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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
CIRCUIT COURT
JUDGE LETITIA VERDIN

Case No. 2021-CP-5789

TONIA RANKIN and MATTHEW ROBERT RANKIN,Appellants,

v.

DYNAMIC INSPECTION SERVICES, LLC,
RICHARD H. HOLMES, AUBREE M. LEWIS,
THE HARO GROUP OF KELLER WILLIAMS REALTY,
RONALD K. BARTON, and ALLISON BARTON, Respondents.

AMENDED NOTICE OF APPEAL

Appellants hereby appeal the three orders of the Honorable Letitia Verdin issued on November 30, 2022. Appellant received written notice of the Final Orders on November 30, 2022, therefore this notice of appeal is timely.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Tonia S. Rankin and Matthew Robert Rankin,

Plaintiffs,

vs.

Dynamic Inspection Services, LLC,
Richard H. Holmes, Aubree M. Lewis,
The Haro Group of Keller Williams Realty, Arrow Exterminators, Inc.,
Chris Sprinkle, Ronald K. Barton, and
Allison Barton,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-23-05789

**ORDER GRANTING SUMMARY
JUDGMENT TO DYNAMIC INSPECTION
SERVICES, LLC AND RICHARD H.
HOLMES**

This matter comes before the Court on Defendant Dynamic Inspection Services, LLC and Richard H. Holmes' (collectively, "Defendants") Motion for Summary Judgment. A hearing was held on October 20, 2022.

After careful consideration of the filings, arguments of counsel, and review of the record, the Court finds that no genuine issues of material fact exist making summary judgment in favor of Defendants appropriate. Accordingly, for the reasons set forth herein, Defendants Dynamic Inspections Services, LLC and Richard H. Holmes' Motion for Summary Judgment is GRANTED.

BACKGROUND

Plaintiffs Tonia and Matthew Rankin (collectively, "Plaintiffs") entered a written Inspection Agreement (the "Agreement") with Dynamic Inspections Services, LLC ("Dynamic") on May 4, 2018, under the terms of which Dynamic was to inspect a Taylors, South Carolina home (the "Home") Plaintiffs planned to purchase. The two-page Agreement contained the following language:

The maximum liability of [Dynamic] or its employees for errors and omissions in the inspection process shall be Limited (sic) to the amount of the fee paid for the applicable inspection.

On May 11, 2018, Richard H. Holmes (“Holmes”), owner and employee of Dynamic, performed the home inspection and produced a written report. Plaintiffs later purchased the Home and subsequently filed suit against Defendants alleging gross negligence and civil conspiracy related to the inspection, which Plaintiffs claim failed to uncover significant problems in the Home.

LEGAL STANDARD

“Summary judgment is proper when there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law.” Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 438-39 (2003) (citing Boughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991)). In determining whether summary judgment is appropriate, the evidence in its reasonable inferences must be viewed in the light most favorable to the non-moving party. Id. At 115, 410 S.E.2d at 545. “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” Bradley v. Doe, 374 S.C. 622, 626, 649 S.E.2d 153 (Ct. App. 2007).

ANALYSIS

I. Dynamic’s liability was limited by the Agreement.

When a contract is entered freely and voluntarily, contractual limitations are normally enforced. Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). This Court has generally upheld limitations of liability and exculpatory clauses, finding they are commercially reasonable. (See e.g., Gladden v. Boykin, 402 S.C. 140, 144–45, 739 S.E.2d 882, 884 (2013); Huckaby v. Confederate Motor Speedway, Inc., 276 S.C. 629, 630, 281 S.E.2d 223, 224 (1981); McCune v.

Myrtle Beach Indoor Shooting Range, Inc., 364 S.C. 242, 248, 612 S.E.2d 462, 465 (Ct. App. 2005); S.C. Elec. & Gas Co. v. Combustion Eng'g, Inc., 283 S.C. 182, 192, 322 S.E.2d 453, 459 (Ct. App. 1984)).

