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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson
Circuit Court Judge

Unpublished Opinion No. 2023-UP-263 (S.C. Ct. App. Filed July 12, 2023)

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

v.

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

PETITION FOR A WRIT OF CERTIORARI

George W. Redman, III
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A
P.O. Box 357
Myrtle Beach, SC 29578

Counsel for Respondents

Steven R. Kropski
S.C. Bar No.: 101441
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, SC 29413
(843) 972-9400

Counsel for Petitioner

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CERTIFICATE OF COUNSEL

Counsel for Petitioner Laura Kopchynski certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 16, 2023.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in applying the "mere scintilla" standard of review to an order granting summary judgment which was abrogated by *Kitchen Planners, LLC v. Friedman*, 2023 S.C. LEXIS 164, 2023 WL 5420401 (2023)?

2. Did the Court of Appeals err in finding a genuine issue of fact existed as to Buyers' negligent misrepresentation claim?

3. Did the Court of Appeals err in finding a genuine issue of fact existed as to Buyers' Residential Property Disclosure Act claim?

STATEMENT OF THE CASE

This matter arises out of Appellees, Rory and Kim Isaac's ("Buyers" or "Isaacs") July 2018 purchase of a home at 24 Avenue of Live Oaks in Pawley's Island, South Carolina ("the Property") from Thomas C. Onions and Jacqueline Onions ("Sellers"). Petitioner Laura Kopchynski ("Sellers' Agent" or "Kopchynski") served as the Sellers' agent and listed the house for sale. Shortly after the Property was listed on or about April 23, 2018, it came under contract with prospective buyers Randy and Suzanne Cole (the "Coles"). (R. pp. 147-154). The Coles engaged a home inspector who provided them with a report dated May 10, 2018, a summary of which was provided to the Sellers and Sellers' Agent. (R. pp. 197-204). Relevant to this Petition, the May 10, 2018 inspection report noted "dampness in the crawlspace," "missing vapor barrier," "wet debris on top of vapor barrier," and "damp ground." (R. pp. 200-201).

Following the Coles' inspection report summary, Sellers requested that Stark Exterminators assess the dampness identified in the inspection report summary. On May 16, 2018, Andy Ward, an employee of Stark Exterminators, assessed the crawlspace, provided Sellers an "inspection graph" and proposed a "crawl space moisture management system" product.[1] (R. p. 156). The graph identified moisture levels in certain parts of the crawlspace between 22-25%. (R. p. 156). The "crawl space moisture management system" proposed installation of a dehumidifier for $4,595 and a $200 renewal fee to maintain the service annually. (R. p. 157).

Sellers testified that they requested a second opinion from a contractor who had previously done work at their property, Emery Custer ("Custer").[2] (R. p. 167, ln. 18-p. 173, ln. 25). Sellers then hired Custer who added vapor barrier where it was missing, installed a fan in the crawlspace to lower moisture levels, and performed other repairs identified on the Coles' inspection report summary. (R. p. 175).

On or about June 18, 2018, the Coles hired Lane's Professional Pest Elimination, Inc., ("CL-100 Inspectors" or "Lane's") to perform a South Carolina Wood Infestation Report inspection, commonly referred to as a CL-100. ("R. pp. 625-626). The same day, however, the

[1] Mr. Ward describes himself as a "registered pest control technician." (R. p. 433). Clemson Regulatory Services does not recognize this as a category of licensing. Furthermore, Section 27-1085K(1) of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act states "Any wood infestation report issued for the purpose of describing the apparent absence of wood-destroying organisms from a building or structure in connection with a sale or mortgage of real property must be issued by an individual currently licensed in Category 7A, Industrial, Institutional, Structural, and Health-Related Pest Control and covered under a valid Pest Control Business License issued by the Department. The report must be signed by the licensed individual and include their applicator and business license number."

[2] Custer is licensed as a specialty contractor in South Carolina under license number 56967. (R. p. 175).

contract between the Coles and the Onions was terminated based upon the appraisal contingency in the contract. (R. pp. 177, 179-180).

Although the Coles' contract fell through, on June 20, 2018, Sellers paid for the June 18, 2018 CL-100 report in order to receive the report. (R. pp. 179-180). Although not known to Kopchynski at the time relevant to this Appeal, the June 18, 2018 CL-100 identified moisture levels in the crawlspace ranging from 20-25%. (R. pp. 625-626).

