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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

Appellate Case No.: 2023-001462

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

APPENDIX

VOLUME II of II

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

Other Counsel of Record:

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

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Civil Action No. 2018-CP-22-00956

Appellant Case No. 2019-001822

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

vs.

Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.

Of Whom Laura Kopchynski is ..... Respondent.

RECORD ON APPEAL – VOLUME III OF III

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400

George W. Redman, III
S.C. Bar No. 72365
Counsel for Appellants

EARHART OVERSTREET, LLC
P.O. Box 22528
Charleston, SC 29413
(843) 972-9400

Steven R. Kropski
S.C. Bar No. 101441
Counsel for Respondent

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In The Matter Of:

Rory M. Isaac and Kimberly J. Isaac v.
Thomas C. Onions, Jacqueline Onions et al

Laura Kopchynski
March 27, 2019

Holly Hiott O'Quinn, RPR -- LMOC, Inc.
Independent Contractor working in association with
Milligan Court Reporting
O: 843.224.5211 F: 843.971.6509
Email: schedule@courtreportingsc.com

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	
Rory M. Isaac and Kimberly J. Isaac,	)	CASE NO.: 2018-CP-22-00956
	)	
	)	DEPOSITION OF:
Plaintiffs,	)	Laura Kopchynski
	)	
vs.	)	
	)	
Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.,	)	
	)	
Defendants.	)	

DATE: Wednesday, March 27, 2019

TIME: 1:02 p.m.

REPORTER: Holly Hiott O'Quinn, RPR

LOCATION: Oxner & Stacy, PA
235 Church Street/Highway 17
Georgetown, SC 29442

HOLLY HIOTT O'QUINN, RPR
Independent Contractor working in association with

Milligan Court Reporting
Telephone(843)224-5211 Fax(843)971-6509
Email: Schedule@courtreportingsc.com

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A P P E A R A N C E S

For Plaintiffs: R. Isaac K. Isaac	Bellamy, Rutenberg, Copeland, Epps Gravely & Bowers, PA By: George W. Redman, III, Esq. 1000 29th Avenue North (29577) Post Office Box 357 Myrtle Beach, SC 29578-0357 (843) 448-2400
For Defendants: T. Onions J. Onions	Oxner & Stacy, PA By: Harry A. Oxner, Esq. 235 Church Street/Highway 17 Post Office Box 481 Georgetown, SC 29442 (843) 527-8020
For Defendant: Kopchynski	Earhart Overstreet, Attorneys at Law By: Steven R. Kropski, Esq. 878 Whipple Road, Suite 200 Post Office Box 22528 Mt. Pleasant, SC 29464 (843) 972-9400
For Defendant: Lane's	Kernodle Root & Coleman By: Trent M. Kernodle, Esq. 914 Folly Road, Suite 2 Post Office Box 13897 Charleston, SC 29422-3897 (843) 795-7800
Also Present:	Rory Isaac Kimberly Isaac

A That was the purchase price that the Onionses told me that they -- not a purchase price, it's a list price.

Q Okay. Thank you. And how did you -- how did that number come to be?

A They -- we looked at the comps.

Q Who is we?

A The Onionses and I. I gave them the comps. But they decided on the list price.

Q How many comps did you pull before you...

A I do not recall.

Q Less than five?

A I do not recall.

Q Okay. Do you -- how did -- you knew the Onionses. You live in the same neighborhood as the Onionses?

A Yes.

Q And did you know -- how did you know them -- if you did, before you listed their house for sale?

A I met them as neighbors in Litchfield Plantation. I did not know them outside of them being my neighbors in there. That's how I met them.

Q Okay. Were you friends, social friends?

A We became social friends.

Q Okay. When? How long have you been friends?

A Maybe five years, six years.
Q So you'd known Mr. and Mrs. Onions for five or six years?
A Yes.
Q Okay. And --
A Well, we became social friends about five or six years ago. I had met them prior.
Q Okay. And your social interaction with them would be -- when would you see them?
A At what time frame are you talking?
Q In the five or six years.
A It would vary. We would once in awhile have dinner together. We would once in awhile see each other at a community function.
Q Okay. Who did you meet first, Mr. Onions or Mrs. Onions?
A I think I met them together.
Q Okay. When? Where?
A I can't recall the actual -- I don't know.
Q Okay. And would you have more interaction with one or the other?
A Yes. In the more recent years, probably Jackie, Mrs. Onions.
Q Okay. Before then, were you -- were you meeting with Mr. Onions in regard to Litchfield

Plantation matters and his role as a board member of the association?

A No.

MR. KROPSKI: Object to the form.

BY MR. REDMAN:

Q Okay.

A Do you mean like did I meet with him in an official capacity to discuss Litchfield Plantation as him being a board member?

Q Well, he was on the board for the association, correct?

A Right.

Q Okay. Would you ever talk to him for an association-related matter?

A Not confidentially. It would be probably a general conversation if we were with people.

Q Okay. You would see him at community events and --

A Right. Or a gathering or -- right.

Q Okay. Well -- okay. So you're friends in the community and you become closer friends in these past five or six years. And how did you learn that they wanted to sell the property?

A They called and asked me to come over.

Q Who called?

A I think Jackie said if you have time, can we see you tomorrow. That was on a Saturday night, right around this time. It was a night or two before we listed the house -- or I'm sorry, a couple nights before we listed the house. She said if you have time, can you come and talk to us. And then Tim called me the next morning and said can you come over. And I said sure. Am I coming over just myself or am I bringing a pad and pen or am I like bringing a laptop, like what -- because I could tell something wasn't just like, hey, why don't you come over and have a cup of tea. And they said bring your laptop.

Q Okay. So they wanted to talk to you in your professional capacity as a realtor. Is that what you mean by bring your laptop?

A Right. I didn't know if they were going to ask me information for me to look up. I wasn't sure why they were asking me over.

Q Okay. But Tim said -- called that morning and said I need you to come over, or can you come on over, and you did?

A Do you have time, yes.

MR. KROPSKI: Object to the form.

BY MR. REDMAN:

Q Okay. And that was on a Saturday morning?

one, which I believe was in MLS. It's just features about the house. It's the ceiling, the 10-foot ceiling, whatever all it is. Just special features. Nothing -- anything that would be something in addition to what you'd expect outside of basic information.

Q Okay. And on Exhibit 28, we talked about information that went into your binder that was at the house.

A Yes.

Q And you said one of the things that was in that binder was a list of special features. Is that what you were talking about?

A Yes.

Q Okay. And you're going to look and see if you can find that?

A Uh-huh.

Q Okay. Great. Do you know whether the -- did you know at any time that the yard had pumps, drainage pumps, installed?

A I found out the day of closing.

Q Okay. So those pumps wouldn't have gone on that special features list?

A No. And I wouldn't think so.

Q Because if it went on that list, you would have put it on that list. You would have typed it in

there?

MR. KROPSKI: Object to the form.

THE WITNESS: No, I don't think there's a -- no. I don't know how to answer that question.

BY MR. REDMAN:

Q So you found out --

A There's not a feature -- I believe a feature icon to put in here for that.

Q Would it be out of the ordinary to have the drainage pumps listed as a feature of the house?

A I can't answer to that what's ordinary or -- I cannot answer to what would be ordinary or out of ordinary.

Q Okay.

A If they had a pump -- I would -- yeah, I don't know how to answer that.

Q Okay. But you didn't know of the pumps -- you found out about the pumps, pumps in the yard?

A And I still to this day do not know where -- apparently there is a pump somewhere in that yard. And to this day, I cannot tell you -- I have not seen it and I cannot tell where it is or how it works.

Q Okay. To your knowledge, there's one?

A I believe so. But I'm not 100 percent sure.

Q Okay. And how did you find out about that

tell you what his -- what he was thinking or his reaction was. But he did say he would go and take a look. And he called me back and said that the water was -- he said, no, the pump is not -- I wouldn't think the pump is broken. Because he said, you know, I can't go in their yard. I don't own the property. So he went to go look where the water exited in that pipe and said it was flushing out and it would be fine.

Q Did he say how he knew it would be fine?

A No.

Q Okay.

A No.

Q Did he say the pumps are right where the water is collecting?

MR. KROPSKI: Object to the form.

THE WITNESS: He didn't say anything about the -- he just said the water was exiting through a pipe where it is supposed to exit.

BY MR. REDMAN:

Q Okay. Was he calm when he spoke to you about it?

A He's always calm.

Q Okay. So -- okay. And you mentioned the HOA hired an engineer to deal with drainage issues in the plantation; is that correct?

A They didn't hire him. They were consulting with an engineer.

Q Who is they?

A The board. The board of governors --

Q Okay.

A -- of the HOA.

Q And was Mr. Onions on the board of governors?

A Yes.

Q Okay. So Mr. Onions would have known about the HOA's consultant engineer?

A Right. But that wasn't for that -- I think it was two-fold. I think that they were evaluating a drainage problem on the other side of the plantation. And also they were talking about trying to incorporate through the ARB with any new builds that they would have to put their drainage plan through somebody so everybody knew it was done. So at that point, it was discussion that perhaps this would be the folks that they would use to try to make sure somebody was looking at drainage for new builds to ensure that it didn't make an issue for the neighbors as the topography changed.

Q Okay. And Mr. Onions was on the board that was handling all of that?

A Uh-huh. And that was in -- that was just

anything of that nature. I was more holding the speaker so they could communicate back and forth.

Q Okay. So we have this property listed and there have been showings, and then it goes under contract with the Coles. Do you know exactly -- or about when it went under contract with the Coles?

A I was looking over my notes. I want to -- I'm not sure, but I think on or about May 2nd.

Q Okay. And before that, before it can go under contract, you have to have a disclosure form filled out; is that correct?

A Yes.

Q Okay. And you say you had that in the binder?

A That was in the MLS as well.

Q Okay. And how did that get filled out?

A With the -- we did the listing paperwork. Before the listing, the Onionses filled out their disclosure as part of the listing paperwork.

Q Did you provide the form to them?

A Yes.

Q Did you explain it to them?

A The only thing I told them, which is what we tell everybody -- well, what I tell -- we're not allowed to advise, instruct, consult, explain a

disclosure form. So all I do is, this is the disclosure form. You need to read all the instructions very carefully and read each section very carefully. And that's basically -- that's basically it.

Q And you said that to Mr. Onions and Mrs. Onions?

A I don't recall. I definitely remember telling Tim. And I cannot recall if Jackie was in the room or not at that time.

Q Did Tim fill it out at that time?

A Throughout that period he did. I don't know exactly when, but he filled it out before we put the listing into MLS.

Q Did he fill it out while you were there?

A I don't know if he did it all the same day. I was back and forth a few days. I don't know if he did it all at once or not. I cannot recall.

Q Do you know who filled it out? Was it Tim and Jackie or just one or the other?

A I -- primarily I believe Tim was looking it over, and I believe he filled it out. That's my understanding.

Q What is that based on?

A I don't know. I don't know why I think that. But I do, for some reason, recall Tim being the one who

home inspection.

Q Okay. Did they do that through you at all? Or what do you recall about that?

A No. The only thing -- no, they did not.

Q Okay. And did they coordinate -- was -- the site visit for the inspector, was that coordinated through you at all?

A No.

Q Okay. And did you learn of the inspection at some point?

A Yes, because I had to call Jackie Onions to confirm a time for the inspector to come.

Q Okay. So that part went through you and that was worked out and you knew when the inspector was going to be there?

A Yes.

Q Okay. Were you there when the inspector was there?

A No.

Q Okay. Do you know who was there when the inspector was there?

A I believe one or both of Tim or Jackie were home.

Q But somebody was home?

A Somebody was home.

BY MR. REDMAN:

Q So by they, you mean Tim and Jackie?

A Tim and Jackie.

Q Okay. So you don't specifically recall being at the house and looking over a report with Jackie Onions and talking with her about it at the residence?

A I can't remember. I can't remember if I e-mailed it to them or brought them over. I don't remember.

Q You just don't remember?

A No.

Q Okay. Now, do you remember anyone else coming over to inspect the property?

A Yes. So there was one -- there was a section of the home inspection summary -- because we didn't have the whole home inspection report, we just had the summary. And there was photos of the crawl space.

Q Okay.

A And it said like recommend further evaluation by a licensed contractor. And then there was one photo that said something to the effect of recommend further inspection by a crawl space professional or something like that. So I had told Jackie that I had done a CL-100 -- we had a CL-100 done on another property that I had listed a couple of months before, which was

Stark. Andy Ward at Stark Exterminators had done it. And it was at that visit I had to meet him at the property. It was at that visit that he told me, oh, by the way, do you get a lot of listings. You should know that you don't have to wait until a CL-100 is due in a contract to have us come over and take a look. Any time you list a property, let me know, and I'll come out automatically and take a look and give an evaluation and tell you in my opinion if anything else needs to be done so you're not waiting until the portion of the contract -- that an actual formal CL-100 is done to see if there is an issue and then you have a chance of your contract blowing up.

So I recalled that. I said, Jackie, I know of this guy. I told her exactly what I told you. I said, do you have anyone else to call or do you want to call him to see if he's willing to come out and take a look. I don't know if he's going to charge you. I don't think so, I don't know. But this is a service he says that they provide. So she said yes. Yes, sure.

So with her standing next to me -- I had his phone number in my phone from the last contact -- I called him, explained the situation. He said he would be available to go over the following day. He asked a time. I asked Jackie if that time was suitable. She

It was in a condo.

Q But he left an impression upon you that he's --

A Somebody you could call that would be willing to come and give an opinion in the beginning before waiting for an actual CL-100 to be done.

Q Okay. And he looked -- generally, he was -- you wouldn't recommend somebody unless they seemed --

A Oh, yeah.

MR. OXNER: Object to the form.

MR. KROPSKI: Object to the form.

MR. REDMAN: Well, she didn't let me finish it. So it's not really fair.

MR. OXNER: Finish it.

BY MR. REDMAN:

Q So at that job -- at that prior job, what did you discuss with Mr. Ward at that prior job?

A He just -- I just stood there while he tried to -- there was a lattice that was nailed up, and he said he wasn't allowed to take it down. So I had to try to find someone to come to the property to take the lattice off. So it was that, it was him crawling down underneath there, and then just the conversation about, hey, any time you ever get a new listing, let me know and I'd be happy to come over to do some sort of

evaluation so you're not waiting until a CL-100 is due in the contract. And that was how that came about.

Q How long before that job until you called him with Jackie?

A I think that was probably in March. And this was in May. So it was fairly recent.

Q So within two months?

A About, yeah.

Q Okay. And you were there the next day -- were you there the whole time that Mr. Ward was there?

A Yes.

Q Okay. And what did Mr. Ward do when he arrived at 24 Avenue of Live Oaks?

A He came in, introduced himself. We showed him the home inspection summary. And then he went down into the crawl space. He put on his work jumper and went downstairs, did an valuation, and then came back up to discuss it.

Q How long was he down there?

A I don't remember.

Q Was it one or two minutes or --

A No. I would say -- no, it wasn't one or two minutes. Maybe 20 or 30. I can't recall.

Q Okay. I won't hold you to exactly how long he was down there. But thank you for the estimate.

evaluation and providing that to you and the Onionses, correct?

A Correct.

Q Okay. And at the end of that, I think you mentioned that the Onionses went and got a second opinion; is that right?

A Yes.

Q Okay. Tell me about that.

A After Andy came, Mr. Onions was away, so Jackie filled him in on the fact that he came over. And they decided to get another evaluation from their licensed contractor.

Q Who is that?

A Emery Custer.

Q Do you know Emery Custer?

A I've met Emery.

Q How many times have you met Emery?

A Three or four, perhaps.

Q Are you friends with Emery?

A No.

Q He's never done work on your property?

A No.

Q Okay. What do you know about Emery?

A I know that the Onionses used him for much of their work and so did the HOA for Litchfield Plantation

for several homeowners and some of the board members.

Q Okay. And so he's fairly well known in the area; is that correct?

A Yes.

Q Okay. And is he known as a licensed handyman in the area?

MR. KROPSKI: Object to the form.

THE WITNESS: No. I think he's known as a very reputable and credible licensed contractor.

BY MR. REDMAN:

Q Okay. And you knew him before you listed this property for sale; didn't you?

A I met him once when I went to the beach house at Litchfield Plantation and he was doing work over there. I was introduced to him.

Q How long before the listing of this property was that?

A It was sometime over -- actually, I don't know.

Q Okay. My question was, did you know Emery before you listed this property?

A Yes.

Q Okay. And all the things you say about him, you knew all of those things that he -- other board members and other people in the area used him before

you listed this property, right?

A Yes.

Q And you knew -- I guess, then, it follows that you would have known about Emery the same day that you recommended calling Andy Ward, right?

A That I knew of Emery before my recommendation to call Andy Ward?

Q Right.

A Yes, I knew of Emery.

Q Okay. But when you thought of or were reading the language we talked about earlier that there's a -- the Cornerstone report was recommending a crawl space specialty contractor, Andy Ward came to your mind first; didn't he?

MR. KROPSKI: Object to the form.

THE WITNESS: I didn't even think of Emery, period.

(WHEREUPON, Plaintiffs' Exhibit No. 30 was marked for identification only.)

BY MR. REDMAN:

Q Fair enough. Now, I've handed you Exhibit 30. Do you recognize this document?

A Yes.

Q What is it?

A It's a Litchfield Plantation newsletter.

Q Who writes these up?
A I did at the time.
Q Okay. You don't do these anymore?
A No.
Q What was this -- is this the last one you did?
A The last one I did was November 2018.
Q They all kind of have the same format?
A Generally.
Q Yeah, okay. Would you mind -- do you have access to all of these that you have made?
A I'm sure if I -- I could probably -- I could try.
Q Could you e-mail those to your attorney to have him send over to us?
A (Witness nods head.)
Q How -- were they quarterly, four a year or so?
A One a month.
Q Okay. And you did this for how many years?
A I think I did 27 or 28 issues. So two and a half years. A little over two years.
Q And why did you stop doing it?
A Because I didn't want to do it anymore.
Q Was it a paying job?

A No.

Q Okay. Did you, on occasion, get any referrals from this?

A One.

Q Over 27 months, you got one?

A Right. I didn't put my name in it until --

Q Okay.

A -- toward the end, because I was just doing it as a homeowner. I wasn't doing it to advertise. And then they finally insisted that I do.

Q Okay. And there are other people's names in here, too, right?

A Yes.

Q Are they -- the people who you referred to as they insisted that your name go in here, would that be the people who are listed as the board of governors?

A The board, yes.

Q Okay. Mr. Onions was one of those?

A Actually, Tom Eckard is the one that insisted.

Q Okay. And did you know everybody on the board of governors?

A I have met Jason Burger and Justin Nash, but I really don't -- I didn't really know them at the time.

Q Okay. Do you keep up with board of governors issues in Litchfield Plantation throughout that time?

A Whatever is common knowledge that we all know, yes.

Q Okay. So you knew enough to put together a newsletter or gathered enough to put together a newsletter every month for 27 months?

A Yes.

Q Okay. And the members of the board of governors are in there. The members of the architectural review board are on the second page.

A Uh-huh.

Q And your first service residential managers for the association are on the third page.

A Yes.

Q Okay. Gate house and gate guards are also on the third page.

A Uh-huh. Yes.

Q Okay. All important contact information, correct?

A Yes.

Q Okay. And the last page has two events. One's Easter and the Lowcountry festival. And then in the middle a list of contractors.

A Yes -- they're not all contractors. But --

they're not all contractors.

Q Okay. What would you characterize them as?

A Well, Emery is a contractor. And then the rest are more landscaping professionals.

Q Okay. And this has Emery Custer. How many of these newsletters was he -- his name in?

A I don't recall. The board asked me to -- Tom Eckard, specifically, wanted to start including these following names in here. Because they were constantly getting phone calls about who perhaps to use and recommendations. So they said for simplicity and for easy contact, can -- they gave me all this information and asked for me to please include that in the newsletter.

Q Okay. And then -- so you don't know, but we can go back and look at how many of these newsletters Emery's name shows up in, right?

A Yes.

Q Okay. And the same thing, you're on the bottom there too. You have a nice little update of information and then your contact information, right?

A Yes. Which the real estate stats I had done all along. And like I said, it was only like maybe the last year or so that I started to include my information in there. Year and a half.

they're more comfortable and they had decided to go with Emery.

Q To do the repairs?

A To do, right, whatever repairs or improvements.

Q Okay. Do you know whether Emery went over there and diagnosed the problem or what he did when he went over there?

A I do not.

Q Okay. So the Onionses told you they felt like Emery was qualified to do these repairs. And did Emery in fact do them?

A Yes.

Q Okay. And how do you know that?

A They told me that -- when he was going to do it. They told me when it was done. And I said I needed some sort of written -- or I would prefer some sort of written verification to show the Coles so the Coles knew exactly which repairs were made.

Q Okay. And were you provided with a verification?

A I was.

Q Did you need that verification to come from the contractor?

A Meaning?

Q From Emery.

A I needed a verification of what -- something to verify exactly what he did --

Q Okay.

A -- so that there was no question as to what improvements or repairs were made.

Q Okay. And since Emery was doing the repairs, did you expect that verification to come from Emery?

MR. OXNER: Object to the form.

THE WITNESS: Yes. I would have, yes.

BY MR. REDMAN:

Q Okay. Did you get a verification?

A I did.

Q And who was it from?

A The -- it was a -- I got it from the Onionses. They gave it to me. And I believe I -- I see that my copy is a cam scan, and I've done that with some of the documents. So I don't know if I had any part of an original or if I just cam-scanned it to send to the other agent.

Q So a cam scan is where you take a picture of it?

A Right, from your phone.

Q Okay. But you saw a verification of repairs?

A Yes.

Q Okay. And that was given to you by the Onionses?

A Yes.

Q Who filled it out?

A Who filled it out?

Q Who prepared it?

A I found out later after this was filed that Tim typed it up for Emery.

Q At the time, did you understand -- did you think it came from Emery?

A Yes.

Q And after the lawsuit, you discovered that that's what Tim had typed?

A Yes.

Q Okay. Now, after the -- after you were told the repairs were done, did you ever have a discussion with the Onionses -- well, we'll get to that.

The CL-100 -- a CL-100 had to be performed at some point. And we're still talking about the period of time where the Coles are under contract, right?

MR. KERNODLE: Object to the form.

BY MR. REDMAN:

Q And a CL-100 needed to be performed; is that correct?

MR. KERNODLE: Object to the form.

THE WITNESS: It was in the contract. As part of the contract, they checked that they were going to do a CL-100, yes.

BY MR. REDMAN:

Q Okay. And do you know who can perform or do a CL-100 in the state of South Carolina?

A I suppose someone who's licensed to do it. Because not all pest control companies or what have you offer to do it. So I'm not sure what the regulations and stipulations are.

Q Okay. Some pest control companies can and some can't, to your knowledge?

A Or some do and some don't. I don't know.

Q Okay. Fair enough. And do you -- were you involved with the CL-100 being scheduled during the time the Cole contract was in place?

A No.

Q Okay. So you weren't a part of that at all?

A No.

Q Okay. Were you told that one was being done at any point?

A Yes.

Q Okay. And did you ever receive that CL-100?

A Yes.

Q Okay. When did you receive it?

A I think it was like a day or two after it was done. Because we had broke out of contract that day, and so I didn't have to get it to the closing attorneys. So there was no rush. There was no rush for it.

Q So you received the CL-100 form after the Cole contract had fallen through?

A Yes.

Q Okay. And therefore, there wasn't going to be a closing of the Cole contract?

A Yes.

Q And there was no need to forward a CL-100 to the closing attorney or the prospective purchaser because those folks were no longer in the picture?

A Right.

Q Okay. And did you look at the CL-100 form when you received it?

A Yes.

Q Okay. Did you read it?

A I don't really -- I probably skimmed through it, yes. I mean, I opened the doc. I saw it. I don't know exactly when I did it. I do know that I -- I cannot tell you exactly when I read it.

Q Okay.

A I don't know.

A Not that I recall.

Q Okay. And so was there discussion about a CL-100 needing to be done for the Isaacs?

A It was in the contract that the Isaacs had selected to do a CL-100.

Q Okay. And what do you recall about that process, getting a CL-100 for the Isaacs?

A In the contract, the -- I told Ed that -- that's when I told Ed Stark had been out and done an evaluation. I said, I don't know who the Isaacs plan on using, but I just want you to know Stark had been out to do an evaluation. I know they do CL-100s. And if the Isaacs choose Stark, which they can, I just want to give you a heads up that the Onionses took much of the recommendations that Stark had made but did not hire Stark or use Stark to make any of the repairs. And so I don't know that they would remain professional or if there would be any sort of resentment if they came and saw all of the improvements that were made underneath. And Ed actually chuckled out loud and said, you would like to think that. But thank you for letting me know, and we'll let you know who -- I think they wanted Jackie Onions to make the appointment for the CL-100. So we'll let you know who to -- I'm trying to think...

Q Well, before -- did you have a conversation with the Onionses about the CL-100 needing to be done for the Isaacs?

A They knew part of the contract that they were going to have a CL-100.

Q The Onionses knew?

A Yes.

Q Okay. And did you talk with them about who was going to do the CL-100 on their house?

A No, because we didn't know at the time, because the Isaacs were going to get to choose who to select.

Q Okay. So you didn't know at the time. Did you discuss that matter with them at the time?

MR. KROPSKI: Object to the form.

MR. OXNER: Same objection.

THE WITNESS: The only time it came up with the Isaacs with the CL-100 is I was noticing it was time to schedule one. And I called Ed and said, you have to schedule the CL-100. And he thought it was the seller's responsibility. And I looked back over the contract, I said, no, the buyer is paying for it and the buyer is choosing the provider and we're in that time frame. And that was the same time I had told -- when Jackie Onions and I had talked about we

need to get -- that the CL-100 has to get done. I said, I'm going to find out who's going to do it and I'm going to let Ed know what happened with -- if Stark comes, that it could be awkward.

BY MR. REDMAN:

Q Okay. So there was a discussion with you and Jackie about I'm going to find out who it is and that if Stark shows up, it could be awkward because --

A I'm going to let Ed know that it could be awkward if Stark comes, but they are welcome to use Stark.

Q And you had that conversation with Jackie?

A Yes.

Q Was Tim around?

A I don't believe so.

Q Okay. But it was -- was the gist of that discussion that you and Jackie would prefer that Stark not do the CL-100?

A No. It was just going to be awkward for her because she was present for it. It was going to be awkward for her if Andy came back and they didn't -- after the time that he spent and all the conversation that they had, that she didn't actually go ahead and hire him. It was more about awkwardness for her.

Q Okay. So your testimony is that a discussion

took place that having Stark back out there would be a problem?

MR. KERNODLE: Object to the form.

MR. KROPSKI: Object to the form.

THE WITNESS: No, not a problem. That it could be awkward, that's all.

BY MR. REDMAN:

Q Okay. And after you had that conversation with Jackie and you were going to go and talk to Ed, were you going to -- you told me that you spoke to Ed and you told them Stark was out there and --

A It could be awkward.

Q And you told them you would hope they'd be professional but you just don't know?

MR. KERNODLE: Object to the form of the question.

BY MR. REDMAN:

Q Is that what you said?

MR. KERNODLE: Object to the form of the question.

BY MR. REDMAN:

Q That was your testimony?

MR. KERNODLE: Object to the form of the question.

THE WITNESS: Yes.

BY MR. REDMAN:

Q Okay. And you told Ed the reason it might be awkward was because Jackie or the Onionses had taken the Stark recommendations and done them?

MR. KERNODLE: Object to the form.

THE WITNESS: They had taken many of the Stark recommendations and done them.

BY MR. REDMAN:

Q Okay.

A But did not use Stark to do it.

Q Have you ever in your career called up another realtor and said, I don't think we should use this contractor to do the CL-100?

A I never said they shouldn't.

MR. KROPSKI: Object to the form.

THE WITNESS: And I never have said that, no.

BY MR. REDMAN:

Q Okay. So in this case, you didn't say, you know, Ed, I don't think we should use Stark? That's what you're telling me, right?

MR. KERNODLE: Object to the form.

THE WITNESS: I did not say that.

BY MR. REDMAN:

Q You did not say that. Okay. You're saying

that you were just pointing out to Ed that there might be some awkwardness if Stark were to show up?

MR. KERNODLE: Object to the form of the question.

THE WITNESS: Yes.

BY MR. REDMAN:

Q Okay. And you were concerned about professionalism in there somehow?

MR. KERNODLE: Object to the form of the question.

BY MR. REDMAN:

Q You tell me.

A The possibility, yeah. It was a concern --

Q That Stark --

A -- that they'd be professional if they came out, yes.

Q And saw that some other contractor did the work that they had taken the time to recommend?

A Exactly.

Q Have you, to the best of your knowledge, produced all of the e-mails between you and Ed in regard to this transaction?

A Yes.

Q Okay. We talked earlier today about your conversations the day that Mr. Ward from Stark was out

Q Do you know what percent it was?
A Seventy, I believe.
Q That would be a big percentage.
MR. KROPSKI: Object to the form of the question.
THE WITNESS: There's different structures.
BY MR. REDMAN:
Q So how would you and your company be paid out of the closing of this transaction is what I was asking?
A The seller pays the commission. Is that what you're asking me?
Q The funds for your commission would come out of the sale proceeds, correct?
A Correct.
Q And what percentage of the sales proceeds was the realtor's commission in this case?
A Oh, I'm sorry. Well, it was 3 percent for -- is that --
Q Yes.
A Okay. I'm sorry. That's why you thought the 70 was -- okay. I'm sorry, I couldn't follow you. So it's right. It was 6 percent sales commission. 3 percent for the buyer's agency -- no, it wasn't. It was 5 percent for this transaction. Two and a half for

each side.

Q Okay. Do you know about what that adds up to in the sales price of this residence?

A I don't remember what the total commission was. I think for each side it was 12- or 15,000, somewhere around in there.

Q Okay. And in 2018, how many sales did you close?

A 2018? Five or six perhaps.

Q Okay. And were they sales that were all about the same amount or does it vary? Or where does this fit in the scheme of things for 2018?

A They varied.

Q What was your total commissions earned in 2018 approximately?

A I want to say -- I'm not 100 percent sure -- 30- to 35,000.

Q Thirty-five --

A Thirty to 35,000 total.

Q Total commissions for the year?

A Yes.

Q So this commission right here would have been 15 of that 35?

A Yes.

Q Okay.

A Yes, that's all we had.
Q Okay. And page 2 of this exhibit says 5/10/2018. Do you see that?
A Yes.
Q So we're about a week after the contract; is that correct?
A Yes.
Q Okay. And this appears to be the document we were talking about?
A (Witness nods head.)
Q Okay. And have you ever had a home inspection report which shows insulation falling, having fallen off?
A Very frequently.
Q Okay. Do you know what the cause of insulation falling off can be?
A It could be an animal doing it. It could be moisture. There's a whole -- I'd just be speculating.
Q Okay. All right. And I'm looking at page 5 of 10.
A Okay.
Q Are you looking at it too?
A I happen to be.
Q Okay. And 7.6, there's a paragraph there. And this is where the home inspector recommends further

inspection and any needed corrections by a crawl space specialty company. Did I read that correct?

A Yes.

Q Okay. And is that what you saw when you told Jackie that you knew a guy who works in the crawl spaces?

A Yes.

MR. KROPSKI: Object to the form.

BY MR. REDMAN:

Q And that was Andy Ward, right?

A Yes.

Q Okay. And let's go to Exhibit 7.

A I see it.

Q Let's go to Exhibit 8 first off and see if you recognize this document.

What exhibit are you on?

A Eight. I mean, I don't -- I don't recall it, but, yes. I mean -- oh, it's just one? I'm sorry. This is my e-mail.

Q Do you remember sending this e-mail?

A I don't.

Q Okay. Is this your e-mail address?

A Yes.

Q And it is -- does it appear to be five days after the Cornerstone report, Exhibit 6 that we just

June 2018.

A I see June 20.

Q On the first page, top of the first page.

A Oh, yes.

Q Okay. And that's about the same time the release was being signed that we just looked at, right?

A It was the same day.

Q Yeah. And so do you think you received this after the release was signed?

A I don't think I received this that day.

Q You didn't receive it on the 18th?

A I don't believe so.

Q You received it after the 18th?

A I believe so.

Q Okay. So there's no sense in forwarding that on to the Coles or their buyer, right?

A Right.

Q Okay. Because they're already -- the contract is dead.

Now, did you read this when you received it?

A Yes.

Q Okay. And did anybody tell you what this said, or did you go by what it actually says?

A Just -- I just went through and checked that -- and I was told before reading this that it was

good. So I didn't read it clearly or -- I shouldn't say clearly. Shouldn't read it that closely because they were also having their own CL-100 done.

Q So -- but that was later on. On the 20th, about therein when you received, right, you're saying?

A I don't remember which. It's probably somewhere around there.

Q Okay. Right about the time the Isaacs were going under contract?

A Uh-huh.

Q Okay. Do you see the small print up at the top of Exhibit 11?

A Which small print?

Q I'm just -- generally. Do you see it up there?

A The Official South Carolina Wood Infestation Report?

Q Yeah, and all the small language underneath that. Did you read all that?

A Do you want me to read it right now?

Q No. I'm just asking do you recall reading it at the time?

A I don't recall exactly.

Q Okay. Let me point out one sentence in it, the fourth paragraph there. It says: If there's

evidence of active infestation or past infestation of termites and/or wood-destroying organisms or fungi, it must be assumed that there is some damage to the building caused by this infestation.

Do you see that?

A Yes.

Q Okay. So if there's evidence of active or past infestation of termites and/or wood-destroying organisms or fungi, this form says damage is assumed, right?

A Yes.

MR. KERNODLE: Object to the form of the question.

