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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Maite Murphy

Case No. 2019-CP-18-00980
Appellate Case No. 2023-001762

Andrey Gergel and Sonjay M. Wyatt.,.....Respondents,

v.

Alexander Opoulous, III, Tina B. Opoulous, Sebrina Leigh Jones, and Luxury Land and Homes, Inc, Defendants,

Of Whom Tina B. Opoulous is the.....Appellant.

RESPONDENTS' INITIAL BRIEF

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STATEMENT OF ISSUE ON APPEAL

I. THE APPELLANT IN THIS CASE SEEKS TO PUT FORM OVER SUBSTANCE AND HAVE THIS COURT OVERTURN A WELL-DELIBERATED JURY VERDICT AS RETURNED ON APRIL 12, 2022, IN ST. GEORGE, ENTERED BY THIS COURT ON MAY 6, 2022, BY APPEALING AN ORDER DENYING A MOTION TO SET ASIDE THE ORIGINAL JUDGMENT ENTERED IN THIS CASE

STATEMENT OF THE CASE

This matter is before this Court on the appeal of Tina B. Opoulous, for herself and her late husband's estate, appealing the Order of the Honorable Maite Murphy dated October 18, 2023, denying her Motion to Reconsider. (Form 4 Order)

The original judgment in the matter was entered on May 6, 2022. (Form 4 Order) In that Order, the Court affirmed a jury verdict in favor of the Plaintiffs, Andrey Gergel and Sonja M. Wyatt, (the "Plaintiffs"), in the amount of $196,000 in actual damages. *Idi.* Attorneys fees and costs were also awarded in the amount of $21,382.95 pursuant to the statutory cause of action for failure to disclose on the South Carolian Residential Property Condition Disclosure Statement, bringing the total judgment to $217,382.95.

This case commenced with the filing of a Summons and Complaint on April 3, 2017. (Summons and Complaint). In their Complaint, the Plaintiffs asserted causes of action for negligent misrepresentation, civil liability pursuant to S.C. Code Ann. §27-50-65 and S.C. Code Ann. §27-50-70 for failure to disclose defects on the South Carolian Residential Property Condition Disclosure Statement, and fraud and fraud in the inducement. *Id.* The Plaintiffs also sought their attorneys' fees pursuant to those statutory provisions. *Id.*

The Defendants, Alexander Opoulous and Tina Opoulous, (the "Defendants"), who were residents of the County of Dorchester, in the State of South Carolina, filed an answer on May 3, 2017 (Defendants' Answer).

The Defendant, Sebrina Leigh Jones was dismissed in the matter on April 21, 2017 (Order of Voluntary Dismissal as to Sebrina Leigh -Jones).

The Defendant, Luxury Land and Homes, Inc., a corporation organized and existing under the laws of the State of South Carolina, (the "Defendant Luxury Land"), which filed its answer on January 16, 2018 (Defendant Luxury Land's Answer).

The Plaintiffs' First Requests to Admit were served on the Defendants on May 11, 2017 and answered by the Defendants on June 6, 2017. (Requests and Responses)

On February 12, 2018, Stafford J. McQuillin, III, filed a notice of appearance for the Defendants. (Notice of Appearance). Shortly thereafter, the parties agreed to a scheduling order filed on March 2, 2018. (Scheduling Order)

As the parties were negotiating a settlement, a Consent Rule 40(j) Order was filed on July 30, 2018 (Order). After lack of cooperation by the Defendants to mediate and continue settlement negotiations, the Plaintiffs filed a consent motion to restore on March 27, 2019, and on May 30, 2019, a Form 4 C Order restoring case to the active roster was filed. (Consent Motion to Restore) (Form 4 C Order)

The Defendants' counsel, Stafford J. McQuillin, III filed a Consent Motion to Withdraw as Defendants' Counsel on April 2, 2019. (Consent Motion to Withdraw) and a Consent Order Granting Motion for Withdrawal of Counsel was filed on April 15, 2019, granting the motion. (Order)

The case was placed back on the trial roster and set for trial on May 26, 2020. The Plaintiffs filed and mailed a Notice of Hearing on April 3, 2020. (Notice). However, due to the Covid-19 Pandemic closing of courts and postponement of trials, the matter was continued.