Following termination of the contract with the Coles, Sellers' Agent contacted the Buyers' realtor, Ed Kimbrough ("Buyers' Agent" or "Kimbrough") to advise him that the prior contract had terminated, and the Property was available. (R. pp. 179-180). Via email dated June 19, 2018, Sellers' Agent advised Buyers' Agent that 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). At the same time, Sellers' Agent provided an updated Property Condition Disclosure Statement which disclosed the repairs performed by Custer along with the Coles' inspection report summary. (R. pp. 191-195).

On June 20, 2018, Buyers made an offer to purchase the Property. (R. pp. 207-219). The Buyers did not hire their own home inspector; however, they did hire Lane's to perform their own CL-100 inspection. Thus, Buyers hired the exact same company that performed the June 19, 2018 CL-100 report, and had full knowledge of the conditions in the crawlspace. (R. pp. 221-222, 232 ln. 18-p. 233 ln. 7).

Lane's performed a CL-100 inspection for the Buyers on July 11, 2018. The July 11, 2018 Cl-100 identified moisture levels ranging from 8 to 18%. (R. pp. 221-222). On July 23, 2018, the Buyers and Sellers closed on the Property. (R. p. 507 ln. 10-17).

Shortly after closing, the Buyers allege that they experienced extensive standing water on the Property including water in the crawlspace after a period of severe rain. (R. pp. 18-37). Buyers further allege that they have spent a significant amount of money to address flooding on the property and moisture issues in the crawlspace. (R. pp. 34-35 at ¶119).

Buyers commenced this lawsuit on November 16, 2018 against the Sellers, Sellers' Agent, and the CL-100 inspector, Lane's, alleging concealment of a history of flooding and water intrusion in the crawlspace. (R. pp. 18-37).

Petitioner Kopchynski timely answered the Complaint on December 19, 2018. (R. pp. 62-72). After extensive discovery, including nine depositions, Kopchynski filed her Motion for Summary Judgment on the grounds that there was no genuine issue that Kopchynski did not conceal any alleged flooding problems at the Property, and nonetheless that Buyers did not rely on Kopchynski to inform them of crawlspace moisture conditions because they had their own CL-100 performed. (R. pp. 135-250). Kopchynski's motion was supported by a Memorandum in Support of Summary Judgment with exhibits. (R. pp. 137-250). Buyers submitted a Memorandum in Opposition (R. pp. 251-285), and the Affidavits of Andy Ward (R. pp. 433-456), Henry Moore (R. pp. 425-432), and Brad Cromartie (R. pp. 414-424).

The Motion for Summary Judgment was heard by the Honorable Benjamin H. Culbertson on July 26, 2019. (R. pp. 96-132). Judge Culbertson issued a Form 4 Order on July 26, 2019 (R. pp. 1-3), and entered the formal order granting summary judgment on August 12, 2019. (R. pp. 4-13). Buyers timely moved to reconsider on August 5, 2019. (R. pp. 286-301). Both parties submitted additional memoranda in support of their respective positions. (R. pp. 302-398, 399-413). On September 25, 2019, Judge Culbertson issued a Form 4 Order denying Buyers' Motion

to Reconsider. (R. pp. 14-16). Buyers served a Notice of Appeal on October 25, 2019. (R. pp. 73-95).

The Court of Appeals heard the Buyers' appeal on November 15, 2022. (R. p. 708). On July 12, 2023, the Court of Appeals filed a per curiam decision, affirming in part and reversing in part the trial court's decision. (R. pp. 708-718). The Court of Appeals affirmed the trial court's granting of Kopchynski's motion for summary judgment as to the Buyers' claims for fraud and civil conspiracy, yet reversed the trial court's granting of Kopchynski's motion for summary judgment as to the Buyers' claims as to the Buyers' claims for negligent misrepresentation and violation of the Residential Property Disclosure Act. (R. pp. 708-718).

