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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2018-CP-22-00956

Appellate Case No. 2019-001822

Rory M. Isaac and Kimberly J. Isaac …….. Appellants

v.

Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc. ……Of Whom Laura Kopchynski is the Respondent.

RESPONDENT'S PETITION FOR REHEARING

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Respondent Laura Kopchynski respectfully petitions this Court pursuant to Rule 221(a), SCACR for a rehearing of the Court's July 12, 2023 Opinion in the above-captioned matter.

SUMMARY

In its July 12, 2023 Opinion, this Court held that a genuine issue of material fact exists as to Rory and Kimberly Isaac's (collectively, "Buyers") claims for negligent misrepresentation and violation of the South Carolina Residential Property Disclosure Act against Respondent Laura Kopchynski ("Kopchynski" or "Sellers' Agent") arising out of her representation of Thomas and Jackie Onions ("Sellers") in listing their house for sale. As explained herein, the Court misapprehended or overlooked the undisputed evidence that the Buyers did not rely on any alleged representations by Sellers' Agent. Likewise, the Court misapprehended the statutory framework governing a real estate licensee's duties in a transaction, vastly expanding the obligations and potential liability of a real estate agent beyond that which is prescribed in S.C. Code Ann. §40-1-10 et seq.

ARGUMENT

1. The Court erred in finding a genuine issue as to whether Kopchynski negligently misrepresented any material adverse facts.

The Court erred in finding that Plaintiffs presented even scintilla of evidence as to the elements of negligent misrepresentation. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 770 (2011) citing *Hancock v. Mid-S. Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The "essential elements to establish liability for negligence misrepresentation" include:

> (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 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.

AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992).

With respect a motion for summary judgment, while all inferences must be interpreted in favor of the non-moving party, a scintilla still requires a "verifiable spark," and cannot be simply "conjured by shadows." *See Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019). In other words, a *genuine* issue of material fact must exist beyond mere speculation. In this case, however, the Buyers failed to demonstrate a mere scintilla of evidence that Kopchynski made a false representation, *upon which Plaintiffs relied*, or that Plaintiffs suffered a pecuniary loss as a result.

The Court identifies five pieces of evidence supporting its decision that the Buyers presented evidence that a jury could conceivably infer Kopchynski had reasonable cause to suspect Sellers were not being truthful, and should have shared that information to Buyers:

> (1) Kopchynski' s position with the community newsletter; (2) the Kopchynski' s knowledge of the earlier conditions in the Onions' crawlspace and the Onions' decision to hire Emery Custer rather than someone with more specialized knowledge; (3) the fact that Kopchynski could have known from a plain reading of the June 18 CL-100 that it was not "good," or should have corrected her mistaken impression once she became aware; (4) testimony indicating that she sent two distinct versions of the Emery Custer work "verification" to Kimbrough; (5) the text conversation between herself and Jackie.

For the reasons described herein, each of these alleged facts fail to meet even the low bar of the "mere scintilla" standard, and accordingly, the Court erred in determining that the grant of summary judgment on the negligent misrepresentation was improper.

A. Kopchynski' s work on the community newsletter

Buyers allege that because Kopchynski lived in the same community as the Property, Litchfield Plantation, and was involved in the community newsletter, there is a genuine issue of material fact

as to whether Kopchynski had notice of prior flooding at the Sellers' Property.[1] This allegations fails to provide even a mere scintilla of evidence, as the allegation is pure speculation, and there is no evidence in the record suggesting Kopchynski was aware of flooding *at the Property*. Indeed, the fact that at some point, the community association had consulted with an engineer on draining issues *within common areas of the community that existed far away from the Property*, does not provide any evidence that Kopchynski was aware of flooding at the Property. To accept such a premise would be to declare that every single property within Litchfield Plantation suffers flooding issues—a fact for which there is no evidence.

Sellers have failed to cite any facts demonstrating that Kopchynski had knowledge of any alleged prior flooding at *the Property*. There is no testimony or evidence in the record before this Court that establishes that Kopchynski had any knowledge of prior flooding at *the Property*.[2]

From a broad perspective, this Court's holding appears to vastly expand a realtor's duty beyond that expressly stated in the statute. *See* S.C. Code Ann. § 27-50-80 ("real estate licensee…has no duty to inspect the onsite or offsite conditions of the property and any improvements"); *see also Chastain v. Hiltabidle*, 381 S.C. 508, 519, 673 S.E.2d 826, 832 (Ct. App. 2009) ("a real estate licensee does not have a duty to inspect or investigate the physical condition of a piece of property for the purposes of confirming or denying statements made by a seller in a disclosure statement. Rather, the Legislature places the duty of performing such an inspection or investigation squarely on the buyer") (emphasis added).

