IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-348

Filed 18 November 2026

Moore County, No. 25CV000125-620

NATE HOLTON and CHRISTINE HOLTON, Plaintiffs,

vs.

VALUEBUILD HOMES, LANDMARK HOMES OF PINEHURST, LLC, VALUEBUILD HOMES - FAYETTEVILLE, LLC, VALUEBUILD HOMES - CHARLOTTE, LLC, VALUEBUILD HOMES - RALEIGH, LLC and PROFESSIONAL WARRANTY SERVICE CORPORATION, Defendants.

vs.

LANDMARK HOMES OF PINEHURST, LLC, Defendant/Third-Party Plaintiff,

vs.

WSMASONRY, LLC, WILLIAM DONNELL SMITH D/B/A WS MASONRY, RANDY HENDERSON AND CECIL HENDERSON, Third-Party Defendants.

Appeal by Plaintiffs from order entered 16 October 2025 by Judge Vince Rozier in Moore County Superior Court. Heard in the Court of Appeals 28 October 2026.

Robbins May & Rich LLP, by Claire C. Toulouse and William M. Van O'Linda, Jr., for Plaintiffs-Appellants.

McAngus, Goudelock & Courie, PLLC, by Jeffrey B. Kuykendal, for Defendants-Appellees.

COLLINS, Judge.

Plaintiffs appeal from an order granting summary judgment in favor of Defendants on claims arising from the alleged defective construction of Plaintiffs' residence. Plaintiffs contend the trial court erred by concluding their claims were barred by the applicable statutes of limitation and repose and by dismissing their claims for negligence and unfair and deceptive trade practices. Because the undisputed forecast of evidence demonstrates that Plaintiffs knew of the condition underlying their claims no later than 2016 and failed to commence this action until January 2025, and because Plaintiffs failed to forecast evidence sufficient to support their remaining claims, we affirm.

I. Background

The forecast of evidence tended to show the following:

Plaintiffs Nate and Christine Holton entered into a contract with Defendants Value Build Homes on 15 November 2015, for the construction of a residence in Moore County. A certificate of occupancy was issued on 17 May 2016. Plaintiffs thereafter occupied the residence. Within thirty to sixty days after receiving the certificate of occupancy, Plaintiffs "noticed a substantial dip in the kitchen floor." Plaintiffs contacted Defendants, and a representative came to the home and stabilized the affected area.

On or about 14 October 2016, Plaintiffs executed an Application for Builder's Limited Warranty with Professional Warranty Service Corporation. The warranty

provided for various levels of coverage for ten years from 17 May 2016 and required any and all disputes be resolved through binding arbitration.

Years later, after consulting a crawlspace contractor in October 2023, Plaintiffs became concerned that the residence had been constructed on an improperly sloped foundation. On 8 November 2023, Plaintiff Nate Holton contacted Defendants and asserted that "[t]he house was never level since day 1." Defendants investigated and took measurements at the property during 2024.

On 17 January 2025, Plaintiffs filed this action asserting claims for breach of contract, express warranty, implied warranty, latent construction defect, negligence, and unfair and deceptive trade practices. Defendants filed a third-party complaint against some of its subcontractors.

Following a hearing, the trial court granted summary judgment in Defendants' favor and dismissed all claims. Plaintiffs timely appealed. On 16 April 2026, Plaintiffs voluntarily dismissed their claims against the Professional Warranty Service Corporation with prejudice.

II. Discussion

Plaintiffs argue that the trial court erred by granting summary judgement to Defendants on all Plaintiffs' claims.

A. Jurisdiction

Although the order on appeal is interlocutory because Defendants' third-party claims remain pending, *see Veazey v. City of Durham*, 231 N.C. 357, 361-62 (1950),

the appeal affects a substantial right. *See* N.C. Gen. Stat. §§ 1-277(a) (2025), 7A-27(b)(3)(a) (2025). The third-party claims arise from the same alleged construction defects as Plaintiffs' claims and require resolution of overlapping factual issues concerning the existence, cause, and responsibility for those defects. Because separate proceedings could yield inconsistent verdicts on those issues, Plaintiffs' appeal affects a substantial right and is properly before this Court. *See Hamilton v. Mortgage Info. Servs., Inc.*, 212 N.C. App. 73, 79 (2011).

B. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2025). "In ruling on a motion for summary judgment, the trial court must view the evidence in the light most favorable to the non-moving party." *Foxx v. Davis*, 289 N.C. App. 473, 480 (2023) (quotation marks and citation omitted).

"The party moving for summary judgment bears the burden of establishing that there is no triable issue of material fact." *Badin Shores Resort Owners Ass'n v. Handy Sanitary Dist.*, 257 N.C. App. 542, 549 (2018). "This burden can be met by proving: (1) that an essential element of the non-moving party's claim is nonexistent; (2) that discovery indicates the non-moving party cannot produce evidence to support an essential element of his claim; or (3) that an affirmative defense would bar the

claim." *CIM Ins. Corp. v. Cascade Auto Glass, Inc.*, 190 N.C. App. 808, 811 (2008) (citation omitted).

