

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

RECEIVED

Aug 20 2021

Appeal from Beaufort County
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

SC Court of Appeals

Case No. 2019-CP-07-00223
Appellate Case No. 2020-001659

Tracey Lee Lunenburg,

Respondent,

v.

Vincent J. Aiello, Jr.,
Atlantic Heritage Builders, Inc.,
Yuko Construction, Inc., d/b/a Advanced Roofing, Inc.,
Bismark Lara, Premium Stucco, and
Shaw Manufacturing's Wrought Iron Works, Inc.,

Defendants.

Vincent J. Aiello, Jr., and
Atlantic Heritage Builders, Inc.,

Third-Party Plaintiffs,

Palatial Homes, Inc., Palatial Homes, LLC,
Palatial Homes Design, LLC, and
Palatial Building Group, LLC,

Third-Party Defendants,

Of whom Vincent J. Aiello, Jr., and
Atlantic Heritage Builders, Inc., are the

Appellants.

RECORD ON APPEAL

CLEMENT RIVERS, LLP
Jason A. Daigle (SC Bar No. 73308)
Nicholas J. Rivera (SC Bar No. 77186)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, SC 29401
P.O. Box 993 (29402)
(843) 720-5488

Attorneys for Appellants

FINN LAW FIRM, P.C.
Thomas J. Finn (SC Bar No. 66534)
P.O. Box 6003
Hilton Head Island, SC 29938
(843) 682-3555
Attorneys for Respondent

INDEX

Page

Orders

Order Granting Appellants’ ¹ Motion to Stay, filed May 20, 2020.....	1
Order Granting Plaintiff’s ² Motion to Lift Stay, filed November 20, 2020	4

Pleadings

Summons and Complaint, filed February 4, 2019	7
Aiello’s Answer to Complaint and Cross-Claims, filed April 26, 2019.....	19
AHB’s Answer to Complaint and Cross-Claims, filed April 26, 2019.....	33

Other Material

Appellants’ Motion to Stay, filed January 9, 2020.....	47
Affidavit of Tracey Lee Lunenburg, dated May 7, 2020	49
Appellants’ Memo in Support of Motion to Stay, filed May 8, 2020.....	53
Exhibit A: Affidavit of Robert Kenney, P.E.	61
Exhibit B: Letter dated June 28, 2019	63

¹ “Appellants” refers to Defendants/Appellants, Vincent J. Aiello, Jr. (“Aiello”), and Atlantic Heritage Builders, Inc. (“AHB”).

² “Plaintiff” refers to Plaintiff/Respondent, Tracey Lee Lunenburg.

Exhibit C : Email dated September 16, 2019.....	65
Exhibit D : Letter dated October 10, 2019.....	66
Plaintiff’s Memo in Opposition to Appellants’ Motion to Stay, filed May 14, 2020.....	67
Plaintiff’s Motion to Lift Stay, filed September 28, 2020.....	71
Appellants’ Memo in Opposition to Plaintiff’s Motion to Lift Stay, filed November 6, 2020	75
Exhibit A : Affidavit of Robert Kenney, P.E.....	(see 61)
Exhibit B : Letter dated June 28, 2019	(see 63)
Exhibit C : Email dated September 16, 2019.....	(see 65)
Exhibit D : Letter dated October 10, 2019.....	(see 66)
Exhibit E : Form 4 Orders Granting Motions to Stay	84
Exhibit F : Letters dated June 18, 2020.....	93
Exhibit G : Letter dated July 14, 2020	97
Exhibit H : Letter dated September 15, 2020.....	100
Plaintiff’s Memo in Support of Motion to Lift Stay, filed November 9, 2020	101
Exhibit 1 : Order Granting Appellants’ Motion to Stay.....	(see 1)
Exhibit 2 : Letter dated June 18, 2020	(see 93)
Exhibit 3 : Email dated June 25, 2020	105
Exhibit 4 : Letter dated July 14, 2020	(see 97)

Exhibit 5 : Letter dated July 16, 2020	108
Notice of Appeal and Proof of Service, served/filed December 21, 2020	109
Certificate of Counsel	116

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700223

Tracey Lee Lunenburg
PLAINTIFF(S)

Vincent J Aiello, Jr et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on May 15, 2020 on Defendant Atlantic Heritage Builders, Inc.'s (hereinafter "the Defendant") Motion to Stay Proceedings or Dismiss, filed January 9, 2020. Representing the Defendant was Jason A. Daigle, Esq. Representing the Plaintiff was Thomas J. Finn, Esq. The Defendant's Motion to Stay or Dismiss is made pursuant to the South Carolina Notice and opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. 40-59-810 (hereinafter "the Act.")

Pursuant to the Act, "[i]n an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following: (1) a statement that the claimant asserts a construction defect; (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect;

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/19/2020 .

Advanced Roofing Inc
Yuko Construction Company Inc
Premium Stucco Llc
Bismark Lara
American Master Ironworks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

and (3) a description of any results of the defect, if known." S.C. Code Ann. 40-59-840.

"If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. 40-59-830.

Upon a thorough review of the record, it appears that the Plaintiff has not complied with the requirements of S.C. Code Ann 40-59-840. The record reveals no indication of written notice containing a statement of construction defect, a description of the claim, and a description of any results of the defect. Accordingly, pursuant to S.C. Code Ann. 40-59-830, this case is hereby stayed until the Plaintiff complies with the requirements of S.C. Code Ann. 40-59-840.

Further, as the Court has granted Defendant's Motion to Stay, and because the Defendant prayed for dismissal in the alternative, the Court need not address the merits of Defendant's Motion to Dismiss.



Beaufort Common Pleas

Case Caption: Tracey Lee Lunenburg VS Vincent J Aiello Jr , defendant, et al

Case Number: 2019CP0700223

Type: Order/Electronic Form 4

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-05-19 12:38:24 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700223

Tracey Lee Lunenburg
PLAINTIFF(S)

Vincent J Aiello, Jr et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion to Lift Automatic Stay is hereby granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/20/2020 .

Advanced Roofing Inc
Yuko Construction Company Inc
Premium Stucco Llc
Bismark Lara
American Master Ironworks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Beaufort Common Pleas

Case Caption: Tracey Lee Lunenburg VS Vincent J Aiello Jr , defendant, et al

Case Number: 2019CP0700223

Type: Order/Electronic Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2020-11-20 15:28:48 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 19-CP-07-

TRACEY LEE LUNENBURG,)
Plaintiff,)
vs.)

VINCENT J AIELLO, Jr.,)
ATLANTIC HERITAGE)
BUILDERS, INC.,)
YUKO CONSTRUCTION,)
INC, D/B/A ADVANCED)
ROOFING, INC, BISMARK)
LARA, PREMIUM STUCCO,)
SHAW MANUFACTURING'S)
WROUGHT ,IRON WORKS,)
INC.)
Defendants.)

SUMMONS
(Jury Trial Demanded)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, Finn Law Firm, PC, P.O. Box 6003, Hilton Head Island, South Carolina 29938, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

FINN LAW FIRM, PC

By: S/Thomas J. Finn
Thomas J. Finn
P.O. Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555
Attorney for the Plaintiff

This 1st day of February, 2019
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 18-CP-07-
TRACEY LEE LUNENBURG,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
VINCENT J AIELLO, Jr.,	)	
ATLANTIC HERITAGE	)	
BUILDERS, INC.,	)	
YUKO CONSTRUCTION,	)	
INC., D/B/A ADVANCED	)	
ROOFING, BISMARCK LARA	)	COMPLAINT
AMERICAN MASTER	)	(Jury Trial Demanded)
IRONWORKS, PREMIUM	)	
STUCCO, LLC, SHAW	)	
MANUFACTURING'S	)	
WROUGHT ,IRON WORKS, INC)	)	
	)	
Defendants.	)	
	)	

The Plaintiff complaining of the Defendants herein would respectfully show unto this Honorable Court as follows:

1. The Plaintiff, Tracy Lee Lunenburg, is a citizen and resident of the State of Connecticut, and owns real property in Beaufort County, South Carolina.
2. Defendant, Atlantic Heritage Builders, Inc., is, or was, upon information and belief a corporation organized and existing under the laws of one of the fifty states and which is or was, authorized to do business in South Carolina and was the corporate entity which was responsible for constructing the residence at 55 Bridgetown Road, on Hilton Head Island, South Carolina.

3. Defendant, Vincent J. Aiello, has a general contractor's license issued by the state of South Carolina and acted as the general contractor supervising the construction of the residence located at 55 Bridgetown Road on Hilton Head Island.

4. Defendant, YUKO Construction d/b/a Advanced Roofing, Inc., is, or was, upon information and belief a corporation organized and existing under the laws of one of the fifty states and was the subcontractor that installed the roof at the residence located at 55 Bridgetown Road, on Hilton Head Island, South Carolina.

5. Defendant, Premium Stucco, LLC is upon information and belief organized and existing under the laws of one of the fifty states and which is, or was, authorized to do business in South Carolina and was the corporate entity which was responsible for furnishing labor, materials, tools, equipment, taxes, licenses, insurance and qualified supervision necessary to fully perform and in every respect to complete certain stucco work to be incorporated into/installed at the Residence.

6.. Defendant Bismark Lara, was a corporation organized and existing under the laws of one of the fifty States and conducted business in Beaufort County, South Carolina and was the corporate entity responsible for furnishing labor, materials, tools equipment, taxes, licenses, and qualified supervision necessary to fully perform and in every respect to construct the masonry installed at the residence.

7. The 55 Bridgetown residence was built in 2008 and 2009 and Certificate of Occupancy was issued on November 18, 2009. Upon information and belief, the problems or defects are a result of defective construction.

8. The defects in construction complained of include but are not limited to:

- A. Improper roofing installation thereby allowing water infiltration and decay of structural components;
 - B. Improper and/or incomplete roof flashing;
 - C. Improper roofing and flashing thereby allowing water infiltration and decay of structural components;
 - D. Improper installation of the siding and failure of the siding;
 - E. Improper installation and failure of structural systems;
 - F. Improper and lack of proper caulking;
9. As a direct and proximate result and consequence of the numerous construction defects and problems, the Plaintiff has and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of the residence.

FOR A FIRST CAUSE OF ACTION

(Negligence / Gross Negligence Atlantic Heritage Builders, Inc.)

10. Plaintiffs incorporate into this cause of action the allegations of paragraph 1-13 above as if repeated verbatim herein.
11. Defendant Atlantic Heritage Builders, Inc., as general contractor for the subject residence owed a duty to the Plaintiff to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.
12. The deficiencies and defects which exist at the 55 Bridgetown Road residence are the proximate and direct result of the negligence of Defendant, Atlantic Heritage Builders, in one or more of the following particulars:

A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction.

B. In failing to properly supervise the subcontractors and/or other trades in order to insure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

C. In accepting non-conforming or defective materials;

D. In accepting and performing deficient and/or defective workmanship and/or materials, without proper inspection to insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications, owed a duty to Plaintiff to exercise that degree of skill necessary to select an architect and contractor and oversee the project and otherwise deliver the building free of construction defects and which were designed and built in conformity with customary and ordinary standards of the building and construction industry.

13. As a direct and proximate result and consequence of the gross negligence of the general contractor, Plaintiff has suffered injuries and damages in the amount equal to extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A SECOND CAUSE OF ACTION

(Negligence / Gross Negligence Vincent J. Aiello)

14. Plaintiffs incorporate into this cause of action the allegations of paragraphs 1-13 above as if repeated verbatim herein.

15. Defendant, Vincent J. Aiello, holder of a South Carolina general contractors license owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise, and review the design and otherwise deliver the building free of construction defects and which was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

16. The deficiencies and defects which exist at the Lunenburg residence are the proximate and direct result of the negligence and/or gross negligence of Defendant Vincent J. Aiello in one or more of the following particulars:

A. In failing to properly construct the building by deviating from the plans and specifications and by failing to employ practices and methods of construction, conforming with accepted industry standards; and/or using defective materials, and/or installing materials not in accordance with the plans and specifications or in violation of the manufacturer's instructions.

B. In failing to properly supervise the contractors and/or other trades in order to insure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

C. In accepting or selecting non-conforming or defective materials;

D. In accepting and performing deficient and/or defective workmanship and/or materials; without proper inspection to insure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions.

E. In failing to inform the architect and/or owner of the defects in the plans and specifications.

17. As a direct and proximate result and consequence of the gross negligence of Defendant, Vincent J. Aiello, the Plaintiff has suffered injuries and damages in an amount equal to extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A THIRD CAUSE OF ACTION

(Negligence /Gross negligence/ Yuko Construction a/k/a Advance Roofing, Inc)

18. The Plaintiff incorporates and reiterates each and every allegation set forth in paragraphs 1-17 as if fully repeated verbatim herein.

19. Plaintiffs allege the roof system is defective in that it allows water to penetrate the roof causing damage to the framing and interior of the residence. Plaintiffs claim the roof was not installed or completed in accordance with applicable architectural plans and specifications. Defendant, Yuko Construction a/k/a Advance Roofing, Inc., supplied the materials for the roof and applied the roof to the exterior of the residence.

20. Defendant, Yuko Construction a/k/a Advanced Roofing Inc., , owed a duty to the Plaintiff to exercise that degree of skill necessary to apply the roof system free of defects and such roof system built in conformity with the customary and ordinary standards of the building and construction industry. The deficiencies and defects which exist at the 55 Bridgetown Road residence are the proximate and direct result of the negligence and gross negligence of Yuko Construction a/k/a Advance Roofing Inc.

21. Defendant, Yuko Construction, a/k/a Advance Roofing Inc., roofer of the subject residence owed a duty to Plaintiff to exercise that degree of skill necessary to

properly install a roof at the project and otherwise deliver the building free from construction defects and which were designed and built in conformity with the customary and ordinary standards of the building and construction industry.

22. As a direct and proximate result and consequence of the negligence and/or gross negligence of Yuko Construction a/k/a Advance Roofing, Inc., the Plaintiffs have suffered injuries and damages in an amount equal to extraordinary repair, maintenance and construction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A FOURTH CAUSE OF ACTION

(Negligence, Gross negligence, Premium Stucco, LLC)

23. Plaintiffs repeat and reiterates each and every allegation set forth in Paragraphs 1-22 above as if fully repeated verbatim herein. performance of the referenced task and to perform that task in a manner commensurate with industry standards and in compliance with all applicable building codes.

24. Defendant, Premium Stucco LLC negligent and/or Grossly negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturer's instructions or guidelines or was volatile of applicable building codes.

25. As a direct and proximate result of the negligence and/or gross negligence of Premium Stucco LLC, Plaintiff has suffered injuries and damages in an amount to

equal extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A FIFTH CAUSE OF ACTION

(Negligence, Gross negligence, Shaw Manufacturing's Wrought Iron Works)

26. Plaintiffs repeat and reiterate each and every allegation set forth in Paragraphs 1-25 above as if fully repeated verbatim herein. performance of the referenced task and to perform that task in a manner commensurate with industry standards and in compliance with all applicable building codes.

27. Defendant, Shaw Manufacturing's Wrought Iron Works was negligent and/or Grossly negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturer's instructions or guidelines or was violative of applicable building codes.

28. As a direct and proximate result of the negligence and/or gross negligence of Shaw Manufacturing's Wrought Iron Works, Plaintiff has suffered injuries and damages in an amount to equal extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

FOR A SIXTH CAUSE OF ACTION

(Negligence, Gross Negligence, Bismark Lara)

29. Plaintiffs repeat and reiterate each and every allegation set forth in Paragraphs 1-28 above as if fully repeated verbatim herein. performance of the referenced task and to perform that task in a manner commensurate with industry standards and in compliance with all applicable building codes.

30. Defendant, Bismark Lara was negligent and/or Grossly negligent, careless, reckless, willful and wanton in failing to properly carry out its tasks and failing to employ practices and methods of design and construction which conforms with industry standards or which were not in accordance with the plans and specifications or in failing to follow manufacturer's instructions or guidelines or was violative of applicable building codes.

31. As a direct and proximate result of the negligence and/or gross negligence of Bismark Lara, Plaintiff has suffered injuries and damages in an amount to equal extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, and depreciation in value.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for such actual and punitive damages as the court deems appropriate and such other and further relief as is just and proper.

FINN LAW FIRM, PC.

By: s/ Thomas J. Finn
Thomas J. Finn
38D-4 New Orleans Road
Post Office Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555

Hilton Head Island, South Carolina

This 1st day of February, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 19-CP-07-00223
TRACEY LEE LUNENBURG,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	
	)	VINCENT J. AIELLO, JR.'S ANSWER
VINCENT J. AIELLO, JR., ATLANTIC	)	TO COMPLAINT AND CROSS-
HERITAGE BUILDERS, INC., YUKO	)	CLAIMS
CONSTRUCTION, INC. D/B/A	)	
ADVANCED ROOFING, INC.,	)	(JURY TRIAL REQUESTED)
BISMARCLARA, PREMIUM STUCCO,	)	
SHAW MANUFACTURING'S	)	
WROUGHT IRON WORKS, INC.,	)	
	)	
Defendant(s).	)	
	)	

TO: ALL COUNSEL OF RECORD:

Defendant Vincent J. Aiello, Jr. (hereinafter "Aiello") hereby answers Plaintiff's Complaint and asserts his cross-claims as follows:

Each and every allegation of Plaintiff's Complaint not hereinafter expressly admitted, qualified, and/or explained is denied.

1. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1; accordingly, this Paragraph stands denied.

2. The allegations contained in Paragraph 2 are denied.

3. Paragraph 3 is denied as stated.

4. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4; accordingly, this Paragraph stands denied.

5. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5; accordingly, this Paragraph stands denied.

6. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6; accordingly, this Paragraph stands denied.

7. Paragraph 7 is denied.

8. Paragraph 8, including each of its subparts, is denied.

9. Paragraph 9 is denied.

FOR A RESPONSE TO THE FIRST CAUSE OF ACTION
(Negligence/Gross Negligence Atlantic Heritage Builders, Inc.)

10. In response to Paragraph 10 of Plaintiff's Complaint, Aiello re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

11. The allegations contained in Paragraph 11 of the Plaintiff's Complaint are not directed to this Defendant, and therefore, no response is required. To the extent that a response is required, this Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Plaintiff's Complaint, and therefore, denies the same.

12. Paragraph 12, including each of its subparts, is denied.

13. Paragraph 13 is denied.

FOR A RESPONSE TO THE SECOND CAUSE OF ACTION
(Negligence/Gross Negligence Vincent J. Aiello)

14. In response to Paragraph 14 of Plaintiff's Complaint, Aiello re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

15. Aiello admits the allegations contained in Paragraph 15 of Plaintiff's Complaint which alleges that Aiello holds a general contractors license. Aiello lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 15 of the Plaintiff's Complaint, and therefore, denies the same.

16. Paragraph 16, including each of its subparts, is denied.

17. Paragraph 17 is denied.

FOR A RESPONSE TO THE THIRD CAUSE OF ACTION
(Negligence/Gross negligence/Yuko Construction a/k/a Advance Roofing, Inc.)

18. In response to Paragraph 18 of Plaintiff's Complaint, Aiello re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

19. Upon information and belief, Aiello admits that Advance Roofing, Inc. supplied materials for the roof and applied the roof to the exterior of the residence. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 19; accordingly, this Paragraph stands denied.

20. Aiello responds that Paragraph 20 of Plaintiff's Complaint offers a legal conclusion to which no response is required. However, to the extent a response is required, all allegations contained therein are denied.

21. Aiello responds that Paragraph 21 of Plaintiff's Complaint offers a legal conclusion to which no response is required. However, to the extent a response is required, all allegations contained therein are denied.

22. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22; accordingly, this Paragraph stands denied.

FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION
(Negligence, Gross Negligence, Premium Stucco, LLC)

23. In response to Paragraph 23 of Plaintiff's Complaint, Aiello re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

24. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24; accordingly, this Paragraph stands denied.

25. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25; accordingly, this Paragraph stands denied.

FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION
(Negligence, Gross Negligence, Shaw Manufacturing's Wrought Iron Works)

26. In response to Paragraph 26 of Plaintiff's Complaint, Aiello re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

27. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27; accordingly, this Paragraph stands denied.

28. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28; accordingly, this Paragraph stands denied.

FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION
(Negligence, Gross Negligence, Bismark Lara)

29. In response to Paragraph 29 of Plaintiff's Complaint, Aiello re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

30. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30; accordingly, this Paragraph stands denied.

31. Aiello does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31; accordingly, this Paragraph stands denied.

FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES**For a First Affirmative Defense
(Comparative Negligence)**

32. Plaintiff's claims and damages, if any, are barred, or should be reduced, by her own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of Aiello, if any, and which is expressly denied.

**For a Second Affirmative Defense
(Negligent Acts and Omissions of Others)**

33. Plaintiff's claims and damages, if any, are the result of negligent acts and omissions of other entities or persons over whom Aiello had no control, barring Plaintiff's claims against Aiello.

**For a Third Affirmative Defense
(Acceptance)**

34. That the final completion and acceptance of the work pursuant to the original contract(s) and all modifications thereto constitutes a complete defense to all claims asserted by Plaintiff.

**For a Fourth Affirmative Defense
(Setoff)**

35. Any recovery by Plaintiff must be reduced or offset by amounts Plaintiff have received or will recover from others for the same and/or injuries/damages claimed in this suit.

**For a Fifth Affirmative Defense
(Economic Loss)**

36. Plaintiff cannot recover in tort for purely economic losses.

For a Sixth Affirmative Defense
(Failure to State a Claim)

37. One or more of the Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against Aiello and therefore should be dismissed under Rule 12 (b)(6).

For a Seventh Affirmative Defense
(Intervening/Superseding Negligence of Others)

38. That the injury or damage suffered by Plaintiff, if any, was due to, and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of the defendants/third-party defendants/others, and such constitutes a complete defense to the claims of Plaintiff.

For an Eighth Affirmative Defense
(Mitigation of Damages)

39. Plaintiff had an obligation to mitigate her damages but have failed to do so.

For a Ninth Affirmative Defense
(Laches, Waiver, and Estoppel)

40. Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

For a Tenth Affirmative Defense
(Statute of Limitations/Statute of Repose)

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

For an Eleventh Affirmative Defense
(Unclean Hands)

42. Plaintiff's equitable claims are barred by the doctrine of unclean hands.

For a Twelfth Affirmative Defense
(Betterment)

43. Any amount recovered by Plaintiff from Aiello should be offset or reduced under the betterment doctrine.

For a Thirteenth Affirmative Defense
(Lack of Notice)

44. Any claim advanced as a warranty claim for which the claimant failed to give Defendant timely and reasonable notice as required by law is barred.

For a Fourteenth Affirmative Defense
(Spoliation of Evidence)

45. Plaintiff's claims are barred by the doctrine of spoliation of evidence.

For a Fifteenth Affirmative Defense
(Punitive Damages)

46. The imposition of punitive or exemplary damages against the Defendant would violate their constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

a. imposition of such punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (2) is not adequately and clearly instructed on the limits on punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on

the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state or residence of the Defendant, (4) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objective standards;

b. imposition of such punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;

c. imposition of such punitive damages and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;

d. imposition of such punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of Defendant has been found on the merits;

e. imposition of such punitive damages, and determination of the amount of an award thereof, under any state's law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount;

f. imposition of such punitive damages, and determination of the amount of any award thereof, based on anything other than Defendant's conduct in connection with the sale of the products alleged in this litigation, or in any other way subjecting Defendant to impermissible multiple punishment for the same alleged wrong; and/or

g. imposition of punitive damages by the jury as opposed to the Court, as the issues of the imposition and amount of punitive damages are matters of constitutional fact that must be determined by the Court, not the jury.

For a Sixteenth Affirmative Defense
(Right to Cure)

47. Plaintiff had an obligation to offer the opportunity to cure any and all construction defects under the Opportunity to Cure Construction Dwelling Defects Act S.C. Code §40-59-810-860. Aiello reserves all of his statutory rights under the Act.

For a Seventeenth Affirmative Defense
(Additional Defense Reservation and Non-Waiver)

48. Aiello hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend his Answer to assert any such defenses.

FURTHER ANSWERING AND BY WAY OF CROSS CLAIMS AGAINST THE
FOLLOWING:
YUKO CONSTRUCTION D/B/A ADVANCED ROOFING, INC., PREMIUM STUCCO,
LLC, SHAW MANUFACTURING'S WROUGHT IRON WORKS, INC., AND BISMARCK
LARA

49. Aiello re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

50. Plaintiff, Tracey Lee Lunenburg, (hereinafter "Plaintiff") filed its Complaint on February 4, 2019 alleging Negligence and Gross Negligence against all Defendants in connection with the construction of the residence located at 55 Bridgetown Road, Hilton Head Island located in Beaufort County, South Carolina ("hereinafter "Project").

51. Aiello, by way of its Answer, has denied all of Plaintiff's allegations of liability with regard to each of the causes of action asserted against Aiello, including Plaintiff's prayer for relief, and expressly denies any and all liability allegedly arising from or related to the alleged construction defects and damages purportedly existing at the Project.

PARTIES AND JURISDICTION

52. Aiello re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

53. Aiello is a corporation organized and existing pursuant to the laws of the State of South Carolina that conducts business in Beaufort County, South Carolina, and is still conducting business in Beaufort County, South Carolina.

54. That upon information and belief, Yuko Construction d/b/a Advanced Roofing, Inc. (“Advanced Roofing”) was authorized to and did perform work in Beaufort County, South Carolina as a subcontractor hired to design, construct, inspect, repair, and/or supply materials at the Project.

55. That upon information and belief, Premium Stucco, LLC (“Premium Stucco”) was authorized and did perform work in Beaufort County, South Carolina as a subcontractor hired to design, construct, inspect, repair, and/or supply materials at the Project.

56. That upon information and belief, Bismark Lara, was authorized and did perform work in Beaufort County, South Carolina as a subcontractor hired to design, construct, inspect, repair, and/or supply materials at the Project.

57. Advanced Roofing, Premium Stucco and Bismark Lara will hereinafter be referred to collectively as “Subcontractor Defendants.”

58. The project is located in Hilton Head Island, Beaufort County, South Carolina.

59. Jurisdiction and venue are proper in Beaufort County, South Carolina.

60. Plaintiff’s Complaint alleges defective construction related to services, labor, and/or materials provided by Subcontractor Defendants for the Project.

61. Aiello has denied Plaintiff’s allegations against Aiello, but based upon the

allegations, the responsibilities or fault results, upon information and belief, from the errors or omissions of Subcontractor Defendants, the breach of their respective duties of due care, the breach of their respective contracts, and/or deviations from industry standards, manufacturer's installation instructions, and/or applicable building codes.

FIRST CAUSE OF ACTION
(Equitable/Contractual Indemnity and Contribution)

62. Aiello re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

63. If Aiello is compelled to pay damages for any reason in this matter, it alleges that any liability it has for the damages would be an imputation of liability upon it as a result of wrongful acts or omissions committed by Subcontractor Defendants.

64. Aiello is entitled to full indemnification and/or contribution from Subcontractor Defendants, the amount of any monies it is adjudged to owe Plaintiff or which he pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending the claims including reasonable attorney's fees.

65. Aiello is informed and believes that he is entitled to a judgment against Subcontractor Defendants for the full amount of any judgment Plaintiff obtain against him in this matter and in addition, all costs of investigating and defending this claim including reasonable attorney's fees.

SECOND CAUSE OF ACTION
(Breach of Contract)

66. Aiello re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

67. Aiello entered into contracts with Subcontractor Defendants who agreed to perform certain services and/or provide certain products and/or materials related to the design, construction, inspection, and/or repair of the Residence at issue for an agreed upon price.

68. Aiello honored all of his obligations under the contracts; however, Subcontractor Defendants did not honor their obligations and have provided Aiello with incomplete and/or defective design, construction, inspection, products, material, workmanship, and/or repair in breach of their contracts.

69. Subcontractor Defendants are in breach of contract.

70. As a direct and proximate result of the breach, Aiello is entitled to recover actual and consequential damages from Subcontractor Defendants in an amount to be determined.

THIRD CAUSE OF ACTION
(Negligence)

71. Aiello re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

72. Subcontractor Defendants knew or should have known of the existence of certain construction/material defects on the Residence at issue.

73. Subcontractor Defendants knew or should have known their work and/or materials was/were negligent, defective, improper and/or incomplete.

74. Subcontractor Defendants had a duty to design, inspect, construct, repair, and/or supply materials to the Project in a workmanlike manner with suitable materials in accordance with applicable building codes and industry standards.

75. The deficiencies outlined by Plaintiff evidence that Subcontractor Defendants breached their duties to Aiello.

76. The wrongful acts and omissions by Subcontractor Defendants above-described have resulted in building deficiencies and consequential damages.

77. Subcontractor Defendants were negligent, careless, reckless, willful and wanton in the particulars including, but not limited to, those set forth in Plaintiff's Complaint.

78. Subcontractor Defendants were further negligent in failing to disclose the defective conditions/materials of the Project to Aiello, failing to take proper steps to correct the defective conditions/materials, and failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances.

79. The failures above-described have proximately caused damages to Aiello in an amount to be determined.

FOURTH CAUSE OF ACTION
(Breach of Express and Implied Warranty)

80. Aiello re-alleged and incorporates all previous paragraphs above as if fully repeated verbatim herein.

81. Subcontractor Defendants held themselves out to the general public as qualified to perform the respective work that each undertook and did perform in the design, construction, inspection, repair, and/or supply of materials for the Residence and expressly and/or impliedly warranted the work performed and material supplied in the design, construction, inspection, and/or repair of the project would be performed in a careful, diligent and workmanlike manner in accordance with industry standards and the applicable building codes.

82. Subcontractor Defendants breached these express and/or implied warranties by designing, constructing, inspecting, repairing, and/or supplying materials for the Residence insufficiently in that: the Residence was not fit for its intended purpose of habitation; the

Residence was not designed, constructed, inspected, and/or repaired in a workmanlike manner, and; the Project was not designed, constructed, inspected, and/or repaired with quality material.

83. The breaches of express and/or implied warranty above-described have proximately caused damages to Aiello in an amount to be determined.

WHEREFORE, having fully answered Plaintiff's Complaint, Aiello prays that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

WHEREFORE, having fully answered Plaintiff's Complaint, Aiello prays that the Court render judgment in his favor on his Cross Claims, for attorney's fees, and costs of defending this action, and for such other and further relief as this Court deems just and appropriate in this matter.

WHEREFORE, having fully answered Plaintiff's Complaint, Aiello prays that the Court render judgment in his favor on his Cross Claims, for attorney's fees, and costs of defending this action, and for such other and further relief as this Court deems just and appropriate in this matter

YOUNG CLEMENT RIVERS, LLP

By: s/Jason A. Daigle

Jason A. Daigle

Nicholas J. Rivera

P.O. Box 993, Charleston, SC 29402

(843) 720-5436

jdaigle@ycrlaw.com

nriviera@ycrlaw.com

Attorneys for Defendant Aiello

Charleston, South Carolina

Dated: April 26, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO. 19-CP-07-00223
TRACEY LEE LUNENBURG,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	
	)	ATLANTIC HERITAGE BUILDERS,
VINCENT J. AIELLO, JR., ATLANTIC	)	INC.'S ANSWER TO COMPLAINT
HERITAGE BUILDERS, INC., YUKO	)	AND CROSS-CLAIMS
CONSTRUCTION, INC. D/B/A	)	
ADVANCED ROOFING, INC.,	)	(JURY TRIAL REQUESTED)
BISMARCLARA, PREMIUM STUCCO,	)	
SHAW MANUFACTURING'S	)	
WROUGHT IRON WORKS, INC.,	)	
	)	
Defendant(s).	)	
	)	

TO: ALL COUNSEL OF RECORD:

Defendant Atlantic Heritage Builders, Inc. (hereinafter "Atlantic") hereby answers Plaintiff's Complaint and asserts its cross-claims as follows:

Each and every allegation of Plaintiff's Complaint not hereinafter expressly admitted, qualified, and/or explained is denied.

1. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1; accordingly, this Paragraph stands denied.

2. The allegations contained in Paragraph 2 are denied.

3. Paragraph 3 is denied as stated.

4. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4; accordingly, this Paragraph stands denied.

5. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5; accordingly, this Paragraph stands denied.

6. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6; accordingly, this Paragraph stands denied.

7. Paragraph 7 is denied.

8. Paragraph 8, including each of its subparts, is denied.

9. Paragraph 9 is denied.

FOR A RESPONSE TO THE FIRST CAUSE OF ACTION
(Negligence/Gross Negligence Atlantic Heritage Builders, Inc.)

10. In response to Paragraph 10 of Plaintiff's Complaint, Atlantic re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

11. The allegations contained in Paragraph 11 of the Plaintiff's Complaint are not directed to this Defendant, and therefore, no response is required. To the extent that a response is required, this Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Plaintiff's Complaint, and therefore, denies the same.

12. Paragraph 12, including each of its subparts, is denied.

13. Paragraph 13 is denied.

FOR A RESPONSE TO THE SECOND CAUSE OF ACTION
(Negligence/Gross Negligence Vincent J. Aiello)

14. In response to Paragraph 14 of Plaintiff's Complaint, Atlantic re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

15. Atlantic admits the allegations contained in Paragraph 15 of Plaintiff's Complaint which alleges that Atlantic holds a general contractors license. Atlantic lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 15 of the Plaintiff's Complaint, and therefore, denies the same.

16. Paragraph 16, including each of its subparts, is denied.

17. Paragraph 17 is denied.

FOR A RESPONSE TO THE THIRD CAUSE OF ACTION
(Negligence/Gross negligence/Yuko Construction a/k/a Advance Roofing, Inc.)

18. In response to Paragraph 18 of Plaintiff's Complaint, Atlantic re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

19. Upon information and belief, Atlantic admits that Advance Roofing, Inc. supplied materials for the roof and applied the roof to the exterior of the residence. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 19; accordingly, this Paragraph stands denied.

20. Atlantic responds that Paragraph 20 of Plaintiff's Complaint offers a legal conclusion to which no response is required. However, to the extent a response is required, all allegations contained therein are denied.

21. Atlantic responds that Paragraph 21 of Plaintiff's Complaint offers a legal conclusion to which no response is required. However, to the extent a response is required, all allegations contained therein are denied.

22. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22; accordingly, this Paragraph stands denied.

FOR A RESPONSE TO THE FOURTH CAUSE OF ACTION
(Negligence, Gross Negligence, Premium Stucco, LLC)

23. In response to Paragraph 23 of Plaintiff's Complaint, Atlantic re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

24. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24; accordingly, this Paragraph stands denied.

25. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25; accordingly, this Paragraph stands denied.

**FOR A RESPONSE TO THE FIFTH CAUSE OF ACTION
(Negligence, Gross Negligence, Shaw Manufacturing's Wrought Iron Works)**

26. In response to Paragraph 26 of Plaintiff's Complaint, Atlantic re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

27. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27; accordingly, this Paragraph stands denied.

28. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28; accordingly, this Paragraph stands denied.