BY MR. REDMAN:

Q And in item 3B below, it looks like we got all nos. We don't have any -- nos mean generally that there's no problem of the --

MR. OXNER: I'm going to object to your interpretation. The document is the document.

THE WITNESS: Yeah.

BY MR. REDMAN:

Q Okay. Well, let's go to 3B here. It says nonactive wood-destroying fungi, wood moisture less than 28 percent. It says yes. It says it's there, right?

A Less than 28 percent.

Q It says nonactive wood-destroying fungi. And there's a yes there; isn't there?

MR. OXNER: Object to the form.

THE WITNESS: Yes.

MR. OXNER: She's already answered it says less than 28 percent. You're mischaracterizing her testimony.

MR. REDMAN: You don't need to be giving speaking objections. You can object to the form and we can move on.

MR. OXNER: I've got a lot of objections for you.

MR. REDMAN: Well, good.

MR. KROPSKI: George, can we go off the record?

MR. REDMAN: Yes.

(Off the record 5:29 p.m.)

(On the record 5:30 p.m.)

BY MR. REDMAN:

Q Let's just -- on item 3B, there's a yes checkmark, right?

A Yes.

Q And on item 4, there's also a yes checkmark?

A Yes.

Q Okay. Did you see that when you read this report?

A I don't recall.

Q Okay. Would you know whether that's a problem or not by reading this form?

MR. KROPSKI: Object to the form.

THE WITNESS: I would ask -- I don't know how to necessarily interpret that.

BY MR. REDMAN:

Q Do you remember asking anybody for an interpretation of that?

A No, but I did ask Ed if he wanted this copy to see of what -- to see the CL-100.

Q Okay. Let's be precise about that. You asked him --

A Did he want a copy. I told him one was done. Did he want it. If he did, to let me know. Because I had not seen it at that point. So --

Q Okay. You didn't have the form?

A I did not, no.

Q And you wrote to him and said --

A I do not have it. I can get it for you if you want it.

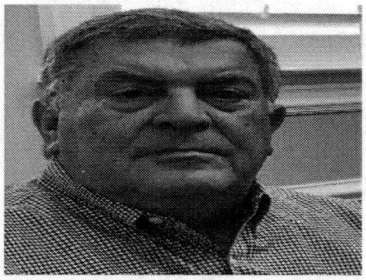
Q Okay. And when you got it, did you -- you -- just to verify, you didn't forward it on and you didn't

THE WITNESS: Yes, sir.
BY MR. OXNER:
Q And to your knowledge, he fixed those things?
A Yes, sir.
Q In the disclosure in number 15, which is the second disclosure --
A Do we have a --
MR. KROPSKI: It's Exhibit Number 15.
BY MR. OXNER:
Q Exhibit 15.
A Okay.
Q The one thing that changed, as we've already talked about, is it says see repair verification, and it's initialed by the parties on 6/20/18.
A Yes.
Q Okay. And the repair verification we're talking about is the Custer verification?
A Yes.
MR. REDMAN: Object to the form of the question.
BY MR. OXNER:
Q The second CL-100 that Lane's did for the Isaac closing, let's look at that one. What number is that one? I'm sorry.
MR. KROPSKI: Seventeen. Yeah.

In The Matter Of:

Rory M. Isaac and Kimberly J. Isaac v.
Thomas C. Onions, Jacqueline Onions et al

Rory M. Isaac
March 28, 2019



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STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON
COUNTY OF GEORGETOWN	) PLEAS) FIFTEENTH JUDICIAL CIRCUIT
	) CASE NO. 2018-CP-22-00956
RORY M. ISAAC AND KIMBERLY J. ISAAC, PLAINTIFFS, vs. THOMAS C. ONIONS, JACQUELINE ONIONS, LAURA KOPCHYNSKI AND LANE'S PROFESSIONAL PEST ELIMINATION, INC., DEFENDANTS.	) DEPOSITION OF:) RORY M. ISAAC

DATE: Thursday, March 28, 2019

TIME: 1:53 p.m.

LOCATION: Oxner & Stacy Law Firm
235 Church Street
Georgetown, South Carolina 29442

REPORTER: Michele Darling Neville, RPR

Michele Darling Neville, RPR
Independent Contractor working in
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A P P E A R A N C E S

For Plaintiffs:	Bellamy, Rutenberg, Copeland, Epps, Gravely & Bower, PA By: George W. Redman, III, Esquire 1000 29th Avenue North Myrtle Beach, South Carolina 29578 Email: GRedman@BellamyLaw.com
For Defendants: Thomas C. Onions & Jacqueline Onions	Oxner & Stacy Law Firm By: Harry A. Oxner, Esquire 235 Church Street Georgetown, South Carolina 29442 Email: HOXNER@OXNERANDSTACY.COM
For Defendant: Laura Kopchynski	Earhart, Overstreet, LLC By: Steve Kropski, Esquire 878 Whipple Road Mount Pleasant, South Carolina 29464 Email: steve@earhartoverstreet.com.
For Defendant: Lane's Professional Pest Elimination, Inc.	Kernodle, Root & Coleman By: Trent Kernodle, Esquire 914 Folly Road Charleston, South Carolina 29412 Email: TKERNODLE@KERNODLELAW.COM.
Also Present:	Kimberly J. Isaac

A That's exactly what was happening.

Q I -- so that's what I mean. Who saw water flowing into the crawl space and who told you that Laura was aware of water flowing into the crawl space?

A I don't know. I can't answer that specific question.

Q Is it possible that this letter is a little bit inaccurate?

MR. REDMAN: Object to the form of the question.

THE WITNESS: It's possible you're interpreting differently than what we wrote it to mean.

BY MR. KROPSKI:

Q Okay. So we agree that Laura did -- that you don't know of any time Laura saw water flowing underneath the house?

A I do not.

Q Okay. Can you go to the second page, third -- second full paragraph?

A Okay.

Q Third paragraph. All right. Third sentence in there, it says: "The Onions also neglected to disclose that they had installed two mechanical sump pumps in a failed effort to stop the repeated water damage."

A Okay, tell me where you are again.

Q The third paragraph down. Second full paragraph.

Q Okay. And he was there just checking out the house? Or was he there scoping out some of the work that was going to be performed?

A Not on the 23rd he was not.

Q The 25th?

A The 25th he was not. He went over there because it started raining so hard and he wanted to see the yard. He wanted to see the water flow.

Q Why did he want to see the water flow?

A Well, part of it was because on the 23rd when we closed, we asked him to go over there and turn off the sprinkler system. Because the morning Ed and Kim walked the property before we closed, the side yard was wet. It was very wet. And what they noticed was that Mr. Onions was running his sprinkler system, even though we had -- you heard him talk about all the rain that we had. He was continuing to run his sprinkler system.

So I called him when Kim told me about it at closing and asked him to go over there and turn off the sprinkler system, to make sure that the sprinkler system was turned off. And that's why he went over there. And then, I guess, he went back.

I can't answer why he was there on the 25th specifically. I didn't ask him to go there, but he was there, evidently.

problems. The law in South Carolina prohibited you from participating in the act of concealment of the water intrusion problems.

What act of concealment did Ms. Kopchynski take part in?

A Here's how I would answer that. She received -- she not only received, but once she got this thing and it pointed out some potential moisture problems or moisture problems in the crawl space and suggested -- their words, not mine -- that a crawl space specialty company be contacted, she contacted Andy Ward at Stark to come out and take a look at it.

Which he did. He gave her a graph, which is an exhibit here, that showed moisture levels, wood-destroying fungi, non-active, but wood-destroying fungi, and other issues and problems in the crawl space. And so she was aware that there were issues, okay?

This disclosure statement doesn't list any of that. Now, she may not have known it, but now she does. No changes were made to the disclosure, which she has an obligation to do, as I understand it, and as I read it. And I've read it. And she didn't.

She then got a CL-100 from Lane's on the 28th -- I mean the 18th of July -- I mean, of June. I'm sorry. June the 18th, that also pointed to pretty much exactly the same

moisture content that -- and in her testimony yesterday, she admitted that she talked with the Onions about worrying about using Stark. Again, she did. And that--

Q We're getting off track here.

A No, we're not. You're asking me how I know.

Q Active -- active concealment--

MR. REDMAN: Let him answer the question.

BY MR. KROPSKI:

Q -- is my question--

MR. REDMAN: He's answering it.

THE WITNESS: I am answering it. She talked about that. And called my realtor, is what she said. I'm just repeating what she said. What I heard yesterday. I have not checked with my realtor to find out if all this is true, okay?

And said that she thought it would be awkward if they used Stark. Because they didn't give him some business and were worried that they potentially wouldn't be professional. I take that -- I'm just saying to you, I take that -- and I knew that she had seen the Stark thing, okay? Because she ordered it. She was concerned enough to pick up the phone to call someone -- not Emery Custer, but someone who does do this -- that's what they do. That's part of what Stark does. It's part of what Lane's does. Part of what a lot of people do. And she called one of these

people. And then didn't act at all knowing -- and also knew the Onions didn't follow the recommendations. Didn't follow the recommendations. And she chose not to disclose that.

That, to me, is concealing it. If you don't disclose something that you know and you have an obligation to do that, I would -- I would call that concealing it. That's how I would interpret that. So that is my answer to your question why I would say she concealed it.

BY MR. KROPSKI:

Q Okay.

A Okay.

Q Exhibit 5, can you look at that?

A I can.

Q The inspection.

A We can. All right. Let me put these back because I'm trying my best to keep these in order.

Okay. Exhibit 6 is what you want?

Q Yep.

A Okay. That's the Cornerstone home inspection report?

Q Yes.

A Okay.

Q Exhibit 6 is the Cornerstone home inspection summary.

A Okay.

Q And paragraph seven.
A Okay.
Q Or section seven.
A Okay.
Q Talks about the crawl space.
A Yep.
Q And it mentions 7. -- let's see -- 5. Pardon me, 7.6.
A Okay.
Q Item -- picture one, dampness in crawl space. Picture two, dampness in crawl space. Picture three, missing vapor barrier, damp ground. Picture four, wet debris on top of vapor barrier. Picture five, missing vapor barrier/dead ground. Picture six, no vapor barrier, damp ground. We -- you saw this before putting in the offer; correct?
A Correct.
Q Okay. And you did not have a property inspection performed yourself?
A I did. By Lane's.
Q Okay.
A Who did a CL-100. And came back. And if all this stuff was there, it should of been noted in the CL-100. It was not. It came back. My attorney that I used to close this thing says one of the best -- one of the best CL-100s

he had ever seen. He said, You should be happy. This is a great CL-100.

So all of this stuff, in my mind, this is what we depended on. When we saw this, we wanted a CL-100. If there was moisture down there, the CL-100 should of told us that. And that CL-100 not only didn't tell us that, it told us that it was great.

Q Okay.

A It was great. Eight to 18 percent. Now I've come to learn, to my detriment, that that's probably a big pile of bologna. But that's what it said and that's why we didn't feel like we needed to do anything else.

We had a -- we had a CL-100 report that very clearly said you don't have a problem with moisture under your house.

Whereas a month -- and what Mr. Onions gave us was these repair verifications that said I've taken care of it. And you know what we thought? Oh, man, it's working. It's doing the job it's supposed to do, because Lane's CL-100 says it's great.

So, yes, I had it inspected by a qualified, licensed by the State of South Carolina, I think, to do CL-100s. And as I read the CL-100, there's a lot of laws that you lawyers have written around that, or legislature with lawyers in it, has written around that CL-100. And I

depended upon on its truthfulness and its accuracy. Again, to my detriment.

Q Okay.

A Okay.

MR. OXNER: Easy on the lawyers.

MR. KROPSKI: We're not evil.

BY MR. KROPSKI:

Q And the inspection report, which was provided to you--

A Uh-huh.

Q -- and then the repair verification that said Emery Custer did this -- put the fan under. And you were aware of that; correct?

A Yes, we were.

Q Is there a reason that Laura knew something different than what you knew as far as the fan and the effectiveness of the repairs that were done under the house?

A What Laura knew that we didn't know -- that my wife and I didn't know when we closed this transaction, was that there was a May 16th and a June the 18th CL -- not CL-100, the one done in May was a moisture proposal. A moisture remediation proposal done by Stark.

And then June the 18th, what we got was -- what they got was a CL-100 that showed elevated moisture levels and wood-destroying fungi, wet conditions, standing water.

A Ed doesn't live in Litchfield Plantation. He lives in Georgetown.

Q Right. But he's a realtor and he gets around.

A You have to ask Ed that.

Q Yeah. And you didn't have a survey done on this house, did you?

A Yes, we did.

Q Did it reveal it was in a flood plain?

A It's not in a flood plain.

Q Not in a flood plain. Okay. So you don't even have to have flood insurance?

A I do, but we don't. I do. But you don't. They didn't.

Q I need to make sure I've got everything in exhibit 40, because I feel that maybe I don't. Exhibit 40 is the ABS.

A Uh-huh.

Q When I count it, down at the bottom, it starts with 249 and ends with 257. Is that what you've got?

A 249. Ends at 257.

Q Okay.

A I don't think anything is missing. Let's see.

Q Good. I've got it all.

A Okay.

Q So if you had found out about the -- what we've

all being been calling the first Stark report graph and the encapsulation proposal, you would not have bought this house?

A Probably not. And I say probably only because -- no, I don't think we would have bought this house.

Q Okay. Because one thing it told you, that there were moisture issues. And it revealed that.

A [Nodding.]

Q That's a yes? You've got to--

A Yes.

Q Okay. But he got it wrong too; right? He didn't tell you all the things you needed to do on this house?

A No, he didn't get it wrong. He only was looking at one part of the issue. The engineer came back and said this won't solve the total problem. This is only part of the solution. And I don't like this particular encapsulation method.

Q But if you'd seen it, you probably wouldn't of bought the house?

A Probably not.

Q And if you didn't buy the house, you wouldn't of ever had to deal with anything to do with Lane's?

A That's true.

Q If you had seen -- well, you did see all the inspection -- home inspector's report?

In The Matter Of:

Rory M. Isaac and Kimberly J. Isaac v.
Thomas C. Onions, Jacqueline Onions et al

Jacqueline Onions
March 26, 2019

Holly Hiott O'Quinn, RPR -- LMOC, Inc.
Independent Contractor working in association with
Milligan Court Reporting
O: 843.224.5211 F: 843.971.6509
Email: schedule@courtreportingsc.com

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)))	IN THE COURT OF COMMON PLEAS
Rory M. Isaac and Kimberly J. Isaac, Plaintiffs, vs. Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc., Defendants.	)))))))))))))	CASE NO.: 2018-CP-22-00956 DEPOSITION OF: Jacqueline Onions

DATE: Tuesday, March 26, 2019 and
Wednesday, March 27, 2019

TIME: 3:40 p.m. and
10:40 a.m.

REPORTER: Holly Hiott O'Quinn, RPR

LOCATION: Oxner & Stacy, PA
235 Church Street/Highway 17
Georgetown, SC 29442

HOLLY HIOTT O'QUINN, RPR
Independent Contractor working in association with

Milligan Court Reporting
Telephone(843)224-5211 Fax(843)971-6509
Email: Schedule@courtreportingsc.com

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A P P E A R A N C E S

For Plaintiffs: R. Isaac K. Isaac	Bellamy, Rutenberg, Copeland, Epps Gravely & Bowers, PA By: George W. Redman, III, Esq. 1000 29th Avenue North (29577) Post Office Box 357 Myrtle Beach, SC 29578-0357 (843) 448-2400
For Defendants: T. Onions J. Onions	Oxner & Stacy, PA By: Harry A. Oxner, Esq. 235 Church Street/Highway 17 Post Office Box 481 Georgetown, SC 29442 (843) 527-8020
For Defendant: Kopchynski	Earhart Overstreet, Attorneys at Law By: Steven R. Kropski, Esq. 878 Whipple Road, Suite 200 Post Office Box 22528 Mt. Pleasant, SC 29464 (843) 972-9400
For Defendant: Lane's	Kernodle Root & Coleman By: Trent M. Kernodle, Esq. 914 Folly Road, Suite 2 Post Office Box 13897 Charleston, SC 29422-3897 (843) 795-7800
Also Present:	Rory Isaac Kimberly Isaac Thomas Onions

approvals that were sought to do that, that was all your husband?

A All my husband, yes.

Q Okay. The -- when you went to sell the property and you were going to hire Mrs. Kopchynski, were you involved in filling out the disclosure, South Carolina disclosure form, which is Exhibit 4 and 15? Were you involved in that?

A I was sitting there. But honestly, I left that up to Tim. We have sold and bought so many homes that I knew he knew what to do, and I just left that in his hands.

Q Okay. And all the checkmarks are his?

A Yes.

Q Okay. And you didn't read any of the questions and check behind him to see if he got it right?

A No, because he's my husband. I trust him.

Q Okay. And the signature on this page and the initials on all the initial spaces, those are yours?

A Yes.

Q Okay. So all the -- have you ever filled one out before, South Carolina Residential Disclosure Form?

A Well, my husband has. I've just sat next to him while he's done it.

A It seemed to go well. But...

Q What did he do?

A I don't know. I wasn't with him. I didn't follow him.

Q Okay. What did he say when he introduced himself?

A That he is from Lane's and he is the manager who comes out and services and does the CL-100s. And we walked around the house and made small chatter, and that was it.

Q So you walked around the house, inside the house with him?

A Well, I was moving my dogs. I wasn't following him, I just left him alone to do his work. So we just kind of like moved in the same area and I'm grabbing my -- I have a big Golden Retriever who loves to jump on you. So...

Q Okay. Did you husband speak -- your husband was home at that time, right?

A Yes.

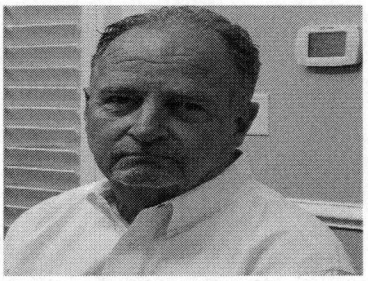
Q Did he speak with Joseph at all?

A I think just to introduce himself again. And probably when he left, we both spoke with him. And I'm trying to remember the conversation, to be honest with you.

In The Matter Of:

Rory M. Isaac and Kimberly J. Isaac v.
Thomas C. Onions, Jacqueline Onions et al

Thomas C. Onions
March 26, 2019



Holly Hiott O'Quinn, RPR -- LMOC, Inc.
Independent Contractor working in association with
Milligan Court Reporting
O: 843.224.5211 F: 843.971.6509
Email: schedule@courtreportingsc.com

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	) IN THE COURT OF COMMON PLEAS))	
Rory M. Isaac and Kimberly J. Isaac, Plaintiffs, vs. Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc., Defendants.	) CASE NO.: 2018-CP-22-00956)) DEPOSITION OF:) Thomas C. Onions)))))))))	

DATE: Tuesday, March 26, 2019

TIME: 9:01 a.m.

REPORTER: Holly Hiott O'Quinn, RPR

LOCATION: Oxner & Stacy, PA
235 Church Street/Highway 17
Georgetown, SC 29442

HOLLY HIOTT O'QUINN, RPR
Independent Contractor working in association with

Milligan Court Reporting
Telephone(843)224-5211 Fax(843)971-6509
Email: Schedule@courtreportingsc.com

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A P P E A R A N C E S

For Plaintiffs: R. Isaac K. Isaac	Bellamy, Rutenberg, Copeland, Epps Gravely & Bowers, PA By: George W. Redman, III, Esq. 1000 29th Avenue North (29577) Post Office Box 357 Myrtle Beach, SC 29578-0357 (843) 448-2400
For Defendants: T. Onions J. Onions	Oxner & Stacy, PA By: Harry A. Oxner, Esq. 235 Church Street/Highway 17 Post Office Box 481 Georgetown, SC 29442 (843) 527-8020
For Defendant: Kopchynski	Earhart Overstreet, Attorneys at Law By: Steven R. Kropski, Esq. 878 Whipple Road, Suite 200 Post Office Box 22528 Mt. Pleasant, SC 29464 (843) 972-9400
For Defendant: Lane's	Kernodle Root & Coleman By: Trent M. Kernodle, Esq. 914 Folly Road, Suite 2 Post Office Box 13897 Charleston, SC 29422-3897 (843) 795-7800
Also Present:	Rory Isaac Kimberly Isaac Jacqueline Onions

A I always loved the house when it was an office, when it was the real estate office. And it was smaller than 84 Spreading Oak. And it was at the time bank owned, so I was able to purchase it from the bank and then hire an engineering company to come in and do all the necessary renovations or whatever it needed.

Q Okay. So if I'm getting the time line right, the time that you bought the -- can I just call it the Live Oak property? Is that fair?

A Sure.

Q When you bought that is when you started with the board of governors with the plantation? Or were you already on the board?

A It might have been around that -- probably was around that time. I don't recall exactly.

Q Were you familiar with the house or the structure when you were on the board, or how did you first become familiar with it?

A The house being 24 Avenue of Live Oaks?

Q Uh-huh.

A Oh, I was familiar with it from the time we first moved in. It was the real estate office where -- that was always there.

Q So you were familiar with it since you moved into the plantation in 2007, 2008?

about any problems in the crawl space other than the beam that needed to be installed?

A No, not at all.

Q Okay. And the beam that was being supplemented, it wasn't being supplemented because it had weakened?

A No. No, not at all.

Q Okay. And did the property at 24 Avenue of Live Oaks have any drainage issues while you lived there?

A The house never had any drainage issues whatsoever. The land around the house, we started having some drainage issues, if you want to call that, when we had a heavy -- when we had either a hurricane or a significant heavy rain event. And so in response to that, I installed a pump out by the drainage ditch on the plantation property.

Q And the drainage issues happened. How many occurrences did you have where drainage was an issue?

A We had probably two occurrences where the driveway flooded because the drainage ditch overflowed. And one was a hurricane. One was just like Nikki Haley's hundred-year rain, or whatever she called it. And that is what promoted me to correct the issue and put in a pump.

Q Okay. So in the four years, you had two occurrences where the driveway flooded. Is that what your testimony is?

A Prior to my putting in the pump.

Q Okay.

A That is what promoted me to put in the pump. Then after I put in the pump, we had another rain issue, the pump pumped it out. So it worked. It corrected the problem.

Q Okay. So going back to the -- when were the pumps installed approximately? Was it after Hurricane Florence or Hurricane --

A Matthew, I think.

Q Matthew. Was that -- that would have been October of 2016?

A I don't know the exact date.

Q But it was after Matthew?

A Yes.

Q Okay. And that's -- how long after Matthew did you -- were the pumps installed?

A Probably immediately after.

Q Within a month or two?

A Likely.

Q Okay. And there were two pumps installed?

A I put the one in first out by Tuckers Road.

And then I had a smaller pump in the garage. And I decided to dig a sump hole and drop it in behind the garage.

Q That was later?

A It probably was right around the same time. But I occasionally would -- you know, again, in addition to the water in the driveway by Tuckers Road, I would get some standing water behind the garage. And it's a mosquito haven. So I said, well, I'm going to put a pump in here and get rid of the standing water there after a -- with the flood-type-thing event or heavy rain event.

Q Okay. And so let's go back to before the pumps were installed in that time frame. There were two occasions where the driveway flooded. And I assume there would have been standing water behind the garage area that you were talking about also. It was the same every time?

A At some point and time, I noticed the water behind the garage probably right after Matthew when I was putting the other pump in. And I said, well, I'll drop a pump in here, because it wasn't much but it was enough that I figured it was a good place for the pump.

Q While we're looking at water on the property, might as well put one on that side also?

A Right.

Q Okay. Now, it's your testimony that that water was in the driveway and in the yards but that it didn't go under the house?

A Absolutely correct.

Q Okay. Did you go under the house and look at it and see that it was dry under the house? Or how did you know that?

A I did not crawl under the house, but the water didn't come up to the house.

Q Okay.

A On the left side of the house, the ground was always soggy because the ground was low. It was always just damp on the left side as you faced the house. I mean, it never prevented you from cutting the lawn. You didn't sink into it or anything. It's just the ground was always damp. But that's -- we didn't have water getting near the house. It just flooded the end of the driveway by Tuckers Road and the ditch that's outside the property on the plantation.

Q Okay. When you looked at it, the water physically stopped before it got to the house; is that what you're saying?

A Yes.

Q Okay. But the ground over there was always

CL then. And then eventually it passed another CL that there was no moisture problem.

Q Okay. Now, you said Emery Custer said he can do everything on that list. Is that what you said? I don't want to repeat what you said wrong.

A Yes.

Q Okay. What list were you talking about?

A The list of recommendations made by the home inspector, the Cornerstone.

Q Okay. And is Mr. Custer a crawl space specialty contractor?

A He's a licensed state and Georgetown County general contractor. That's all I know.

Q Okay. Did you show him the Stark report?

A No. I showed him the home inspection report.

Q Okay. Did he come to a conclusion as to what caused the issues in the crawl space?

MR. KROPSKI: Objection to the form.

THE WITNESS: The debris being under there that he had to clean out. I don't know. The -- part of the moisture barrier not being present, so he needed to replace it. I don't know if he formed a conclusion. I don't know.

BY MR. REDMAN:

Q Okay. And do you remember how much Emery

A This is May 15th.

Q Okay. That's right. Okay. So it's right close in time. Thank you. So maybe it was so close in time that you didn't have Stark's report at the time you received this e-mail?

A That's right.

Q Okay. So but at no time did you provide the Coles with the Stark report after you got it?

A No, I had no communication with the Coles.

Q Do you know whether anybody else provided the Coles with the Stark report?

A I have no knowledge of that.

Q Okay.

MR. REDMAN: Exhibit 9.

(WHEREUPON, Plaintiffs' Exhibit No. 9 was marked for identification only.)

BY MR. REDMAN:

Q Here is an e-mail where your realtor is forwarding a repair verification form. And I will assert to you that Exhibit 9 has three documents to it. One of them, the first page, was pulled from your realtor's documents, Kopchynski 23. And the second two were pulled from the documents you provided, Onions 71 and Onions 72. Do you see that?

A Yes.

Q Did your realtor provide a list of repairs by -- a list of repairs made by Emery Custer?

A To?

Q Did she provide it to the Coles?

A Oh, I don't know.

Q Okay. Look at the second page of Exhibit 9. You can see it's marked Exhibit F at the top, Emery Custer. And the bottom it says Onions Exhibit 71. Do you see that?

A Yes.

Q Have you ever seen that before?

A Yes.

Q What is it?

A It's a list of the work that was completed in response to the Cornerstone inspection.

Q Okay. And who generated this? Who typed it up?

A I think actually, if I remember, Emery handwrote it out and then I typed it up.

Q Okay. So you typed this to show what Emery had written in his own handwriting that he had done?

A Yes.

Q Did you write exactly what he wrote, or does this as per home inspection report, is that how Emery speaks?

A No. I know I probably paraphrased it. I mean, he probably put down took care of electrical box covers in the attic.

Q Okay.

A Took care of the floor bracket on the toilet. And I paraphrased all that.

Q And this Number 8, installed new crawl space fan, number one, beneath residence to provide air flow and remove any dampness within the crawl space. You typed that up, right?

A Yes.

Q Do you remember what he wrote?

A Probably -- probably took care of the fan. I don't know. Installed the fan.

Q Okay. This fan, you've seen the fan that was put under there, right?

A I don't think I've actually -- I think I saw it when it was near the access door.

Q It's just a normal utility fan; isn't it?

A I didn't really get a good look. I just saw there was a fan -- there was one near the utility door. I don't know if it's still there. I think it was moved.

Q Do you know where he bought it?

A No.

difference in money. But it's not like he quoted me a price. I just told him do whatever needs to be done. When he was done, he gave me a bill. I paid it.

BY MR. REDMAN:

Q Okay. Did he see -- did you hand him the Cornerstone report and say, here, address these things? Or did you give him a list or did you give him the realtor's -- what did he get?

A I don't know. He somehow got a list of what to do, obviously, whether it was the Cornerstone report -- probably the Corner -- I don't know, I don't remember.

Q Okay. And we can talk to Emery on Thursday and maybe he'll remember. Okay.

Did Emery specifically tell you that the work he did would fix the cause of all the problems identified in the Cornerstone report?

A I'm sure Emery just did the best job that he could to get things done. That's what he does. He's just a worker. He's a drone. He -- you give him a job, he does the job. He does it well.

Q Fair enough. Thank you.

MR. REDMAN: Okay. I think we're up to Number 10, which is a big one.

numeral IX -- below Roman numeral IX.

A Uh-huh.

Q Okay. Do you recall adding that change to the disclosure report?

A See repair verification?

Q Uh-huh.

A Yes, that we repaired everything that was on the home inspection.

Q And that was a repair verification that we talked about earlier that you typed up for Emery Custer, right?

A Yes.

Q There's no mention of the Stark report. There's no mention of issues in the Lane's report, Lane's number one report; is that correct?

A Correct. Lane's report was there for a CL-100. Said it passed. That was our concern. It needs to pass.

Q I understand you say that he said it passed, but I'm talking about the report.

A So am I.

Q So the report which said -- had two yes marks, remember talking about that?

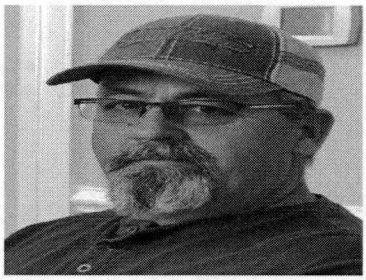
A The Lane's report?

Q Yes. The Lane's report with the yes

In The Matter Of:

Rory M. Isaac and Kimberly J. Isaac v.
Thomas C. Onions, Jacqueline Onions et al

Emery Custer
March 28, 2019



Michele Darling Neville, RPR, ACR
Independent Contractor working in association with
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Email: schedule@courtreportingsc.com

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STATE OF SOUTH CAROLINA COUNTY OF GEORGETOWN	)IN THE COURT OF COMMON)PLEAS)FIFTEENTH JUDICIAL CIRCUIT
	)CASE NO. 2018-CP-22-00956
RORY M. ISAAC AND KIMBERLY J. ISAAC, PLAINTIFFS, vs. THOMAS C. ONIONS, JACQUELINE ONIONS, LAURA KOPCHYNSKI AND LANE'S PROFESSIONAL PEST ELIMINATION, INC., DEFENDANTS.	))DEPOSITION OF:)EMERY CUSTER)))))

DATE: Thursday, March 28, 2019

TIME: 10:08 a.m.

LOCATION: Oxner & Stacy Law Firm
235 Church Street
Georgetown, South Carolina 29442

REPORTER: Michele Darling Neville, RPR

Michele Darling Neville, RPR
Independent Contractor working in
association with Milligan Court Reporting
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A P P E A R A N C E S

For Plaintiffs:	Bellamy, Rutenberg, Copeland, Epps, Gravely & Bower, PA By: George W. Redman, III, Esquire 1000 29th Avenue North Myrtle Beach, South Carolina 29578 Email: GRedman@BellamyLaw.com
For Defendants: Thomas C. Onions & Jacqueline Onions	Oxner & Stacy Law Firm By: Harry A. Oxner, Esquire 235 Church Street Georgetown, South Carolina 29442 Email: HOXNER@OXNERANDSTACY.COM
For Defendant: Laura Kopchynski	Earhart, Overstreet, LLC By: Steve Kropski, Esquire 878 Whipple Road Mount Pleasant, South Carolina 29464 Email: steve@earhartoverstreet.com.
For Defendant: Lane's Professional Pest Elimination, Inc.	Kernodle, Root & Coleman By: Trent Kernodle, Esquire 914 Folly Road Charleston, South Carolina 29412 Email: TKERNODLE@KERNODLELAW.COM.
Also Present:	Rory M. Isaac Kimberly J. Isaac

Q 2015. What caused you to -- what happened then?
A That's when we had the crash of the economy, I guess you'd say.
Q Okay. I think the crash happened a little bit before 2015 but--
A Yeah, it was like a year or two before.
Q Okay.
A Yes.
Q Okay. So the crash and business was not very good for a little while?
A No, not in the mountains.
Q Okay. So I should of asked where in Virginia you were working. It's a big state.
A In the Shenandoah Valley.
Q Is that Southwestern Virginia or is it--
A No, northeastern. Near Winchester, Harrisonburg.
Q Okay. That's where the Shenandoah Valley is?
A Yes, sir, it is the Shenandoah Valley.
Q Okay. And is that more of a rural area or--
A Yes. Oh, my, yes. Rural. Country. Mountains.
Q Okay. And so most of the -- what newspaper were you advertising in?
A The Northern Virginia Daily. And there was one in Manassas, Virginia I can't remember.
Q Okay. And that generated enough business to

A No, sir. I think the fan was put in a week or so after I cleaned it up.

Q Okay. So the first time you went out there, you did the cleanup and replaced the plastic and hung--

A Insulation.

Q Okay. Did you hang new insulation or you took the insulation that was there and pushed it back up and hung it?

A I pushed some back up and there was four or five pieces of new insulation.

Q How did you decide whether to get new insulation or push it back up?

A Because it was missing.

Q Okay. Wherever it was missing, you got new?

A Yes.

Q Okay. And wherever it was hanging, you--

A Just pushed it back up with rods.

Q Okay. And how do you secure it?

A Insulation rods. Rods of metal. Flexible like coat hangers. You just stick them up in there to the board. They gouge into the wood on each side.

Q Okay. How wide are the -- what would you call them, the trusses on the bottom or--

A I think there was two foot. Sixteen inches or two foot. I can't remember for sure.

Q And you would get little pieces of metal that are

about that wide and poke them in the--

A Well, they sell them for that purpose, yes.

Q Okay. And were -- okay. When you were there replacing the plastic and handling the insulation, did you notice any conditions in the crawl space?

A No, sir.

Q Okay. If it was wet or dry, you didn't notice?

A It wasn't wet. I mean, I would of noticed that, I think.

Q Okay. Was it damp?

A No, sir.

Q Humid?

