

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 2479

GUILFORD COUNTY

GOVERNORS COURT CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

v.

JOHN S. CLARK COMPANY, LLC,
successor to JOHN S. CLARK COMPANY,
INC.; SCHAEFER INTERSTATE, INC. d/b/a
SCHAEFER INTERSTATE RAILING
SYSTEMS; and KINGBIRD INDUSTRIES,
LLC d/b/a SCHAEFER INTERSTATE
RAILING SYSTEMS,

Defendants,

and

JOHN S. CLARK COMPANY, LLC,
successor to JOHNS S. CLARK COMPANY,
INC.,

Third-Party Plaintiff,

v.

EDDIE LAND MASONRY CONTRACTOR,
INC.; PRICE NEWMAN PAYNE, P.A.
ARCHITECTS; JOHN DOE #1; MICHAEL
NEWMAN; TALMAGE R. PAYNE; JIMMY
L. NORWOOD, JR.; and MITCHELL LEE
PARSONS,

Third-Party Defendants.

**ORDER ON KINGBIRD'S MOTION
FOR SUMMARY JUDGMENT**

THIS MATTER is before the Court on Motion of Defendant Kingbird Industries, LLC ("Kingbird") for Summary Judgment, filed November 6, 2009. On November 20, 2009, Plaintiff Governors Court Condominium Association, Inc. (the "Association") and Defendant John S.

Clark Company, LLC (“JSClark”) each filed Memorandums in Opposition. Kingbird filed a Reply Memorandum on November 30, 2009. After reviewing the submissions by counsel, the Court hereby GRANTS the Motion.

The Court need not address the issue of whether Kingbird assumed the warranty Schaefer issued on its railing work at Governor’s Court Condominium development (“railing warranty”). The plain language of the railing warranty limits liability to work which proves to be defective “within a period of One (1) year from the Date of Substantial Completion.” (Kingbird’s Mot. Summ. J. Ex. 5.) Kingbird’s evidence shows May 16, 2003 as the date of substantial completion. (Kingbird’s Mot. Summ. J. Ex. 6.) Kingbird’s evidence also shows that Plaintiff did not begin to experience water intrusion problems until fall of 2004 and did not provide notice of the problems until November of 2004. (Kingbird’s Mot. Summ. J. Ex. 7.)

The Association and JSClark failed to set forth specific facts indicating otherwise. In essence, they argue that the work was defective at the outset, otherwise there would have been no slow intrusion as they theorize. However, for the one-year railing warranty to have any meaning, it must be read to cover defects that are shown or found within one year of the date of substantial completion. See Cambridge Advanced Learner’s Dictionary (3d ed. 2008) (defining prove as “to show a particular result after a period of time”); The American Heritage College Dictionary 1101 (3d ed. 1997) (defining prove as “to find out or learn (something) from experience” or “to be shown to be such”).

JSClark’s Memorandum in Opposition to Kingbird’s Motion theorizes that “given the slow nature of water moisture intrusion, a reasonable jury could find that the damage started occurring within the . . . one-year period.” However, mere hope of discrediting Kingbird’s evidence at trial is not enough to establish a triable issue of material fact. See Wachovia Bank & Trust Co. v. Grose, 64 N.C. App. 289, 292, 307 S.E.2d 216, 217 (1983). In any event, the railing warranty requires that the defect be shown or found within the one-year period.

SO ORDERED, this the 4th day of January, 2010.

/s/ Ben F. Tennille
The Honorable Ben F. Tennille
Chief Special Superior Court Judge
for Complex Business Cases