The South Carolina Supreme Court upheld a clause very similar to the one at issue here in a case also involving a defendant-home inspector in Gladden v. Boykin, 402 S.C. 140, 739 S.E.2d 882 (2013). Plaintiffs argue Gladden does not apply, emphasizing that their claim is one for (gross) negligence. This Court is unpersuaded; to adopt Plaintiffs' narrow reading of Gladden would be to render the opinion nearly meaningless. Plaintiffs have presented no evidence that the Agreement should not be enforceable. Therefore, Defendants' liability, if any, is contractually limited by the Agreement pursuant to which Defendants performed the services for Plaintiffs at issue in this matter.

II. There is no evidence regarding the standard of care applicable to South Carolina licensed home inspectors.

In cases involving the negligence of a professional, the plaintiff must prove that the professional failed to conform to the generally recognized and accepted practices in his profession. Doe v. American Red Cross Blood Services, S.C. Region, 297 S.C. 430, 435, 377 S.E.2d 323, 326 (1989). "Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct." City of York v. Tuner-Murphy Co., Inc., 317 S.C. 194, 196, 452 S.E.2d 615, 617 (1994) (internal citations omitted). "The application of the common knowledge exception depends on the facts of each case." Id. at 317 S.C. 197, 452 S.E.2d 617 (internal citations omitted).

South Carolina home inspectors are “professionals.” See generally Gladden v. Boykin, 402 S.C. 140, 739 S.E.2d 882 (J. Beatty dissenting; home inspectors referred to variously as “experts” or “professionals” over twenty times). Furthermore, South Carolina home inspectors, like numerous other professionals in South Carolina, must be licensed, S.C. Code Ann. § 40-59-520(A), and their licensing is dependent upon an application, examination, and regulations which establish minimum standards of conduct. S.C. Code Ann. § 40-59-540(A)-(B).

Plaintiffs allege Inspector Defendants were grossly negligent in their inspection of the Residence but do not offer any evidence regarding the standard of care applicable to Inspector Defendants. Plaintiffs engaged a structural engineer – not a home inspector or an engineer offering an opinion regarding the standard of care applicable to home inspectors. Moreover, the engineer testified he would offer no evidence regarding the standard of care applicable to Inspector Defendants. As a result, Plaintiffs’ claim of gross negligence against Inspector Defendants fails as a matter of law.

III. Richard H. Holmes owed no independent duty to Plaintiffs.

Whether a duty exists in a negligence action is a question of law to be determined by the court. Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007). Further, if the plaintiff fails to prove the defendants owed her a legal duty of care, she fails to prove actionable negligence. Id.

As to Defendant Richard H. Holmes, no duty of care was owed to Plaintiffs upon which to establish a negligence claim. See 16 Jade Street, LLC v. R. Design Const. Co., LLC, 405 S.C. 384, 747 S.E.2d 770 (2013) (rejecting propositions that Residential Home Builders Act, under which home inspectors are licensed, creates a legal duty or private right of action). Plaintiffs have sued both Dynamic Inspection Services, LLC and its sole member, Richard H. Holmes. Mr. Holmes

inspected the Home as a member and employee of Dynamic Inspection Services, LLC. Therefore, Plaintiffs have failed to establish that Defendant Holmes owed Plaintiffs a duty of care.

IV. Civil Conspiracy

The elements of a civil conspiracy in South Carolina (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff. Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (2021), reh'g denied (Aug. 18, 2021).

"The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se." Pye v. Estate of Fox, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006). A claim for civil conspiracy *must allege additional acts* in furtherance of a conspiracy rather than reallege other claims within the complaint. Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981) (emphasis added).

Plaintiffs' civil conspiracy claim restates allegations found elsewhere in the complaint and fails to identify additional acts in furtherance of the conspiracy, separate and independent from the previous allegations. The failure to identify additional overt acts in furtherance of a conspiracy independent from the previous allegations is detrimental to Plaintiffs' claim of civil conspiracy.

IT IS THEREFORE ORDERED that the Defendants' Motion for Summary Judgment is hereby GRANTED.

_____, 2022
Greenville, South Carolina

The Honorable Letitia H. Verdin
Presiding Judge of the 13th Judicial Circuit



Greenville Common Pleas

Case Caption: Tonia S Rankin , plaintiff, et al vs. Dynamic Inspection Services LLC
, defendant, et al
Case Number: 2021CP2305789
Type: Order/Summary Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

TONIA S. RANKIN AND MATTHEW)
ROBERT RANKIN,)

Civil Action No. 2019-CP-23-02554

Plaintiffs,)

ORDER

vs.)

