cured the problem; we're not coming back.

18 Q. If Centex's documents indicate that the
19 last -- before you -- okay.

20 When you started having
21 communications with Centex in -- all right. Let
22 me ask this -- I tell you what. Let's just go
23 through some -- before we go through all the
24 documents, so you had window leakage problems
25 from day one, correct?

1 A. Yeah.

2 Q. What other problems?

3 A. The window could not open actually.

4 Q. Was that ever fixed?

5 A. He came out -- they came out and did
6 something to the window to cause it to open.

7 Q. So it was fixed?

8 A. Uh-huh.

9 Q. And it's fixed now?

10 A. The window can open.

11 Q. So it's fixed?

12 A. Yes.

13 Q. So what other issues exist?

14 A. Issues? From day one?

15 Q. Yeah.

16 A. The floors, when you walk into my son's
17 room, the floor would shake. The furniture would
18 shake. The --

19 Q. Was that ever fixed?

20 A. No.

21 Q. What else?

22 A. The heating unit for the third floor was
23 installed incorrectly. They came in and
24 reinstalled it.

25 Q. Was that fixed?

1 A. They reinstalled it, uh-huh.

2 Q. Was it fixed?

3 A. Yes.

4 Q. When was it reinstalled?

5 A. You know, I can't tell you that, but it
6 was really quick. I want to say -- it had to
7 have been -- because I noticed it -- it had to
8 have been in 2006 because I bought the house in
9 2005.

10 Q. So about a year after you bought it?

11 A. No, not a year, because --

12 Q. Within a year?

13 A. Yeah, I would say it's less than about
14 maybe three or four months.

15 Q. What other issues?

16 A. We had the -- what is it? It was
17 another part of the house. The third floor
18 attic, they said they went in to make sure
19 everything was installed correctly. And that
20 was -- I want to say that was 2009. I can't
21 remember.

22 Q. They, being Centex?

23 A. Centex contractors, yes.

24 Q. What caused you to complain to them that
25 brought them out in 2009?

1 A. Basically, the same situation with the
2 windows, the water coming in the windows. They
3 came out in 2009, and he went in the attic in
4 2009 to make sure that I didn't have no issues in
5 the attic, and he said I didn't have any,
6 according to him.

7 Q. And who was that?

8 A. That's the contractor Centex sends.

9 Q. Do you know his name?

10 A. I don't remember his name.

11 Q. Okay.

12 A. Because there's too many different
13 contractors that come out. It's never the same
14 person.

15 Q. What other problems have you had
16 continually and from day one?

17 A. From day one, they did not install the
18 sidewalk. There were some other things. In the
19 kitchen area, they came back to go in and tighten
20 up the cabinets. And they came in to reinstall
21 some of the hardwood floors and --

22 Q. How about the fireplace?

23 A. I was getting ready to think about what
24 did they do with the fireplace.

25 I don't remember any -- recall

1 anything with the fireplace, but when they came
2 in -- because it's a gas fireplace. We needed to
3 make sure that it was installed properly for gas
4 because it's a gas line. It's a gas fireplace.

5 Q. All right. Have you had any leakage
6 problems with the chimney, fireplace?

7 A. Yeah. The leakage is with -- uh-huh.

8 Q. And those have been since day one,
9 haven't they?

10 A. And they also came out at some point and
11 said they installed the flashings around the
12 house because the house didn't have any flashing
13 when we first started.

14 Q. When was that work done?

15 A. They said they installed in I want to
16 say the -- I want to say maybe eight, nine months
17 or maybe a year or so, a couple years.

18 Q. From the time you bought it?

19 A. Uh-huh, because I --

20 Q. You need to answer yes, please.

21 A. Say it again.

22 Q. You need to answer yes or no for the
23 court reporter.

24 A. Yes to what question?

25 Q. My last one. You said uh-huh instead of

1 just answering --

2 A. Oh, yeah, yes. I'm sorry.

3 Q. No problem.

4 All right. So within a year, you
5 were told the flashings were fixed, but they
6 weren't because the water leakage continued,
7 correct?

8 A. No. They didn't have any flashing in it
9 on -- in the house. They said they installed the
10 flashing, so flashing was never installed on the
11 house, and I didn't know that until the gentleman
12 came and said, Oh, yeah, we're coming back
13 because we have to install flashing. It was not
14 only my house. It was several houses on the
15 street.

16 Q. And that was shortly after you moved in?

17 A. That's about -- yeah, it was the next
18 year or two. I can't remember how long it took
19 them to install the flashing, but I don't know
20 how flashing looks so --

21 Q. But you say they never installed it?

22 A. They said they installed it.

23 Q. But you're saying that they didn't?

24 A. I don't know how it looks. I mean,
25 these are -- I mean, flashing around the chimney,

1 flashing around the windows, and then they
2 also -- as I'm recalling now, they also had to
3 come in and do the gutters because they didn't
4 have any -- we didn't have any gutters.

5 Q. When was the -- let's go back to a
6 question I had just a moment ago. When was the
7 last time that Centex made repairs to your house?

8 A. I want to say -- see, it's been so long
9 ago, and I can't recall.

10 Q. 2009?

11 A. You know, 2009, I remember a
12 conversation like this: We're not coming back
13 because we've already cured all your issues. So
14 they've been out, but I can't tell you if they
15 literally fixed anything because the gentleman
16 that came out that went in the attic when I
17 talked about the windows again, he said, Oh,
18 yeah, I've already done this.

19 And then I called back again,
20 complaining about the same things. So he claimed
21 he fixed the windows again; he did what he needed
22 to do. But they came out several times after
23 that particular gentleman in 2009 came out. So
24 they came out to the house several times in 2009.

25 Q. Right.

1 A. The first time, they said they've cured
2 the issue again.

3 Q. My simple question, Ms. Brown. We're
4 probably going to --

5 A. But they came out too many times.

6 Q. Right. But my question is, since
7 2009 -- they came out several times in 2009 and
8 did repairs. But no repairs have been done by
9 Centex since then. Agreed?

10 A. No, I cannot agree on that one because I
11 can't recall if they came out after and made any
12 repairs. See, I can't -- I don't remember that.

13 Q. Well, can you testify here under oath --

14 A. Uh-huh.

15 Q. -- that Centex did, in fact, make any
16 repairs to your house after 2009?

17 A. Well, this is '18. No, I cannot say
18 they came in after to make repairs.

19 Q. Right. So the -- based on what you can
20 testify under oath here today, the last time that
21 Centex made any repairs, to your knowledge, was
22 in 2009. Agreed?

23 A. That's the last time I can recall.

24 Q. Okay.

25 A. Yes.

1 Q. Let's talk about the -- let's talk about
2 some of the documents here.

3 (Exhibit No. 8 was marked for
4 identification.)

5 Q. Here's a document that we got from your
6 files. It's Bates stamped number 36, and I've
7 marked that as Exhibit 8. And in the middle of
8 it, do you see that you wrote -- or you sent an
9 e-mail to Jean Barraclough at Pulte on
10 September 5, 2013?

11 A. It's to customer care, yes.

12 Q. But anyway, this -- you sent an e-mail
13 to Centex on September 5, 2013, correct?

14 A. Uh-huh, yes.

15 Q. You need to answer yes.

16 A. Yes.

17 Q. All right. And what you are complaining
18 of is roofing, floors, walls, and windows,
19 agreed?

20 A. Yes.

21 Q. And that's in all caps. And then it
22 says, This is our last attempt before we seek
23 legal representation. That's what you wrote,
24 correct?

25 A. Right.

1 Q. So you're saying, Centex, we're having
2 problems, leakage problems with roofing, floors,
3 walls, and windows, and unless you fix them, as
4 of 2013, this is our last notice to you, or we're
5 going to file suit, correct?

6 A. That's what I said.

7 Q. Right. And no repairs were done by
8 Centex after that, were they?

9 A. Centex would -- Centex would attempt to
10 come out. And at that point, Jean -- because I
11 would talk to her on the telephone. And whoever
12 I spoke to on the telephone, she kept saying,
13 We're going to send someone out. We're going to
14 send someone out. And they would promise me
15 they're coming out. And, yeah, we'd have to deal
16 with this issue, and then we'll come out. But
17 he's come out. He's been out. Somebody came
18 out.

19 Q. Well, we've already talked about and
20 you're under oath saying that, to your knowledge,
21 no repairs, though --

22 A. Right.

23 Q. -- no work has been done --

24 A. Right.

25 Q. -- since --

1 (Interruption.)

2 Q. Let me try to -- please let me finish
3 the question, and then I'll try to let you finish
4 your answer before I move on.