A No. Just no airflow.

Q Just no airflow. Okay. Did you notice any discoloration of any wood?

A No, sir.

Q Okay. Did you notice any spots of any type of anything on any wood anywhere?

A No, sir.

Q Okay. Was there any discoloration of the wood where you pushed the insulation back up?

A No, sir.

Q Did you make a note of where you pushed the insulation back up?

A No, sir.

Q Okay. Did you see any reports that said there were problem areas in the crawl space?

A No, sir.

Q You're sure you didn't see any reports?

A No, sir, I'm positive.

Q Okay. Okay. And so those three things were done. Okay. You don't have insulation here on the list. But it would be -- it would be on the same time you put plastic?

A Yes, sir.

Q So the first -- under the work done without Thomas Onions, on exhibit 36, you did the replaced missing pieces of plastic under the house, and then the third item, removed small pieces of duct from under the house left by previously people?

A Yes.

Q And the insulation work all on the same day?

A Yes. I forgot to list the insulation.

Q Okay. No problem. And that's it? It took one day?

A No, sir. I went in -- if I remember correctly, I went and I did the insulation. And then I went back with plastic because I didn't have plastic with me.

Q Okay. So over two days?

A Yeah. Three days, actually. The fan was the third day.

A It's supposed to be.

Q Yeah. We'll all agree that that covers you. And then the next page, page ten, is a South Carolina license you were talking about?

A Yes.

Q And this says right here, South Carolina Residential Builders Commission. This card does not allow this individual to build a home/addition; right?

A Yes.

Q And then next it says: Issues a specialty contractor registration to Emery Custer.

A Yes.

Q And the word only, in all capital, only the following classifications--

A Yes.

Q -- of; and then that's the three that you listed earlier?

A Yes, sir. I thought it was four.

Q Well, one of them is. One's vinyl and aluminum siding and carpentry and roofing.

A Yes.

Q And you're licensed to do that work, and it seems to be the state has licensed you -- it emphasizes only there; right?

A Yes.

Q Okay. And it specifically points out that you're not allowed to -- under this license, to build a home or build an addition to the home; right?

A No, sir. No. Because if I do a complete addition, I have to have a different license.

Q Okay. Understood.

A Yes.

Q Okay. And the bottom -- and the middle -- puts the limit on this up to -- work up to 5,000.

A Yes.

Q And if you want more, you have to put a bond--

A Yes, sir.

Q Okay. Have you ever put a bond up?

A Never did a job over 5,000 since I been here.

Q Okay.

A My intentions when I come here was to basically do just small stuff.

Q Okay. Handyman-type work?

A Yes. Yeah, because it was just basically tired of everything else.

Q What do you mean by everything else?

A In Virginia I did additions and stuff. And it just -- you just get burned out.

Q A lot of the administrative stuff that goes along with it or--

A No, sir.

MR. KROPSKI: Object to the form.

BY MR. REDMAN:

Q Do you -- have you heard of crawl space specialty companies?

A I've seen the advertisement. I've not heard anything about them, no.

Q Okay. So you don't know whether that's just a name people give themselves or a area of work or a specific license?

A I think they specialize in crawl spaces. I want to say encapsulations is what I've seen.

MR. OXNER: Can we take a break here--

THE WITNESS: I think--

MR. OXNER: I'm sorry.

BY MR. REDMAN:

Q Yeah, let's have you finish this.

A I think there's one pickup truck riding around and his it on his tailgate. And I think that's the biggest advertisement I've seen for it.

Q Crawl space specialty?

A I think so. It's on the tailgate of his pickup truck.

Q Okay. And your understanding of a crawl space specialist would be he does a lot of work in the crawl

space, and is specifically to do what?

A I don't know what they do. I mean, I assume they do anything that's involved with the crawl space. Probably the insulation and stuff. Plastic. I would assume would be their specialty.

Q And you've heard of encapsulation--

A Yes.

Q Have you ever--

A I've actually seen encapsulations.

Q Have you ever done work on one or--

A No, sir. Been in one; did fix a leaky plumbing pipe.

Q Okay.

A In Tuckers Woods.

Q Was that a full encapsulation? Partial encapsulation?

A I don't know. I'm assuming it was full. There was a dehumidifier under there.

Q Okay.

A So I can assume it was full. I can't say it was.

Q Okay. Any other experience with an encapsulation system other than that?

A No, sir.

Q Okay.

MR. OXNER: Take a break?

house. We talked about that; right?

A Yes.

Q Okay. Would this have been all of the work that you did, you know, for the couple weeks prior to May 24th?

A Yeah.

Q Okay.

A Yes.

Q And sometimes do you do small tasks and you've got a list and maybe one or two small tasks might be left out but--

A Possibly, yes.

Q Okay. But this generally--

A Yeah, I wouldn't -- yes.

Q Okay. And would this have been the only paperwork that you would of generated?

A Yes, for that, yes. I mean, there -- I don't see where it would of required anything else.

Q Okay. And -- all right. Let me move on to another document.

[Plaintiff's Exhibit Number 38 was marked for identification.]

BY MR. REDMAN:

Q Exhibit 38. I'm going to hand that to you and tell me if you've ever seen that before.

A I assume that's when I showed up here, yes.

Q What does that mean, when you showed up here?
A He showed it to me when I come in the door.
Q And Mr. Oxner?
A Yes, Mr. Oxner.
Q And he showed it to you today?
A Yes.
Q And when did you get here to Mr. Oxner's office today?
A Ten till ten. Ten minutes early.
Q Okay. And you had a discussion with him about this document?
A Yes. He asked me if I had seen it.
Q Okay. Did he ask you anything else?
A No, sir. Oh, he asked me if I recognized the stuff on the list.
Q Okay. Anything else he asked you?
A No, that's it.
Q Okay. And -- well, let me ask you -- again, you had not -- did you just say you had not seen that before--
A Not until today.
Q Today is the first day you've seen this document?
A Yes, sir.
Q Okay. And what was your reaction when you saw this for the first time today?
A The first one I do not remember doing. Can't say

I didn't do it but--

Q I'm general -- I'm saying -- I'm not looking at any specific item on here.

A Oh.

Q What was your reaction when you saw--

A There was no reaction.

Q This is your letterhead or your name on the top?

A No, this is not my -- it's my name, but it's not my letterhead. I didn't type this up.

Q Okay.

A It's probably spelled too correct.

Q Okay. So did it strike you as peculiar why a lawyer asked you as soon as you get in whether you've seen this document before?

A No, sir.

Q It didn't strike you one way or the other? Okay. But you haven't seen it--

A No.

Q -- and you were asked to go through it item by item to see if you recall--

A Yes.

Q -- this scope of work?

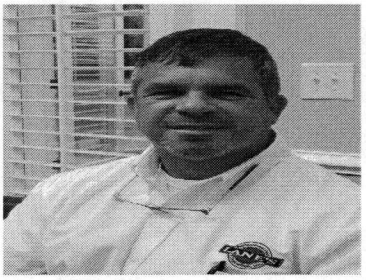
A Yes.

Q Okay. And let's do that -- go through this task right now.

In The Matter Of:

Rory M. Isaac and Kimberly J. Isaac v.
Thomas C. Onions, Jacqueline Onions et al

Joseph Sheheen
June 12, 2019



Holly Hiott O'Quinn, RPR -- LMOC, Inc.
Independent Contractor working in association with
Milligan Court Reporting
O: 843.224.5211 F: 843.971.6509
Email: schedule@courtreportingsc.com

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GEORGETOWN)

Rory M. Isaac and Kimberly J. Isaac,) CASE NO.: 2018-CP-22-00956
)
Plaintiffs,) DEPOSITION OF:
) Joseph Sheheen
vs.)
)
Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.,)
)
Defendants.)

DATE: Wednesday, June 12, 2019

TIME: 10:03 a.m.

REPORTER: Holly Hiott O'Quinn, RPR

LOCATION: Oxner & Stacy, PA
235 Church Street/Highway 17
Georgetown, SC 29442

HOLLY HIOTT O'QUINN, RPR
Independent Contractor working in association with

Milligan Court Reporting
Telephone(843)224-5211 Fax(843)971-6509
Email: Schedule@courtreportingsc.com

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A P P E A R A N C E S

For Plaintiffs: R. Isaac K. Isaac	Bellamy, Rutenberg, Copeland, Epps Gravely & Bowers, PA By: George W. Redman, III, Esq. 1000 29th Avenue North (29577) Post Office Box 357 Myrtle Beach, SC 29578-0357 (843) 448-2400
VIA TELEPHONE For Defendant: Kopchynski	Earhart Overstreet, Attorneys at Law By: Steven R. Kropski, Esq. 878 Whipple Road, Suite 200 Post Office Box 22528 Mt. Pleasant, SC 29464 (843) 972-9400
For Defendant: Lane's	Kernodle Root & Coleman By: Stephen M. Kozick, Esq. 914 Folly Road, Suite 2 Post Office Box 13897 Charleston, SC 29422-3897 (843) 795-7800
Also Present:	Rory Isaac Kimberly Isaac Michael Coffey

A Yes.
Q Okay. And there's no date on the front page?
A No.
Q It says it's for the Onionses at 32 Avenue Of Live Oaks, correct?
A Correct.
Q And then the second page has got the 32 Avenue Of Live Oaks crossed out and the correct address on there, correct?
A Correct.
Q This is an office sheet, it looks like, page 11.
A Yes, it is.
Q Okay. And it looks like it was requesting an estimate for Jim and Jackie Onions.
A Yes.
Q Okay. Did you know the Onionses?
A I don't -- I didn't know them until I went in June.
Q Okay.
A I may have heard of them, because we did do their pest service.
Q How many times did you do their pest service?
A To my recollection, only once.
Q Okay. And to your knowledge, Lane's produced

all the records of -- there would be a record every time somebody goes out there to apply the pesticide, correct?

A Yes.

Q And to your knowledge, Lane's has produced all of the records related to this property?

A Produced for?

Q And sent over to us in this lawsuit.

A I don't know.

Q Okay. We can ask Mike in a few minutes if -- what he knows about that too.

A Okay.

Q Okay. So do you know a Jim Onions?

A Would that be the husband?

Q I'm asking --

A Jim Onions? I don't know.

Q So you doesn't know if Jim is the right name or not?

A I do not.

Q Okay. And the first and third -- I'll represent to you this is the order the papers were given to us. So it looks like the first and the last page go together, and the second page is something the office generated. Would that be reasonable to --

A Yes.

Q Okay. So you're familiar with this waiver form?

A Yes.

Q Okay. And does that change your testimony as far as number 1? If you're going to do just a portion of a property, is there a form required by the state that you get filled out?

A Well, we're treating an addition after the house is already built.

Q Well, that's not what number 1 says; is it? It says the property.

A Right.

Q It doesn't say --

A Which is misleading.

Q Correct. And so if you were just going to treat a portion of the property, a waiver form should have been obtained, correct?

MR. KOZICK: Object to the form.

THE WITNESS: Not to my knowledge.

BY MR. REDMAN:

Q Okay. So treating portion -- a portion of the property is a standard treatment or not?

A If we're treating an addition on an existing house, yes.

Q Okay. That's not my question. I understand

A Yes.

Q Okay. And at the top of Exhibit 58, it says that this is -- it references rules and regulations for the enforcement of the South Carolina Pesticide Control Act, Clemson University Department of Pesticide Regulation; is that correct?

A That's what it says.

Q Okay. And at the bottom here of the signature right here, can you look at that and see who is supposed to sign it?

A Yes, the property owner.

Q Okay. So it's not the technician?

A Right.

Q The property owner has to waive the standard?

A Well, the technician does sign the top of it.

Q Sure.

A So I was -- yes.

Q Okay. But the waiver comes from -- is this to protect the homeowners so that they know that something nonstandard is being done or requested?

A Yes.

Q Okay. And that's -- the purpose of this form is so that what you're doing as far as applying pesticides won't be misleading, correct?

A Correct.

A Yeah.

Q Okay. And is this your drawing for the Onions residence at 24 Avenue Of Live Oaks?

A Yes.

Q Okay. And moisture conditions -- and this wasn't provided -- this isn't part of the report that's provided; isn't that correct?

A To the person that requested it?

Q Yes.

A No, it was not.

Q Okay. So on this, it shows an outline of the house. And under moisture conditions, it says floor joist throughout crawl 20 to 25 percent.

A Right.

Q Okay. Is there anywhere on this graph where it shows that condition exists?

A That shows where it is?

Q Yeah, where that condition exists.

A Right. No.

Q Okay. And how many samples did you take in the crawlspace that day?

A Usually --

Q And by samples, I mean -- that was poorly stated.

A Readings.

Q How many moisture meter readings did you take on that date for that inspection?

A I don't usually count. But usually it's -- like I said, it's around ten. Sometimes it might be more than that.

Q Or a house -- this is a house that's a little bigger than normal or about average?

A Yeah, I mean, it could be on the bigger side.

Q So you think it, on average, would be --

A It's not a huge crawlspace, but --

Q Right. So do you have any idea how many moisture readings you took?

A I don't count them. About -- I mean, like I said, 10 or 15 throughout.

Q Sure. But there's no written record of that anywhere?

A No.

Q It's certainly not on this page; is it?

A Yeah, I don't usually do that --

Q Don't do what?

A -- on my report.

Q You don't document where you find moisture?

A No, I do, but the quantity I don't.

Q Okay. So where was the excessive -- the 20 to 25 percent is excessive moisture, right?

A Yes, it's considered excessive moisture.
Q And we noted that it could be an issue and that somebody might call and say, what are you talking about?
A (Witness nods head.)
Q So where in this crawlspace was the excessive moisture condition?
A It was all throughout the whole crawlspace.
Q Just everywhere you went --
A Uh-huh.
Q -- it was an even 20 to 25 percent in the wood?
A Yeah, just random, you know, throughout the entire crawlspace.
Q Everywhere?
A (Witness nods head.)
Q Okay. And what about drill holes, where were those?
A I don't recall.
Q And this graph doesn't show?
A And again, I don't put that on the graph.
Q Okay.
A On the report, you know, on my work.
Q Okay. Did you go back and look at company records to see what Lane's had done for this residence

she did.
BY MR. REDMAN:
Q You don't know how number 1 came to say what it says on Exhibit 55; do you?
A No.
Q Okay. So --
A I mean, if I can -- I think that it's, like I said before, the pretreat. And I don't -- that's just what I think.
Q Okay. And we have deduced that indicating that this is misleading --
A Right.
MR. KOZICK: Object to the form.
BY MR. REDMAN:
Q So the moisture readings of 20 to 25 percent, was that accurate that day?
A Yes.
Q The moisture reader was working?
A Yes.
Q Do you have to calibrate those things?
A We don't.
Q Okay. Are you supposed to calibrate those things?
A It resets at zero.
Q Okay.

MR. KOZICK: Object to the form.

BY MR. REDMAN:

Q To your understanding.

A I would surmise that that means we only do the pest.

Q Okay. And that was the first time you had done the pest for that property, right?

A It's the first time I did.

Q Okay.

A The -- personally.

Q If somebody else did it, you wouldn't know?

A Well, I wasn't out there to do the initial treatment, so I assumed that I wasn't -- it wasn't the first time we were doing it.

Q But we went through all the records here today and we didn't see any other records of pest control.

A Of pest?

Q Yes.

A No, I didn't see any other records of pest, but we would have those.

Q Okay. And they might exist, it might be that we just didn't get them?

A Well, that's what I'm -- because I didn't get this together.

Q Right. So that's what you're surmising is there are other records out there that we don't have yet perhaps?

A Perhaps.

Q That would be something to ask whoever went and gathered the documents, right?

A Right.

Q Okay. And is there anything about Exhibit 55 that we didn't cover?

A Not to my knowledge.

(WHEREUPON, Plaintiff's Exhibit No. 56 was marked for identification only.)

BY MR. REDMAN:

Q Let's move on. Go next to Exhibit 56. And this is Exhibit -- the first two pages are what we looked at after the e-mail on Exhibit 17 earlier today. Do you remember that? The first three pages were an e-mail, and then the last two pages were the CL100 from July?

A Yes.

Q Okay. So it's the same but it's got a few more pages to it. And it's got Lane's Pest number 22 through 28, all the pages are in there. And this is Exhibit 56, right?

A Fifty-six.

CL100. I don't know what happens after I leave there and do my report.

Q Okay.

A You know, when I say that, I mean between the parties that are involved in it.

Q In it?

A In the sell.

Q Of the house?

A Of the house.

Q And you said when you -- the first time you were there, you know that Jackie Onion, Ms. Onions, was there but you don't know if anybody else was there?

A Right.

Q And you don't recall what you talked about in June?

A Actually, I'm getting -- now that you say it that way, the husband was there on one of the inspections. And I guess he was there on the first one, because I discussed the moisture and the fan.

Q Okay. Was a fan there?

A I do not remember a fan there.

Q Okay. I'm having trouble understanding.

A Okay.

Q You said earlier you didn't believe the fan was there in June. And you just said that Tim was

there for the first inspection in June and you talked about the moisture and the fan.

A Right. I mean, the -- discussed a fan with him, about installing a fan.

Q Okay. Tell me what -- did you talk to -- who was there during that discussion?

A I guess it was, from my memory, Mr. and Mrs. Onions.

Q Okay. Was there two people there? Was the realtor there?

A And I'm kind of -- excuse me, I'm getting the two mixed up a little bit.

Q Okay.

A But, yes, in June they were both there.

Q Just two people? Was there a --

A From what I remember, it was just Mr. and Mrs. Onions.

Q Okay. Do you ever remember more than two people being there?

A I don't. I would say there was -- I mean, to my recollection, there was not. It was just the two.

Q On both times?

A To my recollection.

Q You have to say yes or no. Were both of them there on both inspections in June and July?

nature of it.

Q What would the summertime typical range be?

A I'd say from 12 -- depends on the crawlspace, 12 to on up, 28 percent and above.

Q Well, above 20 isn't -- we talked about that. That's going to be an issue for somebody, right, excessive?

A Well, yeah, not as much of an issue as it would be if it was 28 and above.

Q Understood. Understood. Understood.

A Because -- well, we've already discussed that. It's inactive.

Q So 12 to 20, we're in the normal summertime range for Georgetown?

MR. KROPSKI: Object to the form.

THE WITNESS: I don't categorize moisture readings by region.

BY MR. REDMAN:

Q Okay. Typical summertime readings where you work in the summer?

A Typical summertime moisture readings, like I said, probably I would say it's going to usually be above 12 and to, you know, 25, 26. Sometimes in a bad situation, it could be more than that. I've seen -- I've seen 28, 40, 60. I mean, that's not as common.

Q Right. And I'm talking about a house without excessive moisture from any of the issues that can create it. Just a house that's doing fine out there, a normal --

A With no apparent --

Q Yeah.

MR. KOZICK: Object to the form.

BY MR. REDMAN:

Q Just a normal range for a house that doesn't have any issues.

A You know, I've never --

Q If you have excessive moisture, that's an issue. Is that an issue that needs correcting?

A When you say excessive moisture, are you talking about readings that are above 20 percent but below 28?

Q That's what the form describes as excessive, 20 and above, right?

A Right.

Q And if you have 20 and above, is that a situation that needs correction?

A Yes.

Q Okay. But summertime, usually above 12?

A If you're talking about a house with no encapsulation, just a regular crawlspace with a regular

vapor barrier, you know, you could find, I'm sure, some that are around 12.

Q Okay. All right.

A Some, you know -- like I said, I mean, it -- it's not that easy for me to --

Q Generalize?

A To tell you, to give you, you know, a certain range in the summertime, because it can go from -- it can go off the charts.

Q Understood. Let's look at 56. And this is the July report. And Exhibit 56 we've already talked about is all related to the July report, correct?

A Yes.

Q Okay. And this one --

THE WITNESS: Can I get some water? Time for some more water.

MR. REDMAN: Sure. Do you want to take a short break?

THE WITNESS: Yeah, that would be good.

(Off the record 1:15 p.m.)

(On the record 1:21 p.m.)

BY MR. REDMAN:

Q All right. Joseph, we were talking about Exhibit 56. Have you had a chance to look through Exhibit 56?

Q Okay. And that's at Friday at 5:00. Friday the 13th at 5:00?

A Right.

Q Okay. And do you recall when you got off the phone with Wendy in relation to her signing this form and sending it via e-mail?

A No, I do not.

Q Okay. And you didn't see it before she signed it and sent it off?

A No.

Q Okay. When is the first time you went back and looked at the contents of the July 11 report?

A I do not recall.

Q Was it after litigation?

A Probably.

Q Okay. And you'll see on the signature page, page 2 again --

A Uh-huh, 23?

Q Yes.

A The Lane's, okay.

Q Okay. It says, license number of person signing this report. Do you see that on the bottom to the left of your signature?

A Oh, yes.

Q It says Brent Cole. Do you know Brent Cole?

A Yeah.
Q Who is Brent Cole?
A Well, he used to be a technician there.
Q So when did he stop working there?
A I don't remember.
Q Was it before --
A It was before that.
Q So Brent Cole wasn't even working at the company when this report was signed?
A Right.
Q It was signed by Wendy with your permission?
A My permission.
Q And do you -- when you told them to sign it with your permission, do you tell them how to sign it? Or do they ask, how do I sign your name with permission?
A No.
Q Okay. They just are to sign your name and that's it, not this is Wendy, I'm signing it for Joseph with his authorization?
A Right.
Q There's none of that there?
A Right.
Q And none of that information is conveyed according to -- as far as anyone who receives this

report or looks at this report, they are not going to know that it isn't your signature on there, right?

A Right.

Q And they're relying on this report for very important reasons; are they not?

A Right.

Q Okay. And you understand that this report is extremely important to the people you're sending it to, correct?

A Yes.

Q And they are relying on it?

A Uh-huh.

Q You have to say yes or no.

A Yes.

Q And that if this report is inaccurate or wrong or misleading, it could financially hurt those people relying on it; couldn't it?

MR. KOZICK: Object to the form.

THE WITNESS: I guess it possibly could.

BY MR. REDMAN:

Q Yes. And you'll agree, in the middle of page 2, which is page 23 right here, it says additional pages are attached. It's checked no, right?

A Uh-huh.

Q So it's your understanding that the first two

on 24 Avenue Of Live Oaks?

A Yes.

Q Okay. This report is just wrong?

MR. KOZICK: Object to the form.

THE WITNESS: You're being general? You're generalizing and saying the whole report is wrong?

BY MR. REDMAN

Q Well, no. No, I'm not.

A Okay.

Q I'm saying that the fact that you have it marked inaccessible areas states that it's built on a slab, that is --

A That's wrong.

Q That's absolutely wrong; isn't it?

A Yeah.

Q Okay.

A The things that you have pointed out on this report, those specific things are wrong. It's not on a slab. It's not Brent Cole.

Q That's not your signature, correct?

A Right.

Q And then we have the same statement from -- that we had in the other report, in the June report, Exhibit 55. Right below that is number 2, there is evidence of a prior subterranean termite treatment.

box beside number 2 is not checked, correct?

A Correct.

Q And we talked about that earlier, that a perspective purchaser is going to look at that and he could -- that would be misleading to him because he's not going to see that this treatment in October only applied to 39 linear square feet and not the entire residence, correct?

A We did talk about that. Yes.

Q You and I talked about that?

A Yeah, we did.

Q And that was our conclusion that that was going to be misleading to whoever looked at this?

MR. KOZICK: Object to the form.

BY MR. REDMAN:

Q Is that what we said earlier?

A I believe that's what we discussed.

Q And that was the conclusion we came to together?

MR. KOZICK: Object to the form.

THE WITNESS: Yes.

BY MR. REDMAN:

Q Okay. And so your testimony as to Exhibit 55 on that section of the form would be the same as your testimony for the same part of the form, the bottom

Q Did you -- go ahead; I'm sorry.
A It's usually probably in the range of 10, 15, 20.
Q Uh-huh. And -- but you don't remember, but that's what you normally do, so that's what your testimony is you did in July?
A Yes. I do -- when I go in a crawlspace, that's what I do every time.
Q Did you take it in --
A That range of --
Q Do you know where you took those readings?
A Just in a good representation of the crawlspace.
Q Okay.
A North, south, east, west, center.
Q And we have -- the graph is page 28, right?
A Yes.
Q Okay. And there's -- did you draw this graph?
A Yeah, I did.
Q When did you draw it?
A That would have been the day that I was there.
Q Okay. And -- well, it doesn't have any damage, any -- it doesn't have any notes under anything

on the bottom, correct?

A Yes. No, it doesn't.

Q And there is no indication where you took any moisture readings on this graph; are there?

A No.

Q No, there are no markings for moisture readings, correct?

A Correct.

Q And there's no indication of any drill holes anywhere; is that correct?

A That I notated on the graph?

Q Yes.

A Correct.

Q Okay. There's no indication of a fan being installed anywhere; is there?

A Not on the graph. No, there's no indication.

Q There's no indication anywhere in this exhibit, is there, that there's a fan?

A No.

Q There's no indication that three weeks ago you recommended a fan to help reduced the moisture anywhere on this --

A No, that was just verbal.

Q That was a verbal recommendation, but it doesn't show up in this report that the Isaacs are

A What are they?
Q What are they, yes.
A Eight to 18 percent.
Q Okay. And this is a normal crawlspace. It's not encapsulated. It's just a normal open air crawlspace, correct?
A Yeah, with a vapor barrier covering 75 percent of it.
Q Okay. But there's a fan down there too; wasn't there?
A Uh-huh. Yes, there was a fan in July.
Q Was it running?
A I remember it to be running.
Q Okay. Did you do anything with it?
A It seems like -- I'm just going by my recollection, but it was in the crawlspace door. I can't remember if it was built into the door, but I had to swing it to get in to the side.
Q Okay. And it was running?
A To my recollection, it was running.
Q Okay. Where in the building was the moisture reading 8 percent? I mean, that's the bottom range that's on this report, right?
A Yeah. I don't know. Again, those were random moisture readings throughout the crawlspace.

Q Okay. But you don't recall where that would have been at all; do you?

A I don't.

Q Do you recall anything other than you had to push the fan that you recommended to fix excessive moisture conditions out of the way in connection with that inspection of the crawlspace?

A Just that I took random readings throughout the crawlspace. And again, it's a visual inspection. I didn't see anything else that would need to be written down on the report.

Q And you're saying that your testimony earlier as to 3B was nonactive wood-destroying fungi, 3B. You didn't see that to begin with, because that's inside wood?

A Right.

Q Okay. And so that since the moisture readings that you put down are 8 to 18 percent -- or excuse me, that you told Wendy to put down of 8 to 18 percent, then that automatically dictates that 3B is a no?

A Right.

Q Okay. So the -- it's your testimony that nonactive wood-destroying fungi that was in the wood two and a half, three weeks ago disappeared because the

moisture readings went under 20 percent?

MR. KOZICK: Object to the form.

THE WITNESS: Absolutely, yes.

BY MR. REDMAN:

Q Okay. It just goes away when moisture goes below 20?

A Yes.

Q Okay.

A It's -- the state standards say that that's how you have to report it. If it's below 20 percent, then it's good. It's not -- there's no -- it's not present. Those are the guidelines that I have to go by.

Q Okay. I'm just -- okay.

A No, I understand.

Q No, no, we'll just leave it. That's your testimony. We'll leave it there.

A Okay.

Q Do you know the closing attorney, Sean Phelan? Do you know him?

A No.

Q Okay. You wouldn't -- you're not the person conveying the reports to him or --

A No.

Q He's never called you to say anything about

Mrs. Onions before you went and did that, or did you go take off your over -- or coveralls and then go talk to them?

A At the end.

Q Okay. Did you go back in the house to speak with them or you speak to them outside?

A I can't remember. I don't recall that.

Q Do you normally go back after you take off your protective gear to talk to the homeowners?

A Yes, if they're there and they ordered the report.

Q Did they order this one?

A I believe their -- from what I see, I think their real estate guy did.

Q Well, they're the owners and they're selling it, right?

A Correct. So, yeah, I guess when it comes down to it, they ordered it.

Q So you thought it was okay to go talk to them, the homeowner. The buyer wasn't there; were they?

A No.

Q No realtors were there?

A No.

Q So it was just Mr. and Mrs. Onions and you

had another discussion with them. What do you recall about that discussion?

A I do remember telling them that the moisture readings had come down. And that's really about it.

Q Did you say anything about --

A Well, you know, no evidence of termites and things like that. No damage.

Q Did you tell them anything about the fan?

A I don't recall. You mean the fan worked or -- is that what you're asking?

Q You sure got a nice fan, yeah, anything. I see you got an orange fan. Anything about the fan. Did you bring up the fan at all?

A I don't remember if I did or not. I don't recall.

Q Did you -- was it clear when you went back and talked to them that you recalled meeting with them two and a half, three weeks earlier?

A That I was -- was it clear that I was there before --

Q Yeah.

A -- and we all knew --

Q Was this a continuation?

A They knew it and I knew it? Yes.

Q Everybody knew this was a continuation of the

conversation that you had when you did your inspection back in June?

MR. KOZICK: Object to the form.

THE WITNESS: Yes.

BY MR. REDMAN:

Q But the conversation you had in June about fixing and the excessive moisture that existed in June, none of that shows up on Exhibit 56, correct?

A Just the lower moisture readings. But, no, nothing about the fan.

Q And there's nothing -- it doesn't say these are lower readings; does it? Lower than what? It doesn't refer to any other readings; does it?

A No, the report just shows what I found when I was there for that day.

Q It doesn't say that it was lower than any other time, just that day. And doesn't refer to anything, any excessive moisture that existed in June?

A Yeah. Like I said, I report -- I put on my report what I find while I'm there that day.

Q Okay. So you've told me everything you can recall about your second conversation with the Onionses?

A Yes.

Q And you haven't spoken with them since?

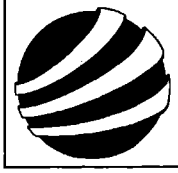
In the Matter Of:

ISAAC vs ONIONS

2018-CP-22-00956

ED KIMBROUGH

June 10, 2019



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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN CASE NO: 2018-CP-22-00956

Rory M. Isaac and Kimberly J. Isaac,)
)
Plaintiffs,)
) Deposition of:
vs.)
) Ed Kimbrough
Thomas C. Onions and Jacqueline)
Onions, Laura Kopchynski, and Lane's) June 10th,
Professional Pest Elimination, Inc.,) 2019
)
Defendants.)

The deposition of ED KIMBROUGH, taken before Josie Allen, Professional Court Reporter and Notary Public, at the Oxner & Stacy Law Firm, 235 Church Street, Georgetown, South Carolina 29442, on June 10th, 2019, commencing at 1:58 p.m.

APPEARANCES

For the Plaintiffs:
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
George W. Redman, III, Attorney at Law
P.O. Box 357
Myrtle Beach, SC 29578
gredman@bellamylaw.com
843-448-2400

For Thomas and Jacqueline Onions:
OXNER & STACY, P.A.
Harry A. Oxner, Attorney at Law
235 Church Street
Georgetown, SC 29442
hoxner@oxnerandstacy.com
843-527-8020

For Laura Kopchynski:
EARHART OVERSTREET
Steve R. Kropski, Attorney at Law
P.O. Box 22528
Charleston, SC 29413
steve.kropski@earhartoverstreet.com

For Lane's:
KERNODLE COLEMAN
Stephen M. Kozick, Attorney at Law
914 Folly Road, Suite 2
Charleston, SC 29422
skozick@kernodlelaw.com
843-795-3708

A. Yes.
Q. -- to your recollection?
A. Uh-huh.
Q. Did they have a home inspection?
A. Laura had called and said I've got a home inspection that we had. We're on a short window closing wise. And she said, you know, the guy did a really good job, and so she sent it on.
She also sent the issues in the home inspection that were addressed by the contractor, so we worked from that.
So we did use that document and that report which we assumed to be a valid report due to the fact that by law, it has to be a licensed contractor making those repairs.
It's just not anybody off the street. So and then as far as the CL-100 report, that was going to be our responsibility. I wanted it that way.
I talked to Mr. and Mrs. Isaac about it mainly because we control who did it and it would also verify that the work that Mr. and Mrs. Onions did as a result of the home inspection could be verified, i.e., the moisture levels under the house.
Q. Okay. This is an e-mail, and you can take a look through and read it. That is dated -- you know

our homework. I did the comps. I talked to a property appraiser. I mean, and we knew what the value -- close to what the value of the house was prior to making an offer.

Q. Okay.

A. And I'm sure you're referring to this line about the CL-100.

Q. I'm referring to, you know, the five paragraphs talking about comps and different values.

A. Just not relevant to us.

Q. Okay.

A. I don't depend on anyone else --

Q. Right.

A. -- to come up with that information.

Q. So you were satisfied with submitting the offer that the purchase price was fair?

A. Yes.

Q. Okay. And the CL-100 reference that is made here, it says: 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.

Did you want that CL-100 report?

A. No.

Q. Okay. How come?

A. I mean, well, because it's our responsibility

to do it. It was going to be on our terms, not on their terms or anybody else's terms.

I thought 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 to see regarding repairs.

So, no, I mean, and it was -- it was not even relevant from a date period. CL-100 reports are only good for 30 days. We would have had to have another one done prior to closing anyway.

So my thought is let's do it ourselves, and we'll verify what we're looking for.

Q. Right.

A. And there was no mention as to who performed that CL-100.

Q. Okay.

A. It could have been any fly by night company. I have no idea.

Q. Okay. Just wasn't something that you were -- you were not interested in getting it; you were doing your own CL-100?

A. That's correct.

Q. Okay.

A. Yes.

Q. I'm going to ask you a couple of questions

A. Yes. Well, the hanging -- I mean, they repaired some of the things that were in this report obviously. But seems like there was a mention of moisture somewhere in here.

"There are areas of ground that are not covered by vapor barrier, and the ground is damp."

Okay. So "further inspections and need correction by crawl space especially."