DYNAMIC INSPECTION SERVICES,)
LLC., RICHARD H. HOLMES, AUBREE)
M. LEWIS, THE HARO GROUP OF)
KELLER WILLIAMS REALTY, ARROW)
EXTERMINATORS, INC., CHRIS)
SPRINKLE, RONALD K. BARTON, AND)
ALLISON BARTON,)

Defendants.)

This matter was before the Court on October 20, 2022 on a Motion for Summary Judgment by Defendants Aubree M. Lewis and The Haro Group of Keller Williams Realty. This case arises out of the purchase of a home by Plaintiffs Tonia and Matthew Rankin (“Plaintiffs”). Subsequent to Plaintiffs’ purchasing of the home, they discovered foundation and water drainage issues. Once they learned that these issues required extensive repair, they filed this action against the following Defendants: (1) sellers of the home, the Bartons; (2) the home inspection company, Dynamic Home Inspection Services, LLC (“Dynamic”) and its inspector, Richard Holmes (“Holmes”); (3) the termite inspection company Arrow Exterminators, Inc. (“Arrow”) and its inspector, Chris Sprinkle (“Sprinkle”); and (4) Aubree Lewis (“Lewis”) and The Haro Group of Keller Williams Realty (“The Haro Group”), the realtor and realty agency Lewis was purportedly working with when she initially met Plaintiffs.

Plaintiffs have asserted numerous causes of action against the various non-realtor Defendants including negligence, gross negligence, fraud, negligent misrepresentation, and breach of the implied covenant of good faith and fair dealing. However, with regard to Lewis and The Haro Group, who are the subjects of this motion, the only claim asserted by the Plaintiffs is a claim of civil conspiracy.

I. STANDARD OF REVIEW

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, 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 the moving party is entitled to judgment as a matter of law.” Rule 56(c). SCRPC. “The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” *Matsell v. Crowfield Plantation Cmty. Servs. Ass’n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in the pleadings to withstand a summary judgment motion but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013). “[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted.” *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

II. DISCUSSION

A. Plaintiffs have not presented any evidence to support a claim of civil conspiracy against Lewis or The Haro Group

The elements required to establish a claim for civil conspiracy are: (1) the combination of two or more persons; (2) joining for the purpose of injuring a plaintiff; and (3) causing special damages to the plaintiff.” *McMillan v. Oconee Mem’l Hosp., Inc.* 367 S.C. 559, 565, 626 S.E.2d 884, 886 (2006). “[A] conspiracy is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action.” *Future Group II v. Nationsbank*, 324 S.C. 89, 100, 478 S.E.2d 45, 51 (1996).

The Court finds that Plaintiff’s claims against Lewis and the Haro Group fall short of meeting the first two elements. The claims against these Defendants stem from Lewis advising the Plaintiffs that a home and termite inspection should be done and recommending Co-Defendants Dynamic and Arrow for those inspections. Plaintiffs allege that Dynamic and Arrow inadequately inspected the home and either failed to discover the foundation and water drainage issues or purposefully concealed the issues from Plaintiffs. Plaintiffs’ theory of the case appears to be that Lewis, who often recommended Dynamic and Arrow for inspections, either knew or should have known that they would do a poor job in inspecting the home.

The Court finds that this allegation does not rise to the level of civil conspiracy. Plaintiffs have presented no evidence whatsoever that Dynamic and Arrow worked with Lewis or The Haro Group specifically in order to injure Plaintiffs. In fact, Defendants have submitted evidence leading to the opposite conclusion. Dynamic’s inspector, Holmes, testified in his deposition that he barely knew Lewis and wouldn’t know her if she walked in the room. Holmes also testified that neither he nor his company paid Lewis for these referrals and there is no evidence that either Lewis or The Haro Group received any type of compensation or advantage from these referrals. Based on the evidence in front of the Court, it appears that Lewis recommended Dynamic and

Arrow simply because she was familiar with them and had done so previously without issue. It does not appear that Dynamic or Arrow were even significantly aware of these referrals.