5 No repairs were done -- what you're
6 saying is, unless you do repairs -- I'm tired of
7 the talking; I don't want any more promises.
8 Unless any -- unless you do repairs to the
9 roofing, floors, walls, and windows, as of 2013,
10 unless you do repairs, I'm going to hire an
11 attorney and file suit. Agreed?

12 A. If it says that, yes.

13 Q. That's what it says, isn't it?

14 A. Right, yes.

15 Q. Right.

16 A. But guess what?

17 Q. And no repairs were done?

18 A. And they came out. They came out. They
19 would come back to my house and promise that they
20 were going to do the repairs.

21 Q. But they never did?

22 A. They would always promise.

23 Q. But they never did. And they never
24 did -- by here, you're at the end of your rope,
25 saying, I'm tired of not having actual repairs

1 done; unless you make the repairs right now, I'm
2 going to file suit. Agreed?

3 A. Oh, but she couldn't make it that day.

4 Q. In this general time frame --

5 A. Right.

6 Q. -- within 30 days or whatever.

7 A. But I didn't give her a general time.

8 Q. Right. But you're saying, unless you do
9 it quite promptly, I'm tired of talking about it,
10 I'm going to file suit in 2013 for all these
11 issues. Agreed?

12 A. Right. I sent that in 2013. And she
13 promised that they were coming out and they were
14 going to address the issues again.

15 Q. And you knew shortly thereafter that
16 they weren't going to address them, and they
17 never did?

18 A. But they came out. They came out and
19 addressed the issue. And they kept saying that,
20 Someone is going to get in touch with you,
21 Monica. Someone is going to get in touch with
22 you to go in and review all this again. They
23 came out. They sent people out there, and then
24 they would keep coming back and forth, back and
25 forth, back and forth.

1 (Exhibit No. 9 was marked for
2 identification.)

3 Q. Let's look at some other documents that
4 you have produced. They are Bates stamped 28
5 through 35, and I've marked those as Exhibit 9.

6 So I think that this is all a long
7 e-mail chain, so I think we need to start with
8 the last page and then move forward. Okay?

9 A. Uh-huh.

10 Q. You need to answer yes or no, please.

11 A. Yes.

12 Q. So do you see at the bottom of the page,
13 it says -- do you know what a Bates stamp is? Do
14 you see Brown -- at the bottom right, Brown --
15 the very last page is Brown 00035.

16 A. Okay.

17 Q. All right. Let's turn to the next page,
18 Brown 0034. Actually, turn to the page before
19 that, 0033. Do you see the start of that e-mail
20 chain? It's dated April 30, 2015, at 2:31 p.m.
21 from you.

22 A. You said the third page?

23 Q. Yeah, 0033. Do you see 0033, Ms. Brown?

24 A. Yes.

25 Q. And this is an e-mail from you to

1 Centex, dated April 30, 2015, correct?

2 A. Oh, okay. I see that.

3 Q. Correct?

4 MR. KALIVAS: At the very bottom of
5 the page?

6 THE WITNESS: At the bottom of the
7 page?

8 MR. HILDEBRAND: Right, yes.

9 Q. And this is where you're writing Centex
10 saying, These are the problems that we're having
11 with our house. Agreed? If you look on the next
12 page, there's a listing from you in all caps
13 about the problems that you've had.

14 A. On the next page, and you're saying page
15 7 out of 8?

16 Q. Yes. This is your e-mail, isn't it --
17 is it not, Ms. Brown?

18 A. Yeah, I was listing all the problems I
19 had day one.

20 Q. Right, from day one.

21 A. Uh-huh.

22 Q. You need to answer yes, please.

23 A. Yes.

24 Q. Thank you. And the third floor had no
25 flashers and had been leaking from day one.

1 Agreed?

2 A. Yes, based on the report.

3 Q. Right. Reading down, The entire room
4 shakes when you walk into my son's room.

5 A. Right.

6 Q. That was never fixed?

7 A. That was -- they said they never were
8 going to address that again after I keep
9 complaining about it.

10 Q. Right. So that existed from day one --

11 A. That existed from --

12 Q. -- and you were complaining again?

13 A. That existed from day one, and they came
14 out, trying to repair it. They were patching it.
15 They came out several times trying to patch it,
16 but it never cured it.

17 Q. Right.

18 A. Never cured the problem. And according
19 to Centex builders, the contractors, the floor
20 doesn't supposed to withstand a lot of weight.
21 That's what they said.

22 Q. But you -- as a homeowner, you
23 recognized that shaking of the floor was not
24 normal and was not satisfactory?

25 A. Well, you know, I'm not a contractor,

1 so, you know, I'm listening to these guys, and
2 I'm complaining about the same thing. So, I
3 mean, I'm not an expert in flooring.

4 Q. I'm not asking you about a contract.
5 I'm talking about, from you as a homeowner,
6 you're saying, This is a construction defect, and
7 I want you to fix it, and they wouldn't. Agreed?

8 A. Yeah.

9 Q. Right.

10 A. I asked them to fix that day one,
11 uh-huh. But this part of it is not in here; the
12 floor is not an issue. I'm not asking about the
13 floor at this point.

14 Q. Why not?

15 A. It's not -- because they don't want to
16 address it anymore.

17 Q. Is that not a complaint that you have --

18 A. I mean, I always had the complaint.

19 Q. -- that was never repaired?

20 A. Right. I always had that complaint
21 about the floor.

22 Q. Let's turn to page 5 of 8, right in the
23 middle where -- an e-mail from you to Centex,
24 dated June 6, 2016, and you're sending that to
25 Jean Barraclough. It says, Jean, we sent out the

1 inspection reports since 2009. What inspection
2 report are you talking about?

3 A. The inspection report she requested.
4 She said, Monica, I need to know what is going
5 on. And in order for us to do anything else --
6 because I hired a guy to do an inspection report
7 of the things I was complaining about, and she
8 asked me to get one.

9 Q. Where is that report?

10 A. I can't find the report, but they sent a
11 report to Jean. I can't find a copy of it.

12 Q. And that's the fellow who's listed in
13 your interrogatory responses?

14 A. No, I don't think he did that.

15 THE WITNESS: Do you see it?

16 Q. Who did that report?

17 A. The inspection report, I cannot recall
18 his name who did that inspection report.

19 Q. Was that One Stop Home Inspector?

20 A. It was One Stop -- if I can recall
21 that's the correct name, One Stop. But I
22 couldn't find a copy of my report, but they sent
23 a copy to Jean because she kept requesting for
24 one.

25 Q. So you hired a home inspector in 2009 to

1 assess what the problems were, and he generated a
2 report. And it was primarily because of the
3 water intrusion issues, correct?

4 A. The inspection report that I was -- that
5 she wanted, she wanted everything to be addressed
6 that I was complaining about.

7 Q. Right. And they were primarily water
8 intrusion issues. Agreed?

9 A. It was all -- it was everything that I
10 had listed. Because the inspection -- the
11 inspector was coming in to address everything I
12 had listed, from the floors, everything. So not
13 just only a water issue. He was doing
14 everything.

15 Q. All right.

16 A. I always had from day one.

17 Q. Were those issues fixed in 2009?

18 A. In 2009, they came back and said they
19 cured some of the issues.

20 Q. But they weren't fixed, to your
21 knowledge?

22 A. To my knowledge as of -- recently, in
23 the last several years, it couldn't have been
24 fixed if I still have the problem. But they're
25 telling me that they cured all of the problems.

1 So when I discovered when water was getting back
2 into my house, then obviously they never cured
3 the problem that they promised me they had cured.

4 Q. In 2016, you're saying that the
5 inspection report went out in 2009. Then, in
6 your own words, I contacted you guys every year,
7 and all I get is the run-around. So you're
8 saying you contacted --

9 A. What page are you on?

10 Q. I'm on page 6 of 8, right in the middle.
11 So you're saying -- so you're saying you got an
12 inspection report in 2009, and that, since then,
13 you've contacted Centex every year, and all you
14 get is the run-around. Nothing has been fixed,
15 and you've been complaining since 2006. Agreed?

16 A. I'm reading where I say, Jean, we're
17 still waiting on your response. So I think we're
18 on a different page.

19 Q. I'm on -- I'm sorry -- 5 of 8, Bates
20 stamp 32.

21 MR. KALIVAS: It's the previous
22 page.

23 Q. That's your -- right in the middle,
24 June 6, 2016, at 3:17. Do you see where you're
25 writing Centex?

1 A. Yes, uh-huh.

2 Q. I need you to answer yes, please.

3 A. Yes.

4 Q. And you're saying that you sent an
5 inspection report in 2009. I contacted you guys
6 every year, and all I get is the run-around. We
7 complained about the same things since 2006.