The Plaintiffs filed a Motion to Strike Answer of Defendant Luxury Land on February 16, 2022, for failure to retain new counsel within sixty (60) days after the court granted its former counsel, C. Tyson Nettles, Motion to Withdraw filed on April 16, 2019, by the Form 4 C Order filed on May 29, 2019. (Motion to Strike) (Motion to Withdraw) (Order granting Motion)

A Form 4 C Order was filed with the Court on February 24, 2022, for a trial date certain set for April 11, 2022, and another Form 4 Order was filed on February 25, 2022, serving all parties. (Form 4 C Orders)

Due to the fact that the Plaintiffs' Motion to Strike Answer of Defendant Luxury Land was continued for a period of thirty (30) days by way of Form 4 C Order filed March 22, 2022, the trial was continued. (Form 4 C Order)

A Stipulation of Dismissal as to Defendant Luxury Land was filed April 7, 2022.

The Defendants represented themselves *pro se* at trial on April 11-12, 2022. (Trial Transcript)

After a two day trial an deliberations, the jury found in favor of the Plaintiffs and a Form 4 C Order was filed May 6, 2022, in the amount of $196,000.00 in actual damages and attorneys' fees and costs were awarded in the amount of $21,382.95, bringing the total judgment to $217,382.95 and a Transcript of Judgment was filed on May 9, 2022. (Form 4 C Order)(Transcript of Judgment)

The Transcript of Judgment was filed in both Chesterfield County and Richland County on May 10, 2022. (Transcripts of Judgment)

The Defendants filed a Motion to Reconsider and to Set Aside the Judgment on May 31, 2022, and a Motion to Stay on June 8, 2022. (Motions)

The Plaintiffs filed a Memorandum in Opposition to Defendants' Motion to Stay on June 13, 2022.

A Form 4 C Order was filed on October 18, 2023, denying both the motions (Order, 10/18/23)

The case was then appealed to this Court by Notice of Appeal filed on November 17, 2023. (Notice of Appeal).

STATEMENT OF FACTS

This matter comes before the Court after the trial of the case to a jury verdict in May, 2022. (Transcript)

The Plaintiffs are citizens and residents of Dorchester County, South Carolina and the current owners of the subject property located at 9 Middleton Oaks, Charleston, South Carolina. (the "Property").

The Defendants Tina B. Opoulous and her late husband, Alexander Opoulous, III, are the former owners of the Property. A selling agent, Sabrina Leigh Jones, presented a home brochure of the Property to the Plaintiffs that was for sale by the Defendants along with the MLS listing of the Property. (Brochure) (MLS Agent Listing) (Transcript, p. 84)

On November 25, 2013, the Plaintiffs, entered into an Agreement to Buy and Sell Real Estate (the "Contract") with the Defendants whereby the Plaintiffs agreed to purchase the Property. (Agreement/Contract)

Pursuant to the Contract, the Defendants provided to the Plaintiffs the statutorily required and mandated South Carolina Residential Property Condition Disclosure Statement dated July 24,

2013 (Disclosure Statement). In their Disclosure Statement, the Defendants represented that they had no knowledge of any problem, malfunction or defect, or any condition evidencing any problems or defects of any of the following:

a. water seepage, leakage, dampness of standing water or water intrusion from any source or any area of the structure;

b. any drainage, grading or stability of soil or retaining structure;

c. they were not aware of any sump pumps on the property;

d. that during the Defendants' ownership of the property or within the past five years they had not made any individual repairs in excess of $500.00 to the garage slab in the subject residence.