After approximately three years of litigation and discovery, the entirety of Plaintiffs' argument that a conspiracy may exist between the Defendants is apparently based on deposition testimony that Lewis hugged the inspector for Dynamic on the day of the inspection. This is not sufficient evidence that they were in on a conspiracy to defraud Plaintiffs. Even if Plaintiffs could show that Lewis had a relationship with these inspectors, Plaintiffs' allegation that Lewis recommended poor inspection companies because she had a friendly relationship with them is not enough to sustain a claim for civil conspiracy.

It is not even clear what benefit Lewis, Dynamic, and Arrow would have received from the purchase of this specific house, especially considering that Dynamic and Arrow would have been paid regardless of whether any problems were found. In fact, considering Lewis may have continued showing Plaintiffs houses and recommending the same inspection companies, there may have been more incentive for Dynamic and Arrow to disclose the alleged problems in the hopes that they would be retained to inspect the next house that was shown to Plaintiffs or, in Arrow's case, to offer additional services to cure or prevent additional issues. Regardless, there is simply no evidence in the record that Lewis or The Haro Group acted in combination with any of the Defendants for the express purpose of injuring Plaintiffs. For this reason, Plaintiffs' civil conspiracy claim must be dismissed.

Defendants also assert that Plaintiffs have failed to assert special damages as part of their civil conspiracy cause of action. Plaintiffs respond that this is no longer the law in South Carolina, citing an unpublished opinion by our Supreme Court. *Paradis v. Charleston Cty. Sch. Dist.*, No. 28030, 2021 S.C. LEXIS 56, at 5 (May 19, 2021). The Court has found that Plaintiffs

have failed to present any evidence consistent with a civil conspiracy under the first two elements and therefore need not reach the issue of whether special damages were pled or required.

B. Lewis did not work at The Haro Group at the time this cause of action arose

Plaintiffs' claims against The Haro Group also appears to be based on the Doctrine of Respondeat Superior. The Doctrine of Respondeat Superior provides that the employer, as the employee's master, is called to answer for the tortious acts of his servant, the employee, when those acts occur in the course and scope of the employee's employment. *Sams v. Arthur*, 135 S.C. 123, 128-31, 133 S.E.2d 205, 207-08 (1926). The Haro Group argues that it is an improper defendant and that this doctrine is inapplicable because Lewis terminated her relationship with the company soon after entering into contracts with Plaintiffs and well before Lewis recommended Dynamic and Arrow. The Court agrees. Lewis was clearly not an employee of The Haro Group at the time of the incident giving rise to the complaint, and Plaintiffs have not presented any evidence to dispute that fact. Therefore, the Haro Group must be dismissed as a Defendant.

III. CONCLUSION

In conclusion, the Court finds that there exist no genuine issues of material fact and that Defendants Lewis and The Haro Group are entitled to judgment as a matter of law regarding Plaintiff's civil conspiracy claims. Therefore, Defendants' Motion for Summary Judgment is GRANTED and Lewis and The Haro Group are DISMISSED as Defendants in this action.

IT IS SO ORDERED

November ____, 2022
Greenville, South Carolina

Letitia H. Verdin
Thirteenth Circuit Court Judge



Greenville Common Pleas

Case Caption: Tonia S Rankin , plaintiff, et al vs. Dynamic Inspection Services LLC
, defendant, et al
Case Number: 2021CP2305789
Type: Order/Summary Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

**TONIA S. RANKIN and MATTHEW
ROBERT RANKIN,**

Plaintiffs,

v.

**DYNAMIC INSPECTION SERVICES,
LLC; RICHARD H. HOLMES; AUBREE
M. LEWIS; THE HARO GROUP OF
KELLER WILLIAMS REALTY;
ARROW EXTERMINATORS, INC.;
CHRIS SPRINKLE; RONALD K.
BARTON; and ALLISON BARTON,**

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2021-CP-23-05789

**ORDER GRANTING SUMMARY
JUDGMENT TO RONALD K. BARTON
AND ALLISON BARTON**

This matter is before the Court on motion of Defendants Ronald K. Barton and Allison Barton, for a grant of summary judgment.

INTRODUCTION

This case was initiated by Tonia S. Rankin and Matthew Robert Rankin (collectively “Plaintiffs” or “Mr. and Mrs. Rankin”) through the filing of a Summons and Complaint in which they assert multiple causes of action against Mr. and Mrs. Barton and other Defendants. All of the causes of action asserted against Mr. and Mrs. Barton are premised upon allegations that Mr. and Mrs. Barton intentionally attempted to conceal defects of a home located at 402 Brook Glenn Road, Taylors, South Carolina (“the Property”) that they sold to Plaintiffs.