8 So in 2016, you're saying that you
9 sent the report in 2009, and you complained to
10 Centex every year since then, and it was never
11 fixed. Agreed?

12 A. To my knowledge, yep.

13 Q. Right, as the homeowner living there.

14 A. Right. Because -- but they're saying
15 they fixed it. They're saying the issues were
16 cured.

17 Q. I understand, but you knew darn well
18 that they weren't because --

19 A. I'm not the expert.

20 Q. But you're the homeowner living there,
21 and that's --

22 A. Right.

23 Q. -- why we're here, isn't it?

24 That's why -- you're the one living
25 there, and you're saying, I can tell living there

1 that these water intrusion issues aren't fixed
2 because I'm still seeing them?

3 A. And I'm not still seeing them because I
4 don't see them, water on the floor. I don't see
5 water on the floor until we had a hard rain.

6 But I knew something was wrong when
7 my light bill kept fluctuating, so that's when I
8 just said, There's no way you guys have fixed
9 this; no way you guys have cured this. Because
10 my light bill has been escalating high because,
11 you know, parts of my house are being cold. I
12 can feel the air, so something is wrong.

13 So I would always complain to
14 Centex. And, We're coming, Monica. We're
15 coming. And they would send people out. Then we
16 have to review this with another manager, this
17 person. They're going to come out. Yeah.

18 Q. I understand that's what you're
19 complaining about.

20 A. Right, right. But it's different --
21 when somebody is telling you something is cured
22 and you're saying, it can't be because my house
23 is cold, cold in the wintertime, and it's hot in
24 the summertime, and something is going on.

25 Q. And the water is still -- I'm still

1 seeing the water coming in?

2 A. Well, I don't see the water coming in
3 all the time.

4 Q. Not all the time, but you see it at
5 least once a year?

6 A. Well, no, because it has to --

7 Q. You don't?

8 A. No. I literally have to -- if it's a
9 hard rain, if it's a hard rain and it's water --
10 I mean, rain is blowing, then --

11 Q. Well, then why are you complaining to
12 Centex every year then?

13 A. I'm complaining to Centex every year
14 because it appears that nothing has been cured.
15 It's like you Band-Aided something because I can
16 see the difference that, okay, why am I cold in
17 the kitchen and when I sit in the kitchen it
18 feels like it's another 30 degrees colder than
19 outside. Something is wrong.

20 Q. Let's turn to page 4 of 8 in the bottom
21 right, at the very bottom. Do you see that very
22 last paragraph? That's from Jean Barraclough you
23 to you. Do you see that, Ms. Brown?

24 A. Yeah.

25 Q. It says, All warranties including the

1 structural warranty expired on November 8, 2015.
2 Centex completed the last repair in 2009, seven
3 years ago. Do you have any testimony or evidence
4 to dispute that the last repairs that Centex made
5 were in 2009?

6 A. No, I don't.

7 Q. Let's turn to page 3 of 8. This is in
8 2016. And on --

9 A. You're on page what?

10 Q. I'm on page 3 of 8.

11 A. Okay.

12 Q. At the bottom, you're writing to Jean
13 Barracclough, correct?

14 A. Uh-huh.

15 Q. You need to answer yes or no, please.

16 A. Yes.

17 Q. And on the next page, it says, about six
18 lines down, We have reached out to you several
19 times and for several years. You never sent
20 anyone to come to our home, and that is negligent
21 on your behalf. We're still arguing about the
22 same thing. I will consult an attorney within a
23 day.

24 So you're saying that, in 2016
25 again, that you continued to have the water

1 intrusion and other problems, you complained to
2 Centex about them every year, and they were never
3 fixed. Agreed?

4 A. Yep.

5 Q. Let's turn to the first of that, if you
6 would, please. It says that -- apparently there
7 was a report that was -- that you had gotten
8 after a storm, that your insurance company gave
9 you; is that right?

10 A. Yes.

11 Q. And that was provided to Centex?

12 A. Yes.

13 Q. And Centex didn't make any repairs as a
14 result of that report, did they?

15 A. Centex promised to make repairs of that
16 report. They promised. And they haven't.

17 (Exhibit No. 10 was marked for
18 identification.)

19 Q. I'm going to hand you what I've marked
20 as Exhibit 10. Is that a copy of the report your
21 insurance company did?

22 A. Yes.

23 Q. So this was done in -- if you look on
24 the second page, it's dated January 27, 2016,
25 correct?

1 A. What page are you on?

2 Q. If you look on -- I'm just trying to get
3 the date of it.

4 A. Oh, yes.

5 Q. January 27, 2016.

6 A. That's when they completed the report.

7 Q. And you provided this to Centex, and
8 they refused to make repairs. Agreed?

9 A. I provided this to Centex, and Centex
10 promised to make the repairs because Centex sent
11 other contractors out to the house, and they
12 promised to make the repairs based on the
13 complaint I had all this time. And they promised
14 to make it every time because several contractors
15 came out to the house.

16 Q. Promised that year in and year out, and
17 it just never happened. Agreed?

18 A. According to them, I never had any
19 problem, and they fixed all the issues.

20 (Exhibit No. 11 was marked for
21 identification.)

22 Q. Let me ask you -- I'm going to hand you
23 what I'm going to mark as Exhibit 11. These are
24 a bunch of photographs that are identified in
25 your discovery responses as photographs that you

1 took. Do you recognize these?

2 A. Yes.

3 Q. When were these taken?

4 A. These were taken -- I can't -- I mean,
5 these photos, some may have been -- when they
6 came out, I took some of these photos. They've
7 been out, starting from -- the last three years,
8 they've been coming out, but some of these --
9 they're in -- these were -- anything under the
10 vinyl, it was just last year because --

11 Q. Who removed the vinyl?

12 A. A gentleman, a contractor removed the
13 vinyl. But according to Centex, one of their
14 guys removed the vinyl as well.

15 Q. Did you -- did your contractor remove
16 the vinyl?

17 A. Yes.

18 Q. So do you have any evidence that
19 Centex -- did you see a Centex representative
20 remove vinyl?

21 A. John Etters said he removed vinyl, and I
22 told John Etters that, John, why did you remove
23 the vinyl off of my house, according to you, if I
24 wasn't there? He went to my house to say they
25 were going to inspect it, and he said, You don't

1 have any dry rot in your house under the vinyl
2 because I had my guy remove your vinyl.

3 And so when he said that, then I
4 had my vinyl guy, the contractor, remove it, and
5 I said to John Etters, There's no way possible
6 you removed the vinyl, but you shouldn't have
7 done it; I wanted to be there with you when you
8 did it.

9 Q. So this was in 2018?

10 A. No. That was -- John Etters was to my
11 house several times.

12 Q. No, I'm saying you said this was in the
13 last year these photographs were taken?

14 A. Yeah. Some of them were -- I took them
15 again this year. I took some last year, uh-huh.

16 Q. All right. Well --

17 A. And I took some --

18 Q. You didn't take photographs of vinyl
19 that you say Centex might have looked under
20 because they didn't leave it open.

21 A. No.

22 Q. These are all from your contractor,
23 right?

24 A. These were all, yeah, because my
25 contractor -- I had -- according to the engineer,

1 he would suggest -- he suggested, I think you
2 should take your vinyl off your house, and you
3 will see the real problem on what's going on
4 underneath that vinyl, and that's why I did it.

5 Q. So the engineer who did this Exhibit
6 10 --

7 A. Uh-huh.

8 Q. -- told you that you needed to have
9 somebody look underneath the vinyl?

10 A. Yeah, to see -- because he -- according
11 to what he's found that the windows were not
12 wrapped properly, the flashings were not
13 installed properly and were missing, you're going
14 to have some other issues under. I'm not an
15 expert, so I wouldn't know to ever take my vinyl
16 off of my house.

17 Q. But regardless, you got this inspection
18 report from your insurance company --

19 A. Right.

20 Q. -- that's marked **Exhibit 10**. And then,
21 after that, you had a vinyl contractor remove
22 portions of the vinyl, and that's when you took
23 these photographs that are marked **Exhibit 11**. Is
24 that correct?

25 A. I did that --

1 MR. KALIVAS: You have to let him
2 finish his questions.

3 THE WITNESS: Oh, okay. I'm so
4 sorry.

5 Q. No problem. Is that correct?

6 A. No. You missed a step.

7 Q. What was the step?

8 A. Because Centex came out and claimed they
9 removed the vinyl.

10 Q. But I'm asking you, these photographs
11 are only of -- were only taken when you were
12 there, which was when your man was removing the
13 vinyl. Agreed?