(Disclosure Statement)

On approximately, August 10, 2013, prior to closing on the Property, a Repair Addendum and Amendment to Agreement to Buy and Sell Real Estate was executed by the Plaintiffs and the Defendants due to issues found in an inspection report prepared for the Plaintiffs by Ace Preferred Inspections Summary and Home Inspection Report dated August 9, 2013. (Inspection Summary and Report) (Repair Addendum and Amendment to Agreement to Buy and Sell Real Estate).

At trial, Andrey Gergel, ("Gergel") testified that

> [w]e had inspection, as has been stated., and had some issues. It was home that was built in 1982, so some of the issues we knew right away and was disclosed in the property condition disclosure. Like the roof was 23 years old, so we knew it was old and needed to be replaced. So it was taken into consideration. (Inaudible) wasn't, you know, anything what – the decision to purchase eh home. So it was nothing alarming, nothing that any limitation would change purchasing the home…

(Transcript, p. 89)

Mr. Gergel is originally from Ukraine. (Transcript p. 80)

Nothing was disclosed to the Plaintiffs at that time that would cause them to back out of the sale at that time. (Transcript, p. 89)

Another Addendum/Amendment Agreement was executed on August 19, 2013, (Addendum/Amendment) as the Plaintiffs questioned the representation that the house measured seven thousand square feet measurement. (Transcript, p. 90) It was determined the total square footage of the actual house was five thousand five hundred square feet. *Id.*

The Plaintiffs backed out of the Contract by way of Release of Agreement/Contract dated November 25, 2013, then resigned an Amendment/Contract at a lower price due to the lesser square footage amount on the same date. (Release) (New Contract)

Mr. Gergel testified that

> "...at that time they said we're going to buy house as-is. That is correct. So we bought the house as-is with a new square footage, but the disclosure of agreement and everything being disclosed in property would stay as-is, so it means no damage, no sump pumps, nothing. So that was states as original contract..."

(Disclosure Statement) (Transcript, p. 92)

The Plaintiffs believed the false statements in the Disclosure Statement signed by the Defendants to be truth, when in fact, they were not and therefore, signed the Amendment to the Contract executed on November 25, 2013, where they received a credit in the amount of $5,000.00 for the misrepresentation of square footage. (Disclosure Statement) (Amendment)

The deeds for the Property conveyed to the Defendants and the conveyance from the Defendants to the Plaintiffs were entered as trial exhibits. (Deeds)

The Plaintiffs closed on the Property in December 2013, but the Defendants needed additional time to vacate. (Transcript, pp. 95-96) The Plaintiffs allowed them additional time to move out and took occupancy on or around approximately the end of January 2014. (Transcript, p. 96) It was only after moving into the Property that Plaintiffs discovered problems with the home. *Id.*

Mr. Gergel noted, "And, sometime end of February we start to notice, you know, odor and, you know, different smell then there used to be. So I didn't know what it was" (Transcript, p. 96)

One of his friends recommended Henry Shepherd who then recommended him to CNT Foundations. Christopher Travis Bedson, CEO of CNT Foundation, who specializes in foundation and structural repairs, water intrusion, capsulation and mold remediation, and whose name is incorrectly spelled in the Trial Transcript as Travis Benson, came and inspected the Property. *Id.*

Mr. Bedson discovered structural problems, water standing under the portion of the house, and sump pumps that the Plaintiffs did not know existed (Transcript, p. 97) At that time, Plaintiffs were replacing the roof on the Property. *Id.* That was their extent of knowledge of the repairs until Mr. Bedson discovered the other problems. *Id.*

Mr. Bedson returned with an employee for further inspection and found ten inches of standing water under a portion of the house. While underneath the house, they discovered two sump pumps that were unplugged from the receptacles and were not pumping water. (Transcript pp. 98-99)

Shortly after the inspection, the Plaintiffs experienced the washing away of their driveway and deterioration of soil near their carport, causing holes to appear. (Transcript p. 98) For three months, the Plaintiffs were concerned about parking in the carport due to fears of its structural integrity. (Transcript, p. 98) None of this had been properly disclosed to the Plaintiffs by the Defendants.