The causes of action asserted against Mr. and Mrs. Barton are: Negligence per se; Negligent Misrepresentation; Breach of an Implied Covenant of Good Faith and Fair Dealing; Fraud; and Civil Conspiracy. In support of these claims Mr. and Mrs. Rankin contend that Mr.

and Mrs. Barton applied caulk to cupboards and built-in cabinetry to hide gaps, applied Quikrete to seal cracks in the brick exterior of the Property, cut-out a portion of the water barrier in the crawlspace; and installed a drain in the crawlspace. After two years of litigation, and ample opportunity for discovery, Plaintiffs can provide no evidence to support their allegations. Further, even when confronted with objective evidence demonstrating that Mr. and Mrs. Barton did not undertake those actions alleged against them Plaintiffs refuse to acknowledge the same and insist that Mr. and Mrs. Barton are at-fault based on the unsubstantiated theory that Mr. and Mrs. Barton lived there so they must have known everything about the condition of the Property.

The claims asserted against Mr. Barton and Ms. Barton are not supported by any evidence, and are ripe for dismissal through Summary Judgment. An unsubstantiated theory and desire to blame others for misfortune is not an adequate basis for a lawsuit. Neither Mr. and Mrs. Barton nor this Court should be forced to entertain further the unsubstantiated theories of Plaintiffs.

SUMMARY OF RELEVANT EVIDENCE

Mr. and Mrs. Barton purchased the Property in December of 2015 and moved-in on December 17, 2015.¹ Their family occupied the Property as their primary residence without issue until Mrs. Barton became pregnant and a larger home became necessary to accommodate the growth of their family.²³ In the Spring of 2018, Mr. and Mrs. Barton listed the Property for sale and ultimately sold it to Mr. and Mrs. Rankin one June 8, 2018.⁴ As a part of the process of selling the Property Mr. Rankin completed a South Carolina Residential Property Disclosure Statement (“the Disclosure Statement”).⁵ The Disclosure Statement was received by Mr. and Mrs. Rankin

¹ Ex. C, Depo. A. Barton 10:7-9

² Ex. C, Depo A. Barton 10:12-17, 13:19 – 16:10, 28:21 – 29:10, 30:17-24

³ Ex. D, Depo K. Barton 18:23-22:24, 35:8-9, 39:13 – 41:23

⁴ Ex. C, Depo A. Barton 10:10-11

⁵ Ex. H S.C. Residential Property Disclosure Statement

on April 28, 2018.⁶ The Disclosure Statement directs sellers to identify current problems (defined as defects, malfunctions, conditions and characteristics) of which the sellers have actual knowledge concerning various features of the property, including the foundation.⁷ Mr. and Mrs. Barton had no knowledge of any current problem concerning the foundation of the Property and never made – or needed to make - repairs to the foundation, brick exterior, walls, ceiling, cabinets or crawlspace prior to completing the Disclosure Statement.⁸⁹ During their ownership of the Property, the only changes made to the property were cosmetic.¹⁰ Mr. and Mrs. Barton changed counter-tops in the kitchen, painted cabinets, added veneer flooring, and painted.¹¹ Accordingly, Mr. and Ms. Barton checked “No” in response to question seven (7) of the Disclosure Statement.¹² Approximately four to six months following the purchase of the Property by Mr. and Mrs. Rankin, Ms. Rankin began to notice cracks in the walls and gaps between cabinetry and the walls.¹³ Ms. Rankin initially suspected this may have been the result of earthquake that had occurred prior to her noticing any of the cracks.¹⁴ Around this time Ms. Rankin also noticed the repairs to the exterior brick of the Property that had been present since at least 2015.¹⁵¹⁶¹⁷ Based on these observations Mr. and Mrs. Rankin developed a theory that Mr. and Mrs. Barton undertook to conceal known foundation problems of the Property.¹⁸

⁶ Id.

⁷ Id.