So the missing vapor barrier and the high moisture content under the house was of concern obviously.

Q. Okay. And with the condition disclosure statement, what's marked as 44, is a letter that says Emery Custer at the top?

A. That's right.

Q. And that was received prior to making the offer as well?

A. Yes, it was.

Q. Okay. You selected Cole's, the company Cole's [sic] to do the CL-100 for the Isaacs; is that correct?

A. Yes. Not Cole's.

Q. Lane's, sorry. The Coles were the --

A. -- previous buyers.

Q. Sorry.

A. That's okay.
Q. Lane's Pest Control to do the CL-100 for the Isaacs?
A. Right.
Q. And at the time, you were aware that they had previously treated the house for pest control?
A. I was. I asked -- most of the time, we like to use a company if they are reputable that has some familiarity with the property.
Q. Okay.
A. So that -- and Lane's -- my office here as well as Pawleys uses lanes, you know, often times. So we had a great respect for that company that have been around for 20-plus years.
Q. Did you know that they had done the Coles' CL-100 at that time?
A. No. Uh-huh.
Q. And Lane's is at least in this area reputable --
A. Yes.
Q. -- company for doing pest control?
A. They are.
Q. -- treatments?
A. They are.
Q. Okay. Had you worked with Stark before?

A. Yeah, yeah. Often.
Q. And before you contacted Lane's to do the CL-100, did Laura tell you that Stark had been out to the house?
A. No, I do not recall that.
Q. You don't recall her --
A. The only reference I understood to the CL-100 was on that e-mail, which could have been Stark, could have been anybody.
Q. Right. Do you recall a conversation with Laura where she mentions that Stark had inspected under the house and proposed some work and the Onions decided not to hire them?
A. No, I don't.
Q. Okay. So you don't recall a conversation when you were talking with her about who was going to do the CL-100 when she mentioned Stark had been out there?
A. We talked about that, and we also talked about the moisture level that was under the house or whatever. But I never remember her saying anything about Stark.
Q. Okay. Okay.
A. I just don't recall that.
Q. What did you discuss in terms of the moisture

level underneath the house?

A. Just that our concern was to make sure that that was repaired and that the moisture levels were, you know, maintained at a certain level.

You know, and I did ask her at that point in time who the Onions used as their main provider. And she said Lane's. I said good. We'll go with Lane's. Very reputable. That sort of thing.

We were fine. We were moving forward with our -- with the transaction. We were satisfied with what we were finding out at this point in time.

Q. Okay. And then Lane's performed the CL-100?

A. On 7/11 I believe.

Q. Okay.

A. 7/11.

Q. Okay. And do you remember when the property closed?

A. 27th I believe.

Q. End of July?

A. Yeah, end of July.

Q. Okay. Had you seen at any point at this property standing water or the buildup of water at all prior to closing?

A. You mean on any previous transaction?

Q. At 24 Avenue Live Oak.

BY MR. OXNER:

Q. When I initially started asking you questions, or might have been Steve, correct me if I'm wrong, but it's my understanding your testimony was that you really didn't care about the original CL-100; is that correct?

A. I wouldn't say I wouldn't care about it, but the fact is it was reported that it was good and it was up to us to verify that it was good and the only way to verify it was to have -- take responsibility for the CL-100 ourselves, which is what we planned to do all along.

Q. Okay. My understanding was your testimony is you didn't have any interest in that first CL-100. You knew it was out there, but you were going to get your own; is that right?

A. Correct. And perhaps she would have reported that it was bad, I would have probably said, yeah, let us see it.

But the fact is she reported it was good. So we're moving along at that point. Things look good, you know.

Q. She gave you the opportunity to request to see it, correct?

A. She did.

close on July 23rd, 2018?

A. Correct.

Q. Okay. Now, between all these dates, particularly after June 19th all the way to July 23rd, what is stopping the Isaacs and/or you from getting your own inspection to confirm whether or not these things have been fixed that the buyer had notice of because of the CHI report? What was stopping them?

A. Nothing.

Q. Okay.

A. But as I told you before, the truth is in the reporting.

Q. Okay.

A. We --

Q. But if you had an inspection --

MR. REDMAN: Wait a minute. He's trying to finish his answer.

Q. But if you had an inspection, it would have been revealed if there was a problem?

MR. REDMAN: Object to the form of the question.

A. The inspection that we chose to go was to have the engineer look at the underneath part of the house. We followed up with that. The CL-100 that we ordered on and was performed on 7/11 would have

verified and confirmed that the repairs done on Number, what, 6 and 8 were working. That being the vapor barrier, reducing the moisture by the use of a fan system. So that was our follow-up.

Q. Okay. And that was done?

A. And that was done, yes.

Q. And it came back clean?

A. According to Lane's, it was clean.

Q. Right. But, again, had the buyer wanted to, they could have checked the contingency of getting their own inspection, and it would have revealed all kind of things, correct?

A. We don't know that. It could have revealed the same things that Mr. and Mrs. Onions found in the CHI report.

Q. Why do you do inspections?

A. To know what we're dealing with.

MR. OXNER: Thank you. That's all the questions I have.

THE COURT REPORTER: Same transcript orders as the first?

MR. KROPSKI: Yeah.

MR. KOZICK: Yes, ma'am.

(The deposition ended at 3:30 p.m. on June 10th, 2019.)

PLAINTIFF'S Onions 1
EXHIBIT NO. 4
FOR IDENTIFICATION
DATE: 3-26-19 RPTR: HO
PENGAD 800-631-6989

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ADDENDUM

Prior to signing contract, owner shall provide this disclosure addendum to the purchaser if the property is subject to a homeowners association, a property owners association, a condominium owners association, a horizontal property regime, or similar organizations subject to covenants, conditions, restrictions, bylaws or rules (CCRBR). These organizations are referred to herein as an owners association.

Purchasers should review the applicable documents (covenants, conditions, restrictions, bylaws, deeds, condominium master deed, and similar documents), all related association issues, and investigate the owners association prior to entering into any legal agreements including a contract. Owners association charges include any dues, fees, assessments, reserve charges, or any similar charges. Purchasers are solely responsible to determine what items are covered by the owners association charges.

Property Address: 24 Avenue of Live Oaks, Pawleys Island, 29585

Describe owners association charges: $ 175.00 Per MONTH (month/year/other)

What is the contact information for the owners association? FIRST SERVICE RESIDENTIAL
843-652-2163

As owner do you have any actual knowledge of answers to the following questions? Please check the appropriate box to answer the questions below.

	Yes	No	No Representation
1. Are there owners association charges or common area expenses?	☑	☐	☐
2. Are there any owners association or CCRBR resale or rental restrictions?	☑	☐	☐
3. Has the owners association levied any special assessments or similar charges?	☐	☑	☐
4. Do the CCRBR or condominium master deed create guest or visitor restrictions?	☑	☐	☐
5. Do the CCRBR or condominium master deed create animal restrictions?	☑	☐	☐
6. Does the property include assigned parking spaces, lockers, garages or carports?	☐	☑	☐
7. Are keys, key fobs or access codes required to access common or recreational areas?	☑	☐	☐
8. Will any membership other than owner association transfer with the properties?	☐	☑	☐
9. Are there any known common area problems?	☐	☑	☐
10. Is property or common area structures subject to South Carolina Coastal Zone Management Act?	☐	☐	☑
11. Is there a transfer fee levied to transfer the property?*	☐	☑	☐

(Question does not include recording costs related to value or deed stamps.)*

Explain any yes answers in the space below and attach any additional sheets or relevant documents as needed: _____

Owner signature: Thomas R Onions Thomas ONIONS Date: 4-23-18 Time: 2:00 PM

Owner signature: Jacqueline Onions Jacqueline Onions Date: 4-23-18 Time: 2:00PM

Purchaser signature: Randy Craig Cole Date: 05/01/2018 09:47 PM EDT Time: _____

Purchaser signature: Suzanne B Cole Date: 05/01/2018 09:30 PM EDT Time: _____

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

The South Carolina Code of Laws (Title 27, Chapter 50, Article 1) requires that an owner of residential real property (single family dwelling unit or a single transaction involving transfer of four dwelling units or less) shall provide to a purchaser this completed and signed disclosure statement prior to forming a real estate contract. This disclosure must be provided in connection with any sale, exchange, installment land sale, and lease with an option to purchase contract. This disclosure statement is not required in connection with transactions listed and exempted by South Carolina Code Section § 27-50-30.

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 a question is answered "yes" or asks for a description, then owner must explain or describe the issue or attach a descriptive report from an engineer, contractor, pest control, operator, expert, or public agency. If owner attaches a report, owner shall not be liable for inaccurate or incomplete information in the report unless owner was grossly negligent in obtaining or transmitting the information. 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 a question is answered "no" for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered "no representation" for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner's answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the 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.

Owner must provide the completed disclosure statement to the purchaser prior to the time the owner and purchaser sign a real estate contract unless the real estate contract states otherwise. Owner should provide a signed copy to the purchaser and keep a copy signed by the purchaser.

A real estate contract, not this disclosure, controls what property transfers from owner to purchaser.

Property Address (including unit # or identifier) 24 Avenue of Live Oaks, Pawleys Island, 29585

Owner: ( ) ( ) Purchaser: ( ) ( ) acknowledge receipt of a copy of this page which is page 1 of 5.

REV: 6/2017

Apply this question below and the three answer choices to the numbered issues (1-14) on this disclosure.
As owner, do you have any actual knowledge of any problem(s)* concerning?
*Problem includes defects, malfunctions, conditions, or characteristics.

I. WATER SUPPLY AND SANITARY SEWAGE DISPOSAL SYSTEM	Yes	No	No Representation
1. Water supply	☐	☑	☐
2. Water quality	☐	☑	☐
3. Water pressure	☐	☑	☐
4. Sanitary sewage disposal system for any waste water	☐	☑	☐

A. Describe water supply ☑ County ☐ City ☐ Private ☐ Corporate ☐ Community ☐ Well ☐ Other _____

B. Describe water disposal ☐ Septic ☑ Sewer ☐ Private ☐ Corporate ☐ Government ☐ Other _____

C. Describe water pipes ☑ PEX ☐ Copper ☐ PVC/CPVC ☐ Polybutylene ☐ Steel ☐ Other/Unknown _____

II. ROOF, CHIMNEYS, FLOORS, FOUNDATION, BASEMENT, AND OTHER STRUCTURAL COMPONENTS AND MODIFICATIONS OF THESE STRUCTURAL COMPONENTS	Yes	No	No Representation
5. Roof system	☐	☑	☐
6. Gutter system	☐	☑	☐
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	☐	☐	☐

A. Approximate year that current roof covering was installed or modified: 2014 . Approximate year structure was built: 2014

B. During your ownership, describe any known roof system leaks and repairs: _____

III. PLUMBING, ELECTRICAL, HEATING, COOLING, AND OTHER MECHANICAL SYSTEMS	Yes	No	No Representation
8. Plumbing system (pipes, fixtures, water heater, disposal, softener, plumbing components)	☐	☑	☐
9. Electrical system (wiring, panel, fixtures, A/V wiring, outlets, switches, electrical components)	☐	☑	☐
10. Heating system(s) (HVAC components)	☐	☑	☐
11. Cooling system(s) (HVAC components)	☐	☑	☐
12. Mechanical systems (pumps, garage door opener, filtration, energy equipment, safety, other)	☐	☑	☐
13. Appliances (range, stove, ovens, dishwasher, refrigerator, washer, dryer, other appliances)	☐	☑	☐
14. Built-in systems and fixtures (fans, irrigation, pool, security, lighting, A/V, other)	☐	☑	☐

Owner: ( ) ( ) Purchaser: ( ) ( ) acknowledge receipt of a copy of this page which is page 2 of 5.

A. Describe Cooling System ☑ Central ☐ Ductless ☑ Heat Pump ☐ Window ☐ Other _____

B. Describe Heating System ☑ Central ☐ Ductless ☑ Heat Pump ☐ Furnace ☐ Other _____

C. Describe HVAC Power ☐ Oil ☐ Gas ☑ Electric ☐ Solar ☐ Other _____

D. Describe HVAC system approximate age and any other HVAC system(s): 1 UNIT 2017

1 UNIT 2005 RENOVATED 2014

IV. PRESENT OR PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS OR DRY ROT OR FUNGUS, THE DAMAGE FROM WHICH HAS NOT BEEN REPAIRED

A. Describe any known present wood problems caused by termites, insects, wood destroying organisms, dry rot or fungus:

NONE

B. Describe/name company that may be providing termite/pest treatment or coverage to property:

LANES

C. Describe any known present pest infestations:

NONE

V. THE ZONING LAWS, RESTRICTIVE COVENANTS, BUILDING CODES, AND OTHER LAND USE RESTRICTIONS AFFECTING THE REAL PROPERTY, ANY ENCROACHMENTS OF THE REAL PROPERTY FROM OR TO ADJACENT REAL PROPERTY, AND NOTICE FROM A GOVERNMENTAL AGENCY AFFECTING THIS REAL PROPERTY

Apply this question below and the three answer choices to the numbered issues (15-23) on this disclosure.
As owner, do you have any actual knowledge or notice concerning?

	Yes	No	No Representation
15. Violations or variances of the following: zoning laws, restrictive covenants, building codes, permits or other land use restrictions affecting the real property	☐	☑	☐
16. Easements (access, conservation, utility, other), party walls, shared private driveway, private roads, released mineral rights, or encroachments from or to adjacent real property	☐	☑	☐
17. Legal actions, claims, foreclosures, bankruptcies, tenancies, judgments, tax liens, other liens, insurance issues, or governmental actions that could affect title to the property	☐	☑	☐
18. Room additions or structural changes to the property during your ownership	☑	☐	☐
19. Problems caused by fire, smoke, or water to the property during your ownership	☐	☑	☐
20. Flood hazards, wetlands, or flood hazard designations affecting the property	☐	☑	☐
21. Drainage, soil stability, atmosphere, or underground problems affecting the property	☐	☑	☐
22. Erosion or erosion control affecting the property	☐	☑	☐
23. Flood insurance covering the property	☐	☑	☐

A. Describe any green energy, recycling, sustainability or disability features for the property: N/A

B. Describe any Department of Motor Vehicles titled manufactured housing on the property: N/A

Owner: ( ) ( ) Purchaser: ( ) ( ) acknowledge receipt of a copy of this page which is page 3 of 5.

VI. BURIED, UNBURIED, OR COVERED PRESENCE OF THE FOLLOWING: LEAD BASED PAINT, LEAD HAZARDS, ASBESTOS, RADON GAS, METHANE GAS, STORAGE TANKS, HAZARDOUS MATERIALS, TOXIC MATERIALS, OR ENVIRONMENTAL CONTAMINATION

A. Describe any known property environmental contamination problems from construction, repair, cleaning, furnishing, intrusion, operating, toxic mold, methamphetamine production, lead based paint, lead hazards, asbestos, radon gas, methane gas, formaldehyde, corrosion-causing sheetrock, storage tanks, hazardous materials, toxic materials, environmental contamination, or other: NONE

VII. EXISTENCE OF A RENTAL, RENTAL MANAGEMENT, VACATION RENTAL, OR OTHER LEASE CONTRACT ANTICIPATED TO BE IN PLACE ON THE PROPERTY AT THE TIME OF CLOSING

A. Describe the lease terms and any leasing problems, if any: NONE

B. Describe the name and contact information for any property management company involved:

C. Describe known outstanding charges owed by tenant for gas, electric, water, sewer, and garbage:

VIII. THE EXISTENCE OF A METER CONSERVATION CHARGE, AS PERMITTED BY SECTION 58-37-50 THAT APPLIES TO ELECTRICITY OR NATURAL GAS SERVICE TO THE PROPERTY

A. Describe any utility company financed or leased property on the real property: N/A

B. Describe known delinquent charges for real property's gas, electric, water, sewer, and garbage: N/A

IX. PLEASE USE THE SPACE BELOW FOR "YES" ANSWER EXPLANATIONS AND TO LIST ANY ATTACHED REPORTS/INFORMATION OR TO FURTHER DESCRIBE NOTICE/KNOWN ISSUES

This disclosure does not limit the obligation of the purchaser to inspect the property and improvements which are the subject of the real estate contract. Purchaser is solely responsible for conducting their own off site conditions and psychologically affected property inspections prior to entering into a real estate contract. The real estate licensees (acting as listing or selling agents, or other) have no duty to inspect the on site or off site conditions of the property and improvements. Purchasers should review all applicable documents (covenants, conditions, restrictions, bylaws, deeds, and similar documents) prior to entering into any legal agreements including any contract. The South Carolina Code of Laws describes the Residential Property Condition Disclosure Statement requirements and exemptions at § 27-50-10 (and following) which can be read online at websites such as www.scstatehouse.gov

Current status of property or factors which may affect the closing:

☑ Owner occupied ☐ Short sale ☐ Bankruptcy ☐ Vacant (How long vacant?) _____
☐ Leased ☐ Foreclosure ☐ Estate ☐ Other: _____

A Residential Property Condition Disclosure Statement Addendum ☐ is ☐ is not completed and attached. This addendum should be attached if the property is subject to covenants, conditions, restrictions, bylaws, rules, or is a condominium.

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

Owner Signature: Thomas C Onions Date: 4-23-18 Time: 2:00 PM

Owner Printed Name. THOMAS C. ONIONS 4-23-18 2:00PM

Owner Signature: Jacqueline Onions Date: 4-23-18 Time: 2:00 PM

Owner Printed Name. JACQUELINE ONIONS

Purchaser acknowledges prior to signing this disclosure:

- Receipt of a copy of this disclosure
- Purchaser has examined disclosure
- Purchaser had time and opportunity for legal counsel
- This disclosure is not a warranty by the real estate licensees
- This disclosure is not a substitute for obtaining inspections of on site and off site conditions
- This disclosure is not a warranty by the owner
- Representations are made by the owner and not by the owner's agents or subagents
- Purchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers, or other qualified professionals

Purchaser Signature: _____ Date: 05/01/2018 09:47 PM EDT Time: _____

Purchaser Printed Name: Randy Craig Cole

Purchaser Signature: _____ Date: 05/01/2018 09:30 PM EDT Time: _____

Purchaser Printed Name: Suzanne B Cole

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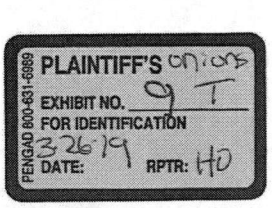
Onions offer for
#120-0452
-Kopchynski 000317



From: **Laura Kopchynski** <laurainpawleys@gmail.com>
Date: Sat, Jun 2, 2018 at 2:17 PM
Subject: 24 Avenue of Live Oaks Repair verification
To: Todd Palmer <toddpalmer@toddpalmer.biz>

Todd,

Attached you will find a list of repairs made by the Onion's contractor, in the form of a summary letter provided by the contractor.

I will be forwarding you 3 separate emails each with a photo as to further verify some of the repairs that were made.

Also, as per our telephone discussion yesterday, please advise as to if the Coles are on board with closing on Thursday 6/28/19 and The Onions moving out by 2PM on Friday 6/29 as to allow the Coles to clean and move in as they are able on Friday 6/29.

Please confirm by Monday morning, as once we are able to verify that this is a plan to which all parties agree, I will contact the Onions attorney to ensure he has space on his calendar on 6/29 to schedule their closing.

--

All the best,

Laura

Laura Kopchynski

RE/MAX BEACH & GOLF

843-979-9979

EXHIBIT F

Emery Custer
Licensed General Contractor
623 1st Avenue North, Surfside, South Carolina

Licensed and Insured

SC License # RBS 56967

Location: Thomas & Jacqueline Onions Residence
24 Avenue of Live Oaks
Litchfield Plantation
Pawleys Island, SC 29585

Work Completed:

1. Replaced missing electrical box covers in attic area consisting of 1 on/off switch and 1 double outlet, as per home inspection report.
2. Replaced floor bracket and wax seal. Re-connect / secure toilet in 1st floor half-bath, as per home inspection report.
3. Re-aligned door latch to upstairs rear bedroom to properly secure, as per home inspection report.
4. Replaced all missing and/or hanging insulation in crawl-space under house with new insulation, as per home inspection report.
5. Replaced all missing plastic vapor barrier in crawl-space including that area beneath the sun room by supplying new vapor barrier product, as per home inspection report.
6. Removed all debris from crawl-space, as per home inspection report.
7. Installed new electrical outlet at center (ceiling) of crawl-space to supply power to crawl space fan.
8. Installed new crawl-space fan [1] beneath residence to provide air flow and remove any dampness within the crawl-space.
   [1] Lasko Max Performance Pivoting Utility Fan Model U15610

ONIONS EXHIBIT #071

#1828 Emery C Custer 5/24/18

P.o Box 384

Murrells Inlet SC, 29576

SC Lic.56967 Horry 227659 Surfside 53161

Georgetown county

Invoice to

Tim Onions

Pawleys Island, SC

---

installed vapor barrier where need under house . added insulation in places missing due to duct work .added insulation hangers as needed, installed fan to circulate air to lower moisture levels under the house . fixed comode from rockin . removed pieces of duct work left under house .

Material and labor	$ 706.00

Total due $ 706.00

1

ONIONS EXHIBIT #072

PLAINTIFF'S
EXHIBIT NO. 15 T
FOR IDENTIFICATION
3-26-19
DATE: RPTR: HO
PENGAD 800-631-6989

LLR

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

The South Carolina Code of Laws (Title 27, Chapter 50, Article I) requires that an owner of residential real property (single family dwelling unit or a single transaction involving transfer of four dwelling units or less) shall provide to a purchaser this completed and signed disclosure statement prior to forming a real estate contract. This disclosure must be provided in connection with any sale, exchange, installment land sale, and lease with an option to purchase contract. This disclosure statement is not required in connection with transactions listed and exempted by South Carolina Code Section § 27-50-30.

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 a question is answered "yes" or asks for a description, then owner must explain or describe the issue or attach a descriptive report from an engineer, contractor, pest control, operator, expert, or public agency. If owner attaches a report, owner shall not be liable for inaccurate or incomplete information in the report unless owner was grossly negligent in obtaining or transmitting the information. 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 a question is answered "no" for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered "no representation" for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner's answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the 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.

Owner must provide the completed disclosure statement to the purchaser prior to the time the owner and purchaser sign a real estate contract unless the real estate contract states otherwise. Owner should provide a signed copy to the purchaser and keep a copy signed by the purchaser.

A real estate contract, not this disclosure, controls what property transfers from owner to purchaser.

Property Address (including unit # or identifier) 24 Avenue of Live Oaks, Pawleys Island, 29585

Owner: ( ) ( ) Purchaser: ( ) ( ) acknowledge receipt of a copy of this page which is page 1 of 5.

REV: 6/2017

Apply this question below and the three answer choices to the numbered issues (1-14) on this disclosure.
As owner, do you have any actual knowledge of any problem(s)* concerning?
*Problem includes defects, malfunctions, conditions, or characteristics.

I. WATER SUPPLY AND SANITARY SEWAGE DISPOSAL SYSTEM	Yes	No	No Representation
1. Water supply	☐	☑	☐
2. Water quality	☐	☑	☐
3. Water pressure	☐	☑	☐
4. Sanitary sewage disposal system for any waste water	☐	☑	☐

A. Describe water supply ☑ County ☐ City ☐ Private ☐ Corporate ☐ Community ☐ Well ☐ Other _____

B. Describe water disposal ☐ Septic ☑ Sewer ☐ Private ☐ Corporate ☐ Government ☐ Other _____

C. Describe water pipes ☑ PEX ☐ Copper ☐ PVC/CPVC ☐ Polybutylene ☐ Steel ☐ Other/Unknown _____

II. ROOF, CHIMNEYS, FLOORS, FOUNDATION, BASEMENT, AND OTHER STRUCTURAL COMPONENTS AND MODIFICATIONS OF THESE STRUCTURAL COMPONENTS	Yes	No	No Representation
5. Roof system	☐	☑	☐
6. Gutter system	☐	☑	☐
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	☐	☐	☐

A. Approximate year that current roof covering was installed or modified: 2014 . Approximate year structure was built: 2014

B. During your ownership, describe any known roof system leaks and repairs: _____

III. PLUMBING, ELECTRICAL, HEATING, COOLING, AND OTHER MECHANICAL SYSTEMS	Yes	No	No Representation
8. Plumbing system (pipes, fixtures, water heater, disposal, softener, plumbing components)	☐	☑	☐
9. Electrical system (wiring, panel, fixtures, A/V wiring, outlets, switches, electrical components)	☐	☑	☐
10. Heating system(s) (HVAC components)	☐	☑	☐
11. Cooling system(s) (HVAC components)	☐	☑	☐
12. Mechanical systems (pumps, garage door opener, filtration, energy equipment, safety, other)	☐	☑	☐
13. Appliances (range, stove, ovens, dishwasher, refrigerator, washer, dryer, other appliances)	☐	☑	☐
14. Built-in systems and fixtures (fans, irrigation, pool, security, lighting, A/V, other)	☐	☑	☐

Owner: ( ) ( ) Purchaser: ( ) ( ) acknowledge receipt of a copy of this page which is page 2 of 5.

A. Describe Cooling System ☑ Central ☐ Ductless ☑ Heat Pump ☐ Window ☐ Other _____

B. Describe Heating System ☑ Central ☐ Ductless ☑ Heat Pump ☐ Furnace ☐ Other _____

C. Describe HVAC Power ☐ Oil ☐ Gas ☑ Electric ☐ Solar ☐ Other _____

D. Describe HVAC system approximate age and any other HVAC system(s): 1 UNIT 2017

1 UNIT 2005 RENOVATED 2014

IV. PRESENT OR PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS OR DRY ROT OR FUNGUS, THE DAMAGE FROM WHICH HAS NOT BEEN REPAIRED

A. Describe any known present wood problems caused by termites, insects, wood destroying organisms, dry rot or fungus:

NONE

B. Describe/name company that may be providing termite/pest treatment or coverage to property:

LANES

C. Describe any known present pest infestations:

NONE

V. THE ZONING LAWS, RESTRICTIVE COVENANTS, BUILDING CODES, AND OTHER LAND USE RESTRICTIONS AFFECTING THE REAL PROPERTY, ANY ENCROACHMENTS OF THE REAL PROPERTY FROM OR TO ADJACENT REAL PROPERTY, AND NOTICE FROM A GOVERNMENTAL AGENCY AFFECTING THIS REAL PROPERTY

Apply this question below and the three answer choices to the numbered issues (15-23) on this disclosure.
As owner, do you have any actual knowledge or notice concerning?

	Yes	No	No Representation
15. Violations or variances of the following: zoning laws, restrictive covenants, building codes, permits or other land use restrictions affecting the real property	☐	☑	☐
16. Easements (access, conservation, utility, other), party walls, shared private driveway, private roads, released mineral rights, or encroachments from or to adjacent real property	☐	☑	☐
17. Legal actions, claims, foreclosures, bankruptcies, tenancies, judgments, tax liens, other liens, insurance issues, or governmental actions that could affect title to the property	☐	☑	☐
18. Room additions or structural changes to the property during your ownership	☑	☐	☐
19. Problems caused by fire, smoke, or water to the property during your ownership	☐	☑	☐
20. Flood hazards, wetlands, or flood hazard designations affecting the property	☐	☑	☐
21. Drainage, soil stability, atmosphere, or underground problems affecting the property	☐	☑	☐
22. Erosion or erosion control affecting the property	☐	☑	☐
23. Flood insurance covering the property	☐	☑	☐

A. Describe any green energy, recycling, sustainability or disability features for the property: N/A

B. Describe any Department of Motor Vehicles titled manufactured housing on the property: N/A

VI. BURIED, UNBURIED, OR COVERED PRESENCE OF THE FOLLOWING: LEAD BASED PAINT, LEAD HAZARDS, ASBESTOS, RADON GAS, METHANE GAS, STORAGE TANKS, HAZARDOUS MATERIALS, TOXIC MATERIALS, OR ENVIRONMENTAL CONTAMINATION

A. Describe any known property environmental contamination problems from construction, repair, cleaning, furnishing, intrusion, operating, toxic mold, methamphetamine production, lead based paint, lead hazards, asbestos, radon gas, methane gas, formaldehyde, corrosion-causing sheetrock, storage tanks, hazardous materials, toxic materials, environmental contamination, or other: NONE

VII. EXISTENCE OF A RENTAL, RENTAL MANAGEMENT, VACATION RENTAL, OR OTHER LEASE CONTRACT ANTICIPATED TO BE IN PLACE ON THE PROPERTY AT THE TIME OF CLOSING

A. Describe the lease terms and any leasing problems, if any: NONE

B. Describe the name and contact information for any property management company involved:

C. Describe known outstanding charges owed by tenant for gas, electric, water, sewer, and garbage:

VIII. THE EXISTENCE OF A METER CONSERVATION CHARGE, AS PERMITTED BY SECTION 38-37-50, THAT APPLIES TO ELECTRICITY OR NATURAL GAS SERVICE TO THE PROPERTY

A. Describe any utility company financed or leased property on the real property: N/A

B. Describe known delinquent charges on real property's gas, electric, water, sewer, and garbage: N/A

IX. PLEASE USE THE SPACE BELOW FOR "YES" ANSWER EXPLANATIONS AND TO LIST ANY ATTACHED REPORTS/INFORMATION OR TO FURTHER DESCRIBE NOTICE/KNOWN ISSUES

SEE REPAIR VERIFICATION ☜ 6/22/2018

Owner: [illegible] | Purchaser: [illegible] | acknowledge receipt of a copy of this page which is page 4 of 5.

#120-0452
Kopchynski 000456

This disclosure does not limit the obligation of the purchaser to inspect the property and improvements which are the subject of the real estate contract. Purchaser is solely responsible for conducting their own off site conditions and psychologically affected property inspections prior to entering into a real estate contract. The real estate licensees (acting as listing or selling agents, or other) have no duty to inspect the on site or off site conditions of the property and improvements. Purchasers should review all applicable documents (covenants, conditions, restrictions, bylaws, deeds, and similar documents) prior to entering into any legal agreements including any contract. The South Carolina Code of Laws describes the Residential Property Condition Disclosure Statement requirements and exemptions at § 27-50-10 (and following) which can be read online at websites such as www.scstatehouse.gov

Current status of property or factors which may affect the closing:

☑ Owner occupied ☐ Short sale ☐ Bankruptcy ☐ Vacant (How long vacant?) _____
☐ Leased ☐ Foreclosure ☐ Estate ☐ Other: _____

A Residential Property Condition Disclosure Statement Addendum ☐ is ☐ is not completed and attached. This addendum should be attached if the property is subject to covenants, conditions, restrictions, bylaws, rules, or is a condominium.

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

Owner Signature: Thomas C Onions Date: 4-23-18 Time: 2:00 PM

Owner Printed Name: THOMAS C. ONIONS 4-23-18 2:00PM

Owner Signature: Jacqueline Onions Date: 4-23-18 Time: 2:00 PM

Owner Printed Name: JACQUELINE ONIONS

Purchaser acknowledges prior to signing this disclosure:

- Receipt of a copy of this disclosure
- Purchaser has examined disclosure
- Purchaser had time and opportunity for legal counsel
- This disclosure is not a warranty by the real estate licensees
- This disclosure is not a substitute for obtaining inspections of on site and off site conditions
- This disclosure is not a warranty by the owner
- Representations are made by the owner and not by the owner's agents or subagents
- Purchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers, or other qualified professionals

Purchaser Signature: Rory M Isaac Date: 6/20/18 Time: _____

Purchaser Printed Name: RORY M. ISAAC

Purchaser Signature: Kimberly Isaac Date: 6/20/18 Time: _____

Purchaser Printed Name: Kimberly Isaac

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Onions offer for

#120-0452
Kopchynski 000467

606

615

STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION
DISCLOSURE STATEMENT ADDENDUM

Prior to signing contract, owner shall provide this disclosure addendum to the purchaser if the property is subject to a homeowners association, a property owners association, a condominium owners association, a horizontal property regime, or similar organizations subject to covenants, conditions, restrictions, bylaws or rules (CCRBR). These organizations are referred to herein as an owners association.

Purchasers should review the applicable documents (covenants, conditions, restrictions, bylaws, deeds, condominium master deed, and similar documents), all related association issues, and investigate the owners association prior to entering into any legal agreements including a contract. Owners association charges include any dues, fees, assessments, reserve charges, or any similar charges. Purchasers are solely responsible to determine what items are covered by the owners association charges.

Property Address: 24 Avenue of Live Oaks, Pawleys Island, 29585

Describe owners association charges: $ 175.00 Per MONTH (month/year/other)

What is the contact information for the owners association? FIRST SERVICE RESIDENTIAL
843-652-2163

As owner do you have any actual knowledge of answers to the following questions?
Please check the appropriate box to answer the questions below.

	Yes	No	No Representation
1. Are there owners association charges or common area expenses?	☑	☐	☐
2. Are there any owners association or CCRBR resale or rental restrictions?	☑	☐	☐
3. Has the owners association levied any special assessments or similar charges?	☐	☑	☐
4. Do the CCRBR or condominium master deed create guest or visitor restrictions?	☑	☐	☐
5. Do the CCRBR or condominium master deed create animal restrictions?	☑	☐	☐
6. Does the property include assigned parking spaces, lockers, garages or carports?	☐	☑	☐
7. Are keys, key fobs or access codes required to access common or recreational areas?	☑	☐	☐
8. Will any membership other than owner association transfer with the properties?	☐	☑	☐
9. Are there any known common area problems?	☐	☑	☐
10. Is property or common area structures subject to South Carolina Coastal Zone Management Act?	☐	☐	☑
11. Is there a transfer fee levied to transfer the property?*	☐	☑	☐

(Question does not include recording costs related to value or deed stamps.)*

Explain any yes answers in the space below and attach any additional sheets or relevant documents as needed: _____

Owner signature: Thomas ONIONS Date: 4-23-18 Time: 2:00 PM

Owner signature: Jacqueline ONIONS Date: 4-23-18 Time: 2:00PM

Purchaser signature: Date: 6/20/18 Time:

Purchaser signature: Date: 6/20/18 Time:

LITCHFIELD PLANTATION

CIRCA 1750

HOA News

Issue 22 March/April 2018

PLAINTIFF'S EXHIBIT NO. 30 FOR IDENTIFICATION 3-27-19 DATE: RPTR: HD
PENGAD 800-631-6989

The board's primary goal in Litchfield Plantation is to build value in the community while bringing the community closer together!