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[1] We reiterate that this argument was not made before the trial court and therefore Buyers have abandoned it. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("an issue cannot be raised for the first time on appeal, but must have been raised and ruled upon by the appellate judge to be preserved for appellate review").

[2] As an example of her work for the community newsletter, Kopchynski occasionally provided updates on how many properties were for sale or have sold within the community. (R. p. 611).

Should this Court's opinion stand, it will essentially require realtors to investigate the condition of all properties within an undefined radius of the subject property and disclose to a potential buyer whether there was ever any flooding or water issues *anywhere* within some undefined radius of the subject property. This contradicts the express duties set forth in the statute. S.C. Code Ann §40-57-740(A)(3)("No cause of action may arise against an owner of real estate or a licensed real estate agent of a party to a transaction for failure to disclose in a transaction ***any off-site condition or hazard that does not directly impact the property being transmitted***.") *See also S.C. Pub. Interest Found. v. Courson*, 420 S.C. 120, 123, 801 S.E.2d 186 (Ct. App. 2017) quoting *Grimsley v. S.C. Law Enforcement Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012) ("[w]hen interpreting the plain meaning of a statute, *courts should not resort to subtle or forced construction to limit or expand the statute's operation*") (emphasis added).

Here, the mere fact that at some point the community association looked into performing drainage work does not prove that the Sellers' property suffered from flooding issues.

For the reasons described above, no reasonable jury could infer that Kopchynski' s work on the community newsletter created reasonable cause for her to believe that Sellers' Property experienced flooding issues.

B. Kopchynski' s knowledge of the earlier conditions and Sellers' decision to hire Emery Custer

The Court further erred in finding that Kopchynski' s knowledge of the earlier conditions in the Onions' crawlspace and the Onions' decision to hire Emery Custer ("Custer") rather than a more "specialized" contractor could lead a reasonable jury to infer that she had reasonable cause to believe she made false, incomplete, or misleading statements.

As to Kopchynski' s knowledge of the earlier conditions, Buyers have presented no evidence that Kopchynski had actual knowledge of misrepresentations on the South Carolina Residential

Property Condition Disclosure Statement ("PCDS") since the inspection graph provided by Andy Ward following his May 16, 2018 inspection identified elevated moisture levels.

S.C. Code Ann. § 40-57-350(G)(1) provides that "[a] licensee shall treat all parties honestly and may not *knowingly* give them false or misleading information about the condition of the property *which is known to the licensee*" (emphasis added). Likewise, the PCDS provides that "the real estate licensee must disclose material adverse facts about the property *if actually known by the licensee about the issue*, regardless of owner responses on this disclosure." (R. p. 38) (emphasis added).[3]

Buyers do not dispute that Kopchynski provided the prior inspection report summary which showed dampness and moisture in the crawlspace to the Buyer's realtor, Ed Kimbrough ("Kimbrough" or "Buyers' Agent"), and disclosed actions taken by the Sellers to address these issues, such as installing a fan in the crawlspace. (R. pp. 191-195, 199-200, 205). In this respect, it was fully disclosed that a fan was used in this crawlspace to address moisture issues, and it was fully disclosed that Emery Custer was the individual who performed repairs at the Property, including addressing the crawlspace issues.

[3] S.C. Code Ann. § 40-57-30(16) defines a "material adverse fact" as "(a) a condition or occurrence that as is generally recognized as: (i) significantly and adversely affecting the value of the real estate; (ii) significantly reducing the structural integrity of improvements to real estate; or (iii) presenting a significant health risk to occupants of the real estate; or (b) information that indicates that a party to a transaction is not able to or does not intend to meet an obligation under a contract or agreement made concerning the transaction."

We reiterate that no evidence in the record indicates that any part of the Property's structural integrity was reduced. However, S.C. Code Ann. § 12-37-3130(1) defines "improvements" as "(a) new construction, (b) reconstruction, (c) major additions to the boundaries of the property or a structure on the property, (d) remodeling, or (e) renovation and rehabilitation, including installation." The work performed on the crawlspace does not fall into any of these categories.