**FOR A RESPONSE TO THE SIXTH CAUSE OF ACTION
(Negligence, Gross Negligence, Bismark Lara)**

29. In response to Paragraph 29 of Plaintiff's Complaint, Atlantic re-alleges and incorporates all previous paragraphs in this Answer as if fully repeated verbatim herein.

30. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30; accordingly, this Paragraph stands denied.

31. Atlantic does not have knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31; accordingly, this Paragraph stands denied.

**FURTHER ANSWERING BY WAY OF AFFIRMATIVE DEFENSES
For a First Affirmative Defense
(Comparative Negligence)**

32. Plaintiff's claims and damages, if any, are barred, or should be reduced, by her own contributory and comparative negligence and recklessness which combined, contributed,

and concurred with any alleged negligence on the part of Atlantic, if any, and which is expressly denied.

For a Second Affirmative Defense
(Negligent Acts and Omissions of Others)

33. Plaintiff's claims and damages, if any, are the result of negligent acts and omissions of other entities or persons over whom Atlantic had no control, barring Plaintiff's claims against Atlantic.

For a Third Affirmative Defense
(Acceptance)

34. That the final completion and acceptance of the work pursuant to the original contract(s) and all modifications thereto constitutes a complete defense to all claims asserted by Plaintiff.

For a Fourth Affirmative Defense
(Setoff)

35. Any recovery by Plaintiff must be reduced or offset by amounts Plaintiff have received or will recover from others for the same and/or injuries/damages claimed in this suit.

For a Fifth Affirmative Defense
(Economic Loss)

36. Plaintiff cannot recover in tort for purely economic losses.

For a Sixth Affirmative Defense
(Failure to State a Claim)

37. One or more of the Plaintiff's Causes of Action fails to state facts sufficient to constitute a cause of action against Atlantic and therefore should be dismissed under Rule 12 (b)(6).

For a Seventh Affirmative Defense
(Intervening/Superseding Negligence of Others)

38. That the injury or damage suffered by Plaintiff, if any, was due to, and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of the defendants/third-party defendants/others, and such constitutes a complete defense to the claims of Plaintiff.

For an Eighth Affirmative Defense
(Mitigation of Damages)

39. Plaintiff had an obligation to mitigate her damages but have failed to do so.

For a Ninth Affirmative Defense
(Laches, Waiver, and Estoppel)

40. Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

For a Tenth Affirmative Defense
(Statute of Limitations/Statute of Repose)

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

For an Eleventh Affirmative Defense
(Unclean Hands)

42. Plaintiff's equitable claims are barred by the doctrine of unclean hands.

For a Twelfth Affirmative Defense
(Betterment)

43. Any amount recovered by Plaintiff from Atlantic should be offset or reduced under the betterment doctrine.

For a Thirteenth Affirmative Defense
(Lack of Notice)

44. Any claim advanced as a warranty claim for which the claimant failed to give Defendant timely and reasonable notice as required by law is barred.

For a Fourteenth Affirmative Defense
(Spoliation of Evidence)

45. Plaintiff's claims are barred by the doctrine of spoliation of evidence.

For a Fifteenth Affirmative Defense
(Punitive Damages)

46. The imposition of punitive or exemplary damages against the Defendant would violate their constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

a. imposition of such punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (2) is not adequately and clearly instructed on the limits on punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state or residence of the Defendant, (4) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objective standards;

- b. imposition of such punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;
- c. imposition of such punitive damages and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;
- d. imposition of such punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of Defendant has been found on the merits;
- e. imposition of such punitive damages, and determination of the amount of an award thereof, under any state's law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount;
- f. imposition of such punitive damages, and determination of the amount of any award thereof, based on anything other than Defendant's conduct in connection with the sale of the products alleged in this litigation, or in any other way subjecting Defendant to impermissible multiple punishment for the same alleged wrong; and/or
- g. imposition of punitive damages by the jury as opposed to the Court, as the issues of the imposition and amount of punitive damages are matters of constitutional fact that must be determined by the Court, not the jury.

For a Sixteenth Affirmative Defense
(Right to Cure)

47. Plaintiff had an obligation to offer the opportunity to cure any and all construction defects under the Opportunity to Cure Construction Dwelling Defects Act S.C. Code §40-59-810-860. Atlantic reserves all of his statutory rights under the Act.

For a Seventeenth Affirmative Defense
(Improper Party)

48. Atlantic Heritage Builders, Inc. is not or may not be a proper party for suit or may have been otherwise improperly designated in the Complaint. Atlantic Heritage reserves the right to identify or designate the proper party or additional proper parties upon further investigation and discovery.

For a Eighteenth Affirmative Defense
(Additional Defense Reservation and Non-Waiver)

49. Atlantic hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

FURTHER ANSWERING AND FOR A FIRST CAUSE OF ACTION AND ASSERTING
CROSS CLAIMS AGAINST THE FOLLOWING:
YUKO CONSTRUCTION D/B/A ADVANCED ROOFING, INC., PREMIUM STUCCO,
LLC, SHAW MANUFACTURING'S WROUGHT IRON WORKS, INC., AND BISMARCK
LARA

50. Atlantic re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

51. Plaintiff, Tracey Lee Lunenburg, (hereinafter "Plaintiff") filed its Complaint on February 4, 2019 alleging Negligence and Gross Negligence against all Defendants in connection with the construction of the residence located at 55 Bridgetown Road, Hilton Head Island located in Beaufort County, South Carolina ("hereinafter "Project").

52. Atlantic, by way of its Answer, has denied all of Plaintiff's allegations of liability with regard to each of the causes of action asserted against Atlantic, including Plaintiff's prayer for relief, and expressly denies any and all liability allegedly arising from or related to the alleged construction defects and damages purportedly existing at the Project.

PARTIES AND JURISDICTION

53. Atlantic re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

54. Atlantic is a corporation organized and existing pursuant to the laws of the State of South Carolina that conducts business in Beaufort County, South Carolina, and is still conducting business in Beaufort County, South Carolina.

55. That upon information and belief, Yuko Construction d/b/a Advanced Roofing, Inc. (“Advanced Roofing”) was authorized to and did perform work in Beaufort County, South Carolina as a subcontractor hired to design, construct, inspect, repair, and/or supply materials at the Project.

56. That upon information and belief, Premium Stucco, LLC (“Premium Stucco”) was authorized and did perform work in Beaufort County, South Carolina as a subcontractor hired to design, construct, inspect, repair, and/or supply materials at the Project.

57. That upon information and belief, Bismark Lara, was authorized and did perform work in Beaufort County, South Carolina as a subcontractor hired to design, construct, inspect, repair, and/or supply materials at the Project.

58. Advanced Roofing, Premium Stucco and Bismark Lara will hereinafter be referred to collectively as “Subcontractor Defendants.”

59. The project is located in Hilton Head Island, Beaufort County, South Carolina.

60. Jurisdiction and venue are proper in Beaufort County, South Carolina.

61. Plaintiff’s Complaint alleges defective construction related to services, labor, and/or materials provided by Subcontractor Defendants for the Project.

62. Atlantic has denied Plaintiff’s allegations against Atlantic, but based upon the

allegations, the responsibilities or fault results, upon information and belief, from the errors or omissions of Subcontractor Defendants, the breach of their respective duties of due care, the breach of their respective contracts, and/or deviations from industry standards, manufacturer's installation instructions, and/or applicable building codes.

FIRST CAUSE OF ACTION
(Equitable/Contractual Indemnity and Contribution)

63. Atlantic re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

64. If Atlantic is compelled to pay damages for any reason in this matter, it alleges that any liability it has for the damages would be an imputation of liability upon it as a result of wrongful acts or omissions committed by Subcontractor Defendants.

65. Atlantic is entitled to full indemnification and/or contribution from Subcontractor Defendants, the amount of any monies it is adjudged to owe Plaintiff or which he pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending the claims including reasonable attorney's fees.

66. Atlantic is informed and believes that it is entitled to a judgment against Subcontractor Defendants for the full amount of any judgment Plaintiff obtain against it in this matter and in addition, all costs of investigating and defending this claim including reasonable attorney's fees.

SECOND CAUSE OF ACTION
(Breach of Contract)

67. Atlantic re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

68. Atlantic entered into contracts with Subcontractor Defendants who agreed to perform certain services and/or provide certain products and/or materials related to the design, construction, inspection, and/or repair of the Residence at issue for an agreed upon price.

69. Atlantic honored all of his obligations under the contracts; however, Subcontractor Defendants did not honor their obligations and have provided Atlantic with incomplete and/or defective design, construction, inspection, products, material, workmanship, and/or repair in breach of their contracts.

70. Subcontractor Defendants are in breach of contract.

71. As a direct and proximate result of the breach, Atlantic is entitled to recover actual and consequential damages from Subcontractor Defendants in an amount to be determined.

THIRD CAUSE OF ACTION
(Negligence)

72. Atlantic re-alleges and incorporates all previous paragraphs above as if fully repeated verbatim herein.

73. Subcontractor Defendants knew or should have known of the existence of certain construction/material defects on the Residence at issue.

74. Subcontractor Defendants knew or should have known their work and/or materials was/were negligent, defective, improper and/or incomplete.

75. Subcontractor Defendants had a duty to design, inspect, construct, repair, and/or supply materials to the Project in a workmanlike manner with suitable materials in accordance with applicable building codes and industry standards.

76. The deficiencies outlined by Plaintiff evidence that Subcontractor Defendants breached their duties to Atlantic.

77. The wrongful acts and omissions by Subcontractor Defendants above-described have resulted in building deficiencies and consequential damages.

78. Subcontractor Defendants were negligent, careless, reckless, willful and wanton in the particulars including, but not limited to, those set forth in Plaintiff's Complaint.

79. Subcontractor Defendants were further negligent in failing to disclose the defective conditions/materials of the Project to Atlantic, failing to take proper steps to correct the defective conditions/materials, and failing to exercise the degree of care and prudence which a reasonable person should exercise under the same or similar circumstances.

80. The failures above-described have proximately caused damages to Atlantic in an amount to be determined.

FOURTH CAUSE OF ACTION
(Breach of Express and Implied Warranty)

81. Atlantic re-alleged and incorporates all previous paragraphs above as if fully repeated verbatim herein.

82. Subcontractor Defendants held themselves out to the general public as qualified to perform the respective work that each undertook and did perform in the design, construction, inspection, repair, and/or supply of materials for the Residence and expressly and/or impliedly warranted the work performed and material supplied in the design, construction, inspection, and/or repair of the project would be performed in a careful, diligent and workmanlike manner in accordance with industry standards and the applicable building codes.

83. Subcontractor Defendants breached these express and/or implied warranties by designing, constructing, inspecting, repairing, and/or supplying materials for the Residence insufficiently in that: the Residence was not fit for its intended purpose of habitation; the

Residence was not designed, constructed, inspected, and/or repaired in a workmanlike manner, and; the Project was not designed, constructed, inspected, and/or repaired with quality material.

84. The breaches of express and/or implied warranty above-described have proximately caused damages to Atlantic in an amount to be determined.

WHEREFORE, having fully answered Plaintiff's Complaint, Atlantic prays that the same be dismissed, together with the costs and disbursements of this action, and for such other and further relief as this Court deems proper.

WHEREFORE, having fully answered Plaintiff's Complaint, Atlantic prays that the Court render judgment in his favor on his Cross Claims, for attorney's fees, and costs of defending this action, and for such other and further relief as this Court deems just and appropriate in this matter.

WHEREFORE, having fully answered Plaintiff's Complaint, Atlantic prays that the Court render judgment in his favor on his Cross Claims, for attorney's fees, and costs of defending this action, and for such other and further relief as this Court deems just and appropriate in this matter

YOUNG CLEMENT RIVERS, LLP

By: s/Jason A. Daigle

Jason A. Daigle

Nicholas J. Rivera

P.O. Box 993, Charleston, SC 29402

(843) 720-5436

jdaigle@ycrlaw.com

nriviera@ycrlaw.com

Attorneys for Defendant Atlantic Heritage Builders, Inc.

Charleston, South Carolina

Dated: April 26, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
TRACEY LEE LUNENBURG,	)	CASE NO. 2019-CP-07-00223
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
VINCENT J. AIELLO, JR., ATLANTIC	)	NOTICE OF MOTION AND MOTION TO
HERITAGE BUILDERS, INC., YUKO	)	STAY PROCEEDINGS OR DISMISS
CONSTRUCTION, INC. D/B/A	)	
ADVANCED ROOFING, INC.,	)	
BISMARKLARA, PREMIUM STUCCO,	)	
SHAW MANUFACTURING'S	)	
WROUGHT IRON WORKS, INC.,	)	
	)	
DEFENDANTS.	)	
	)	
VINCENT J. AIELLO, Jr.	)	
	)	
THIRD-PARTY PLAINTIFF	)	
	)	
v.	)	
	)	
PALATIAL HOMES, INC., PALATIAL	)	
HOMES, LLC, PALATIAL HOMES	)	
DESIGN, LLC, AND PALATIAL	)	
BUILDING GROUP, LLC,	)	
	)	
THIRD-PARTY DEFENDANTS.	)	
	)	

PLEASE TAKE NOTICE that Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc., by and through their under-signed attorneys, hereby move to stay or dismiss this action. The basis for this Motion is that Plaintiff has failed to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code § 40-59-810, *et seq* (the “Act”). Plaintiff has alleged that Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. were the general contractors for her residence. Plaintiff failed to serve written

notice of claim on Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. prior to bringing this action as required by S.C. Code § 40-59-840. Plaintiff has failed to comply with the statutory requirements of the Act and has denied Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. substantive statutory rights under the Act. Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. are entitled to an Order staying proceedings until Plaintiff can comply with the Act or dismissing the proceedings if Plaintiff cannot comply with the Act.

WHEREFORE, Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. respectfully request that the Court stay the action pursuant to S.C. Code § 40-59-830, or in the alternative, dismiss the action.

YOUNG CLEMENT RIVERS, LLP

By: s/Jason A. Daigle

Jason A. Daigle

Nicholas J. Rivera

P.O. Box 993, Charleston, SC 29402

(843) 720-5436

jdaigle@ycrlaw.com

nriviera@ycrlaw.com

Attorneys for Vincent J. Aiello, Jr. and Atlantic
Heritage Builders, Inc.

Charleston, South Carolina

Dated: January 9, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-00223
TRACEY LEE LUNENBURG,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
VINCENT J AIELLO, Jr.,	)	
ATLANTIC HERITAGE	)	
BUILDERS, INC.,	)	
YUKO CONSTRUCTION,	)	
INC, D/B/A ADVANCED	)	
ROOFING, INC, BISMARCK	)	
LARA, PREMIUM STUCCO,	)	
SHAW MANUFACTURING'S	)	
WROUGHT ,IRON WORKS,	)	
INC.	)	
	)	
Defendants.	)	
	)	

**AFFIDAVIT OF
TRACEY LEE LUNENBERG**

COMES NOW Tracey Lee Lunenberg, who being duly sworn deposes and says the following:

1. I am over the age of eighteen (18) suffering from no legal disabilities and have personal knowledge of the matters set forth herein. I am the owner of a residence at 55 Bridgetown Road on Hilton Head Island and I am the Plaintiff in this matter. I have personal knowledge of the construction issues at the subject residence. I have been personally involved in matters relating to the alleged construction deficiencies affecting the house.

2. I purchased the subject residence at 55 Bridgetown from the former owner, Vincent J. Aiello, Jr in 2012. Mr. Aiello's company, Atlantic Heritage Builders, Inc., took over construction of the subject residence after firing the original general contractor, Palatial Homes, Inc. A Certificate of Occupancy for the residence was issued

to Atlantic Heritage Builders, Inc. by the Town of Hilton Head Island on November 17, 2009. Attached hereto as Exhibit (1) is the Certificate of Occupancy.

3. My husband and I live in the residence part time, usually spending much of the Spring of each year at the residence. In 2014 we noticed water infiltration in our second floor bedroom which seemed to be coming from the roof. We notified Mr. Aiello personally about the issue. Mr. Aiello investigated the water infiltration and recommended a course of action to repair same. Mr. Aiello's company, Atlantic Heritage Builders, Inc., as well as employees from Mr. Aiello's other company A&S Sales of Virginia, LLC undertook repairs beginning in May 2014. Attached hereto as Exhibit (1) are the invoices for the repairs made in 2014. After completion of the repairs by Atlantic Heritage Builders and A&S Sales of Virginia LLC under the supervision of Mr. Aiello in August 2014. Mr. Aiello informed us that any water infiltration issues were resolved.

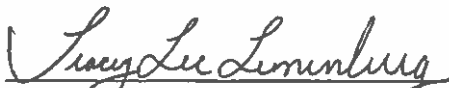
4. In approximately November of 2017 we noticed additional water infiltration issues in a different area of the roof near the elevator. We again contacted Mr. Aiello and requested that he or his company make the necessary repairs. In early December 2017 Mr. Aiello arranged for Steve Dunnett and others, we believe to be employees of A&S Sales of Virginia, undertook repairs to stop the water infiltration. During the repairs in December 2017 significant water damage, wood rot and a termite infestation was discovered. Attached hereto as Exhibit (3) are invoices from Atlantic Heritage Builders, Inc., Steve Dunnett and A&S Sales of Virginia for the work performed in December 2017.