⁸ Ex. C, Depo A. Barton 10:12-17, 13:19 – 16:10, 28:21 – 29:10, 30:17-24

⁹ Ex. D, Depo K. Barton 18:23-22:24, 35:8-9, 39:13 – 41:23

¹⁰ Ex. C, Depo A. Barton 12:19-13:18, 25:11-25

¹¹ Id.

¹² Ex. H S.C. Residential Property Disclosure Statement p. 2

¹³ Ex. A, Depo T. Rankin 89:12-92:2

¹⁴ Id.

¹⁵ Id.

¹⁶ Ex. G, Barton Inspection Report p. 11

¹⁷ Ex. I, S.C. Residential Property Disclosure Statement (Anthony) p. 2 and 4

¹⁸ Ex. B, Depo M. Rankin 69:13 – 73:22, 76:19 – 78:8, 78:20 – 79:4

Due diligence inspections undertaken for Mr. and Mrs. Barton in 2015 and Mr. and Mrs. Rankin in 2018 demonstrate that the Property was in good/average condition for its age when Mr. and Mrs. Barton purchased the Property and when they sold it.¹⁹²⁰ The inspections also demonstrate the falsity of the conspiracy theories developed by Mr. and Mrs. Rankin; Mr. and Mrs. Barton did not repair the brick exterior, remove the moisture barrier from beneath the area of the furnace in the crawlspace, or apply caulk to repair cracks in the walls and ceiling.²¹²² These conditions all existed at the time of the 2015 inspection.²³ The inspections undertaken on behalf of Plaintiffs also identified a risk of water intrusion into the basement through a foundation vent and elevated moisture levels in the crawlspace.²⁴²⁵²⁶

STANDARD OF REVIEW

The evidence developed demonstrates that there is no issue of material fact and Mr. and Mrs. Barton are entitled to judgment as a matter of law. “Summary Judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must go to the jury. However, when plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Etheredge v. Richland Sch. Dist. 1*, 330 S.C. 447, 451-52, 499 S.E.2d 238 (Ct. App. 1998). To maintain their claims against Mr. and

¹⁹ Ex. E, Ranking Inspection Report p. 9

²⁰ Ex. G, Barton Inspection Report p. 37-38

²¹ Ex. G, Barton Inspection Report p. 11, 28, 30 and 37

²² Ex. I, S.C. Residential Property Disclosure Statement (Anthony) p. 4

²³ Ex. G, Barton Inspection Report p. 11, 28, 30 and 37

²⁴ Ex. E, Rankin Inspection Report p. 11, 24, 39 and 40

²⁵ Ex. F, Rankin CL 100 p. 1-3

²⁶ Ex. A, Depo T. Rankin 83:2 – 86:2

Mrs. Barton, Plaintiffs must “come forward with specific facts showing there is a genuine issue for trial.” *Id.* at 453. “The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 453.

ARGUMENT

Plaintiffs have asserted claims against Mr. and Mrs. Barton for negligence per se, negligent misrepresentation, fraud, breach of an implied warranty of good faith and fair dealing, and civil conspiracy. The elements that must be proven by Plaintiffs to maintain their claims are as follows:

Negligence per se: "Negligence per se is established by proof that a party violated a statute which has the essential purpose of protecting persons such as the injured party from the kind of harm suffered." *Kennedy v. Griffin*, 358 S.C. 122, 129, 595 S.E.2d 248 (S.C. App. 2004).

Negligent Misrepresentation: Negligent misrepresentation requires a showing by the preponderance of the evidence that: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated the truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation. *McLaughlin v. Williams*, 379 S.C. 451, 665 S.E.2d 667, 670 (S.C. App. 2008).

Fraud: Fraud requires a showing by “clear and convincing evidence (of): (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; and (9) the hearer’s consequent and proximate injury. *McLaughlin v. Williams*, 379 S.C. 451, 665 S.E.2d 667, 670 (S.C. App. 2008).

Breach of Implied Covenant of Good Faith and Fair Dealing: An action for breach of an implied covenant of good faith and fair dealing (or bad faith) requires a showing of: “(1) the existence of a mutually binding contract ... between the plaintiff and defendant; (2) refusal by the (defendant) to (perform) under the contract; (3) resulting from the (party’s) bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing arising in the contract; (4) causing damage to the (plaintiff).” *BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 453, 731 S.E.2d 902 (S.C. App. 2012).

