

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

Greenville County Court of Common Pleas

The Honorable C. Victor Pyle, Jr., Presiding Circuit Court Judge

Trial Court Case Number: 2009-CP-23-5079

Martha Lynne Angradi and Donald Scott McLorie,
individually and on behalf of their minor child, Jessie M.....Respondents,

v.

Edgar Jack Lail and Leola Lail,
Sylvester Golden, Golden Property, LLC,
Nationwide Homes, and Fayssoux Real Estate.....Defendants,

of whom
Sylvester Golden and
Golden Property, LLC are the.....Appellants.

RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR REHEARING

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ATTORNEYS FOR RESPONDENTS

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MAY 31 2013

SC Court of Appeals

In accordance with the correspondence of the Court, the Plaintiffs/Respondents hereby make this Return in Opposition to the Defendants'/Appellants' Petition for Rehearing, dated May 1, 2013.

For the reasons set forth in Respondents' Brief (which is hereby incorporated by reference) and for the reasons set forth below, Respondents respectfully request that Appellants' Petition for Rehearing be denied and dismissed.

I. THIS COURT WAS CORRECT THAT ALL ISSUES, SAVE THE RIGHT TO RELY, WERE NOT PRESERVED FOR APPEAL BY THE DIRECTED VERDICT OR POST-TRIAL MOTIONS

Appellants first argued that their motions for directed verdict and judgment notwithstanding the verdict preserved all the elements of fraud for appeal. For the foregoing reasons, Respondents respectfully request that the Court not be persuaded by this argument.

A. At trial, counsel for Appellants only argued that Respondents "had no right to rely on my client because he was not the owner." All the issues raised at the close of Respondents case related to the right to rely and home ownership, as follows:

THE COURT: Thank you.

All right, go ahead now, Mr. Jones.

MR. JONES [counsel for Appellant]: Your Honor, the evidence that we've presented, we would like a -- Well, we'd like a directed verdict regarding the issue of negligence as far as -- and fraud on the part of my client. My client did not sell. He's not listed as the seller, seller of the home in question. He's not on the deed. He's not the contract as the seller. He's not on the appraiser as the owner.

Your Honor, and Miss Angradi and Mr. McLorie, they waived their right to an inspection beforehand.

THE COURT: What does that have to do with breach of an implied warranty or with fraud?

MR. JONES: Your Honor, basically, on the fraud is that what did she – what did she – what did she rely on? She had no right to rely on my client because he was not the owner. He did not --

THE COURT: He said he was the owner. I mean why wouldn't that be an element of proving a fraud action?

MR. JONES: Your Honor, Your Honor --

THE COURT: I deny your motion as to the fraud, Mr. Jones.¹

Therefore, the only issues raised at the directed verdict phase and in the post-trial motions related to the right to rely and home ownership. The Court was correct to rule that no other issues were preserved because those issues were neither raised nor discussed.

B. To the extent Appellants argue that the Court too “promptly” denied their arguments at trial, there is no evidence in the Record where counsel for Appellants attempted to assert additional grounds or requested the Court assert additional matters.

C. To the extent this Court wishes to consider all the elements of fraud, Respondents would respectfully rely on their brief, which addressed the nine elements of fraud.

D. Appellants next argue that there is insufficient evidence as to the argument that Mr. Golden was the “owner” of the home. Appellants are correct that evidence exists which support their argument that Mr. Golden did not own that. However, Respondents offered competing evidence. Ms. Angradi testified in part that “Mr. Weatherford [the realtor] asked Mr. Golden who owns this house and he said I do,”² and that Mr. Golden had a “partner” in the home.³ Moreover, in evidence is a letter to which Mr. Golden signed as “Owner.”⁴ Along with the other matters addressed in Respondents’ brief, pages 7-12, Ms. Angradi’s

¹ Record on Appeal, page 198, lines 4-25; page 199, line 1.

² Record on Appeal, page 52, lines 8-15.

³ Record on Appeal, page 141, lines 3-11.