Here, the Court erred in holding an issue of fact existed as to whether or not Kopchynski breached a duty owed to the Buyers (non-clients) in not explicitly advising the Buyers that the Sellers' hired a license specialty contractor to address moisture in the crawlspace, rather than a more specialized company.

As an initial matter, and as identified in Respondent's Brief in this appeal, South Carolina law does not recognize a specialization in crawl spaces within the contractor field. Thus, there is no "more specialized" contractor recognized in South Carolina to address issues in the crawlspace.

Likewise, the statute clearly states that a realtor is not required to opine on matters outside of her expertise as a real estate salesperson. (S.C. Code. Ann. §40-57-350(2)(G)(1)). This necessarily means a realtor is not required to vet or opine on the experience, knowledge or abilities of a contractor. The Court's opinion in this appeal inverts this statutory protection, and instead appears to require realtors to vet and opine on the qualifications of a licensed contractor hired by a seller, despite lacking the expertise to do so[4].

Moreover, there is no evidence in the record to suggest Kopchynski had any reason to believe Emery Custer was not capable of addressing the elevated moisture reading in the crawlspace. Kopchynski testified that Custer is "known as a very reputable and credible licensed contractor." (R. p. 476). Custer himself testified that he possesses a specialty contractor license in South Carolina. (R. pp. 542-543).[5] Accordingly, Kopchynski did not have a duty to advise the Buyers that she believed the contractor hired to address crawlspace moisture issues was not qualified to do so. Furthermore, there is no evidence in the record to suggest Kopchynski doubted that Custer had the requisite skills to perform the work.

[4] There is no dispute amongst the parties that Emery Custer was a licensed specialty contractor within the State of South Carolina.
[5] Custer's license number is 56967. (R. p. 175).

For the reasons described above, no reasonable jury could infer from Kopchynski' s knowledge of an earlier elevated moisture level, that she concealed Sellers' decision to hire Custer rather than a different contractor, or that she had a reasonable cause to believe that Sellers were not being truthful. To the contrary, the record clearly demonstrates that it was disclosed to the Buyers that Emery Custer performed work in the crawlspace to address moisture levels.

C. Kopchynski' s statement regarding her understanding that the CL-100 was "good"

The Court erred in finding there was a scintilla of evidence that Kopchynski made a false representation as to her June 19, 2018 email to Buyers' Agent that stated the "CL-100 was done yesterday and *from what I understand* it was good, but I can obtain the report if/when necessary as the sellers paid for it." (R. pp. 179-180) (emphasis added).[6] In all respects, this statement was indisputably truthful. It cannot reasonably be construed as a misrepresentation.[7] Kopchynski never stated to Buyers or Buyers' Agent that the CL-100 was "good," only that it was good "from what [she understood]." The email itself is unequivocally clear that she had not seen or reviewed the CL-100, and there is no evidence in the record to suggest that Kopchynski reviewed the subject CL-100 at any point during the transaction, as the Buyers realtor stated he was not interested in receiving it, since the Buyers were hiring their own CL-100 inspector.

Rather, for Plaintiffs to demonstrate that this statement is false, they must present a scintilla of evidence that Kopchynski did not in fact "understand" the CL-100 to be "good." No such evidence exists in this record.

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[6] Respondent reiterates that this email was sent to Buyers' Agent *before* Buyers submitted an offer. Rory Isaac testified that he likewise reviewed the summary inspection report before making an offer. (R. pp. 232 ln.10-p. 233 ln. 7).

[7] *See Turner*, 392 S.C. at 124, 708 S.E.2d at 770 (2011) quoting *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993) ("[t]o be actionable, the representation must be…**false when made**") (emphasis added).

Kopchynski never stated that she saw the CL-100, and it is clear from the subject email that she did not. In its opinion, this Court states that a reasonable jury could infer that "Kopchynski could have known from a plain reading of the June 2019 CL-100 that it was not 'good.'" However, South Carolina law does not impose upon a real estate licensee a duty to disclose information that they *could* know; rather, a real estate licensee merely must refrain from *knowingly* giving false or misleading information *which is known to the licensee*. S.C. Code Ann. § 40-57-350(G)(1). *See also* the PCDS ("the real estate licensee must disclose material adverse facts about the property if *actually known* by the licensee about the issue, regardless of owner responses on this disclosure." (R. p. 38) (emphasis added).

