

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND FOR
NASSAU COUNTY, FLORIDA

THE COTTAGES AT STONEY CREEK
CONDOMINIUM ASSOCIATION, INC.
and MEMBERS OF THE BOARD OF
DIRECTORS FOR THE COTTAGES AT
STONEY CREEK CONDOMINIUM
ASSOCIATION, INC.,

Case No.: 17-CA-00344
CLASS REPRESENTATION

Plaintiffs,

v.

COTTAGES AT STONEY CREEK, LTD.,
COTTAGES AT STONEY CREEK, LLC.,
VESTCOR, INC., VESTCOR
COMMUNITIES, INC., JDR
CONSTRUCTION, LLC, STONEY
CREEK, LLC, FORUM CONSTRUCTION
GROUP, INC.,

Defendants.

FINAL ORDER
ON JDR CONSTRUCTION, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND INCORPORATING STIPULATION

THIS CAUSE having come before the Court on Defendant, JDR Construction, LLC's Motion for Partial Summary Judgment on September 23, 2019, and the Notices of Joinder by Blanchard Caulking & Coasting, Inc., PQH Group, Inc. F/K/A PQH Architects, Inc., F.G. Remodeling Corp., Forum Construction Group, Inc., Tello's Florida Painting, and Ash-Brooke Construction, and the Court having reviewed the Motion, heard argument from counsel, being advised that upon stipulation of the parties, Plaintiff has dismissed the remaining defect claims not encompassed within the Barred Defect Claims (as defined in JDR's Motion for Partial Summary Judgment), and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED that said Motion is **GRANTED** for the reasons stated herein:

1. The Cottages at Stoney Creek is a residential condominium community (“Cottages” or “Project”) located in Fernandina Beach, Florida. The Project consists of 224 condominium units located in 28 separate residential buildings and common area amenities.

2. JDR Construction was the general contractor for the original construction of the Project.

3. Turnover of control of the property occurred on June 24, 2010.

4. On October 9, 2017, Plaintiff filed its initial Complaint against JDR, seeking damages for alleged defects in the original construction of the Project.

5. On January 5, 2018, JDR filed a Motion to Stay the proceedings pending compliance with the requirements of Chapter 558 of the Florida Statutes.

6. On February 16, 2018, the Plaintiff served its Notice of Claim pursuant to section 558.004 of the Florida Statutes (“558 Notice”), which attached a December 27, 2017 Report of Preliminary Observations by Woods Engineering, Inc.

7. On March 28, 2018, JDR filed a Motion to Strike the 558 Notice for failure to comply with Chapter 558 of the Florida Statutes.

8. On May 14, 2018, the Court entered an Order on JDR’s Motion to Strike, pursuant to which Order the following conditions were not stricken from the 558 Notice or Complaint:

No.	Noted Deficiency in Dec. 27, 2017 Woods Report	Locations Noted in Dec. 27, 2017 Woods Report
1	Localized depressions of pavement	Various throughout paved areas
2	Depression/settling of interlocking concrete pavers	Pool area deck

3	Ground surface slopes downward toward building	Building 6 (rear)
4	Exposed door frame deteriorated due to moisture/wood destroying insects	Pool building and mail kiosk
5	Stucco abutting dissimilar materials (windows/doors, trim, flashings, penetrations)	All buildings
6	Stucco cracking in the field and where abutting dissimilar materials	All buildings
7	Window bands and stucco abutting windows cracked at corners	All buildings
8	No weep screeds at vertical/horizontal stucco transition	All buildings
9	Stucco separating from stucco accessories at joints and corners (horizontal and vertical)	All buildings
10	Stucco/ACMV terminated near, at, or below adjacent grade and hardscapes	All buildings
11	Improper adhesive application for ACMV	All buildings
12	ACMV adhered to painted stucco	Buildings 11 and 12
13	Lack of weep screed at stucco at walkway/grade	All buildings
14	Apparent missing/improperly installed window head flashings	All buildings
15	Improper/inadequate control joint placement and spacing	All buildings
16	Balcony flashings/terminations embedded in adjacent stucco finishes	All buildings
17	Improper roof kick-out flashing	All buildings
18	Staining of soffit, exterior/interior ceilings, walls indicating water intrusion through walls, windows, and/or roof areas	All buildings
19	Post-tension cable protruding from slab-on-grade Building 17	Building 17
20	Interior floor tile cracked	Building 24

9. On August 16, 2018, Plaintiff filed an Amended Complaint against JDR and others seeking damages for alleged construction defects based on the December 27, 2017 Woods report and a May 30, 2018 Woods report concerning destructive testing performed on the building exterior finishes, roofs, and windows. All counts asserted against JDR in the Amended Complaint are based on the alleged defects contained in the chart in Paragraph 8.

