

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Zachary Leland Moody and Kristina L. Moody,

Plaintiffs,

v.

Gabriela B. Lopez a/k/a Gabriela Baltazar Lopez-Gutierrez, an individual, Leopoldo Vera Hernandez, an individual, Santa Fe Construction, LLC, Juan Carlos Maldonado, an individual, ServPro of Pickens County d/b/a Blue Moon Enterprises, Inc., Scott D. Caufield, an individual, TCT1, LLC d/b/a Keller Williams Western Upstate, Creasy Construction, LLC, Harry James Creasy, an individual, and John Allen Drew, an individual,

Defendants.

C/A No. 2020-CP-23-02297

**ORDER GRANTING DEFENDANT
TCT1, LLC d/b/a KELLER
WILLIAMS WESTERN
UPSTATE'S MOTION FOR
SUMMARY JUDGMENT**

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Sep 25 2023
SC Court of Appeals

This matter came before me on the 27th day of July, 2023 pursuant to Motions for Summary Judgment filed by both the Plaintiffs and by Defendant TCT1, LLC. The Plaintiff was represented by Townes B. Johnson, III, Esq. and Defendant TCT1, LLC was represented by Daniel L. Draisen, Esq. of The Injury Law Firm, P.C. Defendant's Motion is **GRANTED**, and Plaintiff's Motion is **DENIED**.

STANDARD FOR SUMMARY JUDGMENT

South Carolina Rules of Civil Procedure Rule 56 provides that summary judgment:

“shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a 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.” Marietta Garage, Inc. v. South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999), citing Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998). Even where there is no dispute as to evidentiary fact, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Etheredge v. Richland School District, 330 S.C. 447, 449 S.E.2d 238 (Ct. App. 1998).

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial. *Id.* At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. Tanner v. Florence City-County Bldg. Com'n, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999). It is not for the Court to weigh the evidence, as such is strictly the province of the jury.

South Carolina case law is clear that “the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party.” Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994). See also Etheredge v. Richland School District, *supra*; City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994); Thomas v. Waters, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994); State Farm Fire & Casualty Co. v. Breazell, 324 S.C. 228, 478 S.E.2d 831 (1996). All ambiguities, conclusions, and inferences must be construed most strongly against the movant, and the party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Etheredge v. Richland School District, *supra*.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of the purchase of real property located at 221 Foxhound Road, Simpsonville, South Carolina by the Plaintiffs. In early 2017, the Plaintiffs engaged Nate Emery (non-party) and Defendant TCT1, LLC d/b/a Keller Williams Western Upstate as buyers' agent to assist the Plaintiffs with locating and purchasing a home.

Plaintiffs filed their Amended Complaint in this matter alleging, among other things, that Defendant TCT1, LLC d/b/a Keller Williams Western Upstate, by and through its agent, failed exercise any skill or care in discharging its agency duties by failing to review the seller's disclosure statement to ensure that it was complete and, thereby, failed to inform the Plaintiffs of the material fact that the disclosure statement was incomplete as to disclosures related to the home's foundation and the potential ramifications thereof. Further, that had Emery, as agent of Defendant TCT1, reviewed the disclosure statement he would have had reasonable cause to suspect that the information provided by the seller was incomplete, Plaintiffs would have had an opportunity to further investigate same, and elected not to proceed with the transaction. Plaintiffs filed causes of action against Defendant TCT1, LLC d/b/a Keller Williams Western Upstate for negligence and for breach of fiduciary duty.

On May 9, 2023, Defendant TCT1, LLC filed its Motion for Summary Judgment alleging that there are no genuine issues of material fact in the matter and that the Defendant is entitled to judgment as a matter of law. On July 17, 2023, the Plaintiffs filed their cross-Motion for Summary Judgment likewise alleging that there are no genuine issues of material fact in the matter and that Plaintiffs are entitled to judgment as a matter of law.

LEGAL ANALYSIS

Defendant TCT1, LLC frames the seminal legal issue in this matter as follows:

As a matter of law, does South Carolina require that a Buyer's Agent ensure that a Seller has provided responses to each check box question and written in each blank contained in the South Carolina Residential Property Condition Disclosure Statement?