Welcome Spring!

It Takes A Plantation

In some areas it takes a village, but in our case, it takes a plantation! As you drive down the Avenue of Live Oaks it's plain to see that all of our hard work was worth every single effort made. Another tremendous thank you to all of the property owners who were able to participate and help with pruning the azaleas several months ago. The Avenue looks as beautiful and vibrant as ever, and once again, the fruits of our labor have paid off and we are all able to benefit as a result.

We've just installed a new HV/AC system on the third floor of the beach house and we are currently in the process of renovating the third floor kitchen. For our bike enthusiasts, we now have bicycle rack to accommodate those who wish to have a place to park their bicycles. A great big thank you to Joe and Cathy Martino for all of their time in helping to get our beach house ready for the new season!

The pool will open April 1st. We would like to thank Christian and Jeanette Tully for all they've done to help with that! We would also like to thank the Grabers for donating their barbecue, what a great addition that will be when we are enjoying another terrific season at our magnificent pool.

The Board is in the final stages of approving the updated Rules and Regulations which will be distributed accordingly upon completion.

We have decided to hold off on changing the code to the front gate and to the lock boxes at the beach house and pool for the time being, so please continue to use the same one.

Plaintiffs 000239

608

BOARD of GOVERNORS

Tom Eckard
631-398-2539
teckard55@yahoo.com

Tim Onions
[ARB & Landscape]
843-325-9399
tconions@sc.rr.com

Angie Bunn
[Accounting]
843-222-7538
abunntcg@aol.com

Jason Burger
865-851-2635
JasonCBurger@gmail.com

Justin Nash
843-543-5794
Jnash@colonialfuels.com

FirstService Residental
843 - 357- 9888

Architectural Review Board

***Martin Phillips**

Gary Collins

Bob Charnley

Robin Gibbs

Joe Davis

All ARB related matters are to go directly through Amber Theisen
Office Phone: 843-652-2206
Email: Amber.theisen@fsresidential.com

Protocol for submission of plans & questions:

ARB Guidelines: Available through FirstService Residential.

Submittals: Through Chris Amber Theisen at FirstService Residential.

Meetings: The 3rd Tuesday of each month at 5:00 PM in The Abbey at Litchfield Plantation.

Timing: Submittals and questions must be in to Amber by the 1st of the month in order to guarantee presentation at that month's ARB Meeting.

Any exterior modification to include landscaping and landscaping materials must be approved by the ARB.

Upcoming Reminders

Revised Rules & Regulations pertaining to Litchfield Plantation will be distributed

- Jeanette and Christian Tully will manage the pool.
- Joe and Cathy Martino will manage the beach house.
- Leslie List is spearheading our new Welcoming Committee for new property owners.

Coming Soon: Look for an improved and user friendly version of our HOA website!

A reminder that landscaping trailers, boat trailers, etc. are to be kept and stored out of street view. If you do not have a garage and want to create a natural space on your property to store these items, please contact Amber Theisen regarding ARB approval or to discuss any questions you may have regarding this matter.

To report any concerns or file a complaint pertaining to Litchfield Plantation's Rules, Regulations or Restrictions please do so by emailing Tim Zachary AND make certain to copy Tom Eckard and Tim Onions on the email as well.

FirstService Residential as your management team.

Tim Zachary - Office Phone, 843-652-2163
Cell Phone, 843-385-7056
Email: Tim.zachary@fsresidential.com

Amber Theisen - Office Phone 843-652-2206
Email: Amber.theisen@fsresidential.com

The Guard Gate

Our guards: Nancy Barbier & Paul Ross

Gate House Phone: 843-235-0041

Gate House Email: lp_sec_aus@outlook.com

Please call or email the names of ALL guests and visitors (family, friends, pizza delivery person, etc.) to the guard house prior to their arrival. If a guest is staying over, please provide their arrival and departure dates.

Construction crews must adhere to HOA regulations!

THE ABBEY
AT PAWLEYS ISLAND

Easter Services:

Sunday April 1st

9:00 AM and 11:00 AM

(843) 314-0277

46 Gathering Lane, Pawleys Island, SC 29585

Sundays 8:00 AM and 10:00 AM

http://theabbeyatpawleys.org

Community Lowcountry Festival

Where: The Abbey at
The Carriage House
46 Gathering Lane
Litchfield Plantation

When: Friday, April 13th

~~~~~~~~~~~~~~~~~~

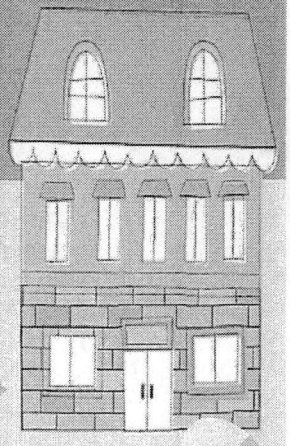
Lowcountry Food & Beverages
6:00 ~ 8:00 pm

Featuring Beach Music by
DJ Tootie Brown
Dancing from
7:00 ~ 10:00 pm

Fun Activities for Children of All Ages
Face Painting / Game Truck
Appearance by Beauty & The Beast

Emery Custer 843 - 833 - 7313 Electric, carpentry, plumbing and general handyman.
Allen Moomaw 540 - 335 - 6006 Bush hogging, mulching and more.
Wright Landscaping & Tree Removal (Jimmy) 843-833-0356 Bush hogging & removal.
Jack List 843 - 555 - 1234 Lawn care, yard maintenance, Spring/Fall Cleanup.

Real Estate News on the Plantation 02/01/2018 - 03/28/18



Single family homes (2) Active for sale, (2) Pending and (2) Have sold.

Building Lots (21) Active for sale, (1) Pending and (2) Have sold.

Townhomes/Condos (5) Active for sale, (2) Pending and (5) Have sold.

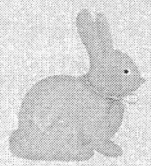
Litchfield Plantation Newsletter written/designed and real estate stats provided by:

Laura Kopchynski

LP resident and Realtor with RE/MAX BEACH & GOLF in Pawleys Island.

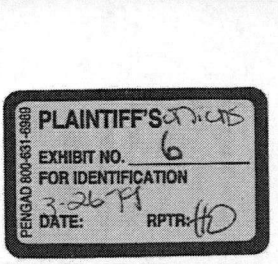
Contact Laura: www.PawleysIslandDiscoverRealEstate.com

Email: Laurainpawleys@gmail.com Cell: 516-443-4215



Plaintiffs 000242

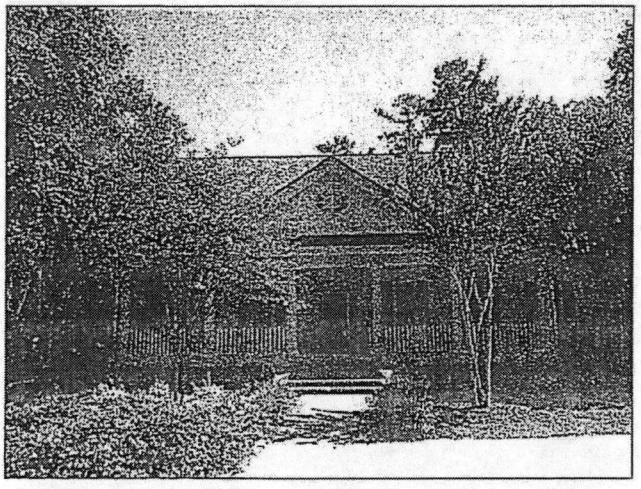
Front page photo credit of plantation house;
http://carolinahomesandinteriors.com/b/sc-coastal-regions/georgetown-sc/a-million-miles-from-everything-at-litchfield-plantation/
~~~~~~~~~~~~~~~~~~



Inspection Report

Randy and Suzanne Cole

Property Address:
24 Avenue of Live Oaks
Pawleys Island SC 29585



Cornerstone Home Inspections of SC, LLC

Eric Koppel 48983
22 Cheyenne Road
Myrtle Beach, SC 29588
843-957-1343

ONIONS EXHIBIT #075

Date: 5/10/2018	Time: 09:00 AM	Report ID: EK-5189
Property: 24 Avenue of Live Oaks Pawleys Island SC 29585	**Customer:** Randy and Suzanne Cole	**Real Estate Professional:** Todd Palmer United Real Estate

Comment Key or Definitions

The following definitions of comment descriptions represent this inspection report. All comments by the inspector should be considered before purchasing this home. Any recommendations by the inspector to repair or replace suggests a second opinion or further inspection by a qualified contractor. All costs associated with further inspection fees and repair or replacement of item, component or unit should be considered before you purchase the property.

Inspected (IN) = I visually observed the item, component or unit and if no other comments were made then it appeared to be functioning as intended allowing for normal wear and tear.

Not Inspected (NI)= I did not inspect this item, component or unit and made no representations of whether or not it was functioning as intended and will state a reason for not inspecting.

Not Present (NP) = This item, component or unit is not in this home or building.

(Summary items) = The item, component or unit is not functioning as intended, or needs further inspection by a qualified contractor. Items, components or units that can be repaired to satisfactory condition may not need replacement.

In Attendance:	Type of building:	Approximate age of building:
Seller only	Single Family (2 story)	13 years
Temperature:	**Weather:**	**Ground/Soil surface condition:**
69 degrees at time of arrival	Clear	Dry
Rain in last 3 days:	**Radon Test:**	**Water Test:**
No	No	No

ONIONS EXHIBIT #076

General Summary

Cornerstone Home Inspections of SC, LLC

22 Cheyenne Road
Myrtle Beach, SC 29588
843-957-1343

Customer
Randy and Suzanne Cole

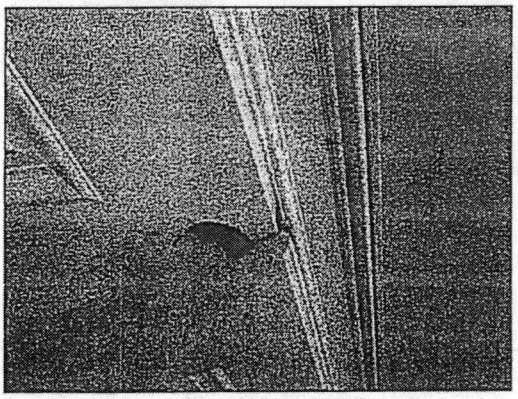
Address
24 Avenue of Live Oaks
Pawleys Island SC 29585

The following items or discoveries indicate that these systems or components **do not function as intended** or **adversely affects the habitability of the dwelling; or warrants further investigation by a specialist, or requires subsequent observation.** This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the function or efficiency of the home. This Summary is not the entire report. The complete report may include additional information of concern to the customer. It is recommended that the customer read the complete report.

5. Living Areas and Bedrooms

5.4 Doors (representative number)

The door to the back left bedroom does not latch when closed. Recommend adjustment by a qualified contractor. Item 1(Picture)



5.4 Item 1(Picture) Door does not latch

7. Structural Components

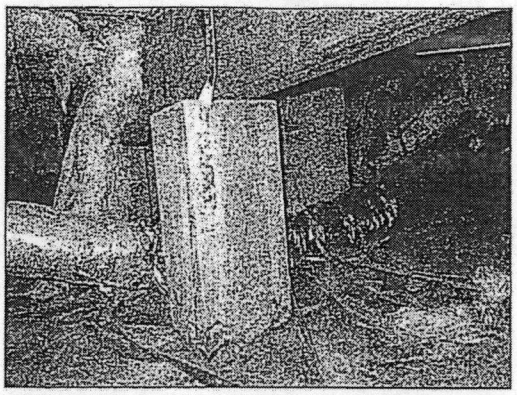
ONIONS EXHIBIT #077

614

623

7.3 Floors (Structural)

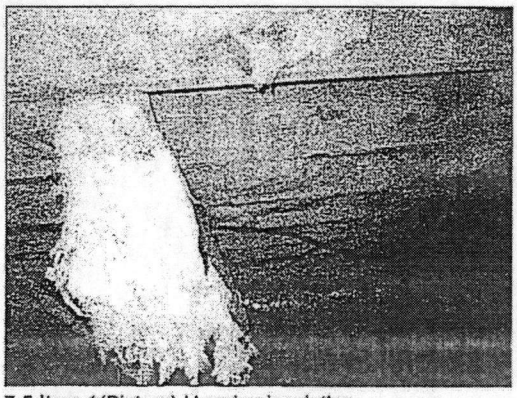
There is an area of the floor that appears to have had a beam installed recently. The current owners did mention that they had a floor area repaired and that the repair was professionally engineered. Recommend confirmation of the engineering. Item 1(Picture)



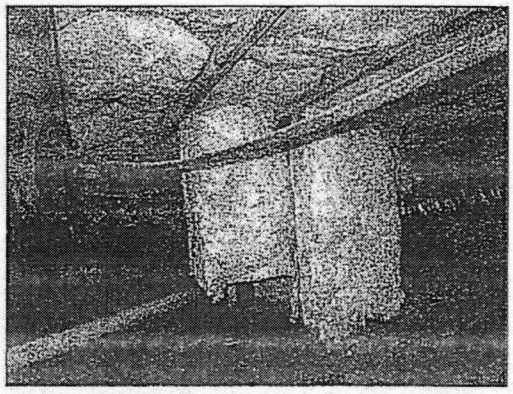
7.3 Item 1(Picture) Wood beam and posts under living area

7.5 Insulation Under Floor System

There is a large amount of floor insulation that has fallen or is hanging in the crawl space. Recommend further inspection and correction by a qualified contractor. Item 1(Picture) Item 2(Picture) Item 3(Picture) Item 4(Picture) Item 5(Picture)

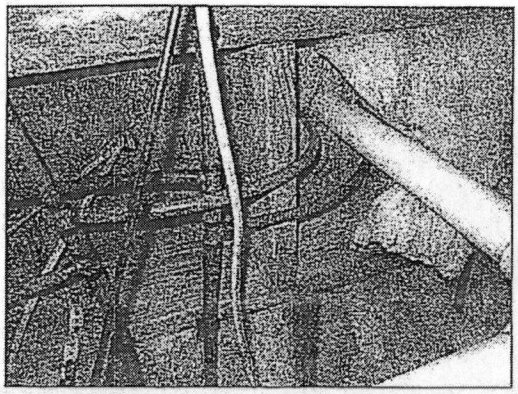


7.5 Item 1(Picture) Hanging insulation

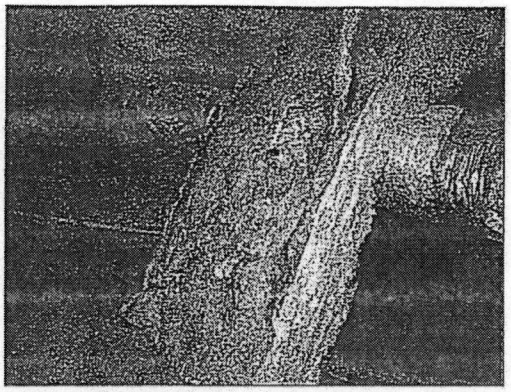


7.5 Item 2(Picture) Hanging insulation

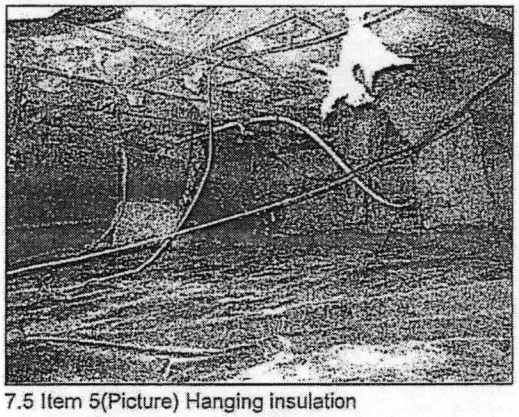
ONIONS EXHIBIT #078



7.5 Item 3(Picture) Missing insulation



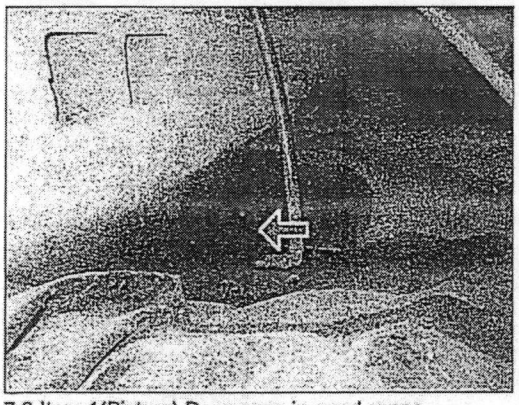
7.5 Item 4(Picture) Hanging insulation



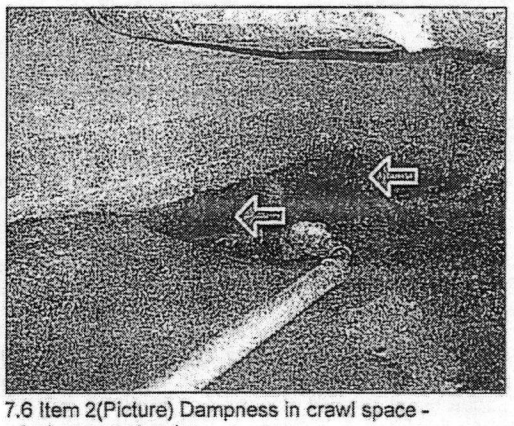
7.5 Item 5(Picture) Hanging insulation

7.6 Vapor Retarders (in Crawlspace or basement)

There are areas of ground that are not covered by a vapor barrier and the ground is damp. Recommend further inspection and any needed corrections by a crawl space specialty company. Item 1(Picture) Item 2(Picture) Item 3 (Picture) Item 4(Picture) Item 5(Picture) Item 6(Picture)

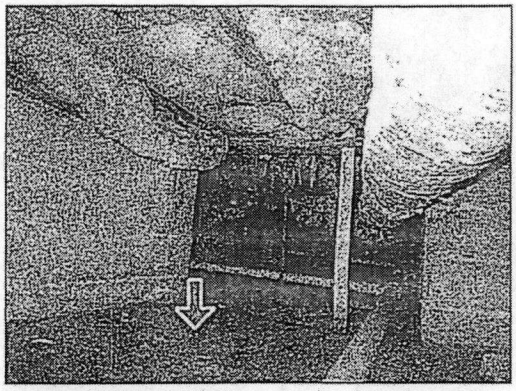


7.6 Item 1(Picture) Dampness in crawl space

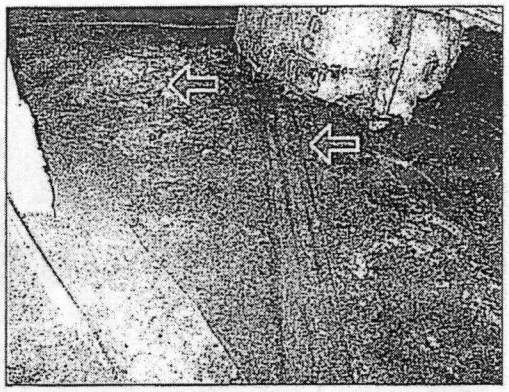


7.6 Item 2(Picture) Dampness in crawl space - missing vapor barrier

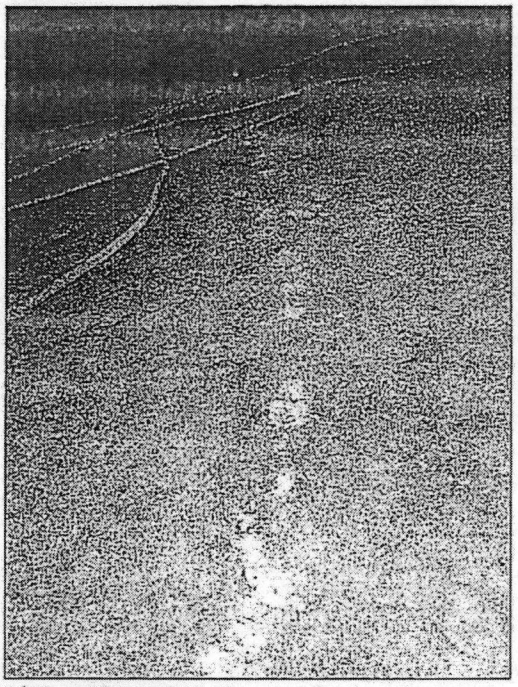
ONIONS EXHIBIT #079



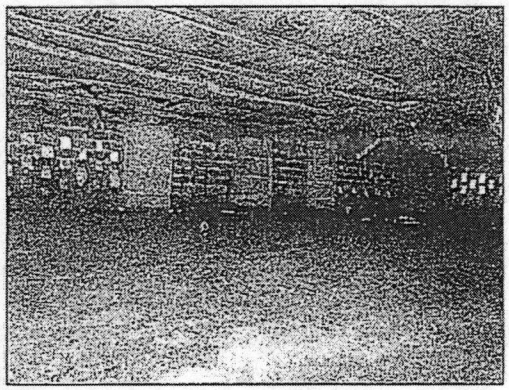
7.6 Item 3(Picture) Missing vapor barrier - damp ground



7.6 Item 4(Picture) Wet debris on top of vapor barrier



7.6 Item 5(Picture) Missing vapor barrier - damp ground



7.6 Item 6(Picture) No vapor barrier under sun room - damp ground

Home inspectors are not required to report on the following: Life expectancy of any component or system; The causes of the need for a repair; The methods, materials, and costs of corrections; The suitability of the property for any specialized use; Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions; The market value of the property or its marketability; The advisability or inadvisability of purchase of the property; Any component or system that was not observed; The presence or absence of pests such as wood damaging organisms, rodents, or insects; or Cosmetic items, underground items, or items not permanently installed. Home inspectors are not required to: Offer warranties or guarantees of any kind; Calculate the strength, adequacy, or efficiency of any system or component; Enter any area or perform any procedure that may damage the property or its components or be dangerous to the home inspector or other persons; Operate any system or component that is shut down or otherwise inoperable; Operate any system or component that does not respond to normal operating controls; Disturb insulation, move personal items, panels, furniture,

ONIONS EXHIBIT #080

equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility; Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to mold, toxins, carcinogens, noise, contaminants in the building or in soil, water, and air; Determine the effectiveness of any system installed to control or remove suspected hazardous substances; Predict future condition, including but not limited to failure of components; Since this report is provided for the specific benefit of the customer(s), secondary readers of this information should hire a licensed inspector to perform an inspection to meet their specific needs and to obtain current information concerning this property.

Prepared Using HomeGauge http://www.HomeGauge.com : Licensed To Eric Koppel

ONIONS EXHIBIT #081

Electrical Issues

Cornerstone Home Inspections of SC, LLC

22 Cheyenne Road
Myrtle Beach, SC 29588
843-957-1343

Customer
Randy and Suzanne Cole

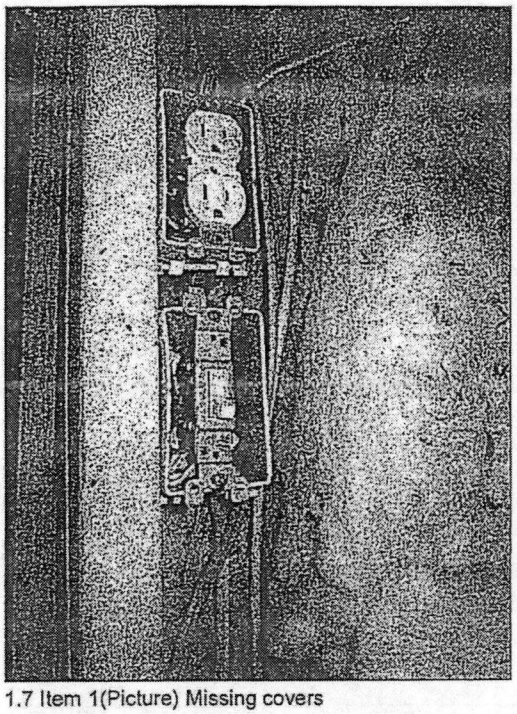
Address
24 Avenue of Live Oaks
Pawleys Island SC 29585

1. Roof System / Chimneys and Attic

1.7 Visible Electric Wiring in Attic

There is an electrical outlet and a switch in the attic that is not protected with a cover. Recommend correction by a qualified contractor. Item 1(Picture)

ONIONS EXHIBIT #082

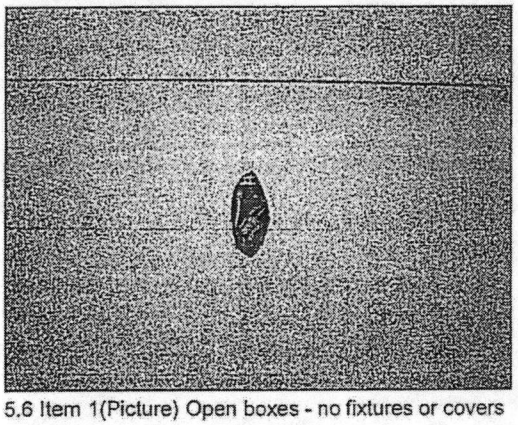


1.7 Item 1(Picture) Missing covers

5. Living Areas and Bedrooms

5.6 Outlets, Switches and Fixtures

There are two mounting boxes on the wall at the second floor living area that do not have fixtures installed and are not covered by cover plates. Recommend correction by a qualified contractor. Item 1(Picture)



5.6 Item 1(Picture) Open boxes - no fixtures or covers

ONIONS EXHIBIT #083

620

629

Plumbing Issues

Cornerstone Home Inspections of SC, LLC

22 Cheyenne Road
Myrtle Beach, SC 29588
843-957-1343

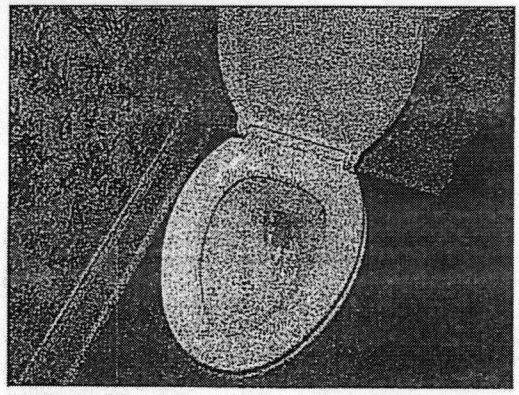
Customer
Randy and Suzanne Cole

Address
24 Avenue of Live Oaks
Pawleys Island SC 29585

6. Bathroom and Components

6.7 Plumbing Water Supply, Distribution System and Fixtures

The toilet in the half bath is loose at it's connection to the floor flange. Recommend further inspection and correction by a qualified contractor. Item 1(Picture)



6.7 Item 1(Picture) Toilet will move/tip when pushed

ONIONS EXHIBIT #084

PLAINTIFF'S ONIONS
EXHIBIT NO. 7 T
FOR IDENTIFICATION
DATE: 3.26.19 RPTR: TD
PENGAD 800-631-6989

EXHIBIT K

STARK EXTERMINATORS
Beyond The Call.

INSPECTION GRAPH

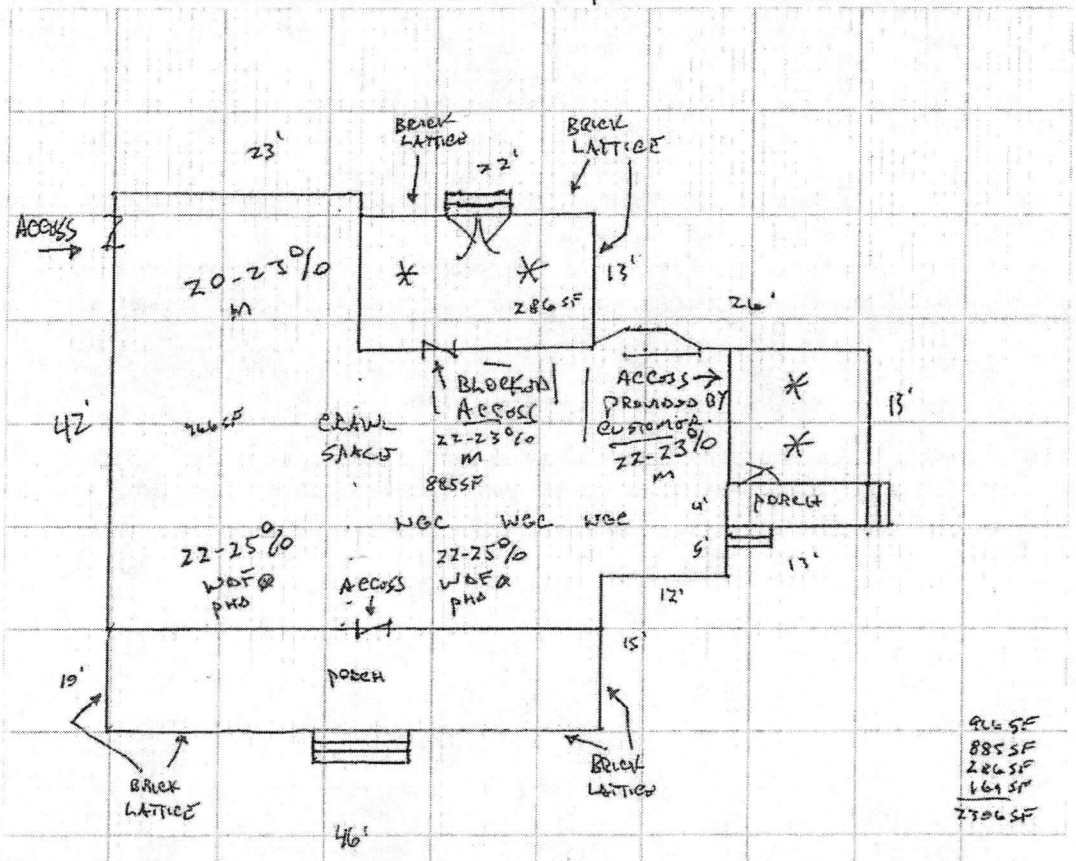
Date: 5 / 16 / 18

Inspector: Andy Ward

Owners/Agents Name: Jacqe Onions Hm Ph: 325-3733 Other Ph: 843 Email: JACQUEOQ SC.RR.COM

Occupants/Purchasers Name: _____ Hm Ph: _____ Other Ph: _____ Email: _____

Service Address: 24 Ave of Live Oaks City Pawleys Is. State: SC Zip Code: 29585



NOTE: This is not a structural damage report. If visible infestation is noted the customer should have a structural engineer or a professional qualified in structural repairs to access the structural integrity of any noted damages.

FOUNDATION WALLS: ☑ BLOCK ☐ POURED ☐ _____
EXTERIOR CLADDING: ☐ BRICK ☐ STUCCO ☑ SIDING ☐ _____
CONSTRUCTION TYPE: Basement: ☐ Finished ☐ Unfinished ☐ Floating Slab ☐ Supported Slab ☐ Monolithic Slab ☑ Crawl ☐ Pier & Beam

CODE: ☐ ACTIVE INFESTATION = A ☐ SUBTERRANEAN TERMITES = ST ☐ DRYWOOD TERMITES = DT
☑ WOOD BORERS = WB ☐ POWDER POST BEETLES = PPB ☑ WOOD DECAY FUNGI = WDF
☑ MOISTURE CONDITION = M ☐ PREVIOUS INFESTATION = P ☐ BATH TRAP = B

CONDUCIVE CONDITIONS: ☑ POSSIBLE HIDDEN DAMAGE = PHD ☑ EXISTING VISIBLE DAMAGE = ⊗ ☑ INACCESSIBLE AREAS = ✱
☐ WOOD TO GROUND CONTACT = WGC ☐ INADEQUATE VENTILATION = IV ☐ STANDING WATER = SW
☐ CELLULOSE DEBRIS = CD

INSPECTORS STATEMENT LOCATION OF VISIBLE INFESTATION: _____
TYPE OF TREATMENT: ☐ Baiting System ☐ Liquid Treatment ☐ Limited Liquid Treatment ☐ Other: _____

TREATMENT DATE: ___ / ___ / ___ PRODUCT _____ ESTIMATED ☐ GALLONS / ☐ STATIONS _____
Water Well: [ ] NO [ ] Yes - # of Feet _____ Additional Instructions: _____

Size of Structure: _____ Scale Used: Waiver Issued
☐ Cubic Footage ☐ Linear Footage ☐ 1:1 ☐ Other: _____ ☐ Yes ☐ No

STK-SAS-100-SC 5765 *Moisture Meter Readings Required Revised 1/16

622 ONIONS EXHIBIT #172

107 Queen St, Suite A
Georgetown, SC 29440
843-546-5898 • 843-344-5567

Proposed work detail for 24 Ave of Oaks, Pawleys Island, SC 29585:

1. Removal of debris from crawlspace area*
2. Reopen blocked access under porch area in order to gain access to crawl space area. The referenced blocked access that needs to be reopened was originally converted from a porch to a den on the rear of the house. *
3. Create access to crawlspace area on far right hand side facing end of house. The referenced area is beneath the kitchen area of the house. *

*Please note that Stark Exterminators will not be responsible for doing the proposed work detail noted above. These items will need to be completed at homeowner's expense before we can begin installing the Crawlspace Moisture Management System as noted on the agreement.