14 A. Right, yes, agreed.

15 Q. So all these photographs were taken --
16 that are shown in Exhibit 11 were taken after the
17 report, which is Exhibit 10, correct?

18 A. Yes.

19 (Exhibit No. 12 was marked for
20 identification.)

21 Q. I'll hand you what I've marked as
22 Exhibit 12. Let's turn to the third page of
23 that, please. That's from -- you're sending an
24 e-mail to John Etters on September 6, 2016. Do
25 you see that at the top?

1 A. Yes.

2 Q. Then you are talking about the
3 complaints, the vinyl and the roofing and the
4 flashing, the fireplace, windows, and walls, and
5 you say, This is very stressful and mentally
6 debilitating that your company has caused my
7 family and I to endure for years, and now no
8 urgency at all.

9 So, there again, you're saying that
10 you've made those complaints to Centex, and you
11 had complained but nothing happened, and that had
12 been going on for years. Agreed?

13 A. Yes. And Centex promised to address the
14 issues. There was no urgency. We're coming,
15 Ms. Brown. We're coming.

16 (Exhibit No. 13 was marked for
17 identification.)

18 Q. I'm going to ask you some questions
19 about your interrogatory responses which I'm
20 handing you and which I have marked as Exhibit
21 13.

22 At the very -- on the third page of
23 this exhibit -- at the bottom it says page 2 of
24 15 -- do you see that, Ms. Brown?

25 A. Okay.

1 Q. All right. At the very bottom, it says
2 Victor Morris. This witness was referred to
3 plaintiff by Tony Manetti and performed the
4 inspection of the vinyl of plaintiff's home.
5 When did that occur?

6 A. I want to say -- that had to have been I
7 want to say either last year or the year before
8 when Victor came out.

9 Q. That would have been after the
10 engineer's report, which is Exhibit 10?

11 A. Yes.

12 Q. On the next page, it says One Stop Home
13 Inspector. I think we've talked about that.
14 That's the one who did the report you provided to
15 Centex in 2009?

16 A. Yes.

17 Q. Do you remember that fellow's name?

18 A. No.

19 Q. Was he from Charleston?

20 A. Yeah, he was from Charleston. I don't
21 remember his name.

22 Q. Is he still in business? Do you know?

23 A. I don't know. Every time I try to look
24 the company up, I can't find it.

25 Q. Let's turn to page 7 of 15 at the

1 bottom, please. All right. This is
2 interrogatory 11, and it asks you to identify any
3 repairs or improvements that have been made to
4 your house.

5 And on the next page, page 8 of 15,
6 the last one under that question says, Replaced
7 the air handler and HVAC unit in 2014. Plaintiff
8 was advised that the air handler, which was
9 located in the attic, was damaged due to water
10 leaking through the roof. Was that -- and the
11 water leakage through the roof is something that
12 you're -- was that a normal occurrence?

13 A. What, the water leakage? That HVAC is
14 in the attic, and I don't go in the attic.

15 Q. Right. But you were told that the HVAC
16 had been damaged through a roof leak.

17 A. Yeah. He's saying the -- it's been
18 leaking.

19 Q. Right.

20 A. And he saw water, and that was his
21 opinion.

22 Q. Right.

23 A. Right, that was his opinion.

24 Q. Right.

25 A. And that's what he said. And he also

1 said that it was installed incorrectly as well
2 because paper was in it, and it was catching on
3 fire.

4 Q. And that was in 2014?

5 A. I think that was in 2014, but I can
6 contact him and get the exact time he came up.

7 Q. That's North Area Repair Service?

8 A. Yes.

9 Q. How much did you have to pay to have
10 that unit replaced?

11 A. I want to say over 3,000. I think over
12 3,000. I can't recall exact amount.

13 Q. Did you get the roof fixed?

14 A. If I got the roof fixed?

15 Q. Yeah.

16 A. No, because any time I tried to tell
17 them I would want to repair anything, Centex
18 always would say, Do not do anything -- because I
19 volunteered to repair all of these damages.
20 Centex would say, If you do it, we will not
21 continue to help you salvage these problems.

22 So every time I would ask them, Can
23 I go and do this and do that, they would say no.

24 Q. So Centex -- when you replaced this HVAC
25 unit in 2014, you called Centex --

1 A. Not about --

2 Q. -- and explained about --

3 A. No, no. Any time I called Centex and
4 talked about, Let me go and repair all the
5 windows; let me go and repair the roof; let me go
6 and do anything, any problem I have, Centex would
7 always say, If you touch it, it's going to void
8 anything, and we're not going to do anything else
9 for you.

10 Q. And that's from day one?

11 A. Yeah.

12 Q. Okay.

13 A. They always told me. They always told
14 me that if you touch anything in your house on
15 your own, we will not continue to do anything for
16 you.

17 Q. Well, you're telling me here today that
18 Centex told -- they never did anything for you
19 anyway --

20 A. No.

21 Q. -- since 2009?

22 A. I didn't tell you that. I didn't tell
23 you Centex didn't do anything for me. I told you
24 that Centex came out, and Centex claimed they
25 cured the problem.

1 Q. In 2009?

2 A. They said they cured the problem.

3 Q. Right. But since then, it continued to
4 have leaks and have problems. We've been through
5 this time and time again, Ms. Brown.

6 A. Right.

7 Q. And it was never fixed. Centex told you
8 it had been fixed in 2009, but it wasn't, and you
9 knew it wasn't.

10 A. And Centex kept saying --

11 MR. KALIVAS: Let him finish the
12 question.

13 THE WITNESS: Oh, go ahead. Sorry,
14 go ahead.

15 Q. It wasn't, and you knew it wasn't,
16 but -- and then you never made any of the
17 repairs, even though you knew that Centex wasn't
18 going to make repairs like they promised?

19 A. No. Centex never said they weren't
20 going to make the repairs.

21 Q. But they never did?

22 A. Jean -- she wanted reports to prove that
23 I was complaining about the problem. And then
24 when she got the report, she said, Oh, we're
25 going to have somebody come out. People have

1 come out to my house after 2009. They have. So
2 she's telling me --

3 Q. But nothing ever happened?

4 A. They're saying, there is no issue. So
5 they will come in, Oh, Ms. Brown, this and that;
6 we're going to send this person back. We're
7 going to send -- okay. They will come out, and
8 they keep saying they're coming out. And they
9 will come out. But saying they didn't fix
10 anything? They keep coming out. We're going to
11 send this guy out. We're going to send this guy
12 out, this guy. I had so many contractors to my
13 house that I can't even name them all.

14 Q. Well, let me ask you this: If in 2014
15 you're told that the HVAC unit was installed
16 incorrectly and had been damaged because of roof
17 leaks, and you're telling me that Centex told you
18 never to fix anything and that you never did
19 because that's what Centex told you, then why did
20 you replace the HVAC unit?

21 A. I have to replace the HVAC because we
22 have to live in the house. That comes with heat
23 and air. We have to replace that. Okay? I had
24 to replace the HVAC. I couldn't live in the
25 house with no heat and no air.

1 Q. Well, if Centex told you not to make
2 repairs and then they never made any repairs --

3 A. Well, the HVAC --

4 Q. Let me finish.

5 A. Okay. Go ahead.

6 Q. If, from day one, Centex told you not to
7 make repairs, according to your testimony, and
8 the last time they made repairs was in 2009, they
9 told you not to make repairs, and every time you
10 called them, they wouldn't come out and make
11 repairs; they'd make promises and never do
12 anything. After you did that once or twice,
13 you'd realize that they weren't going to make
14 repairs, and you would have to make them yourself
15 as the homeowner. Isn't that common sense?

16 A. No. That's not common sense because the
17 HVAC system is not covered under warranty. It's
18 not covered under the warranty at that point.

19 Q. Well, how long is the leakage warranty
20 coverage?

21 A. Well, it's the structure of the house.

22 Q. No.

23 A. They didn't build -- no. They didn't
24 build it right. They did not build the roof --
25 they did not install the roof correctly. You and

1 I both know that. Because if they installed it
2 correctly, sir, we wouldn't have this issue. I
3 wouldn't be here with you today.

4 Q. You wouldn't have had to replace that
5 unit in 2014, correct?

6 A. But the unit is not -- hey, the unit is
7 not a part of the warranty. It tells me that in
8 the warranty.

9 Q. Okay.

10 A. The HVAC unit was not -- in 2014, the
11 HVAC unit, yeah, if I have problems in the
12 beginning with the HVAC, which I did and I told
13 you, when they installed something incorrectly on
14 the HVAC.