5. Upon discovering the extent of the damage caused by the leaks during the December 2017 work, I was directly informed by Mr. Aiello that neither he. nor his

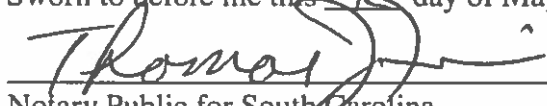
companies, could make what he considered to be the necessary repairs. Mr. Aiello suggested that I contact another contractor to investigate the water infiltration issue and repair same. After being informed By Mr. Aiello that he was not willing and/or able to make the necessary repairs we contacted Richard "Rick" Creamer to undertake the necessary repairs. Attached hereto as Exhibit (4) are emails between my husband Mark Lunenberg and Vinnie Aiello verifying that Mr. Aiello had been informed that Rick Creamer would be continuing the necessary repairs at 55 Bridgetown. Mr. Aiello stated that "I hope all goes well with Rick."

6. On two separate occasions once in 2014 and again in 2017 we contacted Mr. Aiello and informed him of the water infiltration issue at our home. We hired Mr. Aiello and his companies Atlantic Heritage Builder sand A&S Sales of Virginia to complete the necessary repairs. In addition, we paid Mr. Aiello and his companies to make the repairs and were informed the issues had been resolved. In December 2017 we again hired Mr. Aiello and his companies to make repairs to correct additional water infiltration issues discovered at our home. Again Mr. Aiello and his companies were paid for the work they performed. Only after Mr. Aiello informed us that, neither he nor his companies, were capable of undertaking the necessary repairs did we seek to hire another contractor. Our decision to hire another contractor, Rick Creamer, was done with Mr. Aiello's recommendation and approval. We gave Mr. Aiello and his companies every opportunity to correct the deficiencies at our home and only sought assistance elsewhere when Mr. Aiello informed us he could not to the necessary work and suggested we hire another contractor.

FURTHER AFFIANT SAYETH NOT


Tracey Lee Lunenberg

Sworn to before me this 7th day of May, 2020


Notary Public for South Carolina

My Commission Expires 4/27/2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
TRACEY LEE LUNENBURG,	)	CASE NO. 2019-CP-07-00223
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANTS VINCENT J. AIELLO, JR.
VINCENT J. AIELLO, JR., ATLANTIC	)	AND ATLANTIC HERITAGE BUILDERS,
HERITAGE BUILDERS, INC., YUKO	)	INC.'S MEMORANDUM IN SUPPORT OF
CONSTRUCTION, INC. D/B/A	)	THEIR MOTION TO STAY OR DISMISS
ADVANCED ROOFING, INC.,	)	PROCEEDINGS
BISMARKLARA, PREMIUM STUCCO,	)	
SHAW MANUFACTURING'S	)	
WROUGHT IRON WORKS, INC.,	)	
	)	
DEFENDANTS.	)	
	)	
VINCENT J. AIELLO, Jr.	)	
	)	
THIRD-PARTY PLAINTIFF	)	
	)	
v.	)	
	)	
PALATIAL HOMES, INC., PALATIAL	)	
HOMES, LLC, PALATIAL HOMES	)	
DESIGN, LLC, AND PALATIAL	)	
BUILDING GROUP, LLC,	)	
	)	
THIRD-PARTY DEFENDANTS.	)	
	)	

Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc., (hereinafter "Defendants"), by and through their undersigned attorneys, respectfully submit this Memorandum in Support of their Motion Stay or Dismiss Proceedings. Defendants are entitled to an Order granting their motion as Plaintiffs have failed to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810, et seq. ("Right to Cure Act").

Background

The subject residence was constructed from 2008 to 2009 with the certificate of Occupancy being issued on November 18, 2009. See Plaintiff's Complaint ¶ 7. Plaintiff has alleged that both Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. acted as the general contractor for the subject residence during original construction. See Plaintiff's Complaint ¶ 11 and ¶ 15. Plaintiff purchased the subject residence from Defendant Aiello in 2012. At Plaintiff's behest, Defendants made certain repairs and modifications to the subject residence from 2014 to 2017. In June of 2018, Plaintiff began making significant repairs to the subject residence – specifically to the roof and flashing. Defendants did not perform that work, nor were they informed of the work or given the opportunity to inspect the purported defective areas.

Plaintiff filed this lawsuit on February 4, 2019 wherein she set forth causes of action against Defendants for Negligence and Gross Negligence in their capacity as general contractors of the subject residence. Defendants filed their Answers on April 26, 2019. Defendants were permitted to inspect the Property pursuant to Rule 34(a)(2) of the South Carolina Rules of Civil Procedure on May 8, 2019. Defendants' liability expert, Robert Kenney, was also present at the inspection. On the day of inspection it was clear that Plaintiff had been effecting repairs and modifications to the subject property for many months. Almost all of Defendants' work which Plaintiff alleges was negligent had been removed and destroyed. See Kenney Affidavit attached hereto as Exhibit "A". Plaintiff was not given notice of these alleged defects and subsequent repairs or the opportunity to inspect or cure them prior to Plaintiff effecting the repairs and destroying Defendants' work.

Upon discovering the state of the subject residence, counsel for Defendants sent a letter to Plaintiff's counsel on June 28, 2019 requesting that Plaintiff not alter or destroy any alleged defective conditions at the subject property and asking for Plaintiff to comply with South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act - S.C. Code Ann. § 40-59-810. See Letter attached hereto as Exhibit "B". Plaintiff did not cease repairs and continued to actively destroy the alleged defects. On September 16, 2019 – over four months after the initial inspection and almost three months after Exhibit B was sent – Plaintiff's counsel informed defense counsel that a small area of the turret section of the home would be repaired and that we were invited to inspect the turret prior to the work being scheduled. See email attached hereto as Exhibit "C". Of course, Defendants were never given the opportunity to cure the alleged defects to the turret. After it became clear that Plaintiff had no intention of complying with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, counsel for Defendants sent a letter to Plaintiff's counsel on October 10, 2019 stating that they had destroyed all the evidence against his clients thereby denying them their rights under the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act and denying them the opportunity to effectively defend the case against them. See Letter attached hereto as Exhibit "D".

Applicable Law

South Carolina has codified the right of a builder to inspect and cure alleged construction defects to a residence in S.C. Code Ann. § 40-59-810, et seq. These statutory provisions are referred to as the "South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act." S.C. Code Ann. § 40-59-810. Ninety days prior to filing an action against a

builder which seeks damages allegedly caused by construction defects, a Plaintiff “must serve a written notice of claim on the contractor. The notice of claim must contain the following:

- (1) a statement that the claimant asserts a construction defect;
- (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and
- (3) a description of any results of the defect, if known.”

S.C. Code Ann. § 40-59-840.

This written notice must be served by “personal service or delivery by certified mail to the last known address of the addressee.” S.C. Code Ann. § 40-59-820(5).

“If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article”. S.C. Code Ann. § 40-59-830 (emphasis added). It should be noted that “action” means any civil lawsuit or action or arbitration proceeding. S.C. Code Ann. § 40-59-820(1).

Argument

Our Supreme Court has recognized that the Right to Cure Act affords substantial substantive rights to the builder. In Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 571, 703 S.E.2d 197, 200-01 (2010), the Court held that S.C. Code Ann. § 40-59-840 “imposes an absolute condition precedent to the filing of lawsuits that qualify under the Right to Cure Act. Subsection 840, as provided above, encompasses civil lawsuits filed against a contractor or subcontractor, and *requires* the claimant to serve written notice no later than ninety days before filing the action.” (emphasis in original). In fact, the express public intent of the Right to Cure Act is: (1) addressing the need for an alternative dispute resolution method to

promote settlement of construction disputes without litigation, while adequately protecting the rights of homeowners; and (2) requiring a would-be plaintiff in certain construction defect matters to file a notice of claim with the would-be defendant and provide an opportunity to resolve the claim without litigation. Grazia, at 572 (citing 2003 South Carolina Laws Act 82 (S.B. 433). “The stated public policy, therefore, is not abridged when a court, on motion, is required to stay a proceeding in order to require compliance with the Right to Cure Act's notice provisions” (emphasis in original). Grazia, at 572.

These rights under the Right to Cure Act are not new substantive rights, but instead represent an effort by the General Assembly to provide the contractors/subcontractors a new procedural timeline for asserting existing litigation rights. In other words, the right of entry onto and inspection of the claimant's dwelling is now permitted to occur prior to the filing of the action under the notice provisions of §§ 40–59–840 and 850, as opposed to during an action's normal discovery period. Id. at 573. More specifically, the rights afforded to the builder include: the right to request clarification of the alleged defects (§ 40–59–840); the right to inspect the alleged defects (§ 40–59–850); the right to offer to remedy the alleged defect (§ 40–59–850); the right to offer to settle the claims related to the alleged defects (§ 40–59–850), and; the right to deny the claim (§ 40–59–850).

Plaintiffs have categorically failed to comply with any part of the Right to Cure Act. Plaintiffs have not served Defendants with written notice of the alleged defects as required by S.C. Code Ann. §§ 40-59-820(5) and 40-59-840. Plaintiffs’ failure to comply with the notice provision of the statute has denied Defendants their rights to request clarification of the alleged defects, to inspect the alleged defects, to offer to remedy the alleged defect, to offer to settle the claims related to the alleged defects, and/or to deny the claim.

A stay pursuant to the Right to Cure Act is not discretionary, it is mandatory as S.C. Code Ann. §§ 40-59-830 directs that “on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article.” Unless and until Plaintiffs can comply with the Right to Cure Act, this action must be stayed pursuant to S.C. Code Ann. §§ 40-59-830.

Without question, the Right to Cure Act applies here; Plaintiff filed this action before first complying with its requirements; and under the circumstances, it is not possible for the Plaintiff to comply with its requirements, nor indeed is it possible for Defendants to be afforded their rights thereunder. Wherefore, consistent with the Court’s directive to ascertain and effectuate the intention of the legislature,¹ based on the statutory language and in view of Grazia, this case should be dismissed.

Further highlighting the legislative intent, where, as here, a Plaintiff repairs the alleged defects and then seeks to recover the cost of repairs from a contractor, not only has the contractor been denied the right to make an offer to repair but the contractor is also, in regard to attempting a resolution with a claimant (not to mention actually defending against the claim), clearly prejudiced by being denied the right to actually access and inspect the alleged defects and,

¹ “The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); see also id. (“When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.”); id. at 499, 640 S.E.2d at 459 (In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.”); S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (“[T]he statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.”); Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citation omitted) (“If the statute is ambiguous . . . courts must construe the terms of the statute.”); id. (statutory language must be construed in light of the intended purpose of the statute); id. (a statute should not be construed in a way which leads to an absurd result or renders it meaningless).

instead, having to rely solely on whatever photographs (all of them likely of the self-serving variety) the Plaintiff decided to take. Noncompliance with the Act necessarily prejudices a contractor, like Defendants, by denying their rights under the Act, and at the same time, thwarts the policy objectives that prompted the legislature to pass the Act to begin with. The Act's only teeth are in the form of the condition precedent it requires to be met before an action proceeds—a fairly small bite except for where, as here, its requirements are wholly disregarded. See § 40-59-830 (providing that “the court *shall stay* [any] action [filed without first complying with the Act] *until* the claimant has complied with the requirements of [the Act]”) (emphasis added); Grazia, at 570, 703 S.E.2d at, 200-01 (“The circuit court also found that section 40-59-840 imposes an *absolute condition precedent* to the filing of lawsuits that qualify under the Right to Cure Act. . . . We find no error in the circuit court’s analysis regarding the Right to Cure Act’s notice provisions”) (emphasis added). Lest it be rendered completely toothless—and Plaintiff left free to deny rights thereunder with impunity—the Act must be enforced according to its plain terms.

While, as referenced above, the Right to Cure Act expressly calls for a “stay” when a claimant files an action before compliance, it also expressly calls for the stay to remain in effect “*until* the claimant has complied” § 40-59-830 (emphasis added). Moreover, as also referenced above, the language of the Right to Cure Act makes plain the legislature’s intent that no “civil action or other remedy provided by contract or by law” proceed until there has been compliance. See § 40-59-850(C) (“*If* the parties cannot settle the dispute pursuant to [the Right to Cure Act], the claimant *may* proceed with a civil action or other remedy provided by contract or by law.”) (emphasis added). Here, Plaintiff has made compliance with the Right to Cure Act impossible. Plaintiff has substantially repaired and remodeled the home, in the process

destroying the alleged defects without giving Defendants notice of those alleged defects and without giving Defendants an opportunity to inspect/cure them. Because Plaintiff has not complied with the Right to Cure Act, the act plainly requires a stay; because Plaintiff foreclosed even the possibility of compliance with the Right to Cure Act, the stay must be permanent; as a practical matter, a permanent stay is a dismissal.

Conclusion

Based on the above arguments, authorities, and evidence, Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. are entitled to an Order granting its Motion to Stay or Dismiss the Proceedings.

YOUNG CLEMENT RIVERS, LLP

By: s/Jason A. Daigle

Jason A. Daigle

Nicholas J. Rivera

P.O. Box 993, Charleston, SC 29402

(843) 720-5436

jdaigle@ycrlaw.com

nriviera@ycrlaw.com

Attorneys for Vincent J. Aiello, Jr. and Atlantic
Heritage Builders, Inc.

Charleston, South Carolina

Dated: May 8, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
TRACEY LEE LUNENBURG,) CASE NO. 2019-CP-07-00223

PLAINTIFF,

vs.

VINCENT J. AIELLO, JR., ATLANTIC
HERITAGE BUILDERS, INC., YUKO
CONSTRUCTION, INC. D/B/A
ADVANCED ROOFING, INC.,
BISMARCLARA, PREMIUM STUCCO,
SHAW MANUFACTURING'S
WROUGHT IRON WORKS, INC.,

DEFENDANTS.

AFFIDAVIT OF ROBERT N. KENNEY

VINCENT J. AIELLO, JR.

THIRD-PARTY PLAINTIFF

v.

PALATIAL HOMES, INC., PALATIAL
HOMES, LLC, PALATIAL HOMES
DESIGN, LLC, AND PALATIAL
BUILDING GROUP, LLC,

THIRD-PARTY DEFENDANTS.

PERSONALLY, appeared before me, Robert N. Kenney, P.E., CxA+BE., who, being first
duly sworn, deposes and states as follows:

1. That I am over the age of eighteen (18) years and am competent to make this
Affidavit.

2. That I am a licensed Professional Engineer in the state of South Carolina. My
South Carolina license number is 29761.

3. That I have been a forensic engineer with Engineering Systems Inc. (ESi) since 2009.

4. That I have been retained by Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. to serve as a testifying expert to give opinions on, among other things, the alleged defects at the subject property and their subsequent repairs.

5. That I have reviewed various documents for the subject property located at 55 Bridgetown Road, Hilton Head Island, SC. I have reviewed the plans and specifications, the Plaintiff's Complaint, and various repair invoices and contracts related to the subject property.

6. That I attended an on-site inspection of the subject property on May 8, 2019.

7. That the subject property was in the process of being modified and significant construction activities were on-going.

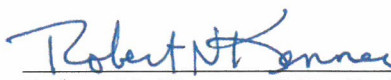
8. That the majority of the allegedly deficient work had been removed and destroyed.

9. That some of the allegedly deficient work had been removed and destroyed and had already been completely repaired.

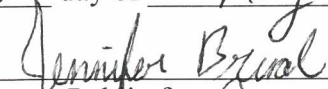
10. That, as a result of Plaintiff's modifications to the subject residence, the majority of any allegedly inadequate or deficient construction did not exist at the subject property.

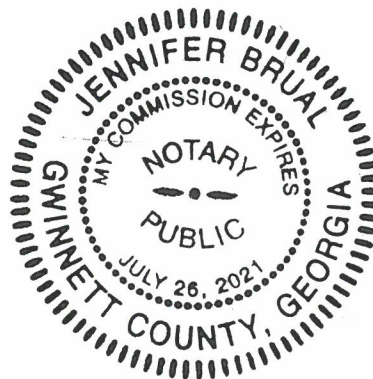
11. That, as a result of Plaintiff's modifications to the subject residence, I was unable to inspect or examine the alleged construction inadequacies and/or deficiencies.

FURTHER AFFIANT SAYETH NOT.


Robert N. Kenney, P.E., CxA+BE

SWORN to and subscribed before me this
8th day of May, 2020.


Notary Public for Gwinnett
My Commission Expires: 7/26/21





YCR LAW

Jason A. Daigle
Partner

Direct Dial: (843) 720-5436
Direct Fax: (843) 579-1324
E-mail: jdaigle@ycrlaw.com

June 28, 2019

Thomas J. Finn
Finn Law Firm, P.C.
38D-4 New Orleans Road
P.O. Box 6003
Hilton Head Island, SC 29938

Re: Tracey Lee Lunenburg v. Vincent J. Aiello, Jr., Atlantic Heritage Builders, Inc.,
Yuko Construction, Inc. d/b/a Advanced Roofing, Inc., Bismarklara, Premium
Stucco, Shaw Manufacturing's Wrought Iron Works, Inc.
Case No.: 2019-CP-07-00223
YCR File: 13918-20190474

Dear Tom,

I am writing to instruct you not to tamper with, alter, repair, or in any way disturb the alleged construction defects and/or deficiencies at the residence located at 55 Bridgetown Road, Hilton Head Island, South Carolina. The alleged construction defects and/or deficiencies outlined in your Complaint, and the areas surrounding those alleged construction defects and/or deficiencies, should not be altered, repaired, or in any way disturbed.

You have sued my clients, Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. for, among other things, alleged construction defects and/or deficiencies at the residence located at 55 Bridgetown Road, Hilton Head Island, South Carolina. Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, my clients have a right to inspect the residence in the condition which gave rise to the allegations contained in your Complaint. If you alter, repair, or in any way disturb the residence then you have engaged in spoliation of evidence and my clients will be entitled to an inference that the condition of the residence was adverse to your position in this lawsuit.

Furthermore, you have not complied with the notice and right to cure provisions S.C. Code § 40-59-810, et seq. In addition to the notice and right to cure, the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act affords my clients a statutory right to inspect the alleged construction defects.