Right around this time, a neighbor informed the Plaintiffs that there had been times during large rain events where the whole driveway was washed out completely, so that the Defendants could not even get in the house. (Transcript, p. 98) According to the neighbor, the Defendants had to bring in dump trucks with dirt to fix what was an ongoing issue with the washing away of the driveway (Transcript, p. 98)

The Plaintiffs paid $1,100,000.00 for the Property and paid CNT Foundation $79,659.00 as a result of damages to it. (Contract) (Invoices)

The Plaintiffs also had to hire a surveyor to locate all of the underground water and to determine the location of a creek of running water through the house. (Transcript, p. 100).

The Plaintiffs also paid for landscaping work that was completed in two phases for $5,000 and an additional $19,149.00 plus prior to the landscaping they had to remove several large trees, dig an eleven (11) feet deep barrier and put in a moisture protector, for an additional, $3,000.00. According to Mr. Gergel, he and his wife spent approximately $206,803.00 in repairs for the damages to the Property. (Invoices) (Transcript, p. 101)

According to Mr. Gergel, the Plaintiffs would never have purchased the Property had they known about prior flooding and prior water issues. (Transcript, p. 102) The statements made about the Property's condition were false and Plaintiffs relied on those statements when deciding to purchase the Property. (Transcript pp. 103-104) They had no way of knowing the statements were false until after moving in to the Property. *Id.*

At the trial, Christopher Travis Bedson, CEO of CNT Foundation, who specializes in foundation and structural repairs, water intrusion, capsulation and mold remediation, and whose name is incorrectly spelled in the Trial Transcript, testified that he was hired by the Plaintiffs to address the Property to evaluate the need of his problems and if it was something we could solve for him." (Transcript, 33, 35) The Court qualified Mr. Bedson as an expert witness without objection. (Transcript p. 70).

Mr. Bedson reviewed the inspection reports provided to him by the Plaintiffs. (Inspection Reports) He had tabbed one place in "...what we could call a supplemental support or additional support in the crawlspace" and "[s]omeone was in there trying to shore up the flooring system" which he saw with his own eyes. (Transcript, 36-37) (Inspection Reports)

Mr. Bedson stated that the Plaintiffs' Property had a myriad of issues, which he would categorize in two distinct categories. (Transcript pp. 37-38) One issue would be water intrusion, which was active water intrusion, causing mold and moisture issues, Second, would be structural issues with the Property (Transcript, p. 37-38)

Mr. Bedson went on to confirm that someone had tried to fix the structural problem without success. (Transcript, p 38) . When he looked in that area under the house, his findings showed exactly what the pictures showed. (Photos) There were some inconsistencies in the framing and structural deficiencies (Transcript, p. 38) It was clear that someone intended to do something and it was ineffective. *Id.*

According to Mr. Bedson: the Plaintiffs required additional piers, squash blocking, supplemental framing. (Transcript pp. 38-39) Some of the framing was rotting due to the moisture-related issues. *Id.* at39 These items and the framing components of the home fall under the structural category of repair. *Id.* Mr. Bedson further testified that there was scouring at the garage almost like an underground river. *Id.* To diagnose the source of the settlement of this garage issue and the fix, it took installation of additional piers and underpinning brackets to support the garage. *Id.*

As to the water intrusion and moisture mitigation, Mr. Bedson testified that the Plaintiffs basically had a river going into the crawlspace of the home. *Id.* They discovered several sump pumps and fans that had been installed. *Id.* Mr. Bedson testified his company had to excavate the perimeter of his home and install a three-part waterproofing system. *Id.* They performed incapsulation underneath his home to mitigate ambient moisture problems, installed a dehumidifier, and sump pumps that, again, control any water that was moving laterally through the soil into the home. *Id.* Per Mr. Bedson, "It was really extensive…" *Id.*