15 But as of replacing it because it's
16 broken, I have to replace it. I have to live.
17 My son has to be comfortable, and I have to be
18 comfortable. And they were not going to replace
19 that HVAC system, and you and I both know that.
20 But I can't wait on them to say, okay --

21 Q. Well, but let's talk about the warranty.
22 You got a two-year warranty that's a workmanship
23 warranty. Agreed?

24 A. Yea.

25 Q. There's a ten-year structural warranty,

1 right?

2 A. Okay.

3 Q. Correct?

4 A. Right.

5 Q. Okay. And the structural -- ten-year
6 structural warranty ran out ten years after you
7 bought that so it was in 2015, November 2015,
8 correct?

9 A. It should have, yes.

10 Q. So you knew that the house was out of
11 warranty for anything at that point. Why didn't
12 you make -- why didn't you make these repairs?

13 A. The house was out of warranty at that
14 point because I've already made my claims before
15 it was out. I made several claims with Centex
16 before the warranty was out.

17 Q. But they told you the warranty had
18 expired, and they weren't going to do anything
19 for you?

20 A. No, they never said the warranty was
21 expired; they're never going to do anything.
22 They did not say that.

23 Ms. Brown, we will address the
24 issues. Ms. Brown, we're coming. Ms. Brown,
25 we're coming. Because the issues didn't change.

1 They kept promising me they were coming. And
2 they did come out, but they never cured the
3 issue. And it's obvious they didn't cure the
4 issues. It's sitting right there in black and
5 white. Because I placed a claim before the
6 warranty even expired several times.

7 Q. Let's turn to page 9 of 15 of your
8 interrogatory answers, the very bottom of it. 9
9 of 15, the very last one. And this is in
10 response to a question asking you for any defect
11 that you're claiming in this suit.

12 And it says, Improper installation
13 of roof, to include shingles and flashing,
14 resulting in damage to the sheathing and the
15 attic. Plaintiff first noticed dry rot in the
16 attic in 2013 but did not become aware of the
17 relation to the roof until 2015.

18 So you saw rot in the attic. What
19 did you think caused it? If it's right under the
20 roof and you see dry rot, what did you think
21 caused it?

22 A. Well, it's not under the roof. It was
23 in a crease in a corner. Water.

24 Q. Okay. That's not normal, is it?

25 A. I mean, it's not normal, but Centex

1 always said they were going to come out to do it.
2 Centex sent someone out to my house prior to
3 this -- after this.

4 And, Ms. Brown, we're going to get
5 back with you. Ms. Brown, we're going to get
6 back with you. And that's what they said. I
7 would always ask, always ask, Can I go and do
8 this? Can I go and do this? Nope, nope.

9 Ms. Brown, if you do that, we're never going to
10 fix it. They always threatened me, We will never
11 come back and do anything if you do it yourself.
12 And I have asked that several times.

13 Q. Is there any documentation of that?

14 A. Documentation of what?

15 Q. Centex telling you not to make any
16 repairs.

17 A. Oh, you can look in there.

18 Q. Right, I don't see it.

19 A. You see John Etters telling me I
20 volunteered with him several times: Can I do the
21 repairs and then give you guys the bill, and he
22 says no.

23 Q. That was just once, wasn't it?

24 A. He told me no.

25 Q. One time, there's an e-mail where he was

1 coming out to make an inspection -- let me
2 finish.

3 A. Go ahead.

4 Q. Where he came out in 2016 and says, I
5 will come out and make an inspection, and you
6 said, Can I just fix these on my own, and he
7 said, No, you can't -- if you fix them before we
8 inspect, then there's nothing for us to see, no
9 deficiencies for us to observe; don't make the
10 repairs before we inspect. That's the only time
11 that there's anything in writing where Centex
12 tells you not to make repairs; isn't that
13 correct?

14 A. In the writing with John Etters.

15 Q. Right.

16 A. Because John Etters is new. When he
17 came to my house, I said, John, I don't remember
18 you. And he said, Yeah, I'm pretty new to the
19 company. I said, I've spoken to several guys
20 that came to my house prior to you, and where are
21 they? Why can't I speak to them? And he was new
22 to me. And I started e-mailing John Etters, yes,
23 I did.

24 Q. My question is, though, with Mr. Etters,
25 it was -- he was coming out to make an

1 inspection. You said, Why -- do you want me to
2 go ahead and have these items repaired before you
3 inspect, and he said, No.

4 A. No, not before you inspect, no. I
5 asked, not before you inspect, because I wouldn't
6 ask him to repair an item before he inspected it
7 because he won't see the proof.

8 John Etters came out to my house,
9 and John Etters said this, and I quote him.
10 Ms. Brown, I'm going to come out to your house.
11 I'm going to inspect your house, and then we're
12 going to get back to you later on, and that's
13 what he said.

14 And I kept calling John Etters and
15 calling John Etters. Okay? So, no, I didn't say
16 for me to fix the house, and he wouldn't have
17 anything to inspect. No, that was not my
18 comment. Because what you're saying now is that,
19 I want to fix the house before he could inspect
20 it, and that wasn't -- that's not how that
21 conversation went.

22 Q. Okay.

23 A. To stop the back and forth of it, I
24 wanted to, okay, if I fix it and give you guys
25 the bill, will you refund me? And he said, We're

1 not going to do that.

2 (Exhibit No. 14 was marked for
3 identification.)

4 Q. I'm going to hand you Exhibit 14.

5 All right. This is an e-mail from
6 you to Teyi Lawson and John Etters, May 16 of
7 this year, correct?

8 A. Correct.

9 Q. Centex had made an offer to come out and
10 make repairs, and you said -- you refused those
11 repairs. Agreed?

12 A. Centex made an offer to make repairs,
13 and I refused?

14 Q. Isn't that correct, just yes or no?

15 A. No, I didn't disagree for Centex to come
16 out to my house and make repairs. I disagreed in
17 what they changed the agreement on, the verbal
18 agreement on.

19 When they changed it, I disagreed
20 because they tried -- they agreed to do one
21 thing; then they changed their mind and says,
22 we're going to do something else when he sent me
23 the e-mail. So that's what -- that's what I
24 said, You can't partially fix this.

25 Q. Let's look at the third paragraph, the

1 second sentence. It says, I spent over thousands
2 of dollars a year trying to keep us out of harm's
3 way and stress of dealing [sic] Centex/Pulte for
4 years.

5 So what that -- tell me what
6 thousands of dollars per year --

7 A. The thousands of dollars I spent every
8 year?

9 Q. Yes.

10 A. Okay. My light bill increased every
11 year. I used to pay in the beginning for my
12 light bill maybe 2, \$300 in the summertime. In
13 the wintertime, I like the cold, so maybe that
14 would have been a hundred and something, close to
15 200. My light bill skyrocketed for several years
16 to 5 --

17 Q. When? For what years?

18 A. Several.

19 Q. What years?

20 A. Several -- I noticed a big -- when I
21 noticed -- I'm like why is my light bill
22 increasing because I called SCE&G out to my house
23 several times, thinking, oh, they're reading the
24 meter wrong. So when I'm referencing that, my
25 light bill has skyrocketed to 450, \$600 in the

1 summertime, and that's what I'm referencing.

2 I have to constantly pay these
3 light bills. Something is wrong. So if you're
4 going to partially repair my house -- we need to
5 cure the issue. Because when --

6 Q. Well, okay.

7 A. These dry rots that I see, sir -- can I
8 speak?

9 These dry rots that I see in my
10 house, it has to be pertaining to my light bill.
11 You know why? Because if I have dry rot in my
12 walls, there is no insulation. So if there is no
13 insulation, it takes longer to heat, longer to
14 cool off my house because it's coming in. The
15 outdoors is coming in.

16 So there's no insulation, so I'm
17 spending money over and over and over, thinking,
18 Oh, it's -- it is SCE&G, their rates. No. It's
19 no insulation. So I'm spending thousands of
20 dollars trying to keep my house heated so we
21 can live comfortably.

22 Q. I thought you replaced the HVAC unit in
23 2014?

24 A. It's nothing about that. But it's
25 nothing about the HVAC unit. If you don't have

1 the right insulation, sir, in the walls --

2 Q. So that's been since day one? The
3 insulation hasn't changed, has it?

4 A. No. The insulation -- I mean, if it's
5 dry rotted at this point, there is none. If it's
6 dry rotted in the walls, sir, they don't work.

7 I don't know that. I wasn't the
8 expert to know the insulation didn't work. I
9 didn't know that. But when I started seeing the
10 spike in my bill and when I started feeling,
11 feeling, I'm sitting in my kitchen, and I cannot
12 sit down because the cold air is coming in, and
13 I'm thinking -- because I'm the shortest one in
14 the house -- my husband is six-six. You-all
15 don't feel this? And we feeled it.