The following sections of the South Carolina Code of Laws are, or may be, applicable to this matter:

SC Code of Laws, 1976., Ann., § 27-50-40:

(A) The owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:

- (1) the water supply and sanitary sewage disposal system;
- (2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;
- (3) the plumbing, electrical, heating, cooling, and other mechanical systems;
- (4) present infestation of wood-destroying insects or organisms or past infestation, the damage from which has not been repaired;
- (5) the zoning laws, restrictive covenants, building codes, and other land- use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property;
- (6) presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination;
or
- (7) existence of a rental, rental management, vacation rental, or other lease contract in place on the property at the time of closing, and, if known, any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property the tenant leases.
- (8) existence of a meter conservation charge, as permitted by Section 58-37-50, that applies to electricity or natural gas service to the property.

(B) The disclosure statement must give the owner the option to indicate that the owner has actual knowledge of the specified characteristics or conditions, or that the owner is making no representations as to any characteristic or condition.

(C) The rights of the parties to a real estate contract in connection with conditions of the property of which the owner has no actual or constructive knowledge are not affected by this article.

SC Code of Laws, 1976, Ann., § 27-50-50:

(A) The owner of real property subject to this article shall deliver to the purchaser the disclosure form required by this article before a real estate contract is signed by the purchaser and owner, or as otherwise agreed in the real estate contract.

(B) Failure to provide the disclosure form required by this article to the purchaser does not:

(1) void the agreement;

(2) create a defect in title; or

(3) present a valid reason to delay or otherwise interfere with the closing of a real estate transaction by a party including a closing attorney or lender.

(C) A real estate licensee acting as a listing agent or a selling agent is subject to the regulations governing his license and performance of his responsibilities as licensee, as provided by the commission. This article does not limit any other remedy available to the purchaser under law.

SC Code of Laws, 1976, Ann., § 27-50-65:

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party.

SC Code of Laws, 1976, Ann., §27-50-70:

(B) This article does not conflict with or alter the duties of the real estate licensee pursuant to the regulations of the commission. The real estate licensee, whether acting as the listing agent or selling agent, is not liable to a purchaser if:

(1) the owner provides the purchaser with a disclosure form that contains false, incomplete, or misleading information; and

(2) the real estate licensee did not know or have reasonable cause to suspect the information was false, incomplete, or misleading.

SC Code of Laws, 1976, Ann., §27-50-80:

This article does not limit the obligation of a purchaser to inspect the physical condition of the property and improvements that are the subject of a contract covered by this article. The real estate licensee, whether acting as a listing agent or selling agent, has no duty to inspect onsite or offsite conditions of the property and any improvements.

SC Code of Laws, 1976, Ann., §40-57-350:

(E)(1) On reaching a written agency agreement to provide brokerage services to a potential buyer of real estate, a buyer's agent shall:

- (a) perform the terms of the written brokerage agreement made with the buyer;
- (b) in accordance with subsection (A), promote the interest of the buyer by performing the buyer's agent's duties which include:
 - (i) seeking the type of property at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the buyer, except that the licensee is not obligated to seek additional properties unless the brokerage agreement provides otherwise for a buyer once the buyer becomes a party to a contract of sale;
 - (ii) presenting in a timely manner all written offers and counteroffers to and from the buyer;
 - (iii) disclosing to the buyer all material adverse facts concerning the transaction which are actually known to the licensee except as directed otherwise in this section. Nothing in this chapter may limit a buyer's obligation to inspect the physical condition of the property which the buyer may purchase;

(G)(1) 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. A licensee is not obligated to discover latent defects or to advise parties on matters outside the scope of the licensee's real estate expertise. Notwithstanding another provision of law, no cause of action may be brought against a licensee who has truthfully disclosed to a buyer a known material defect.

(2) No 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 an engineer, land surveyor, geologist, wood destroying organism control expert, termite inspector, mortgage broker, home

inspector, or other home inspection expert, or other similar reports.

(3) A licensee, the real estate brokerage firm, and the broker-in-charge are not liable to a party for providing the party with false or misleading information if that information was provided to the licensee by the client or customer and the licensee did not know the information was false or incomplete.

(H) Nothing in this chapter limits the obligation of the buyer to inspect the physical condition of the property.