Moreover, Kopchynski offered to obtain the report for Buyers' Agent "if/when necessary." It is undisputed that Kopchinski offered the prior CL-100 to Buyers' Agent, and he rejected it. Therefore, Buyers' Agent could have read the CL-100 for himself if chose to. *See Gecy v. S.C. Bank & Trust*, 422 S.C. 509, 523, 812 S.E.2d 750 (Ct. App. 2018) quoting *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) ("[t]here is no liability for casual statements, representations as to matters of law, *or matters which plaintiff could ascertain on his own in the exercise of due diligence*")(emphasis added).

Here, the Court's opinion attempts to shift the burden of conducting due diligence from the Buyer to the Seller's Agent. This is contrary to the statute and this Court's prior authority. *Chastain*, 381 S.C. at 519, 673 S.E.2d at 832 ("a real estate licensee does not have a duty to inspect or investigate the physical condition of a piece of property for the purposes of confirming or denying statements made by a seller in a disclosure statement. Rather, the Legislature places the duty of performing such an inspection or investigation *squarely on the buyer*") (emphasis added).

Furthermore, the Court erred in concluding that a jury could reasonably interpret the evidence before it to show that Buyers, through their agent, relied on Kopchynski' s statement that "from what I understand it was good" in declining to ask to review the June 18 CL-100. Kimbrough explained in his deposition that the CL-100 was going to be Buyers' responsibility, and that he "wanted it that way." (R. p. 583). He further elaborated: "when she said 'good,' I thought, perfect. We're not going to have an issue on that. **We will order our own CL-100 and we'll verify the information** that we need regarding to repairs…**it was not even relevant** from a date period. CL-100 reports are only good for 30 days. **We would have to have another one done prior to closing anyways**." (R. p. 585) (emphasis added).

As Buyers' Agent himself made clear, he, nor the Buyer's, in any way relied on Kopchynski' s characterization of the June 18 CL-100. Instead, he selected Co-Defendant Lane's to perform the CL-100 for Buyers. (R. pp. 586). *See McLaughlin v. Williams*, 379 S.C. 451, 457-58, 665 S.E.2d 667, 672 (Ct. App. 2008) (holding that a home purchaser had no right to rely on a disclosure statement where a subsequent CL-100 was performed on the property) ("if the undisputed evidence clearly shows that the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact"). In addition to the Buyer's Agent, Appellant Rory Isaac himself also confirmed that he had Lane's perform a CL-100 property inspection, and the Lane's CL-100 performed for the Buyers "is what they depended on." (R. pp. 232 ln. 10-p. 233 ln. 7, 511 ln. 18-25).

Thus, there is no genuine issue of material fact that Buyers hired their own inspector to perform a CL-100 and assess the crawlspace. (R. pp. 232 ln. 10-p. 233 ln. 7). *See McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453-54 (Ct. App. 2014) quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) ("it is not sufficient for a party to create an inference

that is not reasonable or an issue of fact that is not genuine"). Accordingly, there is not a scintilla of evidence that Buyers or Buyers' Agent relied on Kopchynski' s statement.

Finally, The Court also erred in finding that a jury could reasonably interpret the evidence before it to show that Kopchynski' s statement, "from what I understand it was good," foreseeably led to Buyers' alleged pecuniary loss. Even if a reasonable jury inferred that Buyers' Agent relied on Kopchynski' s statement in declining to ask to review the June 18, 2018 CL-100, it is undisputed that Buyers hired Lanes to perform their own CL-100 inspection. (R. pp. 221-22, 232 Ln. 18-p. 233 ln. 7). Lanes performed a CL-100 *on the Buyers' behalf* on July 11, 2018, which identified moisture levels ranging from 8 to 18% (R. pp. 221-222). It is also undisputed that Lanes is licensed to perform CL-100 inspections. (R. pp. 221-222). The Buyers' subsequent CL-100 by Lanes showed that there were no excessive moisture levels in the crawlspace. (R. p. 10).

Accordingly, no reasonable jury could infer that suffered a pecuniary loss as a result of any statements by Kopchynski. To the extent the Buyers' own July 11, 2018 CL-100 contained inaccuracies, it is Buyers' reliance on *this* CL-100, rather than any statement by Kopchynski, that caused Buyers' any alleged loss.

D. Two versions of the repair verification form

The Court erred in finding that a reasonable jury could infer from the two versions of the repair verification forms that Kopchynski had reasonable cause to suspect that Sellers were not being truthful. By contrast, the Record contains no evidence at all to support this inference.