16 So when I'm noticing my bill is
17 spiking, and I'm calling SCE&G, SCE&G, can you
18 check the meter? I think something is wrong with
19 the meter. But lo and behold, it's this, sir, in
20 your exhibit. This is in your exhibit when
21 things are dry rot.

22 Q. Just answer the question. My question
23 is -- so your answer, the thousands of dollars,
24 you're saying, in 2016 that you've been spending
25 for years is increased electricity bills; that's

1 it?

2 A. It's increased electricity bill. It's a
3 lot. It's thousands.

4 Q. And you have determined that that's
5 caused from a lack of insulation in the walls?

6 A. I determined, and it's my opinion, and
7 it's expert opinions as well, when water gets
8 into your wall -- in my kitchen, sir, the wall is
9 dry rotted, and you've seen it in your pictures.

10 So if the wall inside -- after the
11 vinyl has been removed, I did not know --
12 insulation doesn't work. So if the wall is dry
13 rotted, insulation is wet, according to the
14 expert, I'm not the expert, your insulation --
15 there is nothing protecting you from the heat and
16 the cold air, and that's what made my bills high,
17 and that's what I was referencing.

18 And it's still not completed. It's
19 getting worse day by day.

20 MR. KALIVAS: Can we take five?

21 MR. HILDEBRAND: Absolutely.

22 (A recess was taken.)

23 Q. (MR. HILDEBRAND) As of the time that
24 you answered your interrogatories, you said that
25 you've not gotten any repair estimates. Is that

1 still correct, Ms. Brown?

2 A. A repair estimate based on the question?
3 I didn't have any at that point, no. I just
4 received one.

5 Q. Received one when?

6 A. Two days ago.

7 Q. Do you have that?

8 A. It's in my e-mail.

9 MR. KALIVAS: She e-mailed me a
10 copy of it this morning. I can send it to you.
11 I mean, I don't know if that's the -- is what you
12 sent me --

13 THE WITNESS: Let me see. I don't
14 think so.

15 MR. HILDEBRAND: Do you want to
16 e-mail that to me, and I can have it printed?

17 MR. KALIVAS: Yeah. Is that what
18 it was, just that forwarded e-mail, Monica?

19 THE WITNESS: Let me check. I'm
20 trying to figure it out. Yeah, that's only one
21 of them.

22 MR. HILDEBRAND: How many repair
23 estimates are there?

24 THE WITNESS: Well, I'm just
25 waiting on someone else to respond on a different

1 estimate for the fireplace area.

2 MR. KALIVAS: Is this the whole
3 document, or is there an attachment that didn't
4 get sent? I just want to make sure.

5 THE WITNESS: No, that's the whole
6 document because all I did was touch it.

7 Yeah, for the fireplace area.

8 (Off-the-record discussion.)

9 Q. (MR. HILDEBRAND) Are there any other
10 estimates, Ms. Brown?

11 A. No, I don't have one.

12 Q. Are there any other reports from experts
13 or consultants or anything?

14 A. No.

15 (A recess was taken.)

16 (Exhibit No. 15 was marked for
17 identification.)

18 (Exhibit No. 16 was marked for
19 identification.)

20 Q. (MR. HILDEBRAND) I'm going to hand you
21 what I've marked as Exhibits 15 and 16, which are
22 an e-mail and the repair estimate that I just got
23 from you. And it looks like this is a repair
24 estimate that you got today?

25 A. I received it in my e-mail I want to

1 say --

2 Q. December 11?

3 A. Yeah. And I totally kind of -- oh, I
4 forgot to give Will this, yeah.

5 Because I received this on I want
6 to say -- was it Tuesday? I think it was Tuesday
7 he sent it because I kept calling him for it, and
8 he was like, I sent it in your e-mail, and I was
9 like, Oh, okay, and then I looked for it.

10 Q. Who is Peter Martin?

11 A. He's a contractor.

12 Q. How did you come to contact him?

13 A. Through Tony Manetti that used to live
14 here. He's a contractor as well.

15 Q. Where is he now?

16 A. Who? Tony? He moved out of -- he
17 moved, I think, to Virginia, I'm thinking. He no
18 longer lives here in Charleston, and that was
19 just as of recently because I called him.

20 Q. And you said there's another estimate
21 that you requested or another --

22 A. Oh, yeah, for the fireplace area, I
23 requested that. My husband requested that,
24 actually.

25 Q. All right. And who did you request that

1 of?

2 A. Oh. I mean, I don't know who he
3 requested it of, but he's working on the
4 fireplace estimate.

5 Q. Why is he doing that, and you're doing
6 the rest of it?

7 A. Because I noticed it wasn't done. I
8 didn't address -- I say, Oh, the fireplace, and
9 my husband said, I'll do that; you're too busy.
10 And I said, Okay.

11 Q. So you noticed on the Santee Carolina
12 Construction that the fireplace was not included?

13 A. Oh, no -- yeah, because I don't
14 understand, and maybe he's including it, but I
15 need fireplace -- I don't see the word fireplace
16 on here. And I mentioned it to him when I didn't
17 notice it, and I just told my husband, I said,
18 You can get the fireplace estimate.

19 So maybe he's going to come up with
20 an estimate for the fireplace, but my husband is
21 working on it. And I also notified him I didn't
22 see the fireplace.

23 Q. All right. So Exhibit 16 is a repair
24 estimate from Santee Carolina Construction, and
25 that's from Peter Martin.

1 A. Yes.

2 Q. Have you met with Mr. Martin?

3 A. Oh, he's come out to the house.

4 Q. Have you met with him?

5 A. Oh, yes.

6 Q. How many times?

7 A. He's been out to the house, what, maybe
8 twice. Twice he's been out to the house.

9 Q. And when was that?

10 A. That was -- did he come out last week?
11 I'm thinking he came out to the house last week,
12 and then he came out to the house maybe three,
13 four weeks ago, but I know he was under the
14 weather.

15 Q. When he came out three or four weeks
16 ago, how long was he there?

17 A. He was there for quite some time. I
18 would say a couple hours, several hours.

19 Q. Were you there the whole time?

20 A. No. My husband was there.

21 Q. Were you there at all?

22 A. Who, me? Yes, I was there for a long
23 time. I think I was there for -- over an hour I
24 was there, and I said, Oh, I have to leave
25 because I had an appointment.

1 Q. And then he came out last week?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes.

5 Q. And how long was he there then?

6 A. Oh, he was there for I want to say about
7 two, two-and-a-half, three hours.

8 Q. And what was he doing while he was
9 there?

10 A. He was going -- he had another expert
11 with him, and he was just going through all of
12 the areas again to make sure he didn't miss
13 anything he said.

14 Q. When you said he had another expert, is
15 that somebody who worked with him?

16 A. Yeah, somebody who works with him.

17 Q. So how did he come up with the scope of
18 repairs that's shown on Exhibit 16?

19 A. He's the contractor. I mean, he
20 reviewed it. He inspected every -- you know, all
21 these things in the house.

22 Q. But how did he know what the claimed
23 defects were?

24 A. Basically, I told him what the problem
25 is, and he --

1 Q. Did you give him any materials?

2 A. He asked for a copy of the report, and
3 he got a copy of the report.

4 Q. The engineer's report, we're talking
5 about, **Exhibit 10**?

6 A. Yeah, he got that --

7 Q. Did he get anything else?

8 A. -- after the fact.

9 No.

10 Q. You say he got the engineer's report
11 after he did his estimate?

12 A. After he came back -- he came out the
13 first time, and he didn't have the engineer
14 report. And when he came out again, then he had
15 the engineer report about that time.

16 Because he came out before
17 Thanksgiving -- that's how it was. He came out
18 before Thanksgiving, and then he asked, Have you
19 had any reports of these damages so I can verify
20 and I -- you know, so I don't miss anything, and
21 I just told him, I have an engineer report.

22 Q. So he came out once, spent a couple
23 hours without any reports. Then he got the
24 **Exhibit 10** engineering report and then came out
25 for several more hours and generated **Exhibit 16**;

1 is that correct?

2 A. Yes.

3 Q. You said that you didn't think that
4 Exhibit 16 included fireplace repairs. Did you
5 ask Mr. Martin whether it does or not?

6 A. I just -- I told him, I said, I don't
7 see the fireplace in there. And he said, I'll
8 review it again; maybe I missed something. But
9 that was -- it was too late for me to give it to
10 Will, but he's going get back with me. He said
11 he's going to get back with me. He'll review it
12 again to make sure he didn't miss anything.

13 But verbiage-wise, it could be in
14 there, and he just doesn't use the word
15 fireplace, but he hasn't gotten back to me yet.

