

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**

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

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.<sup>1</sup> 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.<sup>23</sup> 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.<sup>4</sup> As a part of the process of selling the Property Mr. Rankin completed a South Carolina Residential Property Disclosure Statement (“the Disclosure Statement”).<sup>5</sup> The Disclosure Statement was received by Mr. and Mrs. Rankin

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<sup>1</sup> Ex. C, Depo. A. Barton 10:7-9

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

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

<sup>4</sup> Ex. C, Depo A. Barton 10:10-11

<sup>5</sup> Ex. H S.C. Residential Property Disclosure Statement

on April 28, 2018.<sup>6</sup> 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.<sup>7</sup> 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.<sup>89</sup> During their ownership of the Property, the only changes made to the property were cosmetic.<sup>10</sup> Mr. and Mrs. Barton changed counter-tops in the kitchen, painted cabinets, added veneer flooring, and painted.<sup>11</sup> Accordingly, Mr. and Ms. Barton checked “No” in response to question seven (7) of the Disclosure Statement.<sup>12</sup> 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.<sup>13</sup> Ms. Rankin initially suspected this may have been the result of earthquake that had occurred prior to her noticing any of the cracks.<sup>14</sup> Around this time Ms. Rankin also noticed the repairs to the exterior brick of the Property that had been present since at least 2015.<sup>151617</sup> 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.<sup>18</sup>

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<sup>6</sup> Id.

<sup>7</sup> Id.

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

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

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

<sup>11</sup> Id.

<sup>12</sup> Ex. H S.C. Residential Property Disclosure Statement p. 2

<sup>13</sup> Ex. A, Depo T. Rankin 89:12-92:2

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Ex. G, Barton Inspection Report p. 11

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

<sup>18</sup> 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.<sup>1920</sup> 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.<sup>2122</sup> These conditions all existed at the time of the 2015 inspection.<sup>23</sup> 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.<sup>242526</sup>

### 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

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<sup>19</sup> Ex. E, Ranking Inspection Report p. 9

<sup>20</sup> Ex. G, Barton Inspection Report p. 37-38

<sup>21</sup> Ex. G, Barton Inspection Report p. 11, 28, 30 and 37

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

<sup>23</sup> Ex. G, Barton Inspection Report p. 11, 28, 30 and 37

<sup>24</sup> Ex. E, Rankin Inspection Report p. 11, 24, 39 and 40

<sup>25</sup> Ex. F, Rankin CL 100 p. 1-3

<sup>26</sup> 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

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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