Civil Conspiracy: "A civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage" and must be established by a preponderance of the evidence. *Yaeger v. Murphy*, 291 S.C. 485, 354 S.E.2d 393, 394-95 (S.C. App. 1987).

There is no evidence proving Mr. and Mrs. Barton engaged in tortious conduct:

All of these causes of action share in the requirement that Plaintiffs prove that Mr. and Mrs. Barton engaged in some tortious conduct – specifically that Mr. and Mrs. Barton acted to conceal defects of the Property and failed to disclose known defects on the Disclosure Statement. No evidence exists to support these allegations.

The Disclosure Statement requires that sellers identify and disclose known, present problems with the property. *Calland v. Carr*, 9:14-cv-0420-DCN (D. S.C. 2015). Mr. and Mrs. Barton never experienced any problem with the foundation of the Property during their period of ownership, and all of the objective evidence demonstrates that the repairs and actions identified by Plaintiffs to support their allegations were completed prior to Mr. and Mrs. Barton purchasing the Property. Pictures within the 2015 property inspection report show the repairs made to the brick exterior of the Property and the missing section of the moisture barrier under the furnace in the crawl-space. In addition, the 2015 inspection report notes the existence of repairs to prior cracks in the walls and ceilings. Finally, the 2015 inspection report – which helped inform and support the purchase of the Property by Mr. and Mrs. Barton - notes that the home showed signs

of “normal settlement” due to its age, and that its overall condition and maintenance were good considering its age. The findings within the 2015 inspection report are also consistent with the findings within the 2018 inspection report which notes, “Interior of home appears to be in average condition for its age.” None of these facts support the contention that Mr. and Mrs. Barton failed to disclose a known, present problem regarding the foundation of the Property. Rather, the evidence supports Mr. and Mrs. Barton’s understanding that the home was in normal condition as demonstrated by their responses on the Disclosure Statement.

The conditions of the Property disclosed to Plaintiffs during their due diligence preclude a finding of reasonable reliance or causation.

All causes of action asserted by Plaintiffs further require a showing that the damages sought by Plaintiffs were proximately caused by some tortious conduct. This would require proving that Plaintiffs reasonably relied on the statements of Mr. and Mrs. Barton within the Disclosure Statement. However, “there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.” *McLaughlin v. Williams*, 665 S.E.2d 667 at 671. Plaintiffs contend that they were misled and not advised of foundation problems caused by water intrusion in the crawlspace. However, the property inspection report prepared for Plaintiffs identified a risk of water intrusion through a foundation vent and high moisture readings in the framework within the crawlspace, and the CL-100 identified high moisture readings and the presence of non-active wood destroying fungi in the crawlspace. Plaintiffs were aware of this information and requested that Mr. and Mrs. Barton complete repairs in response to the findings. Plaintiffs’ knowledge as to these conditions precludes any finding that Plaintiffs reasonably relied upon the representations of Mr. and Mrs. Barton and any recovery by Plaintiffs.

CONCLUSION

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Englert, Inc. v. Leafguard Usa, Inc.*, 377 S.C. 129, 659 S.E.2d 496, 498 (S.C. 2008). No evidence exists to support Plaintiffs' allegations that Mr. and Mrs. Barton engaged in tortious conduct. Further, the results of Plaintiffs' due diligence inspections preclude any finding that Plaintiffs reasonably relied upon the representations of Mr. and Mrs. Barton. Accordingly, this matter does not require the services of a fact finder. The unsubstantiated theories of Mr. and Mrs. Rankin have no further place in this Court, and their claims against Mr. and Mrs. Barton must be dismissed.

After consideration of the record in the light most favorable to Plaintiffs as required by law, the argument of counsel, memoranda submitted, and the applicable law, this Court finds that there does not appear to exist a genuine issue of material fact and therefore the granting of summary judgment should be and is therefore granted.

IT IS SO ORDERED.

_____, 2022

The Honorable Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 318
Greenville, SC 29601



Greenville Common Pleas

Case Caption: Tonia S Rankin , plaintiff, et al vs. Dynamic Inspection Services LLC
, defendant, et al
Case Number: 2021CP2305789
Type: Order/Summary Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162