Mr. Bedson added there were previously installed pumps that were not properly installed, were not properly located, and were not property sized or of the correct type for the job required of them in moving water out of the crawlspace. (Transcript, p. 40) Additionally, they discovered bags of "Damp Rid" an off-the-shelf product, designed to absorb water into bags in an attempt to solve a moisture issue. *Id.* According to Mr. Bedson, "There was bags of Damp Rid everywhere." (Transcript, 40-41)

At trial, Mr. Bedson read the Disclosure Statement provided by the Defendants. (Transcript, p. 41) He testified that it was not a true statement that the Defendants checked "NO" as to conditions problems with Number 1 on the Disclosure Statement as related to foundation, slab, fireplaces, chimneys, floors, windows, including storm, windows and screens, doors, ceilings, interior and exterior walls, attached garage, patio, deck, walkways, or other structural components, including any modifications. *Id.* Mr. Benson stated there were self-evident attempts to mitigate issues so the prior owners could not claim there was no problem. (Transcript, p. 41-42)

Mr. Bedson testified that it was not a true statement as to Number 3 on the Disclosure Statement as related to water, seepage, leakage, dampness or standing water, or water intrusion from any source, including area of the structure. (Disclosure Statement) (Transcript, p. 42)

As for Number 13 of the Disclosure Statement as related to repairs in excess of $500 during their ownership or within the past five years, the Defendants disclosed that there had been "[r]oof repairs from fallen tree branches, three sets of windows, media room equipment, replaced well pump, put in drains for driveway drainage" (Disclosure Statement) (Transcript, p. 42-43) Mr. Bedson confirmed the Defendants did not list anything about Number 1 of the

Disclosure Statement, nor did they disclose the sump pump and supplemental support in the crawlspace. (Transcript p. 43)

As a result of the Defendants' failure to disclose information, the Plaintiffs were forced to pay CNT Foundation, $79,659.00 to repair the defects and damages as per Mr. Bedson, "It was a large sum that he had to pay. As we dug, we kept finding more and more things to accurately remedy the water intrusion issues". (Invoices) (Transcript, p. 43-44)

He added that the large number of pictures taken by an employee of CNT Foundation fairly and accurately represent the conditions of the Property as he found them when CNT Foundation was doing the work on it. (Photos) (Transcript, p. 46) Further, he confirmed that if someone lived on the Property since 2004, there would have been problems that would have been obvious to them.

He stated

> [y]ou would notice a smell. For sure you should have noticed a smell living in the home because of the amount of mold and mildew. You can't have that much moisture and water in a confined space. Anyone that's left a cooler lid shut, even if you wash it out, it still smells. We tell people that 50 percent of the air you breathe in your home comes from your crawlspace. You wouldn't have had to have crawled in your crawlspace to know there was something wrong

(Transcript p. 73)

He further claimed that

> [f]or sure they knew about something. The fact that someone was in there putting in temporary subfloor, there is some screw jacks in there that weren't of the period of construction. Those are very common things that you might go to your home improvement store. Someone tried to put some four-by-fours to try to stiffen up that floor. So someone was up there trying to stiffen the up the structural part.
>
> And then the fact that there was sump pumps, a fan, Damp Rid, someone was trying to solve the moisture issues in that crawlspace. So because there was that evidence there, yeah, you knew because someone was trying to fix it.

(Transcript, p. 74)

Mr. Bedson confirmed that someone living on the Property since 2004, would have known about seepage, leakage, dampness, standing water, or water intrusion from any source in any area of the structure and that if someone clicked "no" on the disclosure form, it would be false. (Transcript, p. 75)

After the Plaintiffs rested and the jury was excused, the Plaintiffs moved for a directed verdict on all causes of action, including negligent misrepresentation and fraud in violation of the Residential Property Disclosure Act. The Judge denied the motion (Transcript, p. 118-120)

The Defendant, Mr. Opoulous, in addition to representing the Defendants pro se, took the stand.