It is my understanding that you have continued with the repairs of the home thereby intentionally destroying evidence and denying my clients their statutory rights to inspect and document the alleged deficiencies. In doing so, you are barred from suing my clients. Our Supreme

Court has recognized that the Right to Cure Act, S.C. Code Ann. § 40-59-810, et seq., affords substantial substantive rights to a builder. In Grazia v. South Carolina State Plastering, LLC, 390 S.C. 562, 571, 703 S.E.2d 197, 200-01 (2010) the Court held that S.C. Code Ann. § 40-59-840 “imposes an absolute condition precedent to the filing of lawsuits that qualify under the Right to Cure Act. Subsection 840, as provided above, encompasses civil lawsuits filed against a contractor or subcontractor, and requires the claimant to serve written notice no later than ninety days before filing the action” (emphasis in original). In fact, the express public intent of the Right to Cure Act is: (1) addressing the need for an alternative dispute resolution method to promote settlement of construction disputes without litigation, while adequately protecting the rights of homeowners; and (2) requiring a would-be plaintiff in certain construction defect matters to file a notice of claim with the would-be defendant and provide an opportunity to resolve the claim without litigation. Grazia at 572 (citing 2003 South Carolina Laws Act 82 (S.B. 433)).

Your client has categorically failed to comply with any part of the Right to Cure Act. Your client has not served my client with written notice of the alleged defects as required by S.C. Code Ann. §§ 40-59-820(5) and 40-59-840 and has not, and cannot, give my clients the opportunity to inspect the alleged defects as required by § 40-59-850. It is impossible for your client to comply with the Act at this point. Your client has repaired and remodeled the residence, thereby destroying the alleged defects without giving notice to my clients of those defects and without giving my clients an opportunity to inspect the alleged defects – as is their right under the Right to Cure Act. Your client has permanently and irreversibly denied my clients their rights under the Right to Cure Act. Specifically, your client has denied my clients their statutory rights to request clarification of the alleged defects, to inspect all of the alleged defects, and to offer to remedy the alleged defect. As such, your client will never be able to comply with the Right to Cure Act, and is therefore barred from suing my clients.

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Jason A. Daigle
Partner

Daigle, Jason

From: Tom Finn <thomas@finnlawfirmpc.com>
Sent: Monday, September 16, 2019 3:17 PM
To: Daigle, Jason; Rachel Igdal
Subject: Tacey Lunenberg

Jason and Rachel:

The turret section of my client' home continues to suffer from water infiltration issues and termite infestation. The exterminator has performed spot treatments to curb the termite activity, however, we must address the water infiltration issues to mitigate our damages. You will recall that this section of the residence has a stone cladding over a secondary moisture barrier and plywood sheathing. We anticipate removing the stone cladding in the near future to correct the water infiltration and repair any wood rot. If you want to do any additional inspections prior to the work commencing please let me know so that can be scheduled. Should you desire to inspect the premises as the corrective work is undertaken let me know and I will schedule that as well. I look forward to hearing from you at your earliest convenience.

Tom

Thomas J. Finn, Esquire
Finn Law Firm, PC
38D New Orleans Road
Hilton Head Island, SC 29928
P.O. Box 6003
Hilton Head Island, SC 29938
843-682-3555 / Fax: 843-682-3558
thomas@finnlawfirmpc.com



YCR LAW

Jason A. Daigle
Partner

Direct Dial: (843) 720-5436
Direct Fax: (843) 579-1324
E-mail: jdaigle@ycrlaw.com

October 10, 2019

Thomas J. Finn
Finn Law Firm, P.C.
38D-4 New Orleans Road
P.O. Box 6003
Hilton Head Island, SC 29938

Re: Tracey Lee Lunenburg v. Vincent J. Aiello, Jr., Atlantic Heritage Builders, Inc.,
Yuko Construction, Inc. d/b/a Advanced Roofing, Inc., Bismarklara, Premium
Stucco, Shaw Manufacturing's Wrought Iron Works, Inc.
Case No.: 2019-CP-07-00223
YCR File: 13918-20190474

Dear Tom,

I am in receipt of your email of September 16, 2019 wherein you invite us to observe stone removal of the turret. I do appreciate you informing me, but that invitation is inadequate to comply with your client's obligation under both the spoliation of evidence provision and the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act. It is my understanding that your client has continued to alter, destroy, and repair allegedly deficient work that is the basis of your client's claims against my clients. This is being done despite my specific instructions to the contrary and as outlined in my June 28, 2019 letter to you. Simply put, the elements that my expert and my clients needed to access and inspect have already been destroyed by your client, thereby spoiling the evidence against my clients and denying my clients their rights under the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act.

I again reiterate my instructions to not tamper with, alter, repair, or in any way disturb the alleged construction defects and/or deficiencies at the residence located at 55 Bridgetown Road, Hilton Head Island, South Carolina.

Sincerely,

YOUNG CLEMENT RIVERS, LLP

Jason A. Daigle
Partner

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 19-CP-07-00223

TRACEY LEE LUNENBURG,)
)
Plaintiff,)
vs.)

VINCENT J AIELLO, Jr.,)
ATLANTIC HERITAGE)
BUILDERS, INC.,)
YUKO CONSTRUCTION,)
INC, D/B/A ADVANCED)
ROOFING, INC, BISMARCK)
LARA, PREMIUM STUCCO,)
SHAW MANUFACTURING'S)
WROUGHT ,IRON WORKS,)
INC.)

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS OR IN THE
ALTERNATIVE STAY

Defendants.)
)
VINCENT J. AIELLO, JR)
)
THIRD PARTY PLAINTIFF,))

v.)
)
PALATIAL HOMES, INC.,)
PALATIAL HOMES, LLC,)
PALATIAL HOMES, DESIGN,)
LLC AND PALATIAL BUILDING)
GROUP, LLC)

THIRD PARTY)
DEFENDANTS)
)
_____)

Plaintiff, Tracey Lee Lunenberg purchased the subject residence at 55
Bridgetown Road on Hilton Head Island in 2012 from Defendant Vincent Aiello and his

wife for \$3,2 million dollars. The Aiello's had originally hired Palatial Homes Inc., to construct the subject residence in 2008. Prior to completion of the home Vincent Aiello terminated the contract with Palatial Homes, Inc. Mr. Aiello's own company, Atlantic Heritage Builders, took over the construction and obtained a certificate of occupancy.

As Plaintiff's affidavit contends the Plaintiff and her husband began to experience Leaks which appeared to be emanating from the flat roof which covered a large portion of the residence. Plaintiff or her husband contacted the builder and former owner Vincent Aiello to address the leaks and subsequent damage. Mr. Aiello's company, Atlantic Heritage Builders investigated the issues, determined the leaks were caused by deficiencies in the flashing, and set about making repairs. The invoices attached to Plaintiff's affidavit indicate that the repairs were made by Atlantic Heritage in the summer of 2014. Plaintiff paid Atlantic Heritage Builders to correct the deficiencies and was insured the problem was resolved.

In 2016 Plaintiff noticed additional leaks also emanating from the flat roof. Plaintiff again called Vincent Aiello. Mr. Aiello began to investigate the source of the leaks and discovered significant water infiltration as well as structural damage both of which required immediate attention. Upon discovering the scope and nature of the water infiltration issues Mr. Aiello informed the Plaintiff that his company could not handle the necessary repairs. Mr. Aiello, as Plaintiff's affidavit verifies, was aware, even encouraged Plaintiff to hire another contractor to conduct the necessary repairs.

Plaintiff afforded Atlantic Heritage the opportunity and right to cure the defects. Plaintiff even paid Atlantic Heritage Builders for the repairs it performed in 2014. Only when Atlantic Heritage Builders declined to make necessary repairs did Plaintiff hire another contractor to stop the leaks.

Defendant Atlantic Heritage filed a motion to stay or dismiss claiming Plaintiff failed to comply with The South Carolina Notice and Opportunity to Cure Construction dwelling Defects Act SC Code §40-59-810, et seq. As Plaintiffs Affidavit indicates the Defendant Atlantic Heritage Builders was not only requested to make repairs, Atlantic Heritage made repairs but were paid by Plaintiff to make the repairs. Plaintiff's affidavit also states that Mr. Aiello of Atlantic Heritage Builders told Plaintiff he could not, and would not, continue with repairs prompting Plaintiff to hire another contractor with the approval of Atlantic Heritage. After Atlantic Heritage declined to make additional necessary repairs Plaintiffs hired another contractor to stop the active leaks in their roof

Third Party Defendants Palatial Homes, Inc., Palatial Homes, LLC Palatial Homes Design, LLC and Palatial Building Group, LLC (hereinafter "Palatial") have also joined in the motion to dismiss or stay. Plaintiff did not file an action against Palatial because they were not the contractor of record that obtained a Certificate of Occupancy. Plaintiff does not believe Palatial's motion to dismiss or stay applies to her.

Defendant Shaw Manufacturing's Wrought Iron Works was named by the Plaintiff in the action as a result of its alleged fabrication and installation of wrought iron railing at the subject residence. While Plaintiff has had fairly extensive repairs made to the flat roof Plaintiff is not aware that any work performed by the Defendant Shaw

Manufacturing's Wrought Iron works has been affected. All the Defendant's, their counsel and experts have had access to inspect the subject residence since the start of the case. Defendant Shaw is free to propose how and when would correct its deficient work but has yet to do so.

Plaintiff respectfully requests that Defendants' motion to dismiss, or in the alternative, stay the case be denied.

FINN LAW FIRM, PC

By SThomas J. Finn
P.O. Box 6003
Hilton Head Island , S.C.
29938
(843) 682-3555
(843)682-3558
Thomas@finnlawfirmpc.com

This 14th day of May, 2020
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 19-CP-07-0223
TRACEY LEE LUNENBURG,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
VINCENT J AIELLO, Jr.,	)	
ATLANTIC HERITAGE	)	
BUILDERS, INC.,	)	
YUKO CONSTRUCTION,	)	PLAINTIFF'S MOTION TO
INC, D/B/A ADVANCED	)	LIFT STAY
ROOFING, INC, BISMARCK	)	
LARA, PREMIUM STUCCO	)	
SHAW MANUFACTURING'S	)	
MANUFACTURERS	)	
WROUGHT IRON WORKS,	)	
	)	
Defendants.	)	
	)	
VINCENT J. AIELLO, JR	)	
	)	
THIRD PARTY PLAINTIFF,	)	
	)	
v.	)	
	)	
PALATIAL HOMES, INC.,	)	
PALATIAL HOMES, LLC,	)	
PALATIAL HOMES, DESIGN,	)	
LLC AND PALATIAL BUILDING	)	
GROUP, LLC	)	
	)	
THIRD PARTY	)	
DEFENDANTS	)	
	)	
	)	

TO: JASON DAIGLE, ESQUIRE, ATTORNEY FOR VINCENT J. AIELLO, JR.,
ATLANTIC HERITAGE BUILDERS, INC., A&S SALES OF VIRGINIA;
RACHEL IGDALL, ESQUIRE AND PAUL H. RAHN, ESQUIRE, ATTORNEYS
FOR SHAW MANUFACTURING'S WROUGHT IRON WORKS; R. TRIPPETT
BOUNEAU, III, ESQUIRE, ATTORNEY FOR PALATIAL HOMES, LLC AND

**PALATIAL HOMES, INC.; BRENT M. BOYD, ESQUIRE ATTORNEY FOR
PALATIAL HOMES, LLC; WESLEY FEW, ESQUIRE, ATTORNEY FOR
PALATIAL HOMES, LLC AND PALATIAL HOMES, INC.;**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through her below signed counsel, will move within ten days hereof, or as soon as practicable before a presiding Judge of this Circuit for an Order lifting the stay in the present case.

Plaintiff filed this action against the Defendants in 2019. Defendants Vincent J. Aiello and Heritage Builders subsequently filed an Answer and Third party Complaint against Palatial Homes Design LLC and Palatial Homes, LLC. Defendants Vincent J. Aiello and Heritage Builders, Inc., also filed a Motion to Stay this matter alleging that Plaintiffs failed to provide Defendants with a Right to Cure pursuant to S.C. Code 40-59-810. Other Defendants and Third Party Defendants joined in the motion and/or filed separate Motions to Stay. After hearing oral argument Judge Jefferson issued an Order staying the case until such time as Plaintiff complied with S.C. Code 40-59-810, et seq.

Upon receipt of the Order, counsel for the Plaintiff drafted and sent, via certified mail “right to cure letters” compliant with the statute to each of the defendants and Third-Party Defendants. Said letters were served on the contractor and subcontractors via certified mail to the last known address of the addressee. Pursuant to S.C. Code 40-59-810 et seq., contractor or subcontractors shall advise the claimant within fifteen days of receipt of claim if the construction defect is not sufficiently stated and shall request clarification.

Only counsel for Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. and A&S Sales of Virginia responded to counsel for Plaintiff’s “Right to Cure Letters”.

Counsel for the above referenced contractors, Jason Daigle drafted a letter dated July 14, 2020 citing S.C. Code §40-59-840 and requesting clarification of Claimant's allegations. Pursuant to the applicable Statute contractors have fifteen days to request clarification.

Claimant's attorney sent certified letters on June 19, 2020 to Vincent J. Aiello, Jr.

Atlantic Heritage Builders, Inc., and A&S Sales of Virginia. Claimant's counsel is aware that A&S Sales of Virginia signed for their letter on June 23, 2020. Atlantic Heritage Builders, Inc. and Vincent J. Aiello, Jr., were sent a letter to their last known address, which is also the address listed with the South Carolina Secretary of State, and never signed for same. Mr. Daigle's letter dated July 14, 2020 which requests clarification from claimant of alleged defects was not within the fifteen days allotted by § 40-59-840 to request clarification, therefore, claimant is not obligated to provide clarifications.

Additionally, Mr. Daigle's letter also states "once I have received the requested clarifications I would like to schedule a time to inspect the alleged defects that still exist at the residence." As claimant is not obligated to make clarifications since contractor's response letter was beyond the allotted time claimant has not scheduled another inspection of the subject property. It is worth noting that contractor, their counsel and their expert have inspected the entire property prior to seeking a stay in this matter. Since neither Vincent J. Aiello, Heritage Builders, Inc., or A&S Sales of Virginia did not request clarification of the alleged damages in a timely manner claimant should not be obligated to do so. Since Defendants made their demand for an inspection contingent upon production of clarifications of alleged defects and their request was not timely, the stay should be lifted to allow plaintiff to proceed with her lawsuit.

Since none of the other Defendants or Third-Party Defendants responded to the “right to cure” letters sent by claimant’s counsel claimant must be granted the opportunity to proceed with her lawsuit.

Plaintiff respectfully requests that the stay be lifted and pursuant to Section 40-59-850 (C) the claimant be allowed to proceed with her civil suit.

FINN LAW FIRM, PC

By: S/Thomas J. Finn
Thomas J. Finn
P.O. Box 6003
Hilton Head Island, S.C. 29938
(843)682-3555
Attorney for the Plaintiff

This 28th day of September, 2020
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
TRACEY LEE LUNENBURG,	)	CASE NO. 2019-CP-07-00223
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	DEFENDANTS VINCENT J. AIELLO, JR.
VINCENT J. AIELLO, JR., ATLANTIC	)	AND ATLANTIC HERITAGE BUILDERS,
HERITAGE BUILDERS, INC., YUKO	)	INC.'S MEMORANDUM IN OPPOSITION
CONSTRUCTION, INC. D/B/A	)	OF PLAINTIFF'S MOTION TO LIFT
ADVANCED ROOFING, INC.,	)	STAY
BISMARKLARA, PREMIUM STUCCO,	)	
SHAW MANUFACTURING'S	)	
WROUGHT IRON WORKS, INC.,	)	
	)	
DEFENDANTS.	)	
	)	
VINCENT J. AIELLO, Jr.	)	
	)	
THIRD-PARTY PLAINTIFF	)	
	)	
v.	)	
	)	
PALATIAL HOMES, INC., PALATIAL	)	
HOMES, LLC, PALATIAL HOMES	)	
DESIGN, LLC, AND PALATIAL	)	
BUILDING GROUP, LLC,	)	
	)	
THIRD-PARTY DEFENDANTS.	)	
	)	

Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc., (hereinafter "Defendants"), by and through their undersigned attorneys, respectfully submit this Memorandum in Opposition to Plaintiff's Motion to Lift Stay. Defendants are entitled to a continued stay and/or dismissal as Plaintiff continues to fail to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810, et seq. ("Right to Cure Act").

Background

The subject residence was constructed from 2008 to 2009 with the certificate of Occupancy being issued on November 18, 2009. See Plaintiff's Complaint ¶ 7. Plaintiff has alleged that both Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. acted as the general contractor for the subject residence during original construction. See Plaintiff's Complaint ¶ 11 and ¶ 15. Plaintiff purchased the subject residence from Defendant Aiello in 2012. At Plaintiff's behest, Defendants made certain repairs and modifications to the subject residence from 2014 to 2017. In June of 2018, Plaintiff began making significant repairs to the subject residence – specifically to the roof and flashing. Defendants did not perform that work, nor were they informed of the work or given the opportunity to inspect the purported defective areas.

Plaintiff filed this lawsuit on February 4, 2019 wherein she set forth causes of action against Defendants for Negligence and Gross Negligence in their capacity as general contractors of the subject residence. Defendants filed their Answers on April 26, 2019. Defendants were permitted to inspect the Property pursuant to Rule 34(a)(2) of the South Carolina Rules of Civil Procedure on May 8, 2019. Defendants' liability expert, Robert Kenney, was also present at the inspection. On the day of inspection it was clear that Plaintiff had been effecting repairs and modifications to the subject property for many months. Almost all of Defendants' work which Plaintiff alleges was negligent had been removed and destroyed. See Kenney Affidavit attached hereto as Exhibit "A". Plaintiff was not given notice of these alleged defects and subsequent repairs or the opportunity to inspect or cure them prior to Plaintiff effecting the repairs and destroying Defendants' work.