Buyer: _____

Company Representative: _____

Service Center Manager: _____

Date Acknowledged: _____/_____/_____

ONIONS EXHIBIT #173

STARK EXTERMINATORS
Beyond the Call.

Crawl Space Moisture Management System

Service and Maintenance Agreement

ONIONS	JACKIE AND TIM		SAME
Account Name, Last	First	Middle	Billing Name
24 AVE. OF OAKS (TUCKERS RD.)			
Service Address, Number	Street		Billing Address, Number Street
DAWLEYS IS.	SC	29585	
City	State	Zip Code	City State Zip Code
843-325-3733			
Service Phone	Home	Work	Billing Phone Home Work
JACQUEDESC.RR.COM			
Cell Phone	Email Address		Cell Phone Email Address
Tenant	Person to Contact		Attention (Property Manager / Commercial Accounts Manager)

Effective 5-18-2018 through 5-18-2019 for the sum of $ 4,595 Stark Exterminators, Inc.* (hereafter Stark) will provide the service specified below, to assist in the control of crawl space moisture levels. In first year a follow up visit will be scheduled 4-6 months after installation to check humidity levels and dehumidifier system

Stark will extend the service annually to the Purchaser for so long as the Purchaser may own the property for $ 200 per year payable on or before the end of the previous service period. After the third annual period and each annual period thereafter, Stark reserves the right to revise the annual extension charge

Stark will install (1) dehumidifier(s) in crawl space to reduce condensation and to aid in the reduction of wood moisture content in sills, joists and other wood members. Dehumidifier(s) will be wired by a licensed electrician and will be drained to the exterior through pvc pipe. A vapor barrier will be installed over the majority of accessible soil after removing debris as necessary. All vents will be covered from inside the crawl space to prevent air movement. If necessary we will clean and treat all exposed wood and concrete for the protection and prevention of wood decay fungus (WDF). Terms and Conditions and costs associated for any treatment performed for wood decay fungus can be found on separate contract titled Wood Destroying Organisms and should accompany this agreement.

Stark will inspect the above listed property periodically as long as the agreement is in effect and will provide the following:

- Replace defective materials and equipment at our expense while under the manufacturer's warranty
- After manufacturer's warranty period, repair or replacement will be made for material cost only with no installation charge, provided materials and equipment were not damaged through abuse, neglect or accident
- Replace dehumidifier filter(s) annually according to manufacturer's recommendation.
- Record wood moisture readings in substructure.
- Adjust dehumidifier settings as needed and ensure dehumidifier's proper drainage
- Inspect and, if needed, repair damages to vapor barrier and vent coverings.

Customer's responsibilities under this agreement:

- Maintain HVAC system including proper drainage
- Maintain/insure proper ventilation for any present or future appliance in crawl space.
- Maintain proper drainage around structure to ensure water does not flow toward foundation walls.
- Notify Stark before any service work is done in the crawlspace. Any damage done by another service provider is not covered by this agreement unless prior notification and direct supervision by a Stark company representative is given

This property was not inspected, nor serviced, for the presence or control of health related mold or fungi. STARK SPECIFICALLY DISCLAIMS ANY LIABILITY FOR ALLERGIES, AGGRAVATIONS THEREOF, OR FOR ANY BODILY INJURY RESULTING FROM MOLD, FUNGUS, MILDEW, OR ANY OTHER CAUSE

As part of this agreement, Stark has not made an inspection for termite infestation and Stark makes no representation, express or implied, as to the absence of termites or other wood destroying pests and no service has been rendered for control of such pests. Ask your Stark representative for a termite inspection if you desire such service

Stark specifically disclaims any warranty as to areas affected by plumbing leaks, roof leaks, defective door and window openings, power outages, floods and/or Acts of God

ANY ADDITIONAL PROVISIONS ATTACHED HERETO, INCLUDING THE ARBITRATION AGREEMENT AND THE OTHER TERMS AND CONDITIONS ON THE REVERSE SIDE AND THE INSPECTION GRAPH DATED 5-16-18 ARE PART OF THIS PLAN.

NOTICE: YOU, THE PURCHASER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.

COMPANY INFO: DATE: 5 / 18 / 18

Address: 107 Queen St., Suite H

City: Georgetown

State: SC Zip: 29440

Phone 843-546-5898

ACCEPTED BY: DATE: / /

☐ Buyer / ☐ Authorized Agent

AMY WARD 843-344-9385
Company Representative

Company Service Center Manager

STK-SAS-063 Revised 4-15

624 ONIONS EXHIBIT #174

PLAINTIFF'S
EXHIBIT NO. 11 T
FOR IDENTIFICATION
DATE: 3-26-19 RPTR: HO
PENGAD 800-631-6989

OFFICIAL SOUTH CAROLINA WOOD INFESTATION REPORT

DATE: 6/18/2018 FILE NO.: 14847

THIS REPORT VALID FOR 30 DAYS ONLY. THIS REPORT IS NOT A GUARANTEE OR WARRANTY AGAINST FUTURE INFESTATION OR DAMAGE. IT IS RECOMMENDED BY THE DEPARTMENT OF PESTICIDE REGULATION THAT THE PURCHASER OF THE STRUCTURE, RATHER THAN THE SELLER, OBTAINS THIS WOOD INFESTATION REPORT.

This is to report that a qualified inspector employed by the below firm has carefully inspected accessible areas, including attics and crawl spaces which permit entry, of the property located at the below address for termites, other wood-destroying organisms, and wood-destroying fungi. The inspection for the presence of wood-destroying fungi is only required to the level below the first main floor as defined in Section 27-1085 K(3)(f) of the Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act. This report specifically excludes hidden areas, areas not readily accessible, and the undersigned pest control operator disclaims that he has made any inspections of such hidden areas or of such not readily accessible.

The inspection described has been made on the basis of visible evidence, and special attention was given to those accessible areas which experience has shown to be particularly susceptible to attack by wood-destroying organisms. Probing and/or sounding of those areas and other visible and accessible wood members showing evidence of infestation was performed. This report is submitted without warranty, guarantee, or representation as to concealed evidence of infestation or damage or as to future infestation.

If there is evidence of active infestation or past infestation of termites and/or other wood-destroying organisms or fungi, it must be assumed that there is some damage to the building caused by this infestation, however, any visible damage to a wood member in accessible areas has been reported. The below-named firm's inspectors are not engineers or builders, and you may wish to call a qualified engineer, licensed contractor, or expert in the building trade to provide their opinion as to whether there is structural damage to this property.

LOCATION AND DESCRIPTION OF PROPERTY INSPECTED: 24 AVENUE OF THE LIVE OAKS PAWLEYS ISLAND SC 29585

IF ANY OF THE FOLLOWING ARE MARKED YES, DESCRIBE ON REVERSE.

WERE ANY AREAS OF THE PROPERTY OBSTRUCTED OR INACCESSIBLE? Yes [✓] No [ ]

INFESTATION:

	Active Infestation YES	Active Infestation NO	Previous Infestation YES	Previous Infestation NO
1. There is visible evidence of :				
a. Subterranean termites	[ ]	[✓]	[ ]	[✓]
b. Drywood termites	[ ]	[✓]	[ ]	[✓]
c. Old house borers	[ ]	[✓]	[ ]	[✓]
d. Powder post beetles	[ ]	[✓]	[ ]	[✓]
e. Other wood-destroying insects	[ ]	[✓]	[ ]	[✓]

2. There is visible evidence of prior subterranean termite treatment — Yes [✓] No [ ]

3. There is evidence below the first main floor of the presence of:
   a. Active wood-destroying fungi (wood moisture content > 28%). — Yes [ ] No [✓]
   b. Non-active wood-destroying fungi (wood moisture content < 28%) — Yes [✓] No [ ]

4. There is evidence of the presence of excessive moisture conditions below the first main floor (20% or above wood moisture content, standing water, etc.) — Yes [✓] No [ ]
   Wood moisture content of the wooden substructure ranged from 20 %to 25 %.

DAMAGE: Termite, other wood-destroying insects and fungi (Note: reporting of fungi damage to wood, commonly called water damage, decay or rot, is limited to the area below the first main floor of the structure as defined 27-1085 K(3)(f) SCRR.) At the time of our inspection, there were visibly damaged wooden members (e.g. insect damage to columns, sills, joists, plates, door jambs, headers, exterior stairs, porches, or fungi damage below the first main floor.). — Yes [ ] No [✓]

If the answer is "YES", specify causes and location(s) on back.

Damage Observed. Damage must be disclosed even if repairs are deemed unnecessary. If visible evidence of active or previous infestation caused by any wood-destroying organism is reported, it must be assumed that some degree of damage is present and location(s) must be described on the reverse side of this report. It is recommended that evaluation of damage and any corrections be performed by a licensed contractor or structural engineer approved by the purchaser.

TREATMENT — Check Appropriate Box

1. The property described was treated by us for the prevention or control of subterranean termites [✓]
   Wood-destroying organism for which treatment was made date 10/2016
2. An Official Waiver of Standards Form (subterranean termite treatment) has been issued. (NOTE: a signed copy must be attached to this report). [ ]
3. The property is covered by a warranty associated with the above treatment. The purchaser should contact the company reguarding information required to transfer warranty. [ ]
4. The property described has not been treated by us for any wood-destroying organisms. [ ]

See other side of this report for additional conditions governing this report. CL-100 Approved by the South Carolina Pest Control Association, Inc., and the Division of FORM CL-100 Regulatory and Public Service Programs of Clemson University Revised 7/12 (supersedes earlier version)

ONIONS EXHIBIT #040

CONDITIONS GOVERNING THIS REPORT
Please read carefully

This report is based on the observations and opinions of our inspector. It must be noted that all buildings have some wood members which are not visible or accessible for inspection. It is not always possible to determine the presence of infestation without extensive probing and in some cases actual dismantling of parts of the structure being inspected.

All inspections and reports will be made on the basis of what is visible, and we will not render opinions covering areas that are enclosed or not readily accessible, areas concealed by wall coverings, floor coverings, insulation, furniture, equipment, stored articles, or any portion of the structure in which inspection would necessitate tearing out or marring finished work. We do not move furniture, appliances, equipment, etc. Plumbing leaks may not be apparent at the time of inspection. If evidence of such leaks is disclosed, liability for the correction of such leaks is specifically denied. No opinion can be rendered as to infestation or damage on that portion of sheathing, siding or other susceptible material, which continues below soil grade.

The areas of the substructure and attic that are accessible and open for inspection have been inspected. The substructure is defined as that portion of the building below the first main floor living space.

Detached garages, sheds, lean-tos, fences, or other buildings on the property are not included in this inspection report unless specifically noted.

The company, upon specific request and agreement as to additional charge, will open any inaccessible, concealed, or enclosed area and inspect same and make a report thereon.

This property was not inspected for the presence or absence of health related molds or fungi. This inspection was conducted solely for visible evidence of wood destroying organisms and their damage and was limited to the visible and accessible areas of the structure(s) only. Inspection for the presence of wood-destroying fungi is only required to the level below the first main floor. We are not qualified to and do not render an opinion concerning mold related air quality or any other health related issues relating to this structure. Questions concerning the presence or absence of health related molds or fungi or other health related issues, which may be associated with this property, should be addressed to a properly trained Industrial Hygienist, Physician or Public Health Official.

REMARKS

THIS SPACE IS TO BE USED TO DETAIL ANY "YES" ANSWERS FROM THE FRONT OF THIS FORM. INCLUDE ITEM NUMBER WITH EACH EXPLANATION CLARIFICATION AND EXPLANATION OF OTHER ITEMS MAY ALSO BE INCLUDED

Additional Pages are Attached Yes [ ] No [✓] No. of Pages

INACCESSIBLE AREAS: Some areas obstructed by articles stored in garage, some areas obstructed by insulation in attic, limited access to attic, the interior finished areas of the entire house, house built on combination with most areas concealed by wall/floor/ceiling coverings, underneath and behind kitchen cabinets, kitchen counters, bathroom vanities, bathtubs, wall voids in all parts of the housing structure, roof soffits, door jambs. the attic was inspected from the access door area only.

2) There is visible evidence of a prior subterranean termite treatment: evidence of drill holes indicates that there has been a conventional termite treatment done sometime in the past.

NOTES: No wood moisture damage above the level of the first main floor will be addresed in this report. This property was not inspected by this firm for the presence or absence of health-related molds, mildew or fungi. We are neither qualified, authorized nor licensed to inspect for health-related molds, mildew or fungi. If you desire information about these issued, it would be prudent to have the entire structure inspected by a licensed structural expert or industrial hygienist before closing.

IMPORTANT NOTICE: By signing or reading this CL-100, Customer/Buyer acknowledges that s/he is NOT relying on or using the statements herein as representations as to the structural condition of the building, whether the building is in need of maintenance or repair, or whether there is damage to the building. Customer/Buyer acknowledges that s/he should consult a certified building inspector to obtain opinions in these areas.

Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in this property. I do further state that neither I nor the company for which I am acting is associated in any way with any party to this transaction.

LICENSE NUMBER OF PERSON SIGNING THIS REPORT: C0012037 JOSEPH SHEHEEN (MUST BE CERTIFIED IN CATEGORY 7A)

Firm: Lane's Professional Pest Elimination Inc

By: Joseph Sheheen

ADDRESS: PO Box 14973

OF FIRM: Surfside Beach SC 29587

Bulsness License Number B0001184

ACKNOWLEDGMENT:

PURCHASER ACKNOWLEDGES THAT A COPY OF THIS REPORT HAS BEEN REVIEWED AND RECEIVED.

DATE ACKNOWLEDGED

PURCHASER'S SIGNATURE

This report and the issuing licensee are regulated by Clemson University's Department of Pesticide Regulation.

ONIONS EXHIBIT #041

For the Coles-CL100

MAKE CHECK PAYABLE TO:

Po Box 14973
Surfside Beach, SC 29587
843-238-9995
Fax :843-238-2450

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VISA

CARD NUMBER	EXP. DATE
SIGNATURE	AMOUNT PAID

Invoice number: 208785

ACCOUNT NUMBER	DATE	BALANCE
14847	6/20/2018	$0.00

ADDRESSEE

☐ Please check if address below is incorrect and indicate change on reverse side

TIM AND JACKIE ONIONS
24 Ave Of Live Oaks
Pawleys Island, SC 29585

Lane's Professional Pest Elimination, Inc.
Po Box 14973
Surfside Beach, SC 29587

0000000008870300100000001064194000000000003

PLEASE PAY FROM THIS INVOICE

Invoice 208785

Date	Description	Amount	Adjustment	Total
ONIONS	24 Ave Of Live Oaks , Pawleys Island, SC 29585-			
6/18/2018	WOOD INFESTATION REPORT	$200.00		$200.00
			Discount	-0.00
			Adjustment	$200.00

PLEASE DISREGARD THIS INVOICE IF PAYMENT HAS ALREADY BEEN SENT

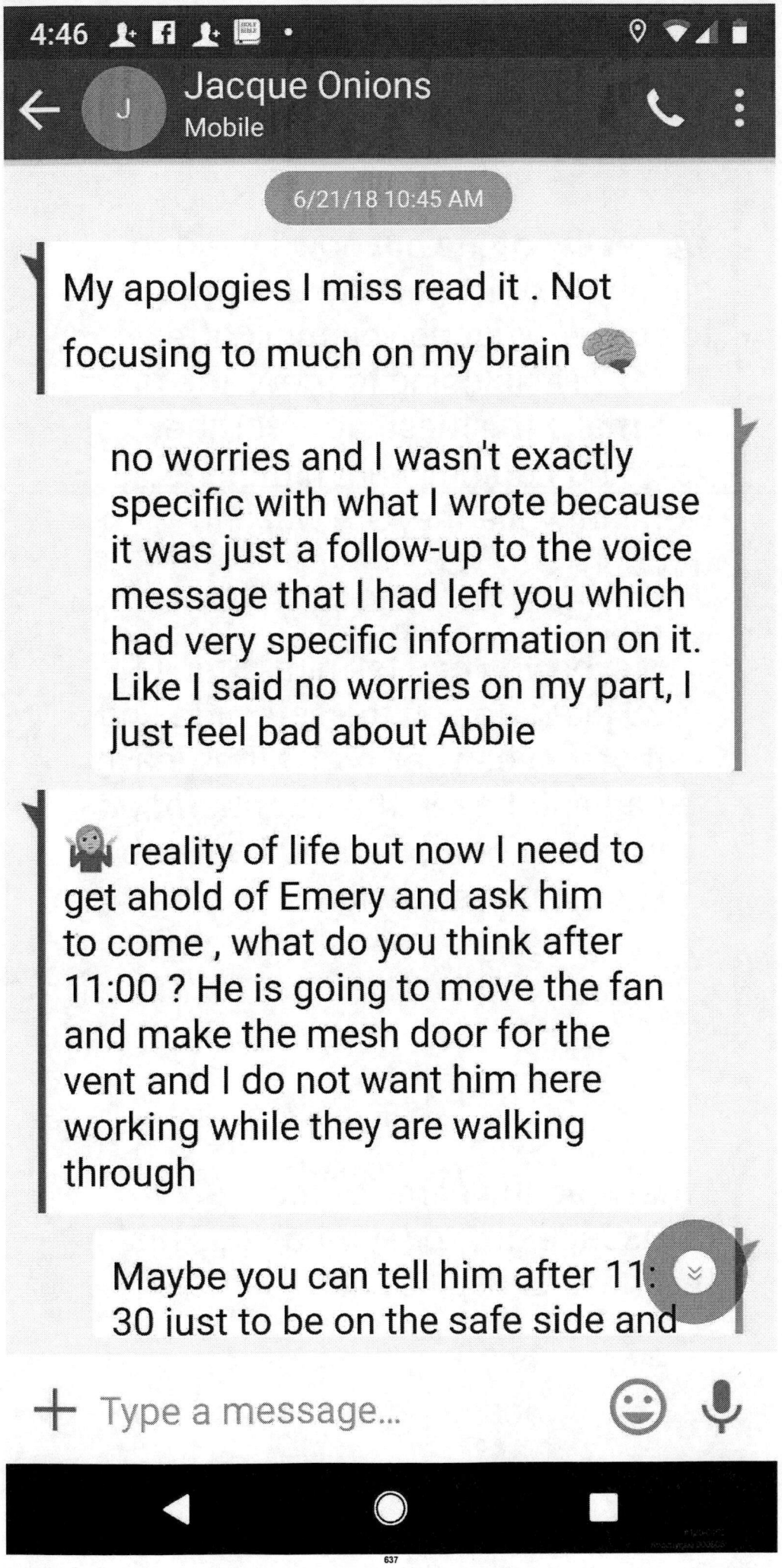
Account#14847 **Purchase Order Number:** Lic#: NC1657PW AMOUNT DUE

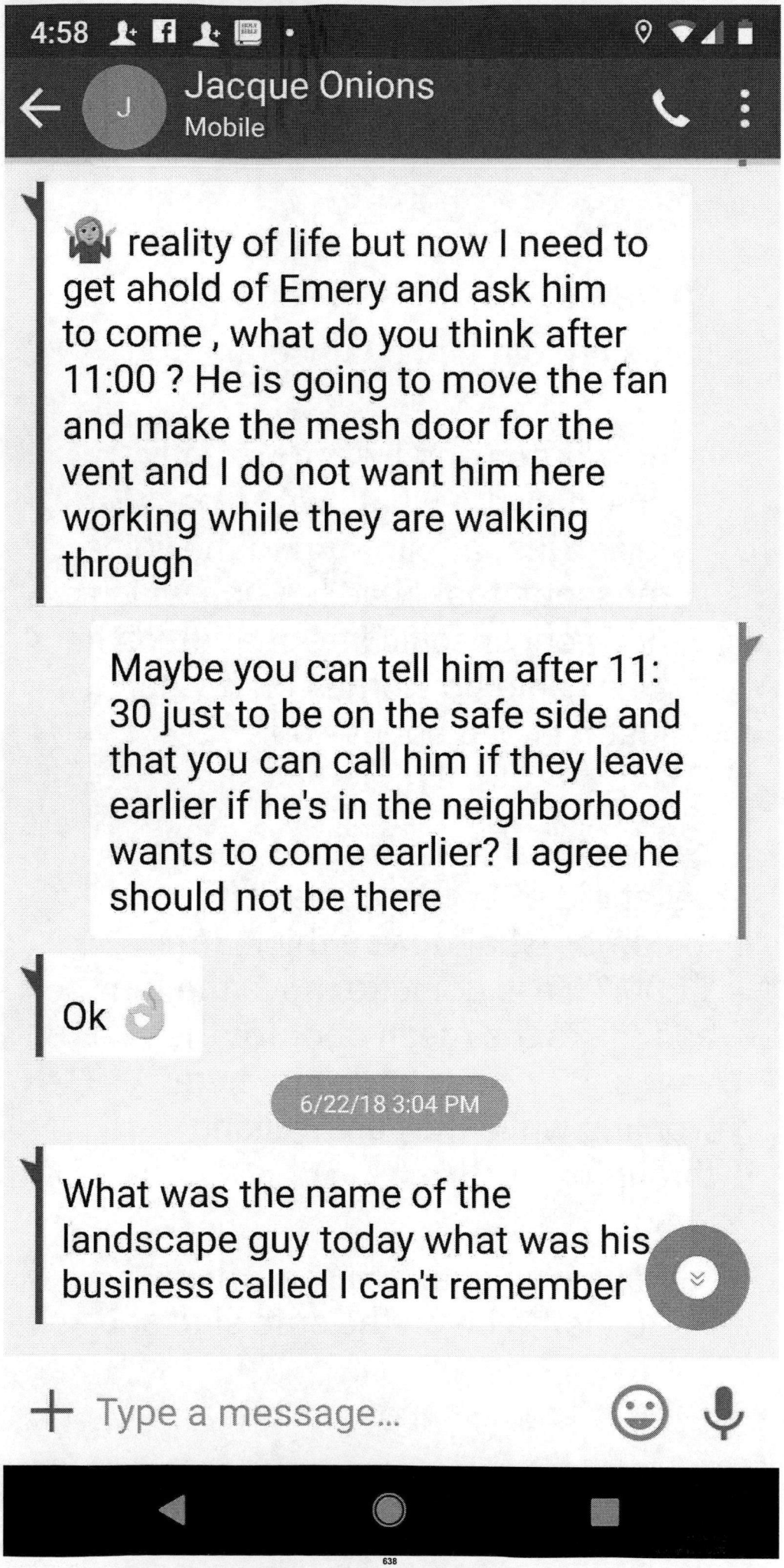
Web Portal Registration Number C625044D Lic#: SC80001184 $0.00
Lic#: GA99102

Consumer Notification(s) / Post Application Statements - Treated Area(s) - Do not allow unprotected persons, children, or pets to touch, enter or replace items or bedding, to contact or enter treated area(s) until dry. Ventilation / Reoccupying - Vacate and keep area(s) closed up to 30 minutes after treatment, then ventilate area(s) for up to 2 hours before reoccupying. Equipment / Processing / Food - Thoroughly wash dished, utensils, food preparation / processing equipment and surfaces with an effective cleaning compound and rinse with clean water, if not removed or covered during treatment. The area should be odor free before products are placed in the area. Exterior Applications - (Baits) - Do not allow grazing of feed, lawn or sod clippings to livestock after bait applications. Do not burn treated wood for 1 month after treatment. National Pesticide Information Center 800.858.7378 pic.orst.edu

CUSTOMER'S SIGNATURE Margaret Onions

ONIONS EXHIBIT #039


4:46
Jacque Onions
Mobile
6/21/18 10:45 AM
My apologies I miss read it . Not focusing to much on my brain
no worries and I wasn't exactly specific with what I wrote because it was just a follow-up to the voice message that I had left you which had very specific information on it. Like I said no worries on my part, I just feel bad about Abbie
reality of life but now I need to get ahold of Emery and ask him to come , what do you think after 11:00 ? He is going to move the fan and make the mesh door for the vent and I do not want him here working while they are walking through
Maybe you can tell him after 11:30 just to be on the safe side and
Type a message...


4:58
Jacque Onions
Mobile
reality of life but now I need to get ahold of Emery and ask him to come , what do you think after 11:00 ? He is going to move the fan and make the mesh door for the vent and I do not want him here working while they are walking through
Maybe you can tell him after 11: 30 just to be on the safe side and that you can call him if they leave earlier if he's in the neighborhood wants to come earlier? I agree he should not be there
Ok
6/22/18 3:04 PM
What was the name of the landscape guy today what was his business called I can't remember
Type a message...

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellant Case No. 2019-001822

Civil Action No. 2018-CP-22-00956

RECEIVED
Jun 30 2020
SC Court of Appeals

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

v.

Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.,

Of Whom Laura Kopchynski is the Respondent.

APPELLANTS' FINAL BRIEF

George W. Redman, III
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400

Counsel for Appellants

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STATEMENT OF THE ISSUES ON APPEAL

(1) DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT BY IGNORING OR CONSTRUING ALL EVIDENCE AND INFERENCES AGAINST THE APPELLANTS AS THE NONMOVING PARTY, WHERE APPELLANT'S VIEW OF THE EVIDENCE WOULD PROVIDE CLEAR PROOF THAT RESPONDENT KOPCHYNSKI KNEW THE PROPERTY HAD A HISTORY OF FLOODING, DRAINAGE PROBLEMS, AND MOISTURE DAMAGE, AND SHE WAS COMPLICIT IN CONVEYING FALSE, MISLEADING, AND INCOMPLETE INFORMATION?

(2) DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT TO KOPCHYNSKI BECAUSE LICENSED REALTORS HAVE A STATUTORY DUTY OF HONESTY WHICH FORBID KOPCHYNSKI FROM CONVEYING INFORMATION SHE KNEW OR SUSPECTED TO BE FALSE, INCOMPLETE, OR MISLEADING?

(3) DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT TO KOPCHYNSKI WHERE THE ISAACS HAD A REASONABLE RIGHT TO RELY UPON A LICENSED REALTOR, AS LICENSED REALTORS HAVE A STATUTORY DUTY OF HONESTY, AND RELIANCE IS A QUESTION OF FACT FOR THE JURY?

(4) DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT WHERE DEFENDANT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT WAS SUBMITTED AFTER THE DEADLINE ESTABLISHED BY THE SUPREME COURT?

(5) DID THE LOWER COURT ERR IN GRANTING SUMMARY JUDGMENT WHERE DISCOVERY AS TO RESPONDENT KOPCHYNSKI WAS NOT COMPLETE?

STATEMENT OF THE CASE

On Monday, July 23, 2018, Appellants, Rory and Kimberly Isaac, purchased the personal residence of Defendants Thomas and Jackie Onions, located in the Litchfield Plantation of Pawleys Island (the "Property"). Respondent Laura Kopchynski was the Onions' realtor.

Two days after their purchase, a rainstorm flooded the Property. The Isaacs filed their complaint on November 16, 2018, alleging the Onions, Kopchynski, and Lane's Professional Pest Elimination, Inc. ("Lanes") knew of and failed to disclose the Property's history of drainage and flooding problems. The complaint forwarded Fraud, Fraud in the Inducement, Negligent Misrepresentation, and Civil Conspiracy claims against Mr. & Mrs. Onions, Lanes, and Respondent Kopchynski; a claim for violation of the South Carolina Residential Property Condition Disclosure Act (found at S.C. Code 27-50-10, *et seq.*) against Mr. & Mrs. Onions and Respondent Kopchynski; and a Negligence claim against Lanes.

Written discovery is partially complete, and the depositions of the parties and key witnesses have been taken in the underlying action:

Deposition of Thomas and Jacqueline Onions ..... March 26, 2019
Deposition of Respondent Laura Kopchynski ..... March 27, 2019
Deposition Emery Custer (the Onions' "handyman") ..... March 28, 2019
Deposition of Rory Isaac ..... March 28, 2019
Deposition of Kimberly Isaac ..... June 10, 2019
Deposition of Ed Kimbrough (Isaac's Realtor) ..... June 10, 2019
Rule 30(b)(6) Deposition of Lane's Professional
Joseph Sheheen and Michael Coffey ..... June 12, 2019

On June 28, 2019, Mr. & Mrs. Onions filed for Summary Judgment under Rule 56, SCRCP, asserting there is no genuine issue of material fact as to their liability. On July 8, 2019, Respondent Kopchynski filed her Motion for Summary Judgment arguing she did not have a

duty to inspect or confirm the Onions' statements about the Property, and that Plaintiffs had actual and constructive knowledge of the alleged defects before the closing.

Both Motions were heard by the Honorable Benjamin H. Culbertson on July 26, 2019. Counsel for Onions and Kopchynski filed supporting memoranda just before the hearing. Plaintiffs filed their memorandum opposing the motions, citing to the depositions noted above, as well as the filed affidavits of an expert entomologist, Henry Moore, IV, registered pest control technician, Norris Andy Ward, and the Onions' former neighbor, Brad Cromartie. At the conclusion of the hearing, the lower court denied the Onions' motion for summary judgment and granted Respondent Kopchynski's motion for summary judgment. The Court issued a Form 4 Order and instructed counsel for Kopchynski to prepare a formal order, which was later filed on August 12, 2019.

On August 5, 2019, Plaintiff's filed their Motion and Memorandum in support of altering and amending the order granting summary judgment in favor of Kopchynski. Kopchynski filed her memorandum in opposition on August 29, 2019. After receipt of the transcript of the hearing, Plaintiffs filed supplemental memoranda in support on August 30, 2019, and September 20, 2019. By way of Form 4 Order dated September 25, 2019, the lower court denied Plaintiff's motion on briefs without oral argument.

Plaintiffs served their Notice of Appeal on October 24, 2019.

STANDARD OF REVIEW

When reviewing a dismissal under Rule 56, SCRCP, this Honorable Court applies the same standard of review implemented by the circuit court. *Cowburn v. Leventis*, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005). *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002). A trial court's decision to grant a motion for summary judgment is appropriate only when there is no genuine issue of material fact so that the moving party is entitled to judgment as a matter of law. *Gilbert v. Miller*, 356 S.C. 25, 28, 586 S.E.2d 861, 863 (Ct. App. 2003). Summary judgment is a drastic remedy, only to be invoked cautiously, and properly denied even where only a scintilla of evidence supports the non-moving party. *Gibson v. Epting*, 426 S.C. 346, 352-53, 827 S.E.2d 178 (Ct. App. 2019). A scintilla "means a gleam, a glimmer, a spark, the least particle, or the smallest trace" of material evidence. *Id.*

The Court must liberally review the decision to construe the record in favor of Mr. and Mrs. Isaac as the non-moving parties. *Jackson v. Doe*, 342 S.C. 552, 555, 537 S.E.2d 567, 568 (Ct. App. 2000). All ambiguities, inferences, and conclusions arising from the evidence must be construed against the movant. *Gilbert v. Miller*, 356 S.C. 25, 28, 586 S.E.2d 861, 863 (Ct. App. 2003). *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *McLaughlin v. Williams*, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct. App. 2008).

"Summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is a dispute as to the conclusions to be drawn therefrom." *Laurens Emergency Med. Specialists, P.A. v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 108-09, 584 S.E.2d 375, 377 (2003).

ARGUMENTS WITH STATEMENT OF FACTS RELEVANT TO EACH

(1) THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT BY IGNORING OR CONSTRUING ALL EVIDENCE AND INFERENCES AGAINST APPELLANTS AS THE NONMOVING PARTY, WHERE THE EVIDENCE WOULD PROVE THAT RESPONDENT KOPCHYNSKI KNEW THE PROPERTY HAD A HISTORY OF FLOODING, DRAINAGE PROBLEMS, AND MOISTURE DAMAGE, AND THAT KOPCHYNSKI WAS COMPLICIT IN CONVEYING FALSE, MISLEADING, AND INCOMPLETE INFORMATION

Defendants Thomas and Jackie Onions hired realtor Laura Kopchynski to sell their personal residence located in the Litchfield Plantation of Pawleys Island (the "Property"). Two days after Appellants Rory and Kimberly Isaac purchased the Property, a rainstorm flooded the Property. Before filing this lawsuit, Mr. and Mrs. Isaac came to learn that Mr. & Mrs. Onions and their agent, Laura Kopchynski, knew the Property had a history of flooding, drainage problems, and moisture-related damage. During discovery, the Isaacs were able to confirm Respondent Kopchynski actively conspired with the Onions to conceal material facts.[1] Under SCRCP, Rule 56, this Court construes all ambiguities, inferences, and conclusions arising from the evidence against Respondent Kopchynski.

Kopchynski's knowledge of these adverse material facts is important because licensed realtors in South Carolina have a legal duty to disclose known material adverse information, as well as legal duty to correct any known material representations which she knows, or has reasonable cause to suspect, to be false, misleading, or incomplete.

[1] Including adverse conditions known to have been covered up by repair instructions given to the Onions' handyman, ongoing repair efforts, as well as conspiring with the Onions to get the Isaacs to rely upon a CL-100 report Kopchynski knew to be materially incomplete and misleading.

A) KOPCHYNSKI LIVED IN LITCHFIELD PLANTATION FOR 10 YEARS AND WROTE AT LEAST 27 NEWSLETTERS FOR THE HOA, CREATING AN INFERENCE SHE KNEW THE HOA BOARD MEMBERS, SHE KNEW THE HOA HANDYMAN, AND SHE KNEW THE HOA HAD HIRED AN ENGINEER TO STUDY DRAINAGE PROBLEMS

The lower court denied the Onions' motion for summary judgment, which acknowledges evidence they knew the Property had flooded, poor drainage, and damage due to moisture. An extensive amount of evidence in the record proves that Kopchynski had actual knowledge of these problems, and conspired with the Onions to fraudulently conceal them, thus violating her statutory duty to be truthful, disclose, and correct information she knew, or **had reasonable cause to suspect**, was false, incomplete, or misleading.