Kopchynski filed a Petition for Rehearing on July 27, 2023. (R. pp. 719-735). On August 16, 2023, the Court of Appeals denied the Petition for Rehearing. (R. pp. 736-737). **Kopchynski seeks a Writ of Certiorari to review the Court of Appeals' unpublished opinion on the grounds that 1) the standard for summary judgment utilized by the Court of Appeals conflicts with this Court's decision in *The Kitchen Planners, LLC v. Friedman*, 2023 S.C. LEXIS 164, 2023 WL 5420401 (2023), (2) the Court of Appeals incorrectly applied the elements of Negligent Misrepresentation to the facts of the case, and (3) the Court of Appeals' decision improperly expands the duties and liabilities of a real estate licensees beyond those established by the Legislature.**

ARGUMENT

1. **The Court of Appeals applied the incorrect "mere scintilla" standard of review to the negligent misrepresentation and residential property disclosure causes of action, which standard was abrogated by this Court in *Kitchen Planners, LLC v. Friedman*.**

In reversing the trial court's order granting Kopchynski Summary Judgment on Buyers' claims for negligence misrepresentation and violation of the Residential Property Disclosure Act,

the Court of Appeals applied the incorrect "mere scintilla" standard to its review. The Court of Appeals explained that "[it] need not find the evidence presented so far is determinative; simply that it is either a scintilla or more than a scintilla." (R. p. 716). The Court of Appeals concluded that the Buyers had presented a scintilla of evidence necessary to survive a motion for summary judgment under Rule 56(c) as to their negligent misrepresentation and violation of the Residential Property Disclosure Act. (R. pp. 708-718).

However, under the heightened burden of proof required for the Buyers' fraud and conspiracy claims, the Court of Appeals held that the Buyers had failed to demonstrate *more* than a scintilla of evidence necessary to withstand summary judgment. (R. pp. 716-717).

In *Kitchen Planners, LLC v. Friedman*, this Court clarified the proper standard by which South Carolina courts must consider a motion for summary judgment pursuant to Rule 56(c), SCRCP. *Kitchen Planners, LLC v. Friedman*, 2023 S.C. LEXIS 164, 2023 WL 5420401 (2023). Contrary to the standard utilized by the Court of Appeals in its Opinion, this Court explained that "the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule. As we explained in *Town of Hollywood v. Floyd*, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.'" *Id.* at *10.

Here, the *Kitchen Planners* decision confirms that the Court of Appeals committed reversible error in this appeal. The Court of Appeals correctly determined the Buyers had *failed to show more than a scintilla of evidence supporting their claims*, but reversed the grant of summary judgment on the negligent misrepresentation and real property disclosure causes of action under its assessment that Appellants had shown a "mere scintilla" of evidence. (R. pp. 708-718).

As the Court of Appeals relied on the incorrect standard of review in reviewing the trial court's summary judgment order, the Court of Appeals reinstatement of the negligent misrepresentation and real property disclosure causes of action should be reversed.

2. The Court of Appeals erred in finding that a genuine issue of fact exists as to whether Sellers' Agent made any negligent misrepresentations.

In its opinion, the Court of Appeals improperly concluded that a genuine issue of fact existed as to Buyers' claims for negligent misrepresentation and violation of the Residential Property Disclosure Act. (R. pp. 715-717). As described above, the Court of Appeals relied on an improper standard of review. However, under any standard of review, the Court of Appeals misapplied both the law and the facts.

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); (R. pp. 712-713).

In its decision, the Court of Appeals identified 5 things that it believed met the "mere scintilla" standard:

> (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.

(R. pp. 715-716).

As described below under separate headings, each of these conclusions was an error of law and a misapplication of the facts to the law.

A. Kopchynski's work on the community newspaper.

Buyers allege that because Kopchynski lived in the same community, Litchfield Plantation, and was a member of the community newsletter, there is at least a "mere scintilla" of evidence suggesting she would have known of prior flooding in the community.[3] This was in error, and directly contradicts the statutes governing realtors.

As an initial matter, it is pure speculation to suggest that simply because Kopchynski lived in the same residential community, she had knowledge of alleged flooding on the subject property. There is no testimony or evidence in the record that demonstrates or even implies Kopchynski knew of prior flooding at the Property, beyond the sole fact of her living in the same residential community.[4] This fact is an inference that is not reasonable and an issue of fact that is not genuine. *Floyd*, 403 S.C. at 477, 744 S.E.2d at 166.

Moreover, the Court of Appeals decision is in direct contradiction of the South Carolina Code. S.C. Code Ann §40-57-740(A)(3) states: "[n]o 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

[3] 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").