Buyers allege that the repair verification sent to Kimbrough was forged and that Kopchynski knew of this forgery. However, they have cited no evidence to support this contention. Rather, Kopchynski testified that she found out after the lawsuit was filed that Mr. Onions typed up the repair verification form for Custer, and that when it was sent to the Buyer's Agent, she believed

the repair verification came from Custer. (R. p. 484 lns. 7-14). Kopchynski did not type up the verification form for Custer. (R. p. 531 lns. 17-22). Additionally, there were no inaccuracies in the repair verification.

With respect to the allegation that two forms of repair verification were sent to Buyer's Agent, this allegation is immaterial to the issue in this case. Except for a signature on the bottom of the second "repair verification" there is no other difference. (R. pp. 270, 273). The substance of the repair verification, which accurately identifies repair performed by Custer, was identical. Buyers do not dispute that Custer did in fact perform the repairs identified on the repair verification, including installation of a fan in the crawlspace. (R. p. 175).

Accordingly, allegations of an alleged "forgery" are immaterial, and there is no evidence to support an inference that Kopchynski knew of any alleged forgery. Thus, no reasonable jury could infer from the two versions of the verification form that Kopchynski had a reasonable cause to believe that Sellers were not being truthful

E. Text conversations between Kopchynski and Jackie Onions

The Court erred in finding that a reasonable jury could infer concealment of a property condition from the text conversation between Kopchynski and Seller Jackie Onions in which they agreed that Custer should not be at the Property when the Buyers were viewing the Property. (R. pp. 628-629). It is unclear how these texts could reasonably be interpreted to suggest that Kopchynski had reasonable cause to suspect that Sellers were not being truthful.

In the text conversations, Kopchynski and Jackie Onions agreed that Custer should not be working at the Property while Buyers were attempting to perform a walkthrough. (R. pp. 628-629). Buyers, however, have presented no evidence that Kopchynski attempted to hide Custer or his work from them. By contrast, Buyers were fully aware of the fan in the crawlspace that Custer

installed, were fully aware that Custer performed repairs on the Property, and the Buyers had *their own* CL-100 inspection performed on the crawlspace prior to closing to verify that crawlspace conditions were satisfactory. (R. p. 591 1n. 18-593 ln. 8). Moreover, Appellants have not even identified what they allege Kopchynski and Sellers were trying to conceal.

Accordingly, no reasonable jury could infer that Kopchynski had reasonable cause to believe Sellers were not being truthful from her text conversation with Mrs. Onions.

2. The Court erred in finding that S.C. Code Ann. § 40-57-350(G) provided a viable cause of action to withstand summary judgment.

The Buyers argue that Kopchynski had actual knowledge of alleged misrepresentations on the PCDS. Buyers further suggest that Kopchynski owed Buyers a legal duty to provide them with Andy Ward's inspection graph. However, the trial court properly ruled that the statutory framework outlining a real estate licensee's responsibility does not support Buyers' claim under the South Carolina Residential Property Disclosure Act.

A real estate licensee's responsibility and liability under the South Carolina Residential Property Disclosure Act is laid out in S.C. Code Ann. §§ 27-50-50(C), 27-50-70(B), and 27-50-80. (R. p. 9). As the trial court properly recognized, these sections "reference and reaffirm" a real estate licensee's obligations under S.C. Code Ann. § 40-57-350, governing real estate licensees. (R. p. 9).

As this Court noted, the South Carolina Residential Property Disclosure Act limits the liability of a real estate licensee for misstatements on a disclosure statement if "the real estate licensee did not know or have reasonable cause to suspect the information was false, incomplete or misleading."[8] S.C. Code Ann. § 27-50-70(B). Further limiting a real estate licensee's liability for

[8] Respondent notes that the PCDS expressly states that "the real estate licensee must disclose material adverse facts about the property *if actually known by the licensee about the issue*, regardless of owner responses on this disclosure." (R. p. 38) (emphasis added).

alleged misstatements is S.C. Code Ann. § 40-57-350(G)(2), which provides that "[n]o cause of action may be brought against a real estate brokerage firm or licensee by a party for *information contained in reports or opinions prepared by [a]…wood destroying organism control expert [or] termite inspector*" (emphasis added).