Kopchynski testified that she lived in the Litchfield Plantation neighborhood for ten years, was a "close personal friend" of the Onions, and the author of at least twenty-seven (27) monthly Litchfield Plantation newsletters. (R. 460-61, 478) The neighborhood newsletters authored by Kopchynski include advertisements for her realty services, specifically identify HOA officers (including Mr. Onions), and list Emery Custer as a neighborhood handyman. (R. 477-81, 608-611) Kopchynski testified Custer was well known in the community as "the Onionses used him for much of their work and so did the HOA for Litchfield Plantation for several homeowners and some of the board members." (R. 475-76) Kopchynski also knew the HOA had hired an engineer to study flooding and drainage issues in the community. (R. 466-67) Kopchynski listed the Onions' property and earned a $15,625.00 commission from the sale to the Isaacs, that is, half of all the commissions she received in 2018. (R. 493-94)

Due to her extremely close personal and professional relationship to both the Onions and their neighborhood, coupled with a significant financial incentive, the lower court should have acknowledged the inference: (1) that if the Property flooded or had severe drainage problems, she would know about or have reasonable cause to suspect them; (2) that Mr. Onions,

Kopchynski, and their handyman Emery Custer knew each other well; and (3) that Kopchynski had viable personal and financial motives to help or allow the Onions conceal adverse information when she listed the property.

B) THE LOWER COURT SHOULD HAVE ACCEPTED THE INFERENCE THAT KOPCHYNSKI QUICKLY LEARNED THE INITIAL PROPERTY CONDITION DISCLOSURE STATEMENT WAS INCOMPLETE, MISLEADING, AND INACCURATE BECAUSE SHE PERSONALLY RECOMMENDED AND CONTACTED A CRAWLSPACE SPECIALTY INSPECTOR, SHE WAS PRESENT AT THE INSPECTION, THE INSPECTOR'S REPORT WAS PERSONALLY HANDED TO HER, AND HE SPECIFICALLY INFORMED HER OF THE SEVERE PROBLEMS.

As part of her representation, Kopchynski had the Onions fill out the requisite South Carolina Residential Property Condition Disclosure Statement (Disclosure Statement). (R. 468-69; 519). By and through the Disclosure Statement, the Onions represented they had no knowledge of any problem or conditions in the crawl space foundation, that Lanes had provided termite/pest treatment, they had not installed mechanical systems such as underground pumps to pump water under the street and onto the property of others; no knowledge of problems caused by wood destroying organisms, dry rot, or fungus; there were no prior violations or restrictive covenants or other land use restrictions affecting the Property; no knowledge of problems caused by water, drainage issues, or flooding during their ownership; and, there were no other known material issues. (R. 593, 602)

The Onions knew the Disclosure Statement was incomplete, misleading, and inaccurate when it was signed on April 23, 2018. (R. 508-10, 514-15; Aff. of Cromartie, ¶¶4-6, R. 414-24). Due to the close personal and professional relationship with the Onions and the neighborhood, a jury could reasonably infer Kopchynski knew the Disclosure Statement was inaccurate at that time as well. However, even if the lower court was correct in rejecting the inference Kopchynski

knew of problems with the Disclosure Statement in April, which it was not, there is clear proof she knew the Disclosure Statement was inaccurate a very short time later.

On May 10, 2018, prior prospective buyers, Mr. & Mrs. Cole (not a party to this Action), had entered into a contract to buy the Onions' Property. The Coles hired Cornerstone Home Inspections of SC, LLC (hereinafter "Cornerstone") to perform a general inspection. Their report noted issues in the crawl space, including hanging and missing insulation, missing vapor barriers, debris, and damp ground. (R. 616). The home inspection did not identify a cause of these issues, instead recommending further inspection by a "crawl space specialty company" (R. 471-72).

Respondent Kopchynski knew of and personally contacted a crawl space specialty inspector, Andy Ward of Stark Exterminating ("Stark"). (R. 471-73; Aff. of Ward, R. 435-39, ¶¶ 4-5). Kopchynski was present when Mr. Ward inspected the Property on May 16, 2018, and Mr. Ward personally informed Kopchynski and Mrs. Onions of very serious problems with the Property, including excessive moisture, wood decay fungi, wood to ground contact, existing visible damage, and areas of possible hidden damage. (R. 433-34, ¶¶ 6-11). Mr. Ward stated, "I also informed Mrs. Onions and Kopchynski that conditions would worsen during summer," and directly contradicted the deposition testimony of Kopchynski by stating, "I have NEVER and would NEVER tell anyone that a Property with excessive moisture conditions would 'pass a CL-100 inspection' because that is NOT true." (R. 434, ¶10 (*emphasis in original*)).

As soon as the Onions and Kopchynski heard Mr. Ward and viewed his report, they certainly knew or had reason to suspect the Property had problems, and that statements in the Disclosure Statement were inaccurate, misleading, and incomplete. (R. 433-34) At that time, Kopchynski would have had a legal duty to disclose Mr. Ward's report to make the suspected material adverse problems known to any purchaser, along with a legal obligation to correct the

Disclosure Statement representations which she knew, or had reasonable cause to suspect, to be false, misleading, and incomplete. Mr. Ward's Report and the problems it identifies were never disclosed; the incomplete, misleading and inaccurate responses of the Disclosure Statement were not corrected; and, Kopchynski took additional affirmative actions to help the Onions conceal these problems. The Isaacs would not have purchased the Property had they been told the truth as to the Property's problems with storm water drainage, flooding, their numerous failed remediation efforts attempted by the Onions and Kopchynski. (R. 508-10, 514-15).

C) KOPCHYNSKI EMAILED TWO VERSIONS OF A REPAIR VERIFICATION (WITHOUT MENTION OF THE DECEPTIVE CHANGES), PURPORTING TO HAVE BEEN PREPARED BY HANDYMAN EMERY CUSTER TO VERIFY PROPER REPAIRS; DURING DISCOVERY APPELLANTS LEARNED CUSTER HAD NEVER SEEN EITHER LETTER; THE LETTERS HAD BEEN FORGED BY MR. ONIONS; THE LETTERS FALSELY CLAIMED CUSTER WAS A LICENSED GENERAL CONTRACTOR AND THAT HE WAS GIVEN THE CORNERSTONE REPORT; AND EMERY'S WORK ONLY COVERED UP PROBLEM AREAS AND DAMAGE

Mr. Ward recommended installing an encapsulation and dehumidifying system in the crawlspace at the cost of $4,595.00. (R. 437-39). Mr. Onions was not home when Mr. Ward was contacted and inspected the Property, and he dismissed it as soon as he was informed of it by Mrs. Onions over the telephone. Upon his return, Mr. Onions elected to call upon his handyman, Emery Custer, and gave him simple verbal instructions to fix the issues identified by the Cornerstone Report. During his deposition, Mr. Onions described Emery Custer as "just a worker ... a drone." (R. 533) Likewise, Emery Custer testified that he was "positive" that he was never given nor saw the Cornerstone report. (R. 539-41) Custer was simply told to install plastic where it was missing, to replace insulation where it was hanging down due to moisture, and to install an electrical box for an extension cord and a fan. (R. 531-33, 541) As discussed below,

his repairs were improper and only served to temporarily cover up and hide issues. (*See* Aff. of H. Moore, R. 425, 431-32)

On June 2, 2018, Kopchynski emailed the Cole's realtor "a list of repairs made by the Onions' contractor, in the form of a summary letter provided by the contractor,"[2] which stated repairs had been made "as per home inspection report." (R. 483-84; R. 297 (Aug. 5, 2019) The Isaacs were shocked to learn Emery Custer had not provided, had not created, and had never seen the summary letter prior to the day of his deposition. (Dep. of Custer, R. 546, ln. 23, to 548, ln. 11). Only after this action was filed did Mr. Onions reveal that he had secretly forged the first "summary letter." (R. 530-32, 600). While the summary letter states Emery Custer is a "licensed general contractor," the discovery of the underlying action revealed Mr. Custer is not only not a licensed general contractor, he had just moved to South Carolina and had no experience remediating moisture in crawl spaces in the Low Country of South Carolina, and the work he performed concealed and worsened damage in the crawl space, and it included several code violations. (R. 428-30, 431-32; R. 531-32, 534; R. 542-45, 546-47).

On or around June 20, 2018, the Onions' contract with the Coles fell through.[3] Kopchynski promptly contacted the Isaacs' realtor, Ed Kimbrough, because she knew the Isaacs were very interested in the Property. Kopchynski quickly scheduled a site visit, and rapidly fired off numerous emails with multiple attachments to Mr. Kimbrough. Kopchynski emailed approximately seven hundred (700) pages of documents, including the May 10, 2018 Cornerstone report, with the forged and falsified "summary letter" discussed above. (R. 369).

After a careful review of these emails in discovery, the Isaacs learned that Kopchynski had emailed a second version of the "summary letter" approximately 3 hours later on that same

[2] Emery Custer was the contractor being referenced.

[3] The Cole contract was terminated due to an unrelated issue.

day. (R. 269-273) Kopchynski's email to Kimbrough falsely asserted it was "prepared by the contractor," and she did not mention any of the deceptive changes made to the summary letter, which included: (1) a title in bold and underlined font: "Repair Verification Form"; (2) a line in bold font indicating "Work Completed: May 25, 2018"; and (3) a signature line for the owners. (R. 273, R. 502)(identifying the second, signed "Repair Verification Form"). The changes made the purported repair verification even more misleading.

The lower court should have accepted the inference that the short time and manipulative edits to the forged and false contractor verification indicate that Kopchynski had a role in procuring the changes. The lower court also should have accepted the inference that all of these undisclosed changes, forwarded by Kopchynski, were made for the purpose of: (1) providing a false and misleading representation that the appropriately licensed professional made the proper and correct repairs to the Property to completely fix the issues raised in the Cornerstone report; and, (2) concealing the materially adverse information, including Andy Ward's report, and the Onions' inaccurate, misleading, and incomplete Disclosure Statement.

D) KOPCHYNSKI DID NOT DISCLOSE MATERIAL ADVERSE INFORMATION (THE STARK REPORT), NOR DID SHE CORRECT THE ONIONS' INITIAL DISCLOSURE STATEMENT

The Isaacs entered into a contract to purchase the Property on or around June 20, 2018 ("Contract"). The Contract was contingent upon an accurate disclosure statement from the Onions. Kopchynski delivered the original Disclosure Statement, dated April 23, 2018, which was only revised to refer to the second version of the Repair Verification Form forged by Co-Defendant Tim Onions. Thus, at that time, Kopchynski delivered the Disclosure Statement to Mr. and Mrs. Isaac, even though she knew or should have suspected that the following misrepresentations were inaccurate, misleading, and incomplete:

a. Failure to disclose moisture and fungi problems (Question #7);

b. Failure to disclose the installation of a non-engineered underground irrigation system discharging water on the property of others (Questions #12, 14);

c. Failure to disclose present or past infestation of wood-destroying fungus (Section IV);

d. Failure to disclose violations of zoning laws and restrictive covenants (Questions# 15, 16);

e. Failure to disclose problems caused by water (Question#19);

f. Failure to disclose flood and drainage problems (Questions #20, 21); and,

g. Forging a false, misleading, and inaccurate "Repair Verification Form (Section IX)."

At that time, Kopchynski would have had a legal duty to disclose Mr. Ward's report to make the suspected material adverse problems known to the Isaacs, along with a legal duty to correct the Disclosure Statement representations which she knows, or had reasonable cause to suspect, to be false, misleading, or incomplete. The lower court erred by failing to hold that the finder of fact

could have reasonably relied upon the impermissible misrepresentations and failures of Kopchynski.

E) THE 700 PAGES OF DOCUMENTS EMAILED TO REALTOR ED KIMBROUGH INCLUDES KOPCHYNSKI'S REFERENCE TO THE FIRST CL-100 REPORT CONDUCTED BY DEFENDANT LANES ON JUNE 20, 2018, ALONG WITH KOPCHYNSKI'S MISREPRESENTATION STATING: "IT IS GOOD"

Approximately one day prior to Mr. Kimbrough being contacted about the Property by Kopchynski, Lane's Professional Pest Control had conducted a CL-100 wood infestation report. Without having seen the report, Kopchynski emailed Kimbrough and erroneously stated the CL-100 "was good." (R. 274) It was not good. In fact, the first CL-100 performed by Lanes identified the persistence of severe problems in the crawl space over a month after Mr. Custer did his initial work on May 25, 2018. (R. 557-58) Kopchynski admits she did not disclose the first CL-100 after she obtained it, and she did **not** correct her misrepresentation (R. 485-86).

The lower court specifically pointed to Laura Kopchynski's "email dated June 19, 2018, [where] Kopchynski advised Kimbrough [the Isaacs' Agent,] the "CL-100 was done yesterday and from what I understand it was good ..." along with an out of context statement from Mr. Kimbrough's deposition to reach the conclusion that the Isaacs waived their right to rely upon any of the numerous fraudulent statements and acts of active concealment of Kopchnski. (R. 5-6). The other fraudulent statements, acts of concealment of Kopchynski are discussed in this Brief above and below.

The lower court erred by construing the above-referenced fact against Mr. and Mrs. Isaac. Mr. Kimbrough testified that he did not think Lanes first CL-100 was relevant because Kopchynski specifically misrepresented the contents of that report by stating, "**It was good**." *Id.*

(*emphasis added*).[4] In Fact, this very issue was so critical that Mr. Kimbrough specifically testified he would not have relied upon a report purchased by the Onions -- **if that report suggested the Property was good**.

BY MR. OXNER:

Q. When I initially started asking you questions, or might have been Steve, correct me if I'm wrong, but it's my understanding your testimony was that you really didn't care about the original CL-100; is that correct?

A. I wouldn't say I wouldn't care about it, but the fact is it was reported that it was good and it was up to us to verify that it was good and the only way to verify it was to have -- take responsibility for the CL-100 ourselves, which is what we planned to do all along.

Q. Okay. My understanding was your testimony is you didn't have any interest in that first CL-100. You knew it was out there, but you were going to get your own; is that right?

A. Correct. And perhaps [if] she would have reported that it was bad, I would have probably said, yeah, let us see it. But the fact is she reported it was good. So we're moving along at that point. Things look good, you know.

Dep. of Kimbrough, R. 590, ln. 1-22. (*emphasis added*)

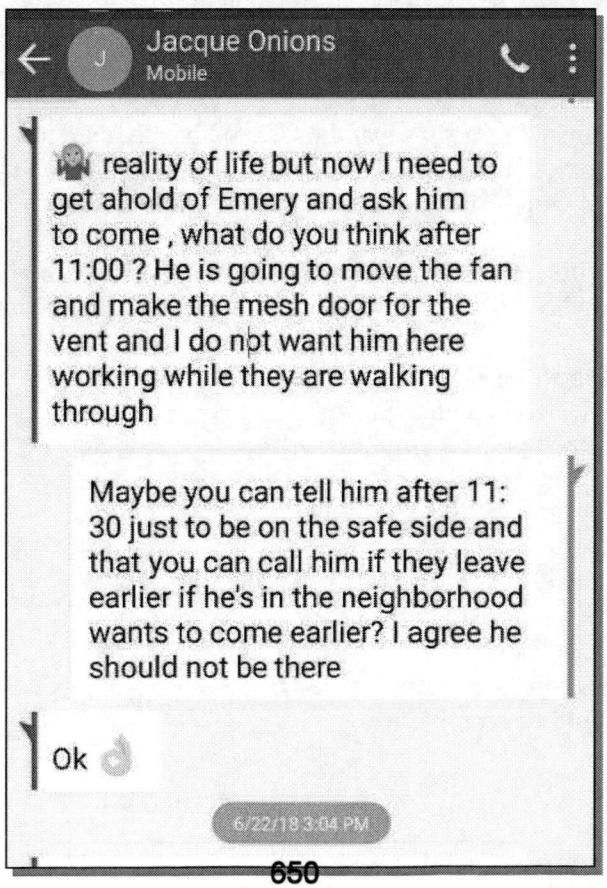
The truth is that the first CL-100 of June 20, 2019 identified the persistence of severe problems in the crawl space a month after the sham repairs of an unlicensed contractor. (R. 556-58) Kopchynski acknowledged that she received the report, reviewed it, and did not disclose the CL-100, nor did she correct the material misrepresentation she had made to Mr. Kimbrough about it. (R. 485-86).

[4] For purposes of context, Kopchynski made this misrepresentation: (i) after Mr. Ward had personally explained numerous troubling findings to her, including excessive moisture, existing damage, and visible wood-decaying fungi; and, (ii) a month after the sham "repair procedure" performed by an unlicensed contractor, Emery Custer, had failed. Mr. Ward and Mrs. Kopchynski sharply dispute what was said during their interactions. (*See* Aff. of Ward, R. 433-344, ¶ 10 (Unequivocally stating he did not tell Kopchynski the house passed inspection)).

A licensed real estate agent would have known the CL-100 report of June 18, 2018, was not clear and would have stopped the closing because no mortgage lender or buyer would have closed on the purchase of that property until those issues had been resolved or the contract renegotiated. (*See* Aff, of Moore, R. 442).

F) ONE DAY AFTER THE FIRST LANES INSPECTION, KOPCHYNSKI HAD TEXT MESSAGE CONVERSATIONS WITH THE SELLERS CONSPIRING TO DELAY A PLANNED CRAWLSPACE REPAIR OF MOISTURE-RELATED ISSUES BECAUSE THE ISAACS WOULD BE VISITING THE PROPERTY. A REPAIR AT THIS TIME CREATES AN INFERENCE THE ONIONS AND KOPCHYNSKI KNEW EARLIER REPAIRS HAD FAILED & THE ONIONS AND KOPCHYNSKI WERE HIDING THE ONGOING PROBLEMS AND REPAIRS

In fact, Kopchynski's own text messages the very day after she represented Lanes' CL-100 was "good," reveal that she specifically told Mrs. Onions to make sure their improperly licensed handyman, Emery Custer, did not show up as scheduled to perform additional work in the crawl space because Mr. and Mrs. Isaac would be visiting the Property.



The lower court erred in granting summary judgment in favor of Kopchynski where this text message conversation creates a clear inference the Onions and Kopchynski knew or should have suspected that both the Onions and Kopchynski were aware the initial work performed by Custer did not work, as well as the clear inference they both knew of the ongoing repairs and conspired together to hide them.

G) KOPCHYNSKI AND THE ONIONS CONSPIRED TO CONVINCE THE ISAACS TO AVOID CONTACTING ANDY WARD OF STARK EXTERMINATORS BY FALSELY ASSERTING STARK WOULD BE UNPROFESSIONAL AND FALSELY CLAIMING LANES HAD ROUTINELY PERFORMED PEST CONTROL AT THE PROPERTY. THESE FACTS ALSO CREATE AN INFERENCE KOPCHYNSKI WAS DIRECTLY INVOLVED IN HIDING STARKS PRIOR REPORT

Kopchynski incredulously testified that she and Mrs. Onions conspired to steer the Isaacs away from Stark Exterminators, and toward Defendant Lanes for their CL-100 inspection.

A. The only time it came up with the Isaacs with the CL-100 is I was noticing it was time to schedule one. And I called Ed and said, you have to schedule the CL-100. And he thought it was the seller's responsibility. And I looked back over the contract, I said, no, the buyer is paying for it, and the buyer is choosing the provider and we're in that time frame. And that was the same time I had told -- when Jackie Onions and I had talked about we need to get -- that the CL-100 has to get done. I said, I'm going to find out who's going to do it and I'm going to let Ed know what happened with – **if Stark comes, that it could be awkward.**

Q. Okay. So there was a discussion with you and Jackie about I'm going to find out who it is and that if Stark shows up, it could be awkward because

A. **I'm going to let Ed know that it could be awkward if Stark comes**, but they are welcome to use Stark.

Q. And you had that conversation with Jackie?

A. Yes.

****

Q. Okay. So your testimony is that a discussion took place that having Stark back out there would be a problem?

A. No, not a problem. That it could be awkward, that's all.

Q. Okay. And after you had that conversation with Jackie and you were going to go and talk to Ed …

R. 488-90 (*emphasis added*).

Based upon the forgoing, there is simply no question. Competent evidence that Kopchynski actively conspired to misrepresent and conceal material facts which would have been disclosed if Mr. and Mrs. Isaac would have contacted Andy Ward of Stark Exterminators prior to their purchase of the Property.

H) KOPCHYNSKI VIEWED THE LANES #2 REPORT OBTAINED BY THE ISAACS, AND SHE KNEW THAT IT WAS MISLEADING AND INCOMPLETE BECAUSE IT DID NOT MENTION ANY PRIOR PROBLEMS, OR THE LANES #1 REPORT AND THE PROBLEMS IN IT, THAT INSPECTIONS AND REPAIRS WERE ONGOING, AND THAT THE LANES INSPECTOR HAD BEEN AT THE PROPERTY ONLY TWO WEEKS PRIOR.

Prior to closing, the Isaacs insisted upon having their CL-100 report to verify the absence of moisture issues in the crawl space. Unfortunately, discovery has revealed the CL-100 inspector Joseph Sheheen, of Lane's Professional Pest Control, actively worked to assist the Onions in concealing the flooding, drainage, and moisture problems. (R. 563, 577-79) As stated above, Kopchynski admits she and Mrs. Onions actively steered the Isaacs away from Stark Exterminators and toward Joseph Sheneen of Lanes by misrepresenting that Lanes routinely provided pest control for the Property (R. 559), and suggesting that Andy Ward and Stark Exterminators would be unprofessional or awkward. (R. 489-492).

While the Lanes inspector, Joseph Sheheen, admits that he had numerous recommendations for and discussions and agreements with Mr. & Mrs. Onions onsite about fixing excessive moisture in the crawl space, these discussions were denied by Mr. & Mrs. Onions. (R. 562-63, 577-79; R. 520) Mr. Sheheen also testified as follows:

a. His name was forged on the first and second CL-100 reports by Lanes, and that he did not see either until after this lawsuit was filed. (R. 567-68);

b. The Isaacs would be the **only people** who **did not know** that Lanes second report was misleading and inaccurate as it failed to disclose excessive moisture and the existence of wood decay organisms and damage noted "throughout" the Property just two weeks earlier by the same inspector from Lanes and that the inspector, Mr. Sheheen, had personally recommended measures to temporarily hide damage during his extended conversations with the Onions despite having been hired by the Isaacs (R. 561-572);

c. That his July CL-100 states moisture readings that were not possible (R. 564-66, 574);

d. That the wood decay fungi somehow disappeared on its own in two weeks (R. 575-76);

e. That the CL-100 has information in his report which could not have come from him (R. 554, 555, 559, 570, 571); and,

f. That Lanes did not routinely conduct pest control upon the property, as the only time it was done was during the first CL-100 inspection in June 2018 (R. 552-53, 560).

The lower court failed to consider these facts, let alone to construe them as evidence that Kopchynski actively worked to conceal moisture related problems and flooding. Kopchynski actually knew the Isaacs were relying upon incomplete and therefore misleading information, and instead of complying with her statutory duty of honesty, she successfully pressed the Isaacs to quickly close on the sale.

The lower court erred by concluding that Kopchynski's only alleged failures were her failures to disclose the Stark Report and the first Lanes CL-100 report. While Appellants have not yet completed discovery, they have uncovered a tremendous amount of evidence which the lower court simply ignored or impermissibly construed against Mr. and Mrs. Isaac.

(2) THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO KOPCHYNSKI BECAUSE LICENSED REALTORS HAVE A STATUTORY DUTY OF HONESTY WHICH FORBID KOPCHYNSKI FROM CONVEYING INFORMATION SHE KNEW OR SUSPECTED TO BE FALSE, INCOMPLETE, OR MISLEADING

S.C. Code § 27-50-70 provides that a licensed real estate agent may face liability to a prospective purchaser if the owner of real property provides a purchaser with a disclosure form that contains false, incomplete, or misleading information, where the real estate licensee knew, or **has reasonable cause to suspect**, the information is false, incomplete, or misleading. Simply stated, no provision of South Carolina law allows a real estate agent to claim truthful disclosure by forwarding information which she knows **or suspects to be false, incomplete, or misleading**. The lower court erred by failing to apply the "knew or has reasonable cause to suspect ... information was false, incomplete, or misleading" standard to the numerous matters of which Respondent Kopchynski was involved.

Additionally, the instructions on the top of the Disclosure Statement form states that Kopchynski was required to have the Onions fill out clearly sets forth the law, providing in part:

> The South Carolina Code of Laws (Title 27, Chapter 50, Article I) requires that an owner of residential real property ... shall provide to a purchaser this completed and signed disclosure statement prior to forming a real estate contract. This disclosure must be provided in connection with any sale ...
> ....
> If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the 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**.

The lower court's Order erroneously excused Kopchynski from liability for fraud and conspiracy at summary judgment under S.C. Code Ann. § 40-57-350 by holding that a realtor cannot be responsible for latent defects or the contents of any expert report where she has partially disclosed information and told a number half-truths. In stark contrast, S.C. Code Ann.

§ 40-57-350(G)(1) starts by providing a real estate agent licensed by the State of South Carolina "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."

The lower court failed to construe facts in Appellants favor, which clearly demonstrated Kopchynski had knowledge of problems, and therefore a duty **to be honest with all parties**. The statute does provide protection for real estate agents by providing realtors are not required to know of latent defects, not required to interpret expert reports, and cannot be sued for **truthfully** disclosing information. Section 40-57-350 (G)(2) further provides no cause of action may be brought against a real estate 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 **of which they have disclosed**.

The lower court erred in granting Kopchynski summary judgment because she did not truthfully disclose a tremendous amount of information and in fact acted to help hide prior problems as well as repairs in progress. Kopchynski cannot and should not escape liability concerning the contents of the Stark Report, the Lanes CL-100 Reports, or the Disclosure Statement - because she chose to secret their contents. As to information Kopchynski did disclose, such as the Cornerstone Report, she cannot escape liability because she actively and repeatedly chose to vouch for repairs performed by a handyman to conceal the damage, to hide the impropriety and failure of the prior repairs, and to conceal and scheme to cover up ongoing repairs.

The Supreme Court in this State "has consistently rejected caveat emptor and adopted the civil law rule of caveat venditor [i.e., *Seller Beware*!] as part of the common law of South Carolina" in connection with the sale of houses. *Lane v. Trenholm Bldg. Co.*, 267 S.C. 497, 502,

229 S.E.2d 728, 730 (1976); *See also Gov't Emps. Ins. Co. v. Chavis*, 254 S.C. 507, 525, 176 S.E.2d 131, 140 (1970)(*citations omitted*). The law should not orphan the purchasers of a house, who are likely investing their life savings. *Lane*, 267 S.C. at 503. In South Carolina, the seller of real property must disclose material facts to the purchaser "[w]here material facts are accessible to the [seller] only and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser." *Lawson v. Citizens & S. Nat'l Bank of S.C.*, 259 S.C. 477, 485, 193 S.E.2d, 124, 128 (1972). Non-disclosure becomes fraudulent concealment when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. *Lawson v. Citizens & S. Nat'l Bank of S.C.*, 259 S.C. 477, 481-82, 193 S.E.2d 124, 126 (1972). The seller of real property must disclose material facts to the purchaser where material facts are accessible to them. *Lawson*, 259 S.C. at 485, 193 S.E.2d at 128.

Indeed, an overwhelming majority of jurisdictions require that licensees disclose material facts known to them about a property. This is an area where bright-line rules do not exist. Presumably, a licensee should be held to a higher standard in observing defects than would be expected of the average home buyer.[5]

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[5] 10 REAL ESTATE BROKERAGE LAW AND PRACTICE § 3A.10 (2018)(*Citing e.g., Williams v. Wells & Bennett Realtors*, 52 Cal. App. 4th 857, 863, 61 Cal. Rptr. 2d 34, 37 (1997) (broker has a duty to disclose known material facts); *Baumgarten v. Coppage*, 15 P.3d 304, 307 (Colo. Ct. App. 2000) (citing statute and discussing broker's duty to disclose adverse material facts actually known by broker); *Zimmerman v. Northfield Real Estate, Inc.*, 156 Ill. App. 3d 154, 162, 109 Ill. Dec. 541, 510 N.E.2d 409, 413–414 (1987), appeal denied, 116 Ill. 2d 578, 113 Ill. Dec. 320, 515 N.E.2d 129 (1987) (brokers had duty to speak regarding known material information); *Bazal v. Rhines*, 600 N.W.2d 327, 329 (Iowa Ct. App. 1999) (finding duty to disclose material facts); Binette v. Dyer Library Ass'n, 688 A.2d 898, 905 (Me. 1996) (citing regulations and stating that broker has duty to disclose known material defects); *Weintraub v. Krobatsch*, 64 N.J. 445, 453–454, 317 A.2d 68, 74 (1974) (noting rule that broker is liable for nondisclosure of defects known to him but unknown to buyer); *Gordon v. Skopos*, 2005 Ohio 4900, 2005 Ohio App. LEXIS 4414, at *7 (Sept. 16, 2005) (a real estate agent has a statutory duty to disclose any material defects of which the agent has knowledge); *Stebbins v. Wells*, 766 A.2d 369, 373 (R.I. 2001) (holding broker had duty to disclose known deficient conditions); *Teter v. Old Colony Co.*, 190 W. Va. 711, 441 S.E.2d 728, 734–35 (1994) (agreeing that broker may be liable for failure to disclose known

(3) THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO KOPCHYNSKI BECAUSE THE ISAACS HAD A REASONABLE RIGHT TO RELY UPON A LICENSED REALTOR, AS LICENSED REALTORS HAVE A STATUTORY DUTY OF HONESTY, AND RELIANCE IS A QUESTION OF FACT FOR THE JURY

The right to rely must be determined in light of the duty to use reasonable prudence and diligence under the circumstances in identifying the truth concerning the representations made to him. *Florentine Corp.*, 287 S.C. at 386, 339 S.E.2d at 114. The determination of what constitutes reasonable diligence and prudence must be made on a case by case basis. *Slack v. James*, 364 S.C. 609, 615, 614 S.E.2d 636, 639 (2005). As a general rule, questions concerning reliance and its reasonableness are factual questions that must be construed in favor of the nonmoving party and ultimately left for the trier of fact to resolve after hearing all of the evidence. *Id.*

In this case, Kopchynski's knowledge of and involvement in the fraud and conspiracy began with the misrepresentations in the statutory Disclosure Statement. Kopchynski's knowledge of problems became more certain on May 16, 2018, by and through her involvement in procuring, receiving, and being informed of the adverse information from the report of Stark Exterminators. Not only did she fail to disclose the Stark report or the information in it, she emailed two versions of Mr. Onion's forged "Repair Verification Form" dated May 25, 2018 which had been specifically edited just three (3) hours after the original verification had been sent on the day the Isaacs sought to contract to buy the property. The second form emailed by Kopchynski was designed to be a more professional and persuasive assurance that the

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material defects); *Eddy v. B.S.T.V., Inc.*, 696 N.W.2d 265, 2005 WI App 78 (2005), review denied, 2005 WI 134, 282 Wis. 2d 722, 700 N.W.2d 274 (2005) (every real-estate broker has a duty to disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law).

appropriate repairs had been made by a qualified general contractor. Kopchynski knew Emery Custer, just like she knew about the Property.

Kopchynski told Mr. Kimbrough that the first CL-100 report issued by Lanes on June 20, 2018, was good. Yet, she testified that she reviewed the report and noted that excessive moisture had been noted, and therefore that Emery Custer's repairs had failed. That report and the information within it remained undisclosed. Instead, Kopchynski worked with the Onions to make sure the Isaacs would not discover that additional repairs were in progress by telling them to make sure Emery Custer did not come to the property as planned, and by coming up with a plan to steer the Isaac's unsuspecting realtor away from Andy Ward of Stark Exterminators, and toward Defendant Lanes. Kopchynski actually contacted Ed Kimbrough to ask him not to use Stark and suggested that Lanes would appropriate because Lanes routinely provided pest control at the Property. In truth, the only time Lanes had provided pest control was when Mr. Sheheen was at the Property for the first Lanes CL-100, i.e., June 18, 2018.

Lanes was supposedly hired by the Isaacs, yet Mr. Sheheen's testimony indicates the Onions were able to convince him to issue what turned out to be an impossibly clean CL-100, without noting that he had personally found excessive moisture, wood decay fungi, and damage just two weeks earlier. Kopchynski, Onions, and Lanes all knew that the Isaacs were relying upon incomplete and therefore misleading information. Isaacs' reliance upon Kopchynski's duty to be truthful, to disclose, and to correct her misrepresentations was reasonable because the problems were hidden by the Onions and the repairs of their handyman, and in each instance, the truth was squarely in her control. As a result, Kopchynski's motion for Summary Judgment should have been denied.

(4) THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE DEFENDANT'S MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT WAS SUBMITTED AFTER THE DEADLINE ESTABLISHED BY THE SUPREME COURT.

The Supreme Court of South Carolina set forth specific rules concerning the filing of Motions in the Fifteenth Judicial Circuit by way of Order issued on September 10, 2015, providing in pertinent part:

> A written motion shall be filed and served with a supporting memorandum of law. A supporting memorandum of law is not required if a full explanation of the motion is contained within the motion and a memorandum would serve no useful purpose. Affidavits and other materials supportive of the motion shall be filed and served with the motion.

Kopchynski's July 8, 2019 Motion only provided notice of three (3) bullet point citations as grounds for Summary Judgment, and thereafter, attempted to preserve the right to introduce last-minute information in direct violation of the Supreme Court's Order. Defendant's Memorandum was not filed until July 24, 2019, just two days before the hearing on Defendant's Motion.

Failing to strike the late Memorandum from the record was manifestly unjust because it facilitated the presentation of misleading deposition testimony from the Isaacs' realtor, Ed Kimbrough, to suggest the Isaacs' did not care about the first CL-100 report from Defendant Lanes. Subsequent deposition testimony from Kimbrough clarified his reliance upon Respondent Kopchynski's statutory duty to correct her misstatements about the contents of the report.