[4] 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).

transaction ***any off-site condition or hazard that does not directly impact the property being transmitted***." (emphasis added).

Here, the Court of Appeals' opinion improperly expands a realtor's duty to identify any instance of flooding in an entire community. (R. pp. 715-716). In essence, the Court of Appeals held that a realtor should know and disclose potential property conditions that may exist within some undefined radius around the subject property.

This holding is contrary to established South Carolina law. *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). Should the Court of Appeals' opinion stand, it will work to expand the duties of a real estate licensee beyond those expressly set out by South Carolina law. *See 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).

For the reasons described above, no reasonable jury could infer from Kopchynski's work on the community newsletter that she had reasonable cause to believe that Sellers were not being truthful about flooding on the property.

B. Kopchynski's knowledge of the Sellers' decision to hire the contractor that addressed moisture in the crawlspace.

The Court of Appeals also erred in finding that Kopchynski's knowledge of the Onions' decision to hire Emery Custer, "rather than someone with more specialized knowledge" could lead a reasonable jury to infer that she had reasonable cause to believe she made false, incomplete, or misleading statements. (R. p. 715). This conclusion by the Court of Appeals is confusing as there is no recognized crawlspace "specialty" contractor category in South Carolina.

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").

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).[5]

Buyers do not dispute that Sellers' Agent provided the prior inspection report summary which showed dampness and moisture in the crawlspace to Ed Kimbrough ("Kimbrough" or

[5] S.C. Code Ann. § 40-57-30(16) defines a "material adverse fact" as "(a) a condition or occurrence that 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.

"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).

South Carolina law does not recognize a specialization in crawl spaces within the contractor field. Nevertheless, Kopchynski testified that Custer is "known as a very reputable and credible licensed contractor." (R. p. 476, lns. 8-9). Custer himself testified that he possesses a specialty contractor license in South Carolina. (R. p. 542, ln. 2- p. 543, ln. 23). Accordingly, as she was not a licensed contractor herself, Kopchynski was entitled to rely on Custer's license that he would perform the work within the standard of care.

For the reasons described above, no reasonable jury could infer from Kopchynski's knowledge of any earlier conditions or Sellers' decision to hire Custer that she had a reasonable cause to believe that Sellers were not being truthful.

C. Kopchynski's statement that "from what she understands" the June 18 CL-100 was "good."

The Court of Appeals further erred in finding there was a genuine issue of material fact as to whether 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]

A plain reading of the email shows this statement is not a false or misleading, and cannot reasonably be construed as such.[7] Kopchynski never stated to Buyers or Buyers' Agent that the

[6] To be clear, 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).

CL-100 was "good," only that it was good "from what [she understood]." For Plaintiffs to demonstrate that this statement is false, they must demonstrate that Kopchynski did not in fact "understand" the CL-100 to be good, and they have failed to do so here.[8]

Kopchynski also never stated that she saw the CL-100. The Court of Appeals found 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.'" (R. pp. 715-716). 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, which, as stated above, 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).

Kopchynski offered to obtain the report for Buyers' Agent "if/when necessary." (R. pp. 179-180). It is undisputed that Kopchinski offered the prior CL-100 to Buyers' Agent, and he rejected it. Thus, Buyers' Agent could have read the CL-100 for himself if chose to, or provided it to Buyers for their review. *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").

Furthermore, the Court of Appeals 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

[8] Even under the impermissibly low "mere scintilla" standard utilized by the Court of Appeals, there is still no evidence in the Record suggesting Kopchynski understood the CL-100 to be anything other than "good."

CL-100. (R. pp. 715-716). 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, lns. 5-23). 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, lns. 3-12) (emphasis added).

As Buyers' Agent himself made clear, he in no way relied on Kopchynski's characterization of the June 18 CL-100. Instead, he selected Lane's to perform the CL-100 for Buyers. (R. p. 586, ln. 19-p. 587 ln. 4). *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"). Rory Isaac further confirmed that he had Lane's perform a CL-100 property inspection himself, and that "this is what [Buyers] 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). In other words, they performed their own due diligence and were more than capable of ascertaining the conditions in the crawlspace. *Strasburger*, 309 S.C. at 222, 420 S.E.2d at 874 (Ct. App. 1992) ("[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); *see also 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 no evidence that Buyers or Buyers' Agent relied on Kopchynski's statement, nor that they were unable to discover relevant facts with proper due diligence.