Upon discovering the state of the subject residence, counsel for Defendants sent a letter to Plaintiff's counsel on June 28, 2019 requesting that Plaintiff not alter or destroy any alleged defective conditions at the subject property and asking for Plaintiff to comply with South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act - S.C. Code Ann. § 40-59-810. See Letter attached hereto as Exhibit "B". Plaintiff did not cease repairs and continued to actively destroy the alleged construction defects. On September 16, 2019 – over four months after the initial inspection and almost three months after Exhibit B was sent – Plaintiff's counsel informed defense counsel that a small area of the turret section of the home would be repaired and that we were invited to inspect the turret prior to the work being scheduled. See email attached hereto as Exhibit "C". Of course, Defendants were never given the opportunity to cure the alleged defects to the turret. After it became clear that Plaintiff had no intention of complying with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, counsel for Defendants sent a letter to Plaintiff's counsel on October 10, 2019 stating that they had destroyed all the evidence against his clients thereby denying them their rights under the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act and denying them the opportunity to effectively defend the case against them. See Letter attached hereto as Exhibit "D".

On January 9, 2020 Defendants filed their Motion to Stay Proceedings or Dismiss. The other Defendants and Third-Party Defendants subsequently joined in this motion. Judge Jefferson heard these motions on May 15, 2020. Following the hearing, Judge Jefferson ruled in favor Defendants' Motion to Stay and issued three (3) Form-4 Orders granting the motions on May 20, 2020. See Orders attached hereto, collectively, as Exhibit "E".

In an effort to comply with the Right to Cure Act, Plaintiff's counsel sent "Right to Cure" letters dated June 18, 2020. Plaintiff has provided no proof of service for those letters. To the contrary, Plaintiff admits in his memorandum that those letters were never signed for by Defendants. Counsel for Defendants was only made aware of those letters on June 25, 2020 after Plaintiff's counsel emailed copies of the letters. Neither Defendants, nor Counsel for Defendants has received the letters by any proper service means, specifically via certified mail as set for in S.C. Code Ann. § 40-59-840.

Plaintiff's June 18, 2020 letter generally listed certain alleged construction defects. More importantly, Plaintiff's counsel also provides that "some repairs have already been made" and that "[t]he completion of these repairs might affect your ability to examine the evidence of original construction." See Letter attached hereto as Exhibit "F".

Despite Defendants having never actually received the letters, and Defendants' counsel only receiving courtesy copies via email, Defendants erred on the side of caution and opted to request clarifications pursuant to S.C. Code Ann. § 40-59-840. The clarification letter was sent to Plaintiff's counsel on July 14, 2020. See Clarification Letter attached hereto as Exhibit "G". That letter requested both clarification of the alleged construction defects and to schedule a time to inspect the alleged defects. Plaintiff's counsel responded to the Clarification Letter on September 15, 2020. The letter simply stated that he had not received the Clarification letter within 15 days of his issuing his Right to Cure letter¹ and that he was moving to lift the stay. See Letter attached hereto as Exhibit "H". Of note, that letter specifically declines to clarify the alleged defects, does not allow or invite any inspection of the alleged defects as required by statute and as requested by Defense counsel two months prior.

¹ Again, Defendants have yet to receive this letter and Plaintiff has shown no proof of service. S.C. Code Ann. § 40-59-840 specifically states that the 15 day time allotted to request such clarification runs from the time of receipt.

Applicable Law

South Carolina has codified the right of a builder to inspect and cure alleged construction defects to a residence in S.C. Code Ann. § 40-59-810, et seq. These statutory provisions are referred to as the “South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act.” S.C. Code Ann. § 40-59-810. Ninety days prior to filing an action against a builder which seeks damages allegedly caused by construction defects, a Plaintiff “must serve a written notice of claim on the contractor. The notice of claim must contain the following:

- (1) a statement that the claimant asserts a construction defect;
- (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and
- (3) a description of any results of the defect, if known.

The contractor or subcontractor shall advise the claimant within fifteen days of receipt of the claim if the construction defect is not sufficiently stated and shall request clarification.” S.C. Code Ann. § 40-59-840. This written notice must be served by “personal service or delivery by certified mail to the last known address of the addressee.” S.C. Code Ann. § 40-59-820(5).

“If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article”. S.C. Code Ann. § 40-59-830 (emphasis added). It should be noted that “action” means any civil lawsuit or action or arbitration proceeding. S.C. Code Ann. § 40-59-820(1).

Argument

Our Supreme Court has recognized that the Right to Cure Act affords substantial substantive rights to the builder. In Grazia v. South Carolina State Plastering, LLC, 390 S.C.

562, 571, 703 S.E.2d 197, 200-01 (2010), the Court held that S.C. Code Ann. § 40-59-840 “imposes an absolute condition precedent to the filing of lawsuits that qualify under the Right to Cure Act. Subsection 840, as provided above, encompasses civil lawsuits filed against a contractor or subcontractor, and *requires* the claimant to serve written notice no later than ninety days before filing the action.” (emphasis in original). In fact, the express public intent of the Right to Cure Act is: (1) addressing the need for an alternative dispute resolution method to promote settlement of construction disputes without litigation, while adequately protecting the rights of homeowners; and (2) requiring a would-be plaintiff in certain construction defect matters to file a notice of claim with the would-be defendant and provide an opportunity to resolve the claim without litigation. Grazia, at 572 (citing 2003 South Carolina Laws Act 82 (S.B. 433). “The stated public policy, therefore, is not abridged when a court, on motion, is required to stay a proceeding in order to require compliance with the Right to Cure Act’s notice provisions” (emphasis in original). Grazia, at 572.

These rights under the Right to Cure Act are not new substantive rights, but instead represent an effort by the General Assembly to provide the contractors/subcontractors a new procedural timeline for asserting existing litigation rights. In other words, the right of entry onto and inspection of the claimant’s dwelling is now permitted to occur prior to the filing of the action under the notice provisions of §§ 40–59–840 and 850, as opposed to during an action’s normal discovery period. Id. at 573. More specifically, the rights afforded to the builder include: the right to request clarification of the alleged defects (§ 40–59–840); the right to inspect the alleged defects (§ 40–59–850); the right to offer to remedy the alleged defect (§ 40–59–850); the right to offer to settle the claims related to the alleged defects (§ 40–59–850), and; the right to deny the claim (§ 40–59–850).

As ruled on by Judge Jefferson, Plaintiff had categorically failed to comply with any part of the Right to Cure Act. Plaintiff had not served Defendants with written notice of the alleged construction defects as required by S.C. Code Ann. §§ 40-59-820(5) and 40-59-840. Plaintiff's failure to comply with the notice provision of the statute denied Defendants their rights to request clarification of the alleged defects, to inspect the alleged defects, to offer to remedy the alleged defect, to offer to settle the claims related to the alleged defects, and/or to deny the claim.

A stay pursuant to the Right to Cure Act is not discretionary, it is mandatory as S.C. Code Ann. §§ 40-59-830 directs that "on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." Even now, Plaintiff has not complied with the Right to Cure Act and the stay in this action must be left in place pursuant to S.C. Code Ann. §§ 40-59-830. Specifically, Plaintiff has not

- a. shown proof that the Right to Cure letters were received by Defendants;
- b. clarified the vague and general allegations of construction defects;
- c. allowed for inspection of the alleged defects, and;
- d. stated which alleged defects have been repaired, destroyed, and/or altered and which alleged defects are no longer available for inspection.

Without clarification of the alleged defects and without the ability to inspect the alleged defects, Defendants have continued to have their statutory rights denied under the Right to Cure Act. Accordingly, Plaintiff has continued to fail to abide by the Right to Cure Act and this action must remain stayed until such compliance with the Act.

It should be noted that it is no longer possible for the Plaintiff to comply with her requirements under the Act, nor indeed is it possible for Defendants to be afforded their rights thereunder. Plaintiff has knowingly and intentionally destroyed and repaired virtually all of the

original construction for which she is suing Defendants. Plaintiff's counsel has conceded that "some repairs have already been made," and "[t]he completion of these repairs might affect your ability to examine the evidence of original construction." See Exhibit "F".

While, as referenced above, the Right to Cure Act expressly calls for a "stay" when a claimant files an action before compliance, it also expressly calls for the stay to remain in effect "until the claimant has complied" § 40-59-830 (emphasis added). Moreover, as also referenced above, the language of the Right to Cure Act makes plain the legislature's intent that no "civil action or other remedy provided by contract or by law" proceed until there has been compliance.² See § 40-59-850(C) ("If the parties cannot settle the dispute pursuant to [the Right to Cure Act], the claimant *may* proceed with a civil action or other remedy provided by contract or by law.") (emphasis added). Here, Plaintiff has made compliance with the Right to Cure Act impossible. Plaintiff has substantially repaired and remodeled the home, and in the process has destroyed the alleged construction defects without giving Defendants notice of those alleged defects and without giving Defendants an opportunity to inspect and/or cure them. Because Plaintiff has not complied with the Right to Cure Act, the act plainly requires the stay to remain in place.

² "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007); see also id. ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."); id. at 499, 640 S.E.2d at 459 (In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."); S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("[T]he statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect."); Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citation omitted) ("If the statute is ambiguous . . . courts must construe the terms of the statute."); id. (statutory language must be construed in light of the intended purpose of the statute); id. (a statute should not be construed in a way which leads to an absurd result or renders it meaningless).

Conclusion

Based on the above arguments, authorities, and evidence, Defendants Vincent J. Aiello, Jr. and Atlantic Heritage Builders, Inc. are entitled to an Order denying Plaintiff's Motion to Lift the Stay.

YOUNG CLEMENT RIVERS, LLP

By: s/Jason A. Daigle

Jason A. Daigle

Nicholas J. Rivera

P.O. Box 993, Charleston, SC 29402

(843) 720-5436

jdaigle@ycrlaw.com

nriviera@ycrlaw.com

Attorneys for Vincent J. Aiello, Jr. and Atlantic
Heritage Builders, Inc.

Charleston, South Carolina

Dated: November 6, 2020

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700223

Tracey Lee Lunenburg
PLAINTIFF(S)

Vincent J Aiello, Jr et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on May 20, 2020 on Defendant Shaw Manufacturing's Wrought Iron Works, Inc.'s Motion to Join Motion to Stay Proceedings or Dismiss, filed March 16, 2020. Representing the Plaintiff was Thomas J. Finn, Esq. Representing the Defendants was Rachel Igdal, Esq.

The Court signed an Order May 19, 2020, filed May 20, 2020 Granting Defendant Atlantic Heritage Builders, Inc.'s Motion to Stay Proceedings or Dismiss, filed January 9, 2020. For the reasons contained in the Court's May 20, 2020 Order and for the foregoing reasons, Defendant Shaw Manufacturing's Wrought Iron Works, Inc.'s Motion to Join Motion to Stay Proceedings or Dismiss is heard and respectfully Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/20/2020 .

Advanced Roofing Inc
Yuko Construction Company Inc
Premium Stucco Llc
Bismark Lara
American Master Ironworks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

The Motion to Stay or Dismiss is made pursuant to the South Carolina Notice and opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. 40-59-810 (hereinafter "the Act.")

Pursuant to the Act, "[i]n an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following: (1) a statement that the claimant asserts a construction defect; (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and (3) a description of any results of the defect, if known." S.C. Code Ann. 40-59-840.

"If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. 40-59-830.

Upon a thorough review of the record, it appears that the Plaintiff has not complied with the requirements of S.C. Code Ann 40-59-840. The record reveals no indication of written notice containing a statement of construction defect, a description of the claim, and a description of any results of the defect. Accordingly, pursuant to S.C. Code Ann. 40-59-830, this case is hereby stayed until the Plaintiff complies with the requirements of S.C. Code Ann. 40-59-840.

Further, as the Court has granted Defendant's Motion to Stay, and because the Defendant prayed for dismissal in the alternative, the Court need not address the merits of the Motion to Dismiss.



Beaufort Common Pleas

Case Caption: Tracey Lee Lunenburg VS Vincent J Aiello Jr , defendant, et al

Case Number: 2019CP0700223

Type: Order/Electronic Form 4

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-05-20 12:33:46 page 3 of 3

EEHECJ FROM NCALLY FILED -- 2020 May 20 12:35 PM -- BEAUFORT -- COMMON COURT -- COMMON COURT -- CASE# 2019CP0700223

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700223

Tracey Lee Lunenburg
PLAINTIFF(S)

Vincent J Aiello, Jr et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on May 15, 2020 on Third-Party Defendant Palatial Homes, LLC's (hereinafter "Palatial") Motion to Join Defendant's Motion to Stay Proceedings or Dismiss, filed February 3, 2020. Representing Palatial was Brent M. Boyd, Esq. Representing the Plaintiff was Thomas J. Finn, Esq. Palatial's Motion to Stay or Dismiss is made pursuant to the South Carolina Notice and opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. 40-59-810 (hereinafter "the Act.")

Pursuant to the Act, "[i]n an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following: (1) a statement that the claimant asserts a construction defect;

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/19/2020 .

Advanced Roofing Inc
Yuko Construction Company Inc
Premium Stucco Llc
Bismark Lara
American Master Ironworks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

(2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect; and (3) a description of any results of the defect, if known." S.C. Code Ann. 40-59-840.

"If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. 40-59-830.

Plaintiff objects to Palatial's Motion because "Plaintiff did not file an action against Palatial because they were not the contractor of record that obtained a Certificate of Occupancy. Plaintiff does not believe Palatial's motion to dismiss or stay applies to her." Memorandum in Opposition at 3. However, S.C. Code Ann. 40-59-840 applies to all actions brought "against a contractor or subcontractor arising out of the construction of a dwelling..." S.C. Code Ann. 40-59-820. An "action" is defined as "any civil lawsuit or action or arbitration proceeding for damages or indemnity..." S.C. Code Ann. 40-59-820. Palatial was brought into this action by the Defendants for indemnification purposes. Accordingly, the Court finds that the requirements of S.C. Code Ann. 40-59-840 apply to the Plaintiff as to Palatial.

Upon a thorough review of the record, it appears that the Plaintiff has not complied with the requirements of S.C. Code Ann 40-59-840 as to Palatial. The record reveals no indication of written notice containing a statement of construction defect, a description of the claim, and a description of any results of the defect. Accordingly, pursuant to S.C. Code Ann. 40-59-830, this case is hereby stayed until the Plaintiff complies with the requirements of S.C. Code Ann. 40-59-840.

Further, as the Court has granted Palatial's Motion to Stay, and because Palatial prayed for dismissal in the alternative, the Court need not address the merits of Palatial's Motion to Dismiss.



Beaufort Common Pleas

Case Caption: Tracey Lee Lunenburg VS Vincent J Aiello Jr , defendant, et al

Case Number: 2019CP0700223

Type: Order/Electronic Form 4

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-05-19 12:37:04 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0700223

Tracey Lee Lunenburg
PLAINTIFF(S)

Vincent J Aiello, Jr et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on May 15, 2020 on Defendant Atlantic Heritage Builders, Inc.'s (hereinafter "the Defendant") Motion to Stay Proceedings or Dismiss, filed January 9, 2020. Representing the Defendant was Jason A. Daigle, Esq. Representing the Plaintiff was Thomas J. Finn, Esq. The Defendant's Motion to Stay or Dismiss is made pursuant to the South Carolina Notice and opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. 40-59-810 (hereinafter "the Act.")

Pursuant to the Act, "[i]n an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following: (1) a statement that the claimant asserts a construction defect; (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction defect;

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/19/2020 .

Advanced Roofing Inc
Yuko Construction Company Inc
Premium Stucco Llc
Bismark Lara
American Master Ironworks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

and (3) a description of any results of the defect, if known." S.C. Code Ann. 40-59-840.

"If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. 40-59-830.

Upon a thorough review of the record, it appears that the Plaintiff has not complied with the requirements of S.C. Code Ann 40-59-840. The record reveals no indication of written notice containing a statement of construction defect, a description of the claim, and a description of any results of the defect. Accordingly, pursuant to S.C. Code Ann. 40-59-830, this case is hereby stayed until the Plaintiff complies with the requirements of S.C. Code Ann. 40-59-840.

Further, as the Court has granted Defendant's Motion to Stay, and because the Defendant prayed for dismissal in the alternative, the Court need not address the merits of Defendant's Motion to Dismiss.



Beaufort Common Pleas

Case Caption: Tracey Lee Lunenburg VS Vincent J Aiello Jr , defendant, et al

Case Number: 2019CP0700223

Type: Order/Electronic Form 4

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-05-19 12:38:24 page 3 of 3

June 18, 2020

Vincent J. Aiello
Atlantic Heritage Builders, Inc.
443 William Hilton Parkway
Hilton Head Island, S.C.
29928

Re: 54 Bridgetown Road, Hilton Head Island, South Carolina

Dear Mr. Aiello:

This firm represents Tracey Lunenberg, who owns the above-referenced Subject Property. We are writing pursuant to S.C Code Ann. § 40-59-810, et seq. to give you notice and an opportunity to cure construction defects existing at the Subject Property. A description of Mrs. Lunenberg's claims includes, but is not limited to:

- 1) Failure to comply with the applicable building codes, industry standards, and industry customs;
- 2) Failure to properly hire, coordinate, and supervise subcontractors;
- 3) Improper installation of stucco;
- 4) Failure to install weep assemblies in the stucco system;
- 5) Improper installation of wrought iron railings;
- 6) Improper installation of windows and rough openings; and
- 7) Failure to install proper flashings, waterproofing, and sealant joints.
- 8) Improper application of stone cladding.