We review a trial court's order granting summary judgment de novo. *Forbis v. Neal*, 361 N.C. 519, 524 (2007). Under de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower court. *Archie v. Durham Pub. Schs. Bd. of Educ.*, 283 N.C. App. 472, 474 (2022).

C. Statute of Repose

Plaintiffs first contend that the trial court erred by concluding their claims are barred by the six-year statute of repose governing improvements to real property. We disagree.

Section 1-50(a)(5) provides that no action "arising out of the defective or unsafe condition of an improvement to real property" may be brought more than six years from the later of the defendant's last act or omission giving rise to the claim or substantial completion of the improvement. N.C. Gen. Stat. § 1-50(a)(5)a, f (2025). "Under the statute, a plaintiff has the burden of showing that he or she brought the action within six years of either (1) the substantial completion of the house or (2) the specific last act or omission of defendant giving rise to the cause of action." *Boor v. Spectrum Homes, Inc.*, 196 N.C. App. 699, 705 (2009) (citations omitted). A statute of repose "serves as an unyielding and absolute barrier that prevents a plaintiff's right of action even before his cause of action may accrue," *Black v. Littlejohn*, 312 N.C. 626, 633 (1985) (citations omitted), "and functions to give a defendant a vested

right not to be sued if the plaintiff fails to file within the prescribed period," *Monson v. Paramount Homes, Inc.*, 133 N.C. App. 235, 240 (1999) (citation omitted). "In short, a statute of repose bars an action a specified number of years after a defendant has completed an act, even if the plaintiff has not yet suffered injury." *Id.*

"[A] building is 'substantially complete' on the date upon which a certificate of occupancy has been issued." *Trillium Ridge Condo. Ass'n, Inc. v. Trillium Links & Vill., LLC*, 236 N.C. App. 478, 494 (2014) (citation omitted). Here, Plaintiffs' residence was substantially complete no later than 17 May 2016, when the certificate of occupancy was issued and Plaintiffs were able to use the home for its intended purpose. Plaintiffs did not file suit until 17 January 2025. Thus, the action was commenced more than eight years after substantial completion.

Plaintiffs contend the repose period should instead be measured from a later "last act or omission" in 2023. They argue that although they first became aware of the problem in 2016, Defendants sent someone out to stabilize the floor, so they thought the problem was resolved until they were told otherwise in 2023.

"[A]lthough an act sufficient to affect the running of the statute of repose may occur after the date of substantial completion, 'a "repair" does not qualify as a "last act" under N.C. Gen. Stat. § 1-50(5) unless it is required under the improvement contract by agreement of the parties[.]'" *Trillium Ridge*, 236 N.C. App. at 494-95 (quoting *Monson*, 133 N.C. App. at 241). "[A]llowing the statute of repose to toll or start running anew each time a repair is made would subject a defendant to potential

open-ended liability for an indefinite period of time, defeating the very purpose of statutes of repose such as N.C. Gen. Stat. § 1-50(5)." *Id.* at 495 (brackets and citation omitted).

Here, Plaintiffs failed to forecast evidence that Defendants performed repair work on the residence after 2016 pursuant to the construction contract. The evidence instead shows that Defendants investigated Plaintiffs' complaints in 2024 by excavating near the foundation and taking measurements. Investigative activities of this nature do not constitute construction work or repairs extending the statutory repose period. *See id.* at 494-95.

Plaintiffs alternatively rely on *Christie v. Hartley Construction, Inc.*, 367 N.C. 534 (2014), contending that Defendants waived repose protection by agreeing to a ten-year structural warranty. Although Defendants failed to engage this argument, we nonetheless are unpersuaded.

In *Christie*, the Supreme Court held that a home siding manufacturer could contractually assume liability through an express warranty extending beyond the repose period. *Id.* at 540-41. We need not decide whether the rationale in *Christie* extends to the circumstances here because Plaintiffs have failed to forecast evidence establishing the specific warranty obligation upon which they rely. The plaintiffs in *Christie* did not prevail simply because a warranty existed. Rather, they sought to enforce an identifiable express warranty whose terms allegedly had been breached. *See id.* By contrast, Plaintiffs here repeatedly refer to a ten-year structural warranty

yet identify no specific warranty provision, no particular obligation imposed upon Defendants, and no forecast of evidence demonstrating a breach of that obligation. On this record, Plaintiffs have failed to show that this action is properly characterized as one seeking enforcement of an express warranty extending beyond the repose period rather than an action arising from the allegedly defective construction of an improvement to real property governed by N.C. Gen. Stat. § 1-50(a)(5).

Moreover, the record reflects that any ten-year warranty was administered through Professional Warranty Service Corporation, and Plaintiffs voluntarily dismissed their claims against that entity with prejudice. Accordingly, Plaintiffs have failed to forecast evidence bringing their claims within the narrow holding of *Christie*.

For these reasons, the trial court therefore properly concluded that Plaintiffs' claims are barred by N.C. Gen. Stat. § 1-50(a)(5).