He testified that he put down roof repairs, falling trees, three sets of windows, equipment that had to be repaired over $500. (Transcript p. 126-127). He confirmed he replaced the well pump, and put in drains for the driveway drainage. Id. He revealed at trial that he knew he had "some water coming down the driveway." *Id.* But, he failed to disclose that because in his opinion, there was no problem or the "kind of water issue that you are seeing in these pictures." *Id.* Yet, he knew there were issues. (Transcript, p. 126-127)

He went on testify about a deck collapsing during a party in his back yard, which he also did not disclose, because, in his thought process, it was repaired so it did not need to be mentioned. (Transcript p. 127). He went to divulge, for the first time at the trial of the case, that there was a tree that made a hole in the breezeway of the house. (Transcript, p. 127). To him this was "not an issue" which was not for him to determine. *Id.*

During cross examination, Mr. Opoulous testified that he was a licensed realtor in the State of California as well as the State of South Carolina, and thus, should be familiar with and have a clear understanding of the the Residential Property Condition Disclosure

Statement. (Transcript, p. 140). When asked as to his testimony under oath as to his own statements regarding the deck that collapsed, a tree that came through the breezeway, holes, water intrusion and sewage in the house during his ownership, he admitted that he did not disclose any such information on the disclosure statement with a solid and checked off a solid *"No."* (Transcript, p. 143)

Mr. Opoulous admitted under oath of his failure to disclose and his failure to comply with the reporting and disclosure requirements of the Condition Statement. He did not help his own case.

After closing arguments and charge, the jury deliberated. (Transcript, pp. 191-195)

The jury rendered its verdict and the Clerk read it aloud. (Transcript. p. 195)

The jury found that the defendant [sic] negligently misrepresented the condition of the property, violated the Residential Property Condition Disclosure Act, and committed fraud and fraud in the inducement. *Id.* The Plaintiffs unanimously awarded actual damages in the amount of $196,000.00. *Id.*

The Plaintiffs then requested the remedy under the South Carolina Residential Condition Disclosure Act for fees and costs which were awarded by the Judge. (Transcript pp. 196-198)

At no time before, during, or after the trial in this matter did the Defendants ever argue or dispute the fact that an official mediation had not taken place. In fact, the only issue in dispute as to the Appellant's appeal is in regards to mediation, not the trial, testimony or the judgment, or the jury's determination.

STANDARD OF REVIEW

Compelling reasons must be given to justify invading a jury's province in granting a new trial. *Bailey v. Peacock,* 318 S.C. 13, 455 S.E.2d 690 (1995). When determining whether to grant relief, the factors to consider are: (1) the timing of the motion for relief, (2) whether the party

requesting relief has a meritorious defense, and (3) the degree of prejudice to the opposing party if relief is granted. (citations omitted); *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E2.d 499 (Ct. App. 1989). A judge will not overturn a jury's verdict if any evidence exists that sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 536 S.E. 2d. 408 (Ct. App. 2000). The decision to set aside a judgment lies within the lower court's discretion and will not be reversed absent a clear showing of an abuse of dissection. *Raby Constr. L.L.P. v. Orr*, 358 S.C. 10, 594 S.E.2d 479 (2004).

ARGUMENT

I. THE JURY'S WELL-REASONED, WELL-DELIBERATED, AND WELL-CONSIDERED VERDICT SHOULD BE UPHELD AS DEFENDANTS HAVE FILED TO PRODUCE ANY SUCH COMPELLING REASONS TO JUSTIFY INVADING A JURY'S PROVINCE IN GRANTING A NEW TRIAL.

The Defendants in this case seek to put form over substance and have this Court overturn a well-deliberated jury verdict as returned on April 12, 2022, in St. George, entered by this Court on May 6, 2002, by appealing Judge Murphy's order denying their motion to set aside the judgment due to a failure to mediate the case. (Appellant's Brief, pp. 3-7)

Citing NO authority other than the South Carolina Supreme Court Order from 2015, the Defendants now wish to have this matter re-tried, re-negotiated, and re-done because there was no proof of mediation, no exemption from mediation, and no mediator appointed by the Clerk of Court for Dorchester County. This is an end run around a well-reasoned jury verdict.