The above defects have resulted in water intrusion, severe wood rot and decay, termite infestation and damage, and other physical damages.

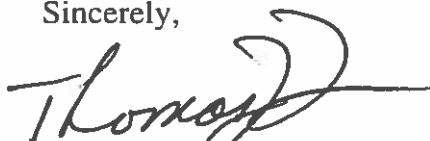
Per the above-cited statute, you have thirty days from service of this notice to inspect, offer to remedy, offer to settle with Mrs. Lunenburg, or deny the claim regarding the defects. Reasonable access and an opportunity to inspect the construction defects are available at a mutually convenient time. Although you have a statutory thirty-day

deadline to respond, you might better protect your interests by providing more urgent attention than that. Due to the emergency nature of the damages, some repairs have already been made. The discovery of damages first occurred when leaks were discovered in a second floor bedroom. As you know Atlantic Heritage Builders and A&S Sales of Virginia attempted to perform repairs. Further investigation into the leaks reveal significant wood rot and severe termite infestation. After several attempts to locate and repair the leaks and associated damage you informed the Lunenbergs that Atlantic Heritage and A&S Sales of Virginia, LLC would not be able to make further repairs. With your advice and consent, the Lunenbergs hired an outside contractor. Once that project started, the contractors continued to find additional damages that required repair. The completion of these repairs might affect your ability to examine the evidence of original construction. We therefore recommend that you consult with your attorney, insurance company, and/or expert consultant as soon as possible to discuss this matter.

While the leaks in the flat roof and parapet walls have been repaired, there remains significant repairs to complete at the subject residence. The stone clad turret must be reconstructed due to water damage, rot and termite activity. The stucco does not have proper weep assemblies which may require complete replacement. The wrought iron railings were improperly installed in a manner that allows water to penetrate the deck water proofing. The windows were not properly flashed which require removal and reinstallation.

Finally, we cannot be certain of the identity of which subcontractors you used for this project. Please immediately place all of them on notice of this claim, especially your framer, stucco subcontractor, roofer, stone mason, iron railing fabricator and waterproofing subcontractor. I look forward to your prompt reply.

Sincerely,



Thomas J. Finn

cc. Jason Daigle, Esquire

June 18, 2020

Vincent J. Aiello
A&S Sales of Virginia
7001 Newington Rd, Ste 1
Lorton, Virginia
22079

Re: 54 Bridgetown Road, Hilton Head Island, South Carolina

Dear Mr. Aiello:

This firm represents Tracey Lunenberg, who owns the above-referenced Subject Property. A&S Sales performed extensive repairs to the Lunenberg residence. Most if not all those repairs are deficient. Under South Carolina Law a contractor, or subcontractor, must be given a right to cure the deficiencies for which they are responsible before a lawsuit can be brought by the property owner. I am writing to you in order to comply with the terms of S.C Code Ann. § 40-59-810, et seq. to give A&S Sales of Virginia a notice and an opportunity to cure construction defects existing at the Subject Property. A description of Mrs. Lunenberg's claims includes, but is not limited to:

- 1) Failure to comply with the applicable building codes, industry standards, and industry customs;
- 2) Failure to properly hire, coordinate, and supervise subcontractors;
- 3) Improper installation of stucco;
- 4) Failure to install weep assemblies in the stucco system;
- 5) Improper installation of wrought iron railings;
- 6) Improper installation of windows and rough openings; and
- 7) Failure to install proper flashings, waterproofing, and sealant joints.

The above defects have resulted in water intrusion, severe wood rot and decay, termite infestation and damage, and other physical damages.

Per the above-cited statute, you have thirty days from service of this notice to inspect,

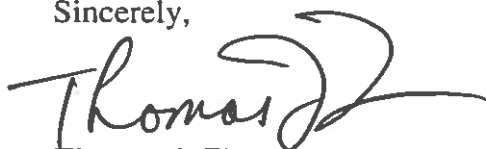
Page 2.

offer to remedy, offer to settle with Mrs. Lunenburg, or deny the claim regarding the defects. Reasonable access and an opportunity to inspect the construction defects are available at a mutually convenient time. Although you have a statutory thirty-day deadline to respond, you might better protect your interests by providing more urgent attention than that. Due to the emergency nature of the damages, some repairs have already been made. The discovery of damages first occurred when leaks were discovered in a second floor bedroom. As you know Atlantic Heritage Builders and A & S Sales of Virginia, LLC attempted to perform repairs at the subject residence. Further investigation into the leaks reveal significant wood rot and severe termite infestation. After several attempts to locate and repair the leaks and associated damage you informed the Lunenbergs that Atlantic Heritage and A&S Sales of Virginia, LLC would not be able to make further repairs. With your advice and consent, the Lunenbergs hired an outside contractor. Once that project started, the contractors continued to find additional damages that required repair. The completion of these repairs might affect your ability to examine the evidence of original construction. We therefore recommend that you consult with your attorney, insurance company, and/or expert consultant as soon as possible to discuss this matter.

While the leaks in the flat roof and parapet walls have been repaired, there remains significant repairs to complete at the subject residence. The stone clad turret must be reconstructed due to water damage, rot and termite activity. The stucco does not have proper weep assemblies which may require complete replacement. The thickness of the stucco in some areas does not comply with the applicable building codes. The wrought iron railings were improperly installed in a manner that allows water to penetrate the deck water proofing. The windows were not properly flashed which require removal and reinstallation.

Finally, we cannot be certain of the identity of which subcontractors you used for this project. Please immediately place all of them on notice of this claim, especially your framer, stucco subcontractor, roofer, stone mason, iron railing fabricator and waterproofing subcontractor. I look forward to your prompt reply.

Sincerely,



Thomas J. Finn

cc. Jason Daigle, Esquire



Jason A. Daigle

Direct Dial: (843) 720-5436

Direct Fax: (843) 579-1324

E-mail: jdaigle@ycrlaw.com

FOR SETTLEMENT PURPOSES ONLY – RULE 408 SCRE

July 14, 2020

Thomas J. Finn
Finn Law Firm, P.C.
38D-4 New Orleans Road
P.O. Box 6003
Hilton Head Island, SC 29938

Re: Tracey Lee Lunenburg v. Vincent J. Aiello, Jr., Atlantic Heritage Builders, Inc., Yuko Construction, Inc. d/b/a Advanced Roofing, Inc., Bismarklara, Premium Stucco, Shaw Manufacturing's Wrought Iron Works, Inc.
Case No.: 2019-CP-07-00223
YCR File: 13918-20190474

Dear Tom,

I am in receipt of the letters you sent to Vincent J. Aiello, Jr.; Atlantic Heritage Builders, Inc., and; A&S Sales of Virginia pursuant to S.C. Code Ann. § 40-59-810, *et seq.* In your letters you have made various general allegations of construction defects. I am writing you pursuant to S.C. Code Ann. § 40-59-840 to request clarification of your allegations.

In your letter you state the construction defect claims include:

“Failure to comply with the applicable building codes, industry standards, and industry customs.”
Please clarify this statement by answering the following:

Which building code was not complied with?

What specific code provisions were not complied with?

What elements of the construction violated the aforementioned building codes?

Where specifically is each construction defect located that violated the aforementioned building codes?

What industry standards were not complied with?

What elements of the construction violated the aforementioned industry standards?

Where specifically is each construction defect located that violated the aforementioned industry standards?

What industry customs were not complied with?

What elements of the construction violated the aforementioned industry customs?

Where specifically is each construction defect located that violated the aforementioned industry customs?



25 CALHOUN STREET, SUITE 400, P.O. Box 993, CHARLESTON, SC 29402 · (843) 577-4000 · www.ycrlaw.com

Charleston · Columbia

Have any of the alleged construction defects related to a failure to comply with the applicable building codes, industry standards, and industry customs been repaired? If so, which ones?

Do any of the alleged construction defects related to a failure to comply with the applicable building codes, industry standards, and industry customs still exist at the residence? If so, which ones?

“Failure to properly hire, coordinate, and supervise subcontractors”

Please clarify this statement by answering the following:

Which subcontractors were not properly hired?

What about the aforementioned subcontractors’ hiring was improper?

Which subcontractors were not properly coordinated?

What about the aforementioned subcontractors’ coordination was improper?

Which subcontractors were not properly supervised?

What about the aforementioned subcontractors’ supervision was improper?

What specific elements of construction do you allege are defective as a result of the failure to properly hire, coordinate, and supervise subcontractors?

Have any of the alleged construction defects related to a failure to hire, coordinate, and supervise subcontractors been repaired? If so, which ones?

Do any of the alleged construction defects related to a failure hire, coordinate, and supervise subcontractors still exist at the residence? If so, which ones?

“Improper installation of stucco”

Please clarify this statement by answering the following:

Which elements of the stucco application are improper?

Where specifically are the alleged construction defects related to the improper installation of stucco located?

Have any of the alleged construction defects related to the improper installation of stucco been repaired? If so, which ones?

Do any of the alleged construction defects related to the improper installation of stucco still exist at the residence? If so, which ones?

“Failure to install weep assemblies in the stucco system”

Please clarify this statement by answering the following:

Where specifically are the alleged construction defects related to the failure to install weep assemblies in the stucco system located?

Have any of the alleged construction defects related to the failure to install weep assemblies in the stucco system been repaired? If so, which ones?

Do any of the alleged construction defects related to the failure to install weep assemblies in the stucco system still exist at the residence? If so, which ones?

“Improper installation of wrought iron railings”

Please clarify this statement by answering the following:

What specifically about the wrought iron railing installation is improper?

Where specifically are the alleged construction defects related to the improper installation of wrought iron railings located?

Have any of the alleged construction defects related to the improper installation of wrought iron railings been repaired? If so, which ones?

Do any of the alleged construction defects related to the improper installation of wrought iron railings still exist at the residence? If so, which ones?

“Improper installation of windows and rough openings”

Please clarify this statement by answering the following:

What specifically about the window installation is improper?

Where specifically are the alleged construction defects related to the improper installation of windows located?

What specifically about the rough openings is improper?

Where specifically are the alleged construction defects related to the improper rough openings located?

Have any of the alleged construction defects related to the improper installation of windows and rough openings been repaired? If so, which ones?

Do any of the alleged construction defects related to the improper installation of windows and rough openings still exist at the residence? If so, which ones?

“Failure to install proper flashings, waterproofing, and sealant joints”

Please clarify this statement by answering the following:

What specifically about the flashing installation is improper?

Where specifically are the alleged construction defects related to the improper installation of flashing located?

What specifically about the waterproofing is improper?

Where specifically are the alleged construction defects related to the improper waterproofing located?

What specifically about the sealant joints is improper?

Where specifically are the alleged construction defects related to the improper sealant joints located?

Have any of the alleged construction defects related to the failure to install proper flashings, waterproofing, and sealant joints been repaired? If so, which ones?

Do any of the alleged construction defects related to the failure to install proper flashings, waterproofing, and sealant joints still exist at the residence? If so, which ones?

“Improper application of stone cladding”

Please clarify this statement by answering the following:

What specifically about the stone cladding application is improper?

Where specifically are the alleged construction defects related to the improper stone cladding application located?

Have any of the alleged construction defects related to the improper application of stone cladding been repaired? If so, which ones?

Do any of the alleged construction defects related to the improper application of stone cladding still exist at the residence? If so, which ones?

Once I have received the requested clarification I would like to schedule a time to inspect the alleged defects that still exist at the residence.

Thank you for your prompt attention to this matter.

Sincerely,

Jason A. Daigle

2019-0476
RECEIVED
9/21/20
JAD/jrh/PL

September 15,, 2020

Jason A. Daigle
Young Clement Rivers, LLP
P.O. Box 993
Charleston, S.C.
29402

Re: Tracey Lee Lunenberg vs. Vincent J. Aiello, Jr., et al
Case No.: 2019CP-07-00223

Dear Jason:

As counsel for Vincent J. Aiello, Jr. and Atlantic heritage Builders you filed a Motion to Stay Proceedings or Dismiss the Proceedings in the above referenced case. As you are aware the Judge declined to dismiss the case but granted a stay until such time as the Plaintiff complied with S.C. Code Ann 40-59-810. On June 19, 2020 I drafted and mailed via certified mail a "Right to Cure" letter to Vincent J. Aiello, Jr., Atlantic Heritage Builders and A&S Sales of Virginia which complied with the requirements of the aforementioned Code section. Pursuant to the statute, your clients would have fifteen days to respond to the "Right to Cure" letter. I did not receive a response within the allotted time and, therefore, will be filing a motion requesting that the stay be lifted. If you have any information which calls into question the facts as I have described them please let me know at your earliest convenience.

If you would like to discuss this matter further or, if you have any questions, please do not hesitate to contact me. Please also consider this our attempt to resolve this matter in compliance with SCRCP Rule 11. I look forward to hearing from you at your earliest convenience.

Sincerely,



Thomas J. Finn

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 19-CP-07-00223

TRACEY LEE LUNENBURG,)
))
Plaintiff,)
vs.)

VINCENT J AIELLO, Jr.,)
ATLANTIC HERITAGE)
BUILDERS, INC.,)
YUKO CONSTRUCTION,)
INC, D/B/A ADVANCED)
ROOFING, INC, BISMARCK)
LARA, PREMIUM STUCCO,)
SHAW MANUFACTURING'S)
WROUGHT, IRON WORKS,)
INC.)

MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION TO
LIFT STAY

Defendants.)
))
VINCENT J. AIELLO, JR)
))
THIRD PARTY PLAINTIFF,))

v.)
))
PALATIAL HOMES, INC.,)
PALATIAL HOMES, LLC,)
PALATIAL HOMES, DESIGN,)
LLC AND PALATIAL BUILDING))
GROUP, LLC)

THIRD PARTY)
DEFENDANTS)
))
_____)

On May 15, 2020, the Honorable D.L. Jefferson granted Vincent Aiello and Atlantic Heritage Builders, Inc.'s (Hereinafter collectively referred to as "Atlantic Heritage") motion to stay this action on the basis that Plaintiff failed to comply with S.C. Code 40-59-820, et seq., by failing to provide Atlantic Heritage with a Notice and

Opportunity to Cure as provided under the Act. Specifically, Judge Jefferson Stated “pursuant to S.C. Code Ann.40-59-840, this case is hereby stayed until the Plaintiff complies with the requirements of S.C. Code Ann 40-59-840. (A copy of Judge Jefferson’s Order is attached hereto as Exhibit “1”).

In accordance with Judge Jefferson’s Order and in compliance with S.C. Code Ann. 40-59-840 on June 19, 2020 plaintiff’s counsel sent, via certified mail, to Vincent Aiello a “Right to Cure Letter”. Attached hereto as Exhibit “2” is a copy of the letter sent to Mr. Aiello, the registered agent for the Atlantic Heritage Builders, Inc., along with a Certified Mail receipt and a signed Return Receipt for the “right to cure letter”. The “right to cure letter” was sent to the address listed on the South Carolina Secretary of State’s website for Atlantic Heritage Builders Inc. Additionally, Plaintiff’s counsel served A&S Sales of Virginia, another company owned by Mr. Aiello, that is not in the lawsuit at this time. That company was also served by certified mail which letter was signed for by P. Bolton June 23, 2020. Finally, counsel for Plaintiffs sent a copy of the right to cure letter to counsel via email on June 25, 2020. Attached hereto as Exhibit “3” is a copy of the email and letter). Despite evidence that Vincent Aiello had actually received the letter he did not respond in accordance with the applicable statute.

Pursuant to S.C. Code § 40-59-840 “The contractor or subcontractor shall advise the claimant within fifteen days of the receipt of the claim if the construction defect is not sufficiently stated and shall request clarification.” In accordance with S.C. Code § 40-59-850 (A) The contractor or subcontractor has thirty days from service of the notice to inspect, offer to remedy, offer to settle with the claimant, or deny the claim regarding the defects.

Counsel for Atlantic Heritage and Vincent Aiello and A&S Sales of Virginia, Jason Daigle sent a letter to counsel for the Plaintiff dated July 14, 2020. We know Mr. Daigle had an email copy of the letter on June 25, 2020 and A&S signed for the right to cure letter on June 23, 2020. Therefore, Mr. Daigle response was either 21 days or 23 days after receipt of the right to cure letter. In the letter Mr. Daigle acknowledges that he is responding on behalf of Vincent J. Aiello, Jr., Atlantic Heritage Builders, Inc., and A&S Sales of Virginia pursuant to S.C. Code § 49-59-810 *et seq.* The vast majority of Mr. Daigle's July 14th 2020 letter "to request clarification of your allegations". (Mr. Daigle's July 14, 2020 letter is attached hereto as Exhibit "4"). According to S.C. Code § 40-59-840 Mr. Daigle and his clients had fifteen days to make such a request and were late by either six or eight days. The defendants have not timely responded to Plaintiff's right to cure letter. Counsel for Plaintiff nevertheless responded to Mr. Daigle by letter dated July 16, 2020 offering to schedule an inspection. (Attached hereto as Exhibit "5" is counsel for Plaintiff's July 16th, 2020 letter)

According to S.C. Code § 40-59-850 (A) The contractor or subcontractor has thirty days from service of the notice to inspect, offer to remedy, offer to settle with the claimant, or deny the claim regarding the defects. Mr Daigle's letter was within thirty days of Plaintiff's right to cure letter. The only portion of the letter that pertains to S.C. Code § 40-59-850 (A) is the last sentence of the letter. Mr. Daigle writes "Once I have received the requested clarification I would like to schedule a time to inspect the alleged defects that still exist at the residence". Plaintiff takes the position that she is not required to make any clarifications because they were received after the statutory fifteen

day period. Mr. Daigle's request to schedule a site visit was contingent upon Plaintiff providing clarifications and, therefore, not valid. The Court should note that Mr. Daigle as well as the experts for Vincent Aiello and Atlantic Heritage Builders, Inc. did in fact make a site visit not long after entering the case. In fact their expert cites the visit in his Affidavit. Plaintiff also has no objection to scheduling a site visit at a mutually convenient time despite the fact that the defendant did not comply with the relevant statute.