16 Q. But if he hasn't gotten back to you, why
17 did your husband ask for a separate estimate for
18 the fireplace repairs when it may already be
19 included in this?

20 A. Because that's what my husband is going
21 to do. He's going to get another estimate.

22 Q. Is he going to get another estimate for
23 all the repairs or just the fireplace?

24 A. He's going to get an estimate for the
25 fireplace, he said. And I told him Peter said he

1 was going to review it again, but my husband said
2 he's going to get one as well because I'm too
3 busy to follow up with it.

4 Q. Other than the communications in your
5 e-mails, Mrs. Brown, where you said that, Unless
6 something is done, I'm going to contact a lawyer,
7 have you -- have there been any other threats to
8 Centex of litigation that you've made?

9 A. Not that I can recall.

10 Q. So you haven't said, Do this, or I'm
11 going to sue you, and Centex said, Well, don't
12 sue us, or anything like that?

13 A. I spoke to one of the gentlemen before
14 when -- I think it was a gentleman that came to
15 my house in 2015 from Hilton Head.

16 I called corporate. And when I
17 called corporate, they had a, I don't know, he's
18 the VP of the southeastern region. And he and I
19 spoke. And I told him, I said, you know, We're
20 going around in a circle. And he says, No, we're
21 going to try to fix this for you, Ms. Brown.

22 I said, Because we shouldn't have
23 to go and hire an attorney and do things like
24 that. I said, I just need you guys to do the
25 right thing. And he said, Ms. Brown, I assure

1 you, we're going to do the right thing.

2 And he was the VP of the
3 southeastern region. I can't remember his name.
4 And we had a conversation over the phone after I
5 had contacted corporate. And he said, Monica,
6 we're going to do our best to make sure
7 everything is correct. I will have someone else
8 come out again.

9 And that's when it started. But,
10 no, I mean, he and I had a conversation and I
11 said to him, I shouldn't have to go and hire an
12 attorney; we just need to do the right thing.
13 And he agreed, You're right; you shouldn't. And
14 I'll have somebody to come out there.

15 Q. That was in -- when in 2015 was that?

16 A. That was -- actually, that was in 2015
17 and again in 2016 and again in -- and again
18 recently in 2018, because that's when the other
19 gentleman came out with him because he said he
20 was going to send another gentleman, not John
21 Etters, I saw his name somewhere, Trey, and
22 that's when Trey came out.

23 Trey came out, and I guess he is
24 someone of a position, some kind of relations --
25 has some kind of relation position. He came out

1 as well. But then the gentleman from Hilton Head
2 that was the head of warranty, he came out. He
3 took pictures as well. And I've been trying to
4 call him as well. And when I could not find him
5 and he couldn't return my calls, that's when I
6 started calling corporate.

7 Q. So the correspondence goes -- the
8 e-mails go back to 2013, where you said you were
9 going to hire a lawyer.

10 A. And that's -- yeah, and I said that.
11 But she also said that, Somebody is going to come
12 out. They would always tell me, We're coming
13 out, Ms. Brown. We're coming out. We're going
14 to handle it. We're going to handle it,
15 Ms. Brown. If you touch any of those item,
16 Ms. Brown, it's going to void your warranty,
17 Ms. Brown. I got that every time.

18 Q. So that -- from day one, you've been
19 told that?

20 A. Yeah, I've always -- they always told me
21 that.

22 Q. And they've said, Just don't make the
23 repairs, we're going to make them, and you don't
24 need to file suit, and don't worry about it?

25 A. I mean, no. I didn't threaten them day

1 one to file suit. I did not. I'm holding them
2 to their word. We're coming, and they came.
3 They said they'd cure this.

4 But when you're having these issues
5 here that, Whoa, I didn't even know about some of
6 these issues. I didn't know the flashings were
7 missing. I didn't know it wasn't the -- the
8 windows wasn't wrapped properly. I didn't know
9 none of those because I'm not the expert.

10 Q. Well, we've already talked about
11 those --

12 A. Right. And you're asking me --

13 Q. -- ad nauseam. What I'm saying is that
14 you knew about these problems. You've said that
15 they were never fixed by Centex, at least from
16 day one and certainly from 2009, the last time
17 that they made repairs. And you're telling me
18 that you would always tell them, Make these
19 repairs, or I'm going to have to file suit, and
20 they --

21 A. No, I didn't always tell them that. I
22 didn't always tell them that because I --

23 Q. When did you start with that?

24 A. I can't tell you.

25 Q. It was at least 2013.

1 A. I can't tell you when I started that.
2 But they always promised, Ms. Brown, we're going
3 to make it right. Ms. Brown, we're going to do
4 this. And people would come out to my house.

5 And they would say, We will get
6 back to you. We have to wait on this set of
7 people. We have to wait on this.

8 So you're saying in 2009, you asked
9 me a question if I --

10 Q. Okay. Well, let's --

11 A. -- threatened. I spoke to the VP of the
12 company, and the VP of the southeastern region
13 said, Ms. Brown, we're going to make it right.

14 Q. Well, let's talk about 2013.

15 A. Okay.

16 Q. Because we have the e-mail we looked at
17 earlier. You said, I'm going to hire a lawyer in
18 2013.

19 A. If you guys -- right. But they came
20 out.

21 Q. Stop. In 2013, and you said, I'm going
22 to hire a lawyer if this isn't done, and you're
23 telling me that they said, Don't hire a lawyer;
24 we're going to fix it, and then you waited five
25 years before you filed suit?

1 A. Sir, I'm giving them a chance to do it.
2 I filed suit.

3 Q. Five years?

4 A. I filed suit. Why did I file suit? You
5 want to know why?

6 Q. Yeah.

7 A. Because, based on the report, you didn't
8 install my house properly when you had me
9 thinking that, Oh, Ms. Brown, we've already cured
10 the issue, but you didn't cure the issue. You
11 did never cure the issue. I'm thinking you cured
12 it, and the report says something different.

13 So if you built my house, sir, the
14 flashing should be on it. All of that should be
15 on it. The windows -- I'm not the expert. I am
16 not the expert.

17 They kept telling me, Ms. Brown,
18 we're going to do this. We're going to do this.
19 We did this. We did this. You should never have
20 any more leaks, Ms. Brown. You shouldn't have
21 this because we have cured the issue. And that's
22 the fact.

23 When you're telling me something,
24 because I'm not the expert, but when you see all
25 of this when you're finding it out, seeing these

1 for the first time, that means clear there, you
2 never cured it.

3 Things were missing on the house
4 that you claim you installed. So if that's the
5 answer you're looking for, I'm giving the facts,
6 because I'm not aware -- I was never aware that
7 they didn't install these things.

8 They told us day one, Oh, we -- oh,
9 we missed the flashing. They came out and did
10 the flashing. The house don't have any
11 flashings. They don't have any.

12 Q. They never fixed it?

13 A. They said they fixed it.

14 Q. But you didn't believe them --

15 A. What?

16 Q. -- because you knew the house continued
17 to leak. You've already told me that.

18 A. But you're still missing what I'm
19 saying. If they said they installed the flashing
20 on it, I don't even know how it looks. I don't
21 know how the flashing looks, sir.

22 Q. All right.

23 A. I mean, you're sitting here asking me
24 that. I don't know how one looks. I'm not a
25 contractor.

1 Q. No, but you're a homeowner, and you know
2 when your house is leaking, like you said, from
3 day one, and it never got fixed.

4 A. Sir, but I'm not a contractor to tell
5 you right now how a flashing looks. I'm not a
6 contractor to tell you --

7 Q. All you know is that your house leaked,
8 and it wasn't fixed.

9 A. Right. And Centex said they cured it,
10 and Centex said they're going to come back --

11 Q. But you know they didn't.

12 (Interruption.)

13 A. The bottom line here, sir, is, Centex
14 promised they were going to cure the issue when I
15 contacted them. They took their slow time coming
16 out. And, as a homeowner, I can call them and
17 talk to them on the phone. I can call them.

18 Why are you not coming? Oh, we're
19 coming, Ms. Brown. We're coming. We're coming.
20 And when I get involved, oh, they send this
21 person here. Let me take pictures. Let me do
22 this. Let me do this. Yes, several people has
23 been out to my house since 2009. And my house
24 was under warranty.

25 Q. When in 2015 did you become aware of the

1 specific causes of the problems?

2 A. Sir, I can't tell you that. I can't
3 tell you exact date.

4 Q. Well, give me an approximation.

5 A. I can't. I have to sit down and think
6 about it.

7 Q. What did you learn in 2015 that made you
8 realize that -- that made you understand what the
9 actual causes of the water intrusion were and the
10 issues that you --

11 A. 2015 or 2016?

12 Q. '15.

13 A. I don't know. I mean, the report, when
14 I read the report, it told me I had missed
15 things. And this report is in 2016.