There is no precedent and no authority for the desperate and drastic measures requested by the Defendants.

Judge Murphy wrote in her Form Order dated October 18, 2023

> This case comes before the Court on Defendants' Motion to Reconsider on the ground that the trial took place prior to mediation. Under Rule 10(b), SCADR,

> courts may impose sanctions for parties' failure to comply with the mediation requirement. However, the rule is permissive rather than mandatory, and the Court declines to impose sanctions in this case where the matter has already been property decided before an improper jury. Therefore, Defendants' Motion is DENIED.
>
> Defendant also submit a Motion for Stay of Execution of Judgment, pending the outcome of the Motion to Reconsider. The Motion to Stay is DENIED.

(Form Order, 10/18/23)

From the face of her Order, Judge Murphy considered the arguments and used her discretion to determine that the appropriate remedy would have been some form of permissive sanctions under Rule 10(b) SCADR and not to overturn a jury's verdict. This is not abuse of discretion, but, instead shows discernment on the Court's part.

The Defendants cite case law related to intrinsic/extrinsic fraud being a reason to overturn the judgment under Rule 60(b). *See Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004). There has been no fraud upon the Court asserted here, either intrinsic or extrinsic. Instead, the Court has been asked to put an administrative rule ahead of that of the substance of the jury's verdict and careful deliberation. The Court considered that argument and disagreed with it.

The Court obviously considered the appropriate factors for a Rule 60(b)(1) motion and denied the motion where the matter had been "properly decided before an impartial jury". The jury found that the Defendants negligently misrepresented the condition of the property, violated the Residential Property Disclosure Act, and committed fraud and fraud in the inducement. There is no meritorious defense to be had by the Defendants. *Wham v. Shearson Lehman Bros., Inc.* 298 S.C 462, 381 S.E.2d 499 (Ct. App. 1989)(the court to consider if the party requesting relief has a meritorious defense)

The Court has been further asked to review two hearsay affidavits from the Defendants, to which the Plaintiffs object. Further, this Court advised both of the Defendants of their being held to the same standards as attorneys during the trial of this case. The Defendants chose to proceed.

They now have asserted, again, through inadmissible affidavits, matters of pure speculation stating "I would have" and "I am distraught".

No one took advantage of the Defendants. This case was filed restored to the active docket on May 30, 2019, having been dismissed pursuant to Rule 40(j) in Case Number 2017-CP-18-0564. (Order, May 30, 2019) In that case, the earlier docket number of the case before this Court, the Defendants represented themselves They were letter represented by Stafford John McQuillin. (Docket entry, Clerk's office). In order to attempt potential settlement, all parties at the time agreed to the dismissal pursuant to Rule 40(j). (Order, July 30, 2018) The Consent Order specifically authorized the continuation of settlement negotiations. *Id.* No such negotiations took place; the Defendants fired their attorney. To say "I would have" or "I am distraught by" belies the underlying facts: no negotiations were had or could have been had due to the Defendants' intransigence, which was also reflected at trial.

The jury's decision in this matter was based upon the evidence and sound deliberation. As the Court will recall, the jury sent out a note during its over four (4) hours of deliberation, ultimately returning a verdict as to the verdict form with specific questions. The Defendants now wish this Court to sit as basically a thirteenth juror due to an administrative rule being overlooked or inadvertently not complied with by the parties, which doctrine should not apply here. *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990) Justice was done in the underlying case and prevailed under the facts presented e.g. the Defendants only revealing at trial that they failed to disclose further problems with the residence including damage to the breezeway during a hurricane. The evidence here clearly justified the verdict, and, frankly, any new trial would reveal the same.

CONCLUSION

Judge Murphy did not abuse her discretion in denying the Defendant's Motion to Reconsider, and, accordingly, she should be affirmed in that decision.

Respectfully submitted:

Mt. Pleasant, South Carolina
March 28 2024

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