10. Thereafter, Plaintiff produced a copy of a May 13, 2011 Building Evaluation Report prepared by Construction Solutions, Inc. (“CSI”). The CSI report details purported deficiencies associated with the windows, doors, sealant application, unsealed penetrations in exterior walls, stucco cracks, water intrusion due to roof drainage, pool deck settlement, and roof kick out flashing. Plaintiff also produced an October 12, 2011 report generated by CSI. The October 12, 2011 CSI report concerns roof leaks and associated repairs. Several of these conditions were later adopted into a Florida Statute Chapter 558 Notice of Claim served by the Plaintiff in 2011 (“2011 558 Notice”).

11. The CSI Reports identify the same claims—the “Barred Defect Claims” as defined in JDR’s Motion for Partial Summary Judgment— contained in Plaintiff’s Amended Complaint and the three Woods Reports.

12. Review of the December 27, 2017 Woods report, as compared to the May 13, 2011 and October 12, 2011 CSI reports, demonstrates that Barred Defect Claims were discovered or were readily discoverable by Plaintiff by October 2011.

13. The Court finds that, as a result, summary judgment must be entered dismissing the Barred Defect Claims. “As a general rule, a statute of limitations begins to run where there has been notice of an invasion of legal rights or a person has been put on notice of his right to a cause of action.” *Snyder v. Wernecke*, 813 So. 2d 213, 216 (Fla. 4th DCA 2002) (citing *City of Miami v. Brooks*, 70 So. 2d 306 (Fla. 1964)). The applicable version of section 95.11(3)(c) of the Florida Statutes states, within four years:

An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action

involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence.

Fla. Stat. § 95.11(3)(c) (effective Oct. 1, 2017 to June 30, 2018). It is undisputed that this case concerns construction of improvements to real property. Thus, section 95.11(3)(c) provides the limitations period applicable to Plaintiff's claims asserted against JDR.

14. In computing the limitations period under the statute, Florida courts have held that “when there is an obvious manifestation of a defect, notice will be inferred at the time of manifestation regardless of whether the plaintiff has knowledge of the exact nature of the defect.” *Performing Arts Ctr. Auth. v. Clark Constr. Group, Inc.*, 789 So. 2d 392, 394 (Fla. 4th DCA 2001); *Kelly v. Sch. Bd. of Seminole County*, 435 So. 2d 804, 806 (Fla. 1983); *Covenant Baptist Church, Inc. v. Vasallo Constr.*, No. 3D18-1315 & 3D18-1060, 2019 WL 2202541, *1 (Fla. 3d DCA May 22, 2019); *Hochberg v. Thomas Carter Painting, Inc.*, 63 So. 3d 861, 863–64 (Fla. 3d DCA 2011); and *Havatampa Corp. v. McElvy, Jennewein, Stefany & Howard, Architects/Planners, Inc.*, 417 So. 2d 701, 704 (Fla. 2d DCA 1982) (recognizing a plaintiff cannot rely on lack of knowledge of the specific nature and cause of the defect or that the negligence of another caused the defect to protect the plaintiff from expiration of the statute of limitations).

15. The record evidence as contained in the Motion for Partial Summary Judgment and supporting exhibits, which include email exchanges involving members of Plaintiff's Board of Directors acknowledging the applicable statute of limitations and reciting the 2011 558 Notice, which adopted the opinions in the CSI Reports and identified the conditions in the CSI report as “construction defects,” establish that the Barred Defect Claims were discovered or were readily discoverable by Plaintiffs by October 2011.

16. The Court finds that the evidence on record establishes that the statute of limitations expired by October 2015 at the latest.

17. Therefore, as the Court finds that the Plaintiffs knew or should have known of the Barred Defect Claims by October 2011, the suit filed on October 9, 2017 was untimely under the four-year statute of limitations provided for in 95.11(3)(c) of the Florida Statutes.

18. The Court finds that the interior floor cracked tile claim was abandoned by consent and, therefore, enters summary judgment in favor of JDR on that claim.

19. The Court hereby incorporates the Stipulation of the parties filed on January 9, 2020, pursuant to which the following two remaining defect claims not addressed by JDR's Motion for Partial Summary Judgment have been dismissed from the lawsuit: (a) "post-tension cable protruding from slab-on-grade in Building 17"; and (b) "Exposed door frame deteriorated due to moisture/wood destroying insects".

20. Based on the Court's entry of summary judgment and the parties Stipulation, this Order finally disposes of the primary action as to all Plaintiff's claims of construction defects and causes of action asserted in the Amended Complaint.

21. The Court reserves jurisdiction as to JDR's Cross-Claims and Third-Party Complaint.

It is ORDERED AND ADJUDGED that JDR Construction's Motion for Partial Summary Judgment is hereby GRANTED. The Plaintiff shall take nothing and the Defendant,

JDR Construction, LLC, along with any party who joined in the Motion for Partial Summary Judgment, shall go hence without day.

DONE AND ORDERED in Chambers at Nassau County, Florida, this 16th day of January, 2020.



Judge Steven Fahlgren
Circuit Court Judge

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