

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**

**RECEIVED**  
**Dec 30 2022**  
**SC Court of Appeals**

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

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The Honorable Letitia H. Verdin  
Presiding Judge of the 13<sup>th</sup> 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