Here, Kopchynski is not a licensed contractor, nor is she licensed to perform CL-100 reports. As a real estate licensee, she had no duty to inspect on- or offsite conditions of the property. S.C. Code Ann. § 27-50-80; *Chastain*, 381 S.C. at 519, 673 S.E.2d at 832 (Ct. App. 2009). Likewise, as a real estate licensee, she is entitled to the limitation of liability contained in S.C. Code Ann. § 40-57-350(G)(2), a plain reading of which, as the trial court correctly noted, bars a cause of action against Kopchynski for information contained in the allegedly inaccurate July 11, 2018 CL-100 report. (R. p. 10). It is indisputable from this record, that the July 11, 2018 CL-100, performed at the request of the Buyers, was the operative inspection relied upon by the Buyers, *not* any alleged statement made by Kopchynski.

The Court's opinion sidesteps this plain reading of the statute by suggesting that Buyers are not seeking to hold Kopchynski responsible for the information in the July 11, 2018 CL-100 report, but instead for her alleged *mischaracterization* of the June 18 CL-100. Opinion, p. 7 (emphasis in original). As described at length herein, there is no genuine issue that Kopchynski did not mischaracterize the June 18 CL-100, and nevertheless, Buyers and Buyers' Agent had a subsequent CL-100 performed following any statements regarding the June 18 CL-100 by Kopchynski. Accordingly, to the extent Buyers do seek to hold Kopchynski liable for mischaracterizing the June 18 CL-100, the trial court properly found that there was no genuine issue of material fact.

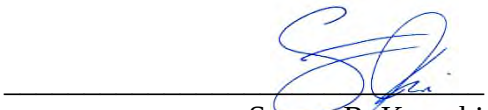
Nonetheless, a plain reading of Buyers' Complaint demonstrates that Buyers did not seek to hold Kopchynski liable for any alleged mischaracterizations of the June 18 CL-100. In fact,

Buyers' Complaint makes no reference to the June 18 CL-100 at all. Rather, in its allegations under the South Carolina Residential Property Condition Disclosure Act, Buyers allege in their Complaint, that Kopchynski was aware of the issues identified in the May 16, 2018 Stark report, but did not disclose the report to them. (R. p. 34). Buyers further allege that "Defendants' failure to fully, honestly, and appropriately disclose material adverse facts was the proximate cause of severe monetary damages to Plaintiffs." (R. p. 34). However, there is no genuine issue of fact that the proximate cause of any of Buyers' alleged damages was potential inaccuracies in the July 11 CL-100. Therefore, the trial court properly ruled that S.C. Code Ann. § 40-57-350(G)(2) bars Buyers' claims as to violations of the South Carolina Residential Property Condition Disclosure Act.

Because it is undisputed that S.C. Code Ann. § 40-57-350(G)(2) bars Buyers' claims, the Court erred in reversing the trial court's Order granting Kopchynski' s Motion for Summary Judgment as to violations of the South Carolina Residential Property Condition Disclosure Act.

CONCLUSION

For the reasons set forth herein, the Court should grant a rehearing and issue an refiled opinion finding no genuine issue as to any material fact as to Buyers' claims for negligent misrepresentation and violation of the South Carolina Residential Property Disclosure Act, and affirming the Trial Court's grant of summary judgment to Kopchynski in its entirety.



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APPEAL FROM GEORGETOWN COUNTY
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PROOF OF SERVICE

I, Tavia Stockdale, an employee of Earhart Overstreet LLC, paralegal for the attorney for Respondent Laura Kopchynski certify that I served a copy of the attached *Respondent's Petition for Rehearing* by email, on July 27, 2023, addressed to counsel for Appellants:

George W. Redman, III
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A
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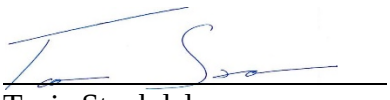
This 27th day of July, 2023.



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July 27, 2023

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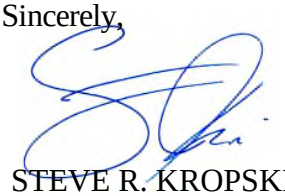
Re: Isaac v. Onions, Kopchynski, and Lane's Professional Pest Elimination, Inc.
2019-001822

Dear Ms. Kitchings:

Please find attached Respondent's Petition for Rehearing for electronic filing. Should you have any questions or concerns, please feel free to contact my paralegal, Tavia Stockdale at (843) 628-3785. Thank you.

With best regards, I am

Sincerely,



STEVE R. KROPSKI

SRK/tss