⁴ Record on Appeal, page 341, Plaintiffs’ Exhibit 5..

testimony and the letter bearing Mr. Golden's signature offer evidence to support Respondents' argument that there was sufficient evidence to go to a jury.

It was for the jury to resolve the competing evidence. Whether reliance is justified requires an evaluation of the circumstances involved, including the positions and relations of the parties. Elders v. Parker, 286 S.C. 228, 332 S.E.2d 563 (S.C.App. 1985). Finally a wrongdoer cannot shield himself from liability by asking the law to condemn the credulity of the ignorant and unwary. Id.

II. THIS COURT WAS CORRECT IN UPHOLDING THE TRIAL COURT'S RULING BARRING MR. GOLDEN FROM TESTIFYING THE HOUSE PASSED INSPECTION

Appellants' second argument is that this Court erred in upholding the trial court's ruling by excluding Appellants from offering testimony to the effect that the house passed inspection. For the reasons set forth below, Respondents respectfully request that this Court not be persuaded by the Appellants' reasoning.

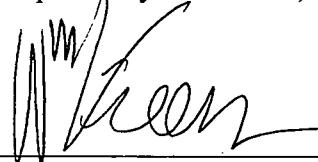
A. Appellants are correct in that they attempted at trial to argue that the house passed inspection, and they offer instances in which the Court did not permit testimony. Had Appellants wished, however, they could have elicited the proffered testimony of Mr. Golden out of the presence of the jury. Failure to so proffer the evidence renders difficulty for a reviewing court to analyze the matter.

B. For the reasons set forth in Respondents' Brief at pages 47-53, the Court was correct in denying Mr. Golden the chance to offer testimony regarding the home "passing" an inspection. Such testimony would have been better from a Greenville Housing Inspector.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Appellants' Petition for Rehearing.

Respectfully submitted,



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May 29, 2013

IN THE STATE OF SOUTH CAROLINA

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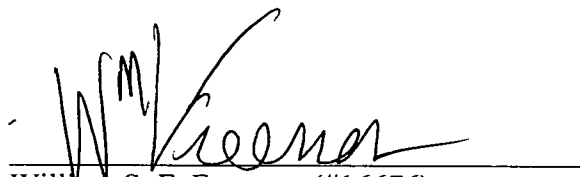
I certify that I have this 28th day of May, 2013, furnished a copy of Respondents' Return
to Appellants' Petition for Rehearing in the above matter by sending a copy of the same via
United States Mail and facsimile to the following:

Stephanie R. Fajardo, Esq.
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Greenville, South Carolina
May 28, 2013

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Greenville County Court of Common Pleas

The Honorable C. Victor Pyle, Jr., Presiding Circuit Court Judge

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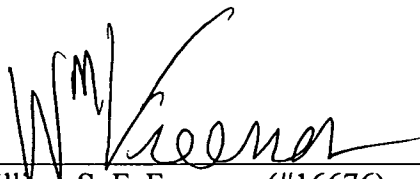
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May ~~28~~, 2013



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25
May 28, 2013

**VIA U.S. MAIL
AND FACISIMILE TO (803) 734-1839**

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Martha Lynne Angradi et al. (Respondents) v. Sylvester Golden III and Golden Properties, LLC (Appellants)
Civil Action Number: 2009-CP-23-5079
Court of Appeals tracking number: 2011196048

Dear Clerk:


I hope this letter finds you doing well. I write in regards to Respondents' Return to Appellants' Petition for Rehearing in the above-referenced case, which Appellants' counsel filed on May 1, 2013.

Please find enclosed an original and seven (7) copies of Respondents' Return to Appellants Petition for Rehearing. Please file the original and send a file-stamped copy to my office in the postage prepaid, self-addressed envelope provided within.

By copy of this letter, I hereby provide the same to Appellants' counsel and Respondents' co-counsel.

Thank you for your help with this matter. Please let me know if there is anything further I need to do.

With kind regards,


William S. F. Freeman

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SC Court of Appeals

Enclosures

cc w/ enc. Jerry L. Finney, Esq.
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