

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2020-CP-26-00909

Matthew N. Wright and Lori E. Wright,)
)
Plaintiffs,)
)
vs.)
)
Frances B. Lambe, Individually and)
Frances B. Lambe in her capacity as)
Trustee of The Frances B. Lambe)
Living Trust, Dated December 3, 2015,)
as Amended and Successors in Trust, a)
Revocable Trust,)
)
Defendants.)
)
_____)

ORDER
GRANTING Partial Summary Judgment
as to the South Carolina Residential
Property Disclosure Act § 27-50-40
AND
DENYING Plaintiffs' Motion for
Summary Judgment; Defendants' Motion
for Judgment as to Lori Wright; and
Defendants' Motion for Summary
Judgment as to Frances Lambe

This matter came before me on March 19, 2024 for hearing on the following motions: (1) Defendants' Motion for Partial Summary Judgment as to the South Carolina Residential Property Condition Disclosure Act (S.C. Code §27-50-40)); (2) Plaintiffs' Motion for Summary Judgment; (3) Defendants' Motion for Partial Summary Judgment as to Lori Wright; and (4) Defendants' Motion for Partial Summary Judgment as to Frances Lambe.

BACKGROUND FACTS

This case arises from the sale of a home located at 675 Wedgewood Drive, Murrells Inlet, SC by The Frances B. Lambe Living Trust to Matthew and Lori Wright. Plaintiffs argue that Defendants violated the South Carolina Residential Property Condition Disclosure Act. Defendants argue that The Frances B. Lambe Living Trust is a valid Trust and as a result the South Carolina Residential Property Condition Disclosure Act does not apply.

Frances B. Lambe, who owned the house, decided to place the property in a Revocable Living Trust which was executed on December 3, 2015. She obtained advice from Bret H. Davis,

a licensed attorney and CPA, who prepared the Revocable Living Trust at her direction. Davis in his Affidavit indicated that he had prepared in excess of a thousand living trusts in his career and that his opinion was that it was a valid revocable trust in the State of South Carolina. After preparing the Revocable Living Trust, Davis prepared a Deed from Frances B. Lambe to the Frances B. Lambe Living Trust. The Deed was filed in the Horry County RMC Office on January 13, 2016, Deed Book 3885, Page 749.

In 2019, Lambe decided to sell the property and it was sold to Plaintiffs Matthew and Lori Wright on August 12, 2019. Previous to the sale, Frances Lambe had prepared and signed a South Carolina Residential Property Condition Disclosure Statement and had signed it Frances B. Lambe Living Trust.

STANDARD OF REVIEW

Under South Carolina law, summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, 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.” Rule 56(c), SCRPC. “Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” *McClanahan v. Richland County Council*, 350 S.C. 433, 437, 567 S.E.2d 240,242 (2002). A party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410S.E.2d 537 (1991). A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings but must set forth specific facts showing a genuine issue of material fact to be considered by a jury. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). It is not enough that the non-moving party show that a factual dispute exists; “[o]nly disputes

over facts that might affect the outcome of the suit under the governing law [i.e., material facts] will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,248 (1986).

Additionally, “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892S.E.2d 297, 301 (2023) (clarifying prior precedent and rejecting the “mere scintilla” standard). In determining whether any triable issues of fact exist, the evidence and all inferences that be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Vermeer Carolina’s, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App.1999). If triable issues exist, those issues should be submitted to the jury. *Young v. S.C. Dept. of Corrections*, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

APPLICABLE LAW

The Defendant Frances B. Lambe Revocable Living Trust argues that S.C. Code § 27-50-30-10, *et. eq.* does not apply to the sale of the home at 675 Wedgewood Drive, Murrells Inlet, SC. Defendant Lambe bases her argument on S.C. Code § 27-50-30 which provides in pertinent part:

This article does not apply to transfers:

* * *

- (3) by a fiduciary in the course of the administration of a decedent’s estate, guardianship, conservatorship, or trust

Defendant Lambe, in support of her motion, provided a copy of the contract of sale by the Trust to Wright (Exhibit 1); a copy of the Trust Agreement (Exhibit 2); and a copy of the Deed into the Trust (Exhibit 3).

Defendant Lambe further presented two Affidavits of Bret H. Davis – the original Affidavit filed February 6, 2024 and a Supplemental Affidavit filed March 18, 2024. In those Affidavits, Attorney Bret H. Davis offers the opinion that the Frances B. Lambe Revocable Living Trust is a legal Trust prepared consistent with S.C. Code § 62-7-401.

Defendant Lambe has also provided to the Court an unpublished opinion of the South Carolina Court of Appeals, *Holley v. Dan-Sa, Inc.*, 2017-UP-243, 2017 S. C. App. Unpub. Lexis 271 (Ct. App. June 14, 2017).¹ In that case, the Court of Appeals held that a residential property disclosure statement was not required because there was a statutory exemption found in S.C. Code § 27-50-30. A second case decided by retired Judge Casey Manning entitled *Masten v. Corboy*, 2019 S.C. C.P. Lexis 9173, January 16, 2020 reached the same result. In that case, the circuit court held that the plain language of the Act states that “the act does not apply to transfers in administration of an estate or by a fiduciary in the course of the administration of a decedent estate.”

Based on the above cases, the Court finds a similar situation here in that 675 Wedgewood Drive, Murrells Inlet, SC had vested title in The Frances B. Lambe Living Trust in 2016 and that the property was deeded to Matthew and Lori Wright from that Trust. Further, the uncontradicted Affidavits of Attorney Bret H. Davis provide additional evidence that the Trust was properly formed and that Lambe deeded the property from Frances B. Lambe to The Frances B. Lambe Living Trust three years prior to the sale to the Wrights.

¹ The Court recognizes that unpublished opinions are not precedent. However, the trial court may consider them, but is not bound by them.

Accordingly, the Court finds that the Plaintiffs' cause of action under the South Carolina Residential Property Condition Disclosure Act, S.C. Code § 27-5-50-10, must be dismissed with prejudice.

Accordingly, Defendants are granted summary judgment as to Plaintiffs' second cause of action as to the South Carolina Residential Property Condition Disclosure Act.

Finally, the Court denies Plaintiffs' Motion for Summary Judgment, Defendants' Motion for Summary Judgment as to Lori Wright, and Defendants' Motion for Partial Summary Judgment as to Frances B. Lambe as there are genuine issues of material fact.

AND IT IS SO ORDERED.

The Honorable William H. Seals

March _____, 2024
Conway, South Carolin



Horry Common Pleas

Case Caption: Matthew N Wright , plaintiff, et al VS Frances B Lambe , defendant, et al
Case Number: 2020CP2600909
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157