Lane's 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 Lane's is licensed to perform CL-100 inspections. (R. pp. 221-222). The Buyers' subsequent CL-100 by Lane's showed that there were no excessive moisture levels in the crawlspace. (R. pp. 10, 221-222). Again, Lane's performed this CL-100 *after* Kopchynksi's alleged misrepresentation. 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' alleged pecuniary loss.

Moreover, in the course of proper due diligence, the Buyers were offered and could have requested the June 18, 2018 CL-100. They declined. Accordingly, there was no concealment of any material fact, and no reasonable jury could infer otherwise.

D. The two versions of the verification form.

The Court of Appeals further erred in finding that a reasonable jury could infer from the two versions of the verification forms that Kopchynski had reasonable cause to suspect that Sellers were not being truthful. (R. pp. 715-716). By contrast, the Record contains no evidence 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 in the Record 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 at the time, she believed the repair verification came from Custer. (R. p. 484 lns. 7-14). As such, Kopchynski did not type up the verification form for Custer. (R. p. 531 lns. 16-22). Accordingly, there is no evidence to support an inference that Kopchynski knew of any alleged forgery.

Nevertheless, any such "forgery" would be immaterial. The only difference between the two "distinct" versions of the repair verification forms was the signature on the form. Likewise, Buyers did not dispute that Custer did in fact perform the repairs identified on the repair verification, including installing a fan in the crawlspace. (R. p. 175).

For the reasons described above, no reasonable jury could infer from the two versions of the verification form that Kopchynski had reasonable cause to believe that Sellers were not being truthful.

E. Text conversations between Kopchynski and Jackie Onions.

The Court of Appeals further erred in finding that a reasonable jury could infer from the text conversation between Kopchynski and Jackie Onions that Kopchynski had reasonable cause to suspect that Sellers were not being truthful. (R. pp. 715-716). It is unclear how these texts could be interpreted to show 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 aware of the fan in the crawlspace that Custer installed and had their own CL-100 inspection performed on the crawlspace prior to closing. (R. p. 591 1n. 18-p. 592 ln. 8).

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.

3. The Court of Appeals erred in finding that a genuine issue of fact exists as to whether Sellers' Agent violated the Residential Property Disclosure Act.

The Buyers argued before the trial court and Court of Appeals that Kopchynski had actual knowledge of alleged misrepresentations on the PCDS. Buyers further suggested 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 responsibilities defeats Buyers' claim under the South Carolina Residential Property Disclosure Act.

A real estate licensee's responsibilities and liabilities under the South Carolina Residential Property Disclosure Act are laid out in S.C. Code Ann. §§ 27-50-50(C), 27-50-70(B), and 27-50-80. 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 the Court of Appeals 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." S.C. Code Ann. § 27-50-70(B); (R. p. 715). Further limiting a real estate licensee's liability for 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 off-site 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 bars a cause of action against Kopchynski for information contained in the allegedly inaccurate July 11, 2018 CL-100 report, as the trial court correctly noted. (R. p. 10).

The Court of Appeals' opinion sidesteps this plain reading of the statute barring Buyers' claims 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 (emphasis in original). (R. p. 715). As described at length above, 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 no genuine issue of material fact exists.

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. (R. pp. 17-61). 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). There is no genuine issue of material 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 S.C. Code Ann. § 40-57-350(G)(2) bars Buyers' claims, the Court of Appeals 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

Based on the foregoing, Petitioner Kopchynski requests that this Court accept certiorari, and reverse the Court of Appeals' reinstatement of Buyers' claims for negligent misrepresentation and violation of the Residential Property Disclosure Act because it is inconsistent with this Court's subsequent decision in *The Kitchen Planners, LLC v. Friedman,* it misapprehends the factual record before it, and because it improperly expands a real estate licensee's duties beyond those set forth by our Legislature.

Respectfully submitted,

EARHART OVERSTREET, LLC

Steven R. Kropski
S.C. Bar No. 101441
Earhart Overstreet LLC
P.O. Box 22528
Charleston, S.C. 29413
steve@earhartoverstreet.com

Counsel for Petitioner

Charleston, South Carolina
September 15, 2023