Vincent Aiello and Atlantic Heritage Builders, Inc., despite receiving a "right to cure" letter from Plaintiff's counsel, did not provide a timely response. As such Plaintiff has complied with the requirements of S.C. Code 40-59-830, 840 and 850 and Judge Jefferson's Order of May 19, 2020. Pursuant to § 40-59-850 (C) If the parties cannot settle the dispute pursuant to this article, the claimant may proceed with a civil action or other remedy provided by contract or by law. Plaintiff respectfully requests that this Court lift the stay and permit Plaintiff to proceed with her action.

Finn Law Firm, P.C.

By: S/ Thomas J. Finn
Thomas J. Finn
P.O. Box 6003
Hilton Head Island, South Carolina
29938
(P) (843) 682-3555
(F) (843) 682-3558
thomas@finnlawfirmnpc.com

This 9th day of November, 2020
Hilton Head Island, South Carolina

Reply all Delete Junk Block

Lunenberg

TF

Tom Finn

Thu 6/25/2020 12:39 PM

To: Daigle, Jason <jdaigle@ycrlaw.com>

Scanned from a Xerox Multif...

53 KB

Please see attached

Thomas J. Finn, Esquire
Finn Law Firm, PC
38D New Orleans Road
Hilton Head Island, SC 29928
P.O. Box 6003
Hilton Head Island, SC 29938
843-682-3555 / Fax: 843-682-3558
thomas@finnlawfirm.com

From: acsf0117@gmail.com <acsf0117@gmail.com>

Sent: Thursday, June 25, 2020 11:04 AM

To: Tom Finn <thomas@finnlawfirm.com>

Subject: Scanned from a Xerox Multifunction Printer

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location:
Device Name: XRX9C934E1EF3E4

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

Workplace and Digital Printing Solutions | Xerox

Workplace solutions, document management and digital printing technologies to help organizations communicate, connect and work.

www.xerox.com

ELECTRONICALLY FILED - 2020 Nov 09 4:58 PM - BEAUFORT - COMMON PLEAS - CASE#2019CP0700223

June 18, 2020

Vincent J. Aiello
A&S Sales of Virginia
7001 Newington Rd, Ste 1
Lorton, Virginia
22079

Re: 54 Bridgetown Road, Hilton Head Island, South Carolina

Dear Mr. Aiello:

This firm represents Tracey Lunenberg, who owns the above-referenced Subject Property. A&S Sales performed extensive repairs to the Lunenberg residence. Most if not all those repairs are deficient. Under South Carolina Law a contractor, or subcontractor, must be given a right to cure the deficiencies for which they are responsible before a lawsuit can be brought by the property owner. I am writing to you in order to comply with the terms of S.C Code Ann. § 40-59-810, et seq. to give A&S Sales of Virginia a notice and an opportunity to cure construction defects existing at the Subject Property. A description of Mrs. Lunenberg's claims includes, but is not limited to:

- 1) Failure to comply with the applicable building codes, industry standards, and industry customs;
- 2) Failure to properly hire, coordinate, and supervise subcontractors;
- 3) Improper installation of stucco;
- 4) Failure to install weep assemblies in the stucco system;
- 5) Improper installation of wrought iron railings;
- 6) Improper installation of windows and rough openings; and
- 7) Failure to install proper flashings, waterproofing, and sealant joints.

The above defects have resulted in water intrusion, severe wood rot and decay, termite infestation and damage, and other physical damages.

Per the above-cited statute, you have thirty days from service of this notice to inspect,

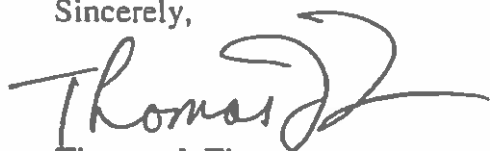
Page 2.

offer to remedy, offer to settle with Mrs. Lunenburg, or deny the claim regarding the defects. Reasonable access and an opportunity to inspect the construction defects are available at a mutually convenient time. Although you have a statutory thirty-day deadline to respond, you might better protect your interests by providing more urgent attention than that. Due to the emergency nature of the damages, some repairs have already been made. The discovery of damages first occurred when leaks were discovered in a second floor bedroom. As you know Atlantic Heritage Builders and A & S Sales of Virginia, LLC attempted to perform repairs at the subject residence. Further investigation into the leaks reveal significant wood rot and severe termite infestation. After several attempts to locate and repair the leaks and associated damage you informed the Lunenbergs that Atlantic Heritage and A&S Sales of Virginia, LLC would not be able to make further repairs. With your advice and consent, the Lunenbergs hired an outside contractor. Once that project started, the contractors continued to find additional damages that required repair. The completion of these repairs might affect your ability to examine the evidence of original construction. We therefore recommend that you consult with your attorney, insurance company, and/or expert consultant as soon as possible to discuss this matter.

While the leaks in the flat roof and parapet walls have been repaired, there remains significant repairs to complete at the subject residence. The stone clad turret must be reconstructed due to water damage, rot and termite activity. The stucco does not have proper weep assemblies which may require complete replacement. The thickness of the stucco in some areas does not comply with the applicable building codes. The wrought iron railings were improperly installed in a manner that allows water to penetrate the deck water proofing. The windows were not properly flashed which require removal and reinstallation.

Finally, we cannot be certain of the identity of which subcontractors you used for this project. Please immediately place all of them on notice of this claim, especially your framer, stucco subcontractor, roofer, stone mason, iron railing fabricator and waterproofing subcontractor. I look forward to your prompt reply.

Sincerely,



Thomas J. Finn

cc. Jason Daigle, Esquire

July 16, 2020

Jason A. Daigle
YCRLAW
P.O. Box 993
Charleston, South Carolina
29402

Re: Tracey Lee Lunenberg v. Vincent J. Aiello Jr., Atlantic Heritage Builders, Inc., YUKO Construction, Inc., d/b/a Advanced Roofing, Inc., et al;
Case No.: 2019-CP-07-00223

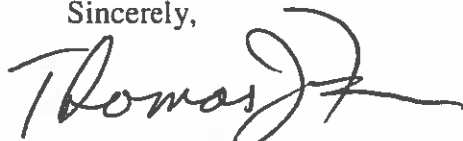
Dear Jason:

I am in receipt of your letter dated July 14, 2020 regarding the above referenced case. Your letter indicates that you were writing pursuant to S.C. Code Ann. §40-59-840 to request clarification of Plaintiff's allegations. You started your letter by indicating that you are in receipt of letters I sent to Vincent J. Aiello, Jr., Atlantic Heritage Builders, Inc., and A&S Sales of Virginia. I was obviously aware that you were representing Vincent Aiello, Jr., and Atlantic Heritage Builders, Inc., but would like you to confirm that you are also representing A&S Sales of Virginia.

Pursuant to S.C. Code Ann. §40-59-840 a contractor has fifteen days to respond and request clarification of the owners allegations. Specifically, the relevant section of the Statute states "Contractor or subcontractor shall advise the claimant within fifteen days of receipt of the claim of the construction defect is not sufficiently stated and shall request clarification. Our records indicate that Vincent Aiello, Jr., A&S Sales of Virginia and Atlantic Heritage Builders were in receipt of our letter more than fifteen days prior to your July 14, 2020 letter. Additionally, the contractor has thirty days from receipt of the letter to inspect the property. Please verify the date each of your clients received the Right to Cure Letters so that we can set up a timely inspection for each of your clients and their representatives.

I look forward to hearing from you at your earliest convenience.

Sincerely,



Thomas J. Finn

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2019-CP-07-00223

Tracey Lee Lunenburg,

Respondent,

v.

Vincent J. Aiello, Jr.,

Atlantic Heritage Builders, Inc.,

Yuko Construction, Inc., d/b/a Advanced Roofing, Inc.,

Bismark Lara, Premium Stucco, and

Shaw Manufacturing's Wrought Iron Works, Inc.,

Defendants.

Vincent J. Aiello, Jr., and

Atlantic Heritage Builders, Inc.,

Third-Party Plaintiffs,

Palatial Homes, Inc., Palatial Homes, LLC,

Palatial Homes Design, LLC, and

Palatial Building Group, LLC,

Third-Party Defendants,

Of whom Vincent J. Aiello, Jr., and

Atlantic Heritage Builders, Inc., are

Appellants.

NOTICE OF APPEAL

YOUNG CLEMENT RIVERS, LLP

Jason A. Daigle (SC Bar No. 73308)

Nicholas J. Rivera (SC Bar No. 77186)

Russell G. Hines (SC Bar No. 72100)

25 Calhoun Street, Suite 400

Charleston, South Carolina 29401

P.O. Box 993 (29402)

(843) 720-5488

Attorneys for Appellants

Other Counsel Of Record:

Thomas J. Finn, Esquire
 FINN LAW FIRM, PC
 P.O. Box 6003
 Hilton Head Island, SC 29938
 (843) 682-3555
thomas@finnlawfirm.pc.com

*Attorney for
 Tracey Lee Lunenburg*

Francis Marion Ervin, II, Esquire
 ROGERS TOWNSEND LLC
 177 Meeting Street, Suite 320
 Charleston, SC 29401
 (843) 737-8611
francis.ervin@rogerstownsend.com

*Attorney for
 Palatial Homes Design, LLC*

Paul R. Rahn, Esquire
 Rachel Igdl, Esquire
 ROBERTSON HOLLINGSWORTH
 MANOS & RAHN, LLC
 550 King Street, Suite 300
 Charleston, SC 29403
 (843) 723-6470
pr@roblaw.net
igdla@roblaw.net

*Attorneys for
 Shaw Manufacturing's Wrought
 Iron Works, Inc.*

Wesley D. Few, Esquire
 WESLEY D. FEW LLC
 P.O. Box 9398
 Greenville, SC 29604
 (864) 527-5906
wes@wesleyfew.com

*Attorney for
 Palatial Building Group, LLC,
 Palatial Homes Design, LLC,
 Palatial Homes, LLC, and
 Palatial Homes, Inc.,*

R. Trippett Boineau, III, Esquire
 George C. James, III, Esquire
 MCANGUS GOUDELOCK
 & COURIE, LLC
 P.O. Box 12519
 Columbia, SC 29211
 (803) 779-2300
trippett.boineau@mgclaw.com
george.james@mgclaw.com

*Attorneys for
 Palatial Homes, LLC, and Palatial
 Homes Design, LLC*

Brent M. Boyd, Esquire
 MURPHY & GRANTLAND, PA
 P.O. Box 6648
 Columbia, SC 29260
 (803) 782-4100
bboyd@murphygrantland.com

*Attorney for
 Palatial Homes, LLC*

Appellants, Vincent J. Aiello, Jr., and Atlantic Heritage Builders, Inc., Defendants/Third-Party Plaintiffs in the above-captioned case, hereby appeal the following order of the Honorable Carmen T. Mullen, Circuit Court Judge:

- **Order filed November 20, 2020**, granting Plaintiff's Motion to Lift Automatic Stay, a copy of which is attached hereto and incorporated herein by reference.¹

Appellants received written notice of entry of the order on November 20, 2020.

Respectfully Submitted,
YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Jason A. Daigle (SC Bar No. 73308)
Nicholas J. Rivera (SC Bar No. 77186)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
Attorneys for Appellants

Charleston, South Carolina

December 21, 2020

¹ Appellants have named Plaintiff, Tracey Lee Lunenburg, as the sole Respondent to this appeal because the appealed order was entered on Plaintiff's motion, which motion, though opposed in the lower court by a number of parties, including Appellants, was not supported by any party other than Plaintiff. Nonetheless, out of an abundance of caution, to the extent any other party besides Plaintiff should be a Respondent to this appeal, Appellants are serving this Notice of Appeal on all parties who have appeared in the action.

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Beaufort County
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2019-CP-07-00223

Tracey Lee Lunenburg,

Respondent,

v.

Vincent J. Aiello, Jr.,

Atlantic Heritage Builders, Inc.,

Yuko Construction, Inc., d/b/a Advanced Roofing, Inc.,

Bismark Lara, Premium Stucco, And

Shaw Manufacturing's Wrought Iron Works, Inc.,

Defendants.

Vincent J. Aiello, Jr., and

Atlantic Heritage Builders, Inc.,

Third-Party Plaintiffs,

Palatial Homes, Inc., Palatial Homes, LLC,

Palatial Homes Design, LLC, and

Palatial Building Group, LLC,

Third-Party Defendants,

Of whom Vincent J. Aiello, Jr. and

Atlantic Heritage Builders, Inc., are

Appellants.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP

Jason A. Daigle (SC Bar No. 73308)

Nicholas J. Rivera (SC Bar No. 77186)

Russell G. Hines (SC Bar No. 72100)

25 Calhoun Street, Suite 400

Charleston, South Carolina 29401

P.O. Box 993 (29402)

(843) 720-5488

Attorneys for Appellants

I, Russell G. Hines, Of Young Clement Rivers, LLP, Attorneys for Appellants, hereby certify that the foregoing **NOTICE OF APPEAL** was served on all parties who have appeared in this matter on December 21, 2020, via email (see attached) to the following counsel of record:

Thomas J. Finn, Esquire
FINN LAW FIRM, PC
P.O. Box 6003
Hilton Head Island, SC 29938
thomas@finnlawfirm.pc.com

*Attorney for
Tracey Lee Lunenburg*

Francis Marion Ervin, II, Esquire
ROGERS TOWNSEND LLC
177 Meeting Street, Suite 320
Charleston, SC 29401
francis.ervin@rogerstownsend.com

*Attorney for
Palatial Homes Design, LLC*

Paul R. Rahn, Esquire
Rachel Igdal, Esquire
ROBERTSON HOLLINGSWORTH
MANOS & RAHN, LLC
550 King Street, Suite 300
Charleston, SC 29403
pr@roblaw.net
igdallr@roblaw.net

*Attorneys for
Shaw Manufacturing's Wrought
Iron Works, Inc.*

Wesley D. Few, Esquire
WESLEY D. FEW LLC
P.O. Box 9398
Greenville, SC 29604
wes@wesleyfew.com

*Attorney for
Palatial Building Group, LLC,
Palatial Homes Design, LLC,
Palatial Homes, LLC, and
Palatial Homes, Inc.,*

R. Trippett Boineau, III, Esquire
George C. James, III, Esquire
MCANGUS GOUDELOCK
& COURIE, LLC
P.O. Box 12519
Columbia, SC 29211
trippett.boineau@mgclaw.com
george.james@mgclaw.com

*Attorneys for
Palatial Homes, LLC, and Palatial
Homes Design, LLC*

Brent M. Boyd, Esquire
MURPHY & GRANTLAND, PA
P.O. Box 6648
Columbia, SC 29260
bboyd@murphygrantland.com

*Attorney for
Palatial Homes, LLC*

<SIGNED ON THE FOLLOWING PAGE>

I further certify that a copy of the foregoing **NOTICE OF APPEAL** is this day, December 21, 2020, being E-filed with the lower court (which will also, i.e., in addition to the email service above referenced, effect service of the notice electronically on all counsel of record via the e-filing system).

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Russell G. Hines (SC Bar No. 72100)
Attorneys for Appellants

Charleston, South Carolina

December 21, 2020

From: [Hines, Russell](#)
To: ["thomas@finnlawfirm.com"](#); ["wes@wesleyfew.com"](#); ["francis.ervin@rogerstownsends.com"](#); ["trippett.boineau@mgclaw.com"](#); ["george.james@mgclaw.com"](#); ["pr@roblaw.net"](#); ["igdalr@roblaw.net"](#); ["bboyd@murphygrantland.com"](#)
Cc: [Daigle, Jason](#); [Hiott, Jaime](#); [Mixson, Kathryn](#); [Rivera, Nicholas \(Nick\)](#); [Justman, Aimee](#); [Bell, Pollyana \(Polly\)](#)
Subject: Lunenburg v. Aiello et al. (Case No. 2019-CP-07-00223) -- Notice of Appeal
Date: Monday, December 21, 2020 3:13:12 PM
Attachments: [image003.png](#)
[Lunenburg v. Aiello et al. -- Notice of Appeal \(Order Lifting Stay\).pdf](#)
[Lunenburg v. Aiello et al. -- Appealed Order -- 2020 11-20 -- Order Lifting Stay.pdf](#)

Attached please find a **Notice of Appeal** in the above-referenced case by Vincent J. Aiello, Jr., and Atlantic Heritage Builders, Inc., as well as a copy of the **appealed order**.

Russell G. Hines
 YOUNG CLEMENT RIVERS, LLP
www.ycrlaw.com
 25 Calhoun Street, Suite 400
 Charleston, South Carolina 29401
 P.O. Box 993 (29402)
 Phone: (843) 720-5488
 Fax: (843) 579-1327
 Email: rhines@ycrlaw.com



RECEIVED

Aug 20 2021

SC Court of Appeals

Certificate of Counsel

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. 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,
CLEMENT RIVERS, LLP

By: s/Russell G. Hines
Jason A. Daigle (SC Bar No. 73308)
Nicholas J. Rivera (SC Bar No. 77186)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
Attorneys for Appellants

Charleston, South Carolina

August 20, 2021