D. Statute of Limitations

Even assuming Plaintiffs' claims are not barred by the statute of repose, Plaintiffs contend the trial court erred by concluding that their claims are barred by the applicable statutes of limitation.

The parties agree that Plaintiffs' contract and negligence claims are governed by the three-year limitations period in N.C. Gen. Stat. § 1-52 and that the unfair and deceptive trade practices claim is governed by the four-year limitations period in N.C. Gen. Stat. § 75-16.2.

Our Supreme Court explained in *Pembee Manufacturing Corp. v. Cape Fear Construction Co., Inc.*, that a cause of action accrues "as soon as plaintiff's injury became apparent, or ought reasonably to have become apparent[.]" 313 N.C. 488, 493 (1985). Once the injury becomes apparent, the limitations period begins to run; later manifestations of the same defect do not create a new cause of action. *Id.* at 493-94.

Here, Plaintiffs' own forecast of evidence shows that shortly after occupying the residence in 2016, they observed a "substantial dip in the kitchen floor." Plaintiffs regarded the condition as sufficiently serious to contact Defendants and request corrective action. Plaintiffs also later acknowledged that "[t]he house was never level since day 1." Thus, unlike a wholly latent condition, the condition forming the basis of Plaintiffs' claims was apparent in 2016.

Plaintiffs nevertheless argue that *Williams v. Houses of Distinction, Inc.*, 213 N.C. App. 1 (2011), created a jury question regarding the discovery date because they believed the condition had been repaired. We disagree.

In *Williams*, the plaintiffs repeatedly received assurances over a period of years that intermittent water-intrusion problems had been corrected, and this Court held the record created a factual dispute concerning when the plaintiffs reasonably should have discovered the underlying defect. *Id.* at 11-12. Here, by contrast, Plaintiffs identified no continuing course of repairs or repeated assurances extending over many years. Rather, the undisputed forecast demonstrates that Plaintiffs discovered a floor defect in 2016 and thereafter allowed more than eight years to pass

before commencing suit. Under *Pembee*, Plaintiffs were placed on inquiry notice at that time, even if they did not yet know the precise cause or full extent of the defect. *See Pembee*, 313 N.C. at 493.

Accordingly, the trial court properly concluded that Plaintiffs' claims are barred by the applicable statutes of limitation.

E. Negligence

Plaintiffs also contend that the trial court erred by entering summary judgment on Plaintiffs' negligence claim.

North Carolina's economic loss rule generally precludes tort recovery for purely economic losses arising from the failure to perform contractual obligations. *N.C. State Ports Auth. v. Lloyd A. Fry Roofing Co.*, 294 N.C. 73, 81 (1978), *rejected in part on other grounds by Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.*, 313 N.C. 230 (1985). More recently, our Supreme Court reiterated that when the parties' relationship is governed by contract, "purely economic losses are not recoverable under tort law." *Crescent Univ. City Venture, LLC v. Trussway Mfg., Inc.*, 376 N.C. 54, 63 (2020) (citations omitted).

Plaintiffs' negligence claim alleges that Defendants failed to construct the residence in a workmanlike manner and seeks damages for loss in value to the home and costs associated with correcting the alleged defect. Plaintiffs identify no duty independent of Defendants' contractual obligations. Accordingly, their negligence

claim is barred by the economic loss rule. *See id.*; *Kaleel Builders, Inc. v. Ashby*, 161 N.C. App. 34, 42 (2003).

F. Unfair and Deceptive Trade Practices

Finally, Plaintiffs argue that the trial court erred by dismissing their unfair and deceptive trade practices claim.

A mere breach of contract, even if intentional, does not constitute an unfair or deceptive trade practice under Chapter 75 absent substantial aggravating circumstances. *Bob Timberlake Collection, Inc. v. Edwards*, 176 N.C. App. 33, 42 (2006); *Mitchell v. Linville*, 148 N.C. App. 71, 75 (2001).

Plaintiffs contend that Defendants concealed the nature of the defect and made inaccurate statements regarding the condition of the foundation. Even assuming the truth of those allegations, Plaintiffs failed to forecast evidence of a distinct injury proximately caused by the alleged deception. The damages identified by Plaintiffs consist of the loss in value to their home and costs associated with the underlying structural problems. Those are the same damages sought for the alleged breach of contract.

Ordinary contract damages do not constitute damages arising from a Chapter 75 violation. *Gray v. N.C. Ins. Underwriting Ass'n*, 352 N.C. 61, 74 (2000). Because Plaintiffs failed to forecast evidence of damages proximately caused by a separate unfair or deceptive act, summary judgment was proper on this claim. *See id.* at 74.

III. Conclusion

The undisputed forecast of evidence demonstrates that Plaintiffs became aware of the condition underlying their claims in 2016 but waited until 2025 to file suit. Their claims are therefore barred by statute of repose and, independently, by the applicable statutes of limitation. Plaintiffs' negligence claim is barred by the economic loss rule, and Plaintiffs failed to forecast evidence sufficient to support a claim for unfair and deceptive trade practices. We thus affirm the trial court's summary judgment order.

AFFIRMED.

Judges GORE and GRIFFIN concur.