To effectuate compliance with Title 27, Chapter 50, Article I, the South Carolina Department of Labor, Licensing, and Regulation has promulgated a South Carolina Residential Property Condition Disclosure Statement form which contains the following provisions:

Owners should answer the questions fully, honestly, and appropriately by attaching documents, checking a box for each check box question, and writing in the blanks on this disclosure statement.

If owner fails to check "yes" or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees.

If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for delivering this disclosure statement to purchaser. 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. Owner is solely responsible to complete this disclosure as truthfully and fully as possible. Owner and purchasers are solely responsible to consult with their attorneys regarding any disclosure issues. By signing below, owner acknowledges their duties and that failure to disclose known material information about the property may result in owner liability.

Question 1:

As owner, do you have any actual knowledge of any problem(s)* concerning?

**Problem includes present defects, malfunctions, damages, conditions, or characteristics.*

Question 2:

As owner, do you have any actual knowledge or notice concerning the following:

Signature Section:

Owner acknowledges having read, completed, and received a copy of this Residential Property Condition Disclosure Statement before signing and that all information is true and correct as of the date signed.

Purchaser acknowledges prior to signing this disclosure:

Receipt of a copy of this disclosure

This disclosure is not a warranty by the owner

Purchaser has examined disclosure

Representations are made by the owner and not by the owner's agents or subagents

Purchaser has had time and opportunity for legal counsel

Purchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers or other qualified professionals

This disclosure is not a warranty by the real estate licensee

This disclosure is not a substitute for obtaining inspections of on site and off site conditions.

Specifically at issue in this matter is the manner in which the seller completed of Section II, number 7, of the disclosure statement which appears as follows:

II. ROOF, CHIMNEYS, FLOORS, FOUNDATION, BASEMENT, AND OTHER STRUCTURAL COMPONENTS AND MODIFICATIONS OF THESE STRUCTURAL COMPONENTS

	Yes	No	No Representation
5. Roof system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Gutter system	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Foundation, slab, fireplaces, chimneys, wood stoves, floors, basement, windows, driveway, storm windows/screens, doors, ceilings, interior walls, exterior walls, sheds, attached garage, carport, patio, deck, walkways, fencing, or other structural components including modifications	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A. Approximate year that current roof covering was installed or modified: _____ . Approximate year structure was built: _____			
B. During your ownership, describe any known roof system leaks and repairs: _____			

Having carefully considered the parties’ positions, the undisputed facts and all applicable law, this Court makes the following Findings of Fact and Conclusions of Law:

1. I find, as a matter of law, that there is no legal duty on a buyer’s agent to ensure that a seller has fully completed (i.e., provided a response to each check box question and filled in the blanks on) the State of South Carolina Residential Property Condition Disclosure Statement form.
2. South Carolina law places the legal duty on the seller, not on a real estate licensee, to fully, honestly and appropriately, by attaching documents, by checking a box for each check box question, and by writing in the blanks on the State of South Carolina Residential Property Condition Disclosure Statement form.
3. I find that, even if South Carolina law imposed a duty on a buyer’s agent with regard to the manner in which a seller completes the State of South Carolina Residential Property Condition Disclosure Statement form, no such duty was breached by Defendant TCT1 in the instant case.

CONCLUSION

Viewing the undisputed facts in this matter in a light most favorable to the Plaintiffs, this Court finds that there are no genuine issues as to any material facts and that, as a matter of law, Defendant TCT1, LLC d/b/a Keller Williams Western Upstate is entitled to judgment. Defendant's Motion for Summary Judgment is therefore **GRANTED**. For the reasons set forth herein above, Plaintiffs' Motion for Summary Judgment is **DENIED**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' claims against Defendant TCT1, LLC d/b/a Keller Williams Western Upstate be, and same are hereby, dismissed.

IT IS SO ORDERED.

(electronic signature affixed hereto) _____
G.D. Morgan, Jr.,
Circuit Court Judge

_____, 2023
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Zachary Leland Moody , plaintiff, et al vs. Gabriela B Lopez ,
defendant, et al
Case Number: 2020CP2302297
Type: Order/Summary Judgment

So Ordered

G.D. Morgan Jr.