16 Q. Right. What did you learn in 2015?

17 A. About?

18 Q. What the actual construction defects
19 were that caused the problems.

20 A. I don't recall learning that in 2016 --
21 I mean, '15.

22 Q. That's what you say in your discovery
23 responses.

24 A. The water came into the house when we
25 had the storm. The report is dated 2016.

1 MR. KALIVAS: Can we go off the
2 record real quick? I might be able to explain
3 this. It appears -- if you're saying, from the
4 report -- the investigation was done, I guess, in
5 2015. The report was produced in 2016.

6 THE WITNESS: Right.

7 MR. KALIVAS: That might be what --
8 is that what you're --

9 THE WITNESS: Yeah, that's what I'm
10 talking about.

11 MR. HILDEBRAND: All right. I
12 think that's all I have. Thank you.

13 (The deposition was concluded at
14 12:42 p.m.)

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

3 I, Teri L. Kennelly, Registered
4 Professional Reporter, do hereby certify that the
5 witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole
7 truth and nothing but the truth in the
8 within-entitled cause; that said deposition was
9 taken at the time and location therein stated;
10 that the testimony of the witness and all
11 objections made at the time of the examination
12 were recorded stenographically by me and were
13 thereafter transcribed by computer-aided
14 transcription; that the foregoing is a full,
15 complete and true record of the testimony of the
16 witness and of all objections made at the time of
17 the examination; and that the witness was given
18 an opportunity to read and correct said
19 deposition and to subscribe the same.

20 Should the signature of the witness
21 not be affixed to the deposition, the witness
22 shall not have availed himself/herself of the
23 opportunity to sign or the signature has been
24 waived.

25 I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, this 2nd day of
January, 2019, at Charleston, Charleston County,
South Carolina.

Teri L. Kennelly
NCRA REGISTERED PROFESSIONAL REPORTER

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

**CENTEX REAL ESTATE COMPANY,
LLC'S AND CENTEX HOMES, A
NEVADA GENERAL PARTNERSHIP'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S POST-HEARING
MEMORANDUM AND FACTUAL
SUBMISSIONS**

Defendants, Centex Real Estate Company, LLC and Centex Homes, a Nevada General Partnership, (collectively "Centex"), by and through their undersigned counsel, hereby submits this Memorandum in Opposition to Plaintiff's Post-Hearing Memorandum and Factual Submissions in response to Centex Real Estate Company,

LLC's and Centex Homes, a Nevada Partnership's Memorandum in Support of Motion for Summary Judgment ("Memorandum in Response").

BACKGROUND

1. On March 21, 2019, Centex filed its Motion for Summary Judgment on the grounds that Plaintiff's claims are barred by the statute of limitations and the statute of repose. Centex's Motion was supported by duly filed facts to support its Motion, to include Exhibit A, which contained excerpts from the deposition of Plaintiff and documents that were produced in this case. Both the Motion and Exhibit A were served on Plaintiff and filed with the court.

2. On April 8, 2019, Defendant filed and served a Memorandum in Opposition to Centex's Motion for Summary Judgment along with Exhibits 1 and 2, which are a report by a professional engineer and an email with a Centex employee, respectively.

3. On April 11, 2019, before the start of the hearing, Centex filed and served a Memorandum in Support of its Motion for Summary Judgment but no further facts or exhibits.

4. At the April 11, 2019 hearing on Centex's Motion, Plaintiff's sought to supplement the record with additional evidence *after* the hearing concluded; Centex objected to this request.

5. At 4:50 p.m. on Friday, April 12, the day after the hearing, Plaintiff filed the subject Memorandum in response along with an accompanying Exhibit A, which is a complete transcript of Plaintiff's deposition.

ARGUMENT

I. Plaintiff's Memorandum in Response is an untimely and improper attempt to supplement the record.

Plaintiff's Memorandum in Response is an untimely and improper attempt to supplement the record before the court. Plaintiff was required to file and serve supporting affidavits and/or deposition testimony at least two days before the hearing. See Rule 56(c), SCRCP ("The adverse party may serve opposing affidavits *not later* than two days before the hearing.") (emphasis added). Plaintiff had the burden—and ample time—to introduce evidence of a genuine issue of fact prior to the April 11 hearing. Plaintiff elected not to provide any of her deposition testimony or an affidavit prior to the hearing and may not now supplement the record.

II. Plaintiff's claim for estoppel as to the statute of limitations is patently unfounded.

Plaintiff argues that Centex should be estopped from arguing the statute of limitations because she claims Centex said that prior repairs had been effective or that future repairs would be made. However, as irrefutably established in Centex's Memorandum in Support of its Motion for Summary Judgment, no repairs have been made by Centex since 2009 and the Plaintiff has testified under oath that the problems she is claiming in the lawsuit have occurred since day one and immediately after the 2009 repairs. Suit was not brought until 2018, nine years after the last repairs, so the groundless nature of Plaintiff's estoppel argument is apparent. The three year statute of limitations would have begun and expired not once, but three times during the nine year period from the date that repairs were last made until suit was filed. In addition, as noted in Plaintiff's first Memorandum and acknowledged by Plaintiff's counsel during

oral arguments, an estoppel argument does not apply to nor affect the statute of repose, which has expired.

III. Plaintiff's claims are barred by the statute of repose because the gross negligence exception does not apply.

First, any gross negligence alleged by Plaintiff must relate to the original construction of the building—not any action taken by Centex after the completion of construction.¹ Second, Plaintiff incorrectly claims that Centex's argument, that Plaintiff has not presented a *prima facie* case of gross negligence, is untimely.

A. The gross negligence exception to the statute of repose relates to original construction only.

Plaintiff's assertion that Centex assured her that the problems she complained of had been previously repaired does not relate to grossly negligent conduct in the original construction of the building and thus cannot be used to establish the gross negligence exception to the statute of repose. "The limitations provided for in the [statute of repose] are not available as a defense to a person guilty of fraud, fraud, gross negligence, or recklessness in providing components in furnishing materials, in developing real property, in *performing or furnishing* the design, plans, specifications, surveying, planning, supervision, testing or observation of construction, construction of, or land surveying, in connection with such an improvement, or to a person who conceals any such cause of action." S.C. Code Ann. § 15-3-670 (emphasis added) (outlining all the actions from *original* construction that preclude the use of the statute of repose to bar construction defect claims).

¹ Centex denies any assertion that it was negligent or grossly negligent in any action it took during or after construction of Plaintiff's residence.

Here, Plaintiff has not shown a scintilla of evidence that Centex was grossly negligent in the original construction of the home.

B. Centex's argument that Plaintiff has not shown a *prima facie* case of gross negligence is timely.

In its Motion for Summary Judgment filed on March 21, 2019, Centex moved for summary judgment on the basis that the statute of repose barred Plaintiff's claim. Centex met its burden as movant by providing the court with evidence of the date of substantial completion and that Plaintiff did not file suit until more than 8 years after that date. The burden then shifted to Plaintiff to show why the statute of repose does not bar her claim.

It is elementary that a motion for summary judgment is a motion on the evidence together with any affidavits that are filed in support of the motion—not a motion on the pleadings. *Compare* Rule 56, SCRCP *with* Rule 12(b)(6), SCRCP; *see also Hancock v. Mid-South Management Co.*, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009)(holding that the non-moving party must submit *at least* a mere scintilla of evidence to survive a motion for summary judgment). Yet, in her original and only timely response to Centex's Motion for Summary Judgment, Plaintiff presented *no* evidence to support her position that Centex was grossly negligent. Plaintiff has not even shown any evidence that Centex violated any building code. Plaintiff has failed to meet the bare minimum of showing even a scintilla of evidence, and therefore, Plaintiff's claims are barred by the statute of repose.

CONCLUSION

Based on the foregoing, Plaintiff's claims are barred by the statute of repose and the statute of limitations and therefore, Centex is entitled to summary judgment

pursuant to Rule 56, SCRCP, as to all causes of action asserted by Plaintiff against Centex. As a result, Centex respectfully requests the Court grant Centex's Motion for Summary Judgment.

Respectfully submitted,

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and Centex Homes, a Nevada General
Partnership,

April 15, 2019

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies, pursuant to Rule 210, SCACR, that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material or matters which were not presented to the lower court. The undersigned also certifies that this Record on Appeal complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully Submitted,

SMITH | CLOSSER | WHEELER, P.A.



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December 23, 2020
Charleston, South Carolina
18-198