The lower court's Order also fails to comply with SCRCP, Rule 54(b) which provides:

> (b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties **only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.**

The dismissal of Laura Kopchynski forced the Isaacs to file this appeal and a stay upon the underlying action. Opportunistic and procedural irregularities should not have been allowed to render Supreme Court Orders meaningless and prevent the Isaacs from timely presenting their entire case to the trier of fact.

(5) THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE DISCOVERY AS TO RESPONDENT KOPCHYNSKI WAS NOT COMPLETE

The Isaacs have requested documents from Mr. & Mrs. Onions, Emery Custer, Lane's Professional Pest Control, and Laura Kopchynski after their respective depositions. As to Respondent Kopchynski, Appellants requested the policy and procedure manual of her employer. It is anticipated these documents would show Kopchynski violated her employer's policies and procedures as to how the company's employees are to handle material adverse information, and would further contradict her sworn testimony as to how to properly advise clients in filling out property disclosure statements in South Carolina. Additionally, Appellants seek additional discovery from Laura Kopchynski, which could prove she has made other misrepresentations. All of this information would provide additional information that would justify the trier of fact in concluding that she was complicit in fraud, concealment, and conspiracy.

Summary judgment should not have been granted because the Isaacs had not yet had a full and fair opportunity to complete discovery. *Baird v. Charleston Cty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

CONCLUSION

The Appellants pray this Honorable Court will properly construe the evidence in this Action in their favor, and as such, find there is competent evidence that Respondent realtor Kopchynski knew of the adverse conditions of the Property. Appellants further pray this Court will find that realtors in South Carolina have a legal duty to disclose known material adverse information; a legal duty to correct any known material representations which she knows, or has reasonable cause to suspect, to be false, misleading, or incomplete; and that a South Carolina realtor may not claim truthful disclosure where they have forwarded information she knows **or suspects to be false, incomplete, or misleading**.

The Isaacs pray this Honorable Court will reverse the decision of the lower court and deny Respondent Laura Kopchynski's Motion for Summary Judgment.

Respectfully Submitted,

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Appellants

George W. Redman, III, Esq., SCB # 72365

June 30, 2020.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2018-CP-22-00956

Appellate Case No. 2019-001822

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

v.

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

RESPONDENT'S FINAL BRIEF

Steven R. Kropski
Ryan M. Gunther
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, South Carolina 29413
(843) 972-9400

Counsel for Respondent

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STATEMENT OF ISSUES ON APPEAL

I. The trial court correctly found that S.C. Code §40-57-350(G)(2) barred Appellants' claims against Respondent.

II. Appellants' failure to address the trial court's grounds for granting summary judgment pursuant to S.C. Code §40-57-350(G)(2) in their appellate brief abandoned appellate review of this conclusion of law.

III. Appellants' remaining arguments fail to present any material issue of fact.

IV. Appellants' failure to address the trial court's decision granting summary judgment on their civil conspiracy cause of action abandoned appellate review of this decision.

V. The trial court correctly granted summary judgment over Appellants' procedural objections.

STATEMENT OF THE CASE

Plaintiffs, Rory and Kim Isaac ("Buyers" or "Isaacs") filed a civil action against three Defendants related to their 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") alleging that a history of flooding and water intrusion in the crawlspace was concealed. In their action, the Isaacs sued the Sellers, the CL-100 inspectors, Lanes Professional Pest Elimination, Inc., ("CL-100 Inspectors" or "Lanes") and the Sellers' agent, Respondent Kopchynski ("Sellers' Agent"). The Buyers alleged that the Sellers' Agent did not disclose prior flooding and moisture issues in the crawlspace.

Following commencement of the lawsuit on November 16, 2018, Respondent Kopchynski timely answered the Complaint. (R. pp. 62-72). The parties then conducted extensive discovery including the taking of nine depositions, including all party witness depositions. On July 8, 2019, Respondent Kopchynski filed her motion for summary judgment on the grounds that the undisputed facts showed that Kopchynski did not conceal any alleged flooding problems at the Property, and the Buyers did not rely on Respondent to inform them of crawlspace moisture conditions as they had their own CL-100 inspection performed. (R. pp. 135-250).

Sellers' Agent'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. p. 1), 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).

INTRODUCTION

A. Listing of the Property and termination of the first contract for reasons unrelated to the condition of the Property

On or about April 23, 2018, the Sellers, through Sellers' Agent, listed the Property for sale. (R. p. 137). Shortly thereafter, the Property went under contract with prospective buyers Randy and Suzanne Cole (the "Coles"). (R. pp. 147-154). The Coles engaged a home inspector who provided the Coles 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 Appeal, 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, the Onions requested that Stark Exterminators assess the dampness identified on 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).

[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."

The Onions testified that they requested a second opinion from a contractor who had previously done work at their property, Emery Custer[2]. (R. p. 167, ln. 18-p. 173, ln. 25). The Onions then hired Custer who added the 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 Lanes 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 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 the Onions paid for the June 18, 2018 CL-100 report in order to receive the report. (R. pp. 179-180). The June 18, 2018 CL-100 identified moisture levels in the crawlspace ranging from 20-25%. (R. pp. 625-626).

B. Appellants' purchase of the Property

Following termination of the contract with the Coles, Sellers' Agent contacted the Appellants' 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 seller's 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).

[2] Custer is licensed as a specialty contractor in South Carolina under license number 56967.

On June 20, 2018, the Isaacs made an offer to purchase the Property. (R. pp. 207-219). The Isaacs did not hire their own home inspector; however, they did hire Lanes to perform their own CL-100 inspection. (R. pp. 221-222, 232 ln. 18-p. 233 ln. 7). Buyers' Agent testified that Buyers hired Lanes based on his experience and recommendation, and neither the Buyers nor Buyers' Agent were aware Lanes had performed a prior CL-100 on the Property. (R. p. 586 ln. 19-p. 587 ln. 24). Lanes 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).

C. Appellants experience flooding on the Property and sue Respondent

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). The Isaacs 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).

On November 16, 2018 the Isaacs commenced suit against the Sellers, Sellers' Agent and the CL-100 Inspector. (R. pp. 17-37). The causes of action asserted against Sellers' Agent were fraud, negligent misrepresentation, civil conspiracy, and violation of the South Carolina Residential Property Condition Disclosure Act. (R. pp. 27-35)

The Buyers alleged that Sellers' Agent had actual knowledge of chronic flooding issues at the Property as a result of Ward's May 16, 2018 inspection graph, and the June 18, 2018 CL-100. (R. pp. 32-35). The Buyers allege that these reports constitute a "material adverse fact" concerning the Property, and allege Sellers' Agent violated the South Carolina Residential Property condition Disclosure Act by not providing the Buyers Ward's May 16, 2018 inspection graph and the June 18, 2018 CL-100 inspection report. (R. pp. 32-35).

After hearing arguments on Sellers' Agent's motion for summary judgment, the trial court entered summary judgment for Sellers' Agent, and thereafter denied Buyers' motion to reconsider. This appeal followed. (R. pp. 1, 4-13, 14-16).

LEGAL STANDARD

An appellate court's review of a grant of summary judgment is subject to the same standard that governs the trial court under Rule 56(c), SCRCP. *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505, 509 (2006). A trial court may properly grant a motion for summary judgment when "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), SCRCP. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24, 25 (1988).

"However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *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)). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Bradley v. Doe*, 374 S.C. 622, 626, 649 S.E.2d 153 (Ct. App. 2007). Factual statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists. *Gilmore v. Ivey,* 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986).

ARGUMENT

I. The trial court correctly held that S.C. Code §40-57-350(G)(2) barred Buyers' claims against Sellers' Agent

In the trial court's Summary Judgment Order, the trial court found that it was undisputed that, rather than relying on Sellers' Agent to disclose the conditions in the crawlspace of the Property, the Buyers relied on their own CL-100 inspection report. (R. p. 10). This report identified moisture levels between 8% and 18%. (R. pp. 221-222). The trial court's finding was based on the deposition testimony of both the Buyer and the Buyers' Agent. (R. pp. 4-13).

In particular, Mr. Isaac testified that he reviewed the summary inspection report prior to making an offer and was aware that the inspection report showed dampness and moisture issues in the crawlspace. When presented with the summary inspection report Mr. Isaac testified:

> Q: picture one, dampness in crawl space. Picture two, dampness in crawl space. Picture three, missing vapor barrier, damp ground. Picture four, wet debris on top of vapor barrier. Picture five, missing vapor barrier/dead ground. Picture six, no vapor barrier, damp ground. We—you saw this before putting in the offer; correct?
>
> A: Correct
>
> Q: Okay. And you did not have a property inspection performed yourself?
>
> A: I did. By Lane's.
>
> Q: Okay.
>
> A: Who did a CL-100. And came back. And if all this stuff was there, it should have been noted in the CL-100. It was not. It came back. My attorney that I used to close this thing says one of the best—one of the best CL-100s he had ever seen. He said, you should be happy. This is a great CL-100. So all of this stuff, in my mind, this is what we depended on. When we saw this, we wanted a CL-100. If there was moisture down there, the CL-100 should of told us that. And that CL-100 not only didn't tell us that, it told us it was great.

(R. pp. 232 ln. 10-p. 233 ln. 7).

Likewise, the Buyers' Agent testified when asked whether he wanted the June 18, 2018 CL-100 referenced by Sellers' Agent in her June 18, 2018 email, that he did not. (R.). When asked why he did not want the June 18, 2018 CL-100, Buyers' Agent testified:

> A. I mean, well, because it is our responsibility to do it. It was going to be on our terms, not on their terms or anybody else's terms. I thought when she said "good," I thought, perfect. We're not going to have an issue with that. We will order our own CL-100 and we'll verify the information that we need to see regarding repairs. So, no, I mean, and it was –it was not even relevant from a date period. CL-100 reports are only good for 30 days. We would have had to have another one done prior to closing anyway. So, my thought is let's do it ourselves, and we'll verify what we're looking for.
>
> Q. Right.
>
> A. And there was no mention as to who performed that CL-100.
>
> Q. Okay.
>
> A. It could have been any fly by night company. I have no idea.
>
> Q. Okay. Just wasn't something that you were—you were not interested in getting it; you were doing your own CL-100.
>
> A. That's correct.

(R. p. 188 ln. 25-p. 189 ln. 22).

Finding that it was undisputed that the Buyers closed on the Property in reliance on their own CL-100 inspection report--rather than any alleged representation by Sellers' Agent--the trial court held that S.C. Code §40-57-350(G)(2) controlled Plaintiffs' claims against Sellers' Agent, and the Buyers' Fraud, Negligent Misrepresentation, and violation of the South Carolina residential Property Disclosure Act causes of action failed as a matter of law. (R. pp. 4-13).

S.C. Code §40-57-350(G)(2) states:

> 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 similar reports.

Based upon the unambiguous reading of S.C. Code §40-57-350(G)(2), the trial court held that Buyers' Fraud, Negligent Misrepresentation, and violation of the South Carolina Residential Property Disclosure Act causes of action failed. (R. pp. 10-11).

While the statutory grounds precluded an action against Sellers' Agent, the trial court also correctly determined that the Buyers could not establish an essential element of their causes of action as it was undisputed that the Buyers did not rely on any communication or alleged concealment by Sellers' Agent.

To establish fraud, a plaintiff must prove the following elements by clear, cogent, and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Moseley v. All Things Possible, Inc.*, 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010).

Similarly, to establish negligent misrepresentation, "the plaintiff must allege and prove the following essential elements...: (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 [s]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)(emphasis added).

In their brief, Appellants generically conclude, without support, that the Buyers "had the right to rely" on the Sellers' Agent, and conclude that this "right to rely" on the Sellers' Agent created an issue of fact.

However, this conclusory statement does not create an issue of fact as it is undisputed that the Buyers hired their own of CL-100 inspector to assess the crawlspace, and therefore, they were not relying on the Sellers' Agent to inform them of the crawlspace conditions. (R. pp. 10-11, p 232 ln. 10-p. 233 ln 7, p. 188 ln. 25-p. 189 ln. 22).

Accordingly, the trial court did not err in determining that the undisputed facts showed that the Buyers' relied on their own CL-100 inspection report, and pursuant to S.C. Code §40-57-350(G)(2), Sellers' Agent was entitled to summary judgment.

II. Appellants waived appellate review of the trial Court's finding pursuant to §40-57-350(G)(2).

The trial court's Summary Judgment Order, identifies his application of S.C. Code §40-57-350(G)(2) barred the Buyers' claims against Sellers' Agent based upon the July 11, 2018 CL-100 report ordered by the Buyers themselves. However, Appellants do not even address this conclusion of law in their Appellate brief, and have therefore, waived appellate review of this issue[3]. *Amick v. Hagler*, 286 S.C. 481, 486, 334 S.E.2d 525, 528 (Ct. App. 1985)("A provision of an order neither excepted to nor raised in the brief is not properly before the court on appeal").

Indeed, Appellants only mention of S.C. Code §40-57-350(G)(2) is Appellants' inaccurate recitation of the text of the statute, in which Appellants add five words to the end of the statute that do not appear in the statute's text. (Appellants' Brief at pg. 19).

[3] "An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief." *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989).

Accordingly, as Appellants did not challenge this part of the trial court's order, Appellants have waived appeal of this issue and the trial court's order should be affirmed.

III. Appellants' remaining arguments fail to present any material issue of fact

Appellants' initial brief suggests that the trial court erred by ignoring multiple disputed facts and failing to construe inferences in favor of the Buyers. However, these alleged disputed issues of fact were, in some cases, not raised to the trial court. Moreover, Appellants' arguments did not raise a *material* disputed issue of fact as to Sellers' Agent's liability. Indeed the alleged disputed issues of fact identified by Appellants in their brief are so generic, conclusory, and unsupported by fact or law, that these issues are deemed abandoned on appeal.

"It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *McMaster,* 411 S.C. at 143, 767 S.E.2d at 453–54.

Furthermore, "[a]n issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue. *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011).

Here, Appellants' attempts to create factual issues are legally insufficient, and not preserved for appellate review.

i. Appellants' argument that Sellers' Agent had knowledge of prior flooding at the Property because she lived in the same residential community is conclusory, and was not raised before the trial court

Buyers allege that since Sellers' Agent lived in the same community as the Property, that they are entitled to an inference that Sellers' Agent was aware of flooding problems at the Property. This argument was not made before the trial court and is therefore abandoned on appeal. *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)("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

Furthermore, Appellants cite no evidence or authority suggesting that Sellers' Agent had knowledge of prior flooding at the Property based upon her residence within the same residential community, Litchfield Plantation. Accordingly, this argument is without merit. *McMaster*, 411 S.C. at 143, 767 S.E.2d at 453–54 ("it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.").

ii. Appellants' argument that Sellers' Agent had actual knowledge of incorrect statements on the property condition disclosure statement is conclusory and unsupported by the law

Appellants argue in their brief that Sellers' Agent had actual knowledge of misrepresentations on the South Carolina Residential Property Condition Disclosure Statement ("PCDS") since the inspection graph provided by Andy Ward identified elevated moisture levels. Appellants go on to suggest that Sellers' Agent had a legal duty to provide Andy Ward's inspection graph to the Buyers.

As an initial matter, Buyers cite no law supporting its conclusory allegation that Sellers' Agent had a legal duty to provide Andy Ward's inspection graph to the Buyers. Accordingly, this

argument is abandoned. *Lindsey*, 394 S.C. at 363, 714 S.E.2d at 558. Moreover, under South Carolina law, Appellants' position is wholly without merit.

It is undisputed that Buyers hired their own real estate agent, Ed Kimbrough, and that Ms. Kopchynski represented only the Sellers. As it is well established in South Carolina that no special "trust or confidence" exists between a real estate and a non-client, no special trust or confident existed between Kopchynski and the Buyers. *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 530, 753 S.E.2d 428, 435 (2014)(buyer's of real property represented by their own real estate agent did not have special "trust and confidence" with seller's agent).

Moreover, S.C. Code Section 40-57-350(G)(1) states "[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." Furthermore, the PCDS states "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).

Appellants' contention that the physical inspection graph created by Ward was an adverse material fact that mandated production of the inspection graph to the Buyers is without merit[4].

[4] S.C. Code §40-57-30(16) defines an adverse material 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.

There is no evidence in this record that the structural integrity of any part of the home was reduced. However, S.C. Code §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 crawlspace does not fall into any of these categories.

Furthermore, it is undisputed that Sellers' Agent provided the prior inspection report summary showing dampness and moisture in the crawlspace to Buyers' Agent and disclosed the action taken by the Sellers' to address the crawlspace issues, i.e. the installation of a fan in the crawlspace[5]. (R. pp. 199-200, p. 205). Disclosure of this inspection summary report put the Buyers on notice that a home inspector had observed dampness in the crawlspace, and if Buyers had concerns about moisture in the crawlspace, they should conduct further due diligence concerning the crawlspace. Indeed, the Buyers did conduct further due diligence by engaging a CL-100 Inspector to inspect the crawlspace. (R. 221-222).

Likewise, it was known by all parties that the purpose of the fan in the crawlspace was to deal with moisture issues found on the inspection report. (R. p. 591 ln. 18-593 ln. 8). Buyers' Agent testified:

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[5]Buyers allege the repair verification sent to Buyers' Agent was forged and Sellers' Agent knew of this forgery. Appellants cite no facts or evidence supporting their allegation that Sellers' Agent knew Mr. Onions typed up the repair verification, that the repair verification was not created by Emery Custer, or that the repair verification was "forged." Therefore, Appellants have abandoned this argument. In any event, it is undisputed Emery Custer did perform the repairs identified on the repair verification, including installation of the crawlspace fan. (R. p. 175). Nevertheless, Sellers' Agent testified:

> A: I found out later after this [lawsuit] was filed that Tim [Onions] typed [the repair verification] up for Emery."
>
> Q: At the time, did you understand---did you think [the repair verification] came from Emery?
>
> A: Yes
>
> Q: And after the lawsuit, you discovered that that's what Tim had typed?
>
> A: Yes

(R. p. 484 lns. 7-14).

Q: But if you had an inspection, it would have been revealed if there was a problem [in the crawlspace]

A: The inspection that we chose to go was to have the engineer look at the underneath part of the house. We followed up with that. The Cl-100 that was ordered and performed on 7/11 would have verified and confirmed that the repairs done on Number, what, 6 and 8 were working that being the vapor barrier, reducing the moisture by use of the fan system. So that was our follow -up.

Q: Okay. And that was done?

A: And that was done, yes.

Q: And it came back clean?

A: According to Lane's, it was clean.

(R. p. 591 ln. 18-593 ln. 8)(emphasis added)(objection to form omitted).

Buyers' assertion that Sellers' Agent should have been aware that the corrective action taken by the Sellers--having a fan installed in the crawlspace to address the moisture levels was insufficient--is conclusory, without evidence, and without merit as a matter of law[6]. *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 purpose 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 shoulders of the buyer")(emphasis added).

[6] Buyers also allege that a text message on June 21, 2018 between Sellers' Agent and Sellers demonstrates an attempt to conceal the Sellers' contractor, Emery Custer, from the Buyers. This allegation is also conclusory and relies on an unreasonable inference. *McMaster*, 411 S.C. at 143, 767 S.E.2d at 453–54 ("it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine."). Moreover, this allegation is not material to Sellers' Agent's liability to the Buyers as Buyers were aware of the fan in the crawlspace and had their own CL-100 inspection of the crawlspace performed prior to closing. (R. p. 591 ln. 18-593 ln. 8).

Here, there is no evidence in the record suggesting that Sellers' Agent had knowledge that crawlspace moisture problems were pervasive and in existence when Buyers purchased the Property. Buyers' assertions to the contrary are based entirely on unreasonable inferences, and unsupported conclusory statements. Accordingly, Appellants allegations that Sellers' Agent violated a disclosure obligation under South Carolina law is without merit.

Furthermore, Appellants point to no facts in the record showing that Sellers' Agent had actual knowledge of false representations made by the Sellers on the PCDS, other than counsel's own unsubstantiated arguments. Therefore, this argument is abandoned. *Lindsey*, 394 S.C. at 363, 714 S.E.2d at 558.

iii. Sellers' Agent did not misrepresent or conceal the June 18, 2018 CL-100 inspection report

Appellants allege that Sellers' Agent misrepresented a previous CL-100 inspection report regarding a prior inspection that occurred on June 18, 2018. This argument is rebutted by the unambiguous documentary evidence. (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 seller's paid for it." (R. pp. 179-180)(emphasis added). It is indisputable that at the time of the email, Sellers' Agent did not represent that she had reviewed the report, and clearly stated in the email "from what I understand it was good." (R. pp. 179-180)(emphasis added). Accordingly, Appellants' allegation that this email represented a knowing misrepresentation by Sellers' Agent is without merit.

Moreover, this email went to Buyers' Agent prior to the Buyers submitting an offer. (R. pp. 179-180, 207-218). The email states that Sellers' Agent will obtain the report for the Buyers if they want it. (R. pp. 179-180). Buyers' Agent, however, testified that he was not interested in

receiving the prior CL-100 report as the Buyers were going to have their own CL-100 performed. (R. p. 188 ln. 25-p. 189 ln. 22). Indeed, the Buyers did have their own CL-100 performed, and it was that CL-100 upon which the Buyers relied (R. pp. 232 ln. 10-p. 233 ln. 7).

As the trial court found, there is no merit to Appellants' suggestion that Sellers' Agent's June 19, 2018 email induced Buyers to close on the Property, nor the allegation that Sellers' Agent knowingly communicated false information to the Buyers. Accordingly, this allegation does not create a material issue of fact precluding summary judgment.

iv. Appellants' allegation that Sellers' Agent "steered" the Buyers away from hiring Stark Exterminators to perform the CL-100 is conclusory, without merit, and Buyers' Agent testified that Buyers' CL-100 inspector was his choice

Appellants allege that Sellers' Agent fraudulently steered Buyers away from hiring Andy Ward with Stark Exterminators to perform the Buyers' CL-100. This allegation is unsupported by the evidence and does not amount to a reasonable inference creating an issue of material fact.

First, the Stark Exterminators' representative referenced by Appellants does not hold the requisite license to perform CL-100 inspections. Rules and Regulations for the Enforcement of the South Carolina Pesticide Control Act Section 27-1085K(1)("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."

Furthermore, Buyers' Agent testified under oath that *he* selected the CL-100 Inspector for the Buyers based on his prior experience and had no recollection of any discussions with Sellers' Agent concerning Stark Exterminators. (R. p. 586 ln. 19-p. 587 ln. 24, p. 588 lns. 2-22). In other words, Sellers' Agent did not influence or steer the Buyers away from hiring Stark Exterminators to perform the CL-100.

Finally, the Buyers did have a CL-100 inspection performed by a licensed CL-100 inspection company. (R. pp. 221-222). Thus, regardless of the company who performed the inspection, the Buyers did hire an inspector to inspect the crawlspace, and the inspector provided a report. (R. pp. 221-222). As the trial court held, Sellers' Agent cannot be liable for alleged inaccuracies regarding the information in the Buyers' own CL-100 report. (R. p. 10); S.C. Code §40-57-350(G)(1).

Accordingly, this allegation does not create an issue of material fact necessary to defeat summary judgment.

VI. Appellants' failure to address the trial court's decision granting summary judgment on their civil conspiracy cause of action abandoned appellate review of this decision.

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). It is essential that the plaintiff prove all of these elements in order to recover. *Estate of Fox*, 369 S.C. at 567, 633 S.E.2d at 511. The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.*,289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

In the Summary Judgment Order, the trial court ruled:

> Kopchynski argues that there is no evidence in the record supporting the elements of civil conspiracy. Kopchynski also cites deposition testimony from Lanes' inspector stating that he does not know Kopchynski and has not talked to her.
>
> In response, Plaintiffs do not identify any evidence showing collaboration between the Defendants to conceal an alleged adverse property condition. Likewise, Plaintiffs identify no evidence showing coordination amongst the Defendants to allegedly provide inaccurate moisture readings in the July 11, 2018 CL-100 report.

(R. p. 11).

In this appeal, the Appellants do not mention or challenge these findings. Therefore, Appellants have abandoned an appeal of this ruling. *Amick*, 286 S.C. at 486, 334 S.E.2d at 528 ("A provision of an order neither excepted to nor raised in the brief is not properly before the court on appeal"); *see also*, *Langehans v. Smith*, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct. App. 2001)("In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal").

Furthermore, to the extent that any argument in Appellants' brief could be considered as an attempt to address the civil conspiracy cause of action, Appellants' argument is conclusory and unsupported by evidence, facts or any authority. Indeed, Appellants point to no evidence showing a collaboration by any of the Defendants to injure the Appellants, nor do Appellants provide any evidence of special damages. Therefore, Appellants have waived appellate review of the trial court's decision granting summary judgment on the civil conspiracy claim. *McMaster*, 411 S.C. at 143, 767 S.E.2d at 453–54; *Lindsey*, 394 S.C. at 363, 714 S.E.2d at 558; *see also*, Rule 220(c), SCARC ("The appellate court may affirm any ruling, order, decision or judgment upon any grounds appearing in the Record on Appeal.").

IV. The trial court correctly granted summary judgment over Appellants' procedural objections

In opposition to Sellers' Agent's motion for summary judgment, Buyers argued that discovery was not yet complete. (R. pp. 261-262). However, beyond this conclusory statement, Buyers did not identify any additional relevant evidence that would be uncovered through further discovery. *Dawkins v. Fields,* 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003)(stating "non moving party to summary judgment motion must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition").

Similarly, Appellants suggest that the trial court erred by considering Sellers' Agent's memorandum in support of summary judgment, filed several days before the hearing, citing the Supreme Court of South Carolina Civil Motion Pilot Program enacted by order of Chief Justice Toal on September 10, 2015. (R. pp. 261).

However, Chief Justice Toal's order establishing the pilot program expressly states that "the court may extend or expedite the briefing schedule in its discretion."

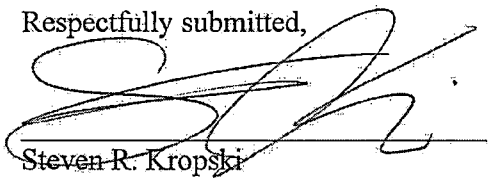
Here, the trial court exercised its discretion to consider all submissions provided to him, including submissions handed up to the Court at the hearing by counsel for Appellants. (R. p. 104 ln. 24-p. 105 ln. 2, p. 106, p. 106 lns. 19-25). Thus, the Court did not err by considering Sellers' Agent's memorandum in support of summary judgment.

Finally, Appellants' argument suggesting that Rule 54(b), SCRCP mandates denial of an otherwise meritorious summary judgment motion is without merit. Rule 54(b) refers to certification allowing for an immediate appeal. Here, no such certification is needed as the current order is immediately appealable under S.C. Code §14-3-330. *Link v. School Dist. of Pickens*, 302 S.C. 1, 4-5, 393 S.E.2d 176, 177-178 (1990).

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the trial court's order granting summary judgment should be affirmed.

Respectfully submitted,



Steven R. Kropski
State Bar No. 101441
Ryan M. Gunther
State Bar No. 104141
Earhart Overstreet, LLC
P.O. Box 22528
(843) 972-9404

Attorneys for Respondent Laura Kopchynski

June 30, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2018-CP-22-00956

Appellate Case No. 2019-001822

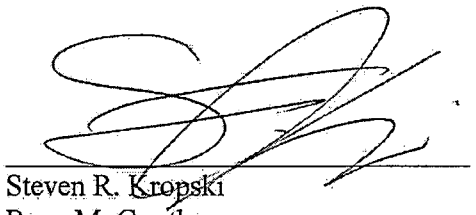
Rory M. Isaac and Kimberly J. Isaac ..... Appellants

v.

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

CERTIFICATE OF COUNSEL

I certify that the *Final Brief of Respondent Laura Kopchynski* complies with Rule 211(b), SCACR.



Steven R. Kropski
Ryan M. Gunther
Earhart Overstreet, LLC
P.O. Box 22528
(843) 972-9400

Attorneys for Respondent Laura Kopchynski

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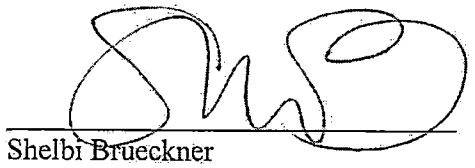
PROOF OF SERVICE

I, Shelbi Brueckner, an employee of Earhart Overstreet LLC, paralegal for the attorney for Respondent Laura Kopchynski certify that I served a copy of the attached *Respondent's Final Brief* by depositing a copy of it in the United States Postal Service, postage prepaid, on June 30, 2020, addressed to counsel for Appellants:

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



Shelbi Brueckner

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.,

Of Whom Laura Kopchynski is the Respondent.

FINAL REPLY BRIEF OF APPELLANTS

George W. Redman, III
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400

Counsel for Appellants

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BRIEF INTRODUCTION TO REPLY BRIEF

Rory and Kim Isaac unknowingly bought a house that has a history of flooding and related damages. Respondent Laura Kopchynski was the licensed listing agent. The Isaacs sued Kopchynski for fraud, misrepresentation, violations of the South Carolina Disclosure Act, and civil conspiracy. The lower court order (drafted by Respondent's Counsel), dismisses all claims against Kopchynski by concluding the Isaacs only relied on one expert report, and Kopchynski is not responsible for the content or interpretation of it.

On Appeal, Appellants assert the lower court's limited factual review ignores important facts outside of the Isaacs' expert report, and it applies the wrong statutory standards to a few improperly construed facts. In other words, the chronology in Appellants' brief presents clear and convincing evidence that Kopchynski knew of flooding and water damage, knowingly failed to truthfully disclose these defects, and profited by overtly helping her clients conceal water damage. Appellants' detailed chronology presents a litany of facts supported by citations to Kopchynski's own testimony and the documents and communications she shared with her clients and others, in addition to other witnesses.

First, this Reply addresses Respondent's erroneous assertion that Appellants failed to contest the lower court's sole reliance on one subsection of a statute, that is, S.C. Code § 40-57-350(G)(2). Respondent's entire argument seeks to avoid a thorough review of the facts so they may conveniently disregard those sections of S.C. Code § 40-57-350(G)(1)-(3), which mandate honesty, prohibit the giving of misleading or incomplete information, and require "truthful disclosure." Additionally, Respondent's brief completely ignores the Residential Property Condition Disclosure Act, S.C. Code § 27-50-10, *et seq.*, which establishes liability where an agent knew or *had **reasonable cause to suspect** the information provided was false, **incomplete, or misleading***. Finally, Respondent's case law citations are easily distinguished.

Second, this Reply responds to Respondent's mischaracterization of Appellants' factual arguments and their repeated assertion that facts may be labeled conclusory, unsupported, and simply ignored. The referenced facts present clear and convincing evidence that Kopchynski knew or had reasonable cause to suspect that information provided to the Isaacs (including the report provided by Lanes) was false, incomplete, or misleading.

Contrary to Respondent's brief, Appellants' factual chronology also presents clear evidence that Defendants' conspired to conceal problems by forwarding false, incomplete, and misleading information.

Finally, this Reply defines the specific prejudice caused by the Respondent's violation of the established briefing rules and procedures of this Court.

STANDARD OF REVIEW

Summary judgment is a drastic remedy, only to be invoked cautiously, and properly denied even where only a scintilla of evidence supports the non-moving party. *Gibson v. Epting*, 426 S.C. 346, 352-53, 827 S.E.2d 178 (Ct. App. 2019). All ambiguities, inferences, and conclusions arising from the evidence must be construed against the movant. *Gilbert v. Miller*, 356 S.C. 25, 28, 586 S.E.2d 861, 863 (Ct. App. 2003); *Laurens Emergency Med. Specialists, P.A. v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 108-09, 584 S.E.2d 375, 377 (2003).

REPLY ISSUES

1. RESPONDENT'S BRIEF FAILS TO ACCURATELY ADDRESS THE CORRECT STATUTORY STANDARDS OF DISCLOSURE FOR LICENSED REALTORS

A. RESPONDENT'S WRONGFULLY RELY UPON FACTUAL FALLACIES TO ASSERT THE ONLY APPLICABLE STATUTE IS S.C. CODE § 40-57-350(G)(2)

The lower court Order (drafted by Respondent's Counsel) relies exclusively on S.C. Code § 40-57-350(G)(2), which provides that no cause of action may be brought against a real estate licensee for information contained in a termite inspector's report. Respondent's brief asserts that Appellants' failed to sufficiently address the lower court's sole reliance on this subsection of the statute. (Resp. Br., p. 11) On the contrary, Appellants' brief confronts this issue head on and in detail, by explaining that Respondents and the lower court Order both ignore critical facts and cite to the wrong statute. (Br. of App., pp. 18-20). More specifically, Respondent's brief and the lower court's Order, make at least three grossly erroneous factual findings which pave the way for an argument that there is only one relevant statute.

Respondent's first factual fallacy is to assert Appellants' entire case is based upon Kopchynski's failure to disclose just two reports, that is, failing to disclose Andy Ward's report issued on May 16, 2019 (the "Stark Report") and failing to disclose the first CL-100 report issued by Defendant Lane's Professional Pest Elimination (Lanes) in June of 2019 (the "June CL-100"). Oddly enough, neither Respondent nor the lower court reviewed the contents of those reports or the testimony of the authors and other witnesses concerning those reports. Instead, the lower court wrongfully opines that both the disclosure of these two reports and all of the facts within and surrounding them, became irrelevant because Appellants' realtor, Ed Kimbrough,

testified that he did not want to see the June CL-100.[1] Instead, Mr. Kimbrough elected to obtain a new CL-100 report, issued by Lanes just a few weeks later, in July of 2019 (the "July CL-100"), (Resp. Br., p. 9; Order, R. 6-7). According to Respondent and the lower court, even if the July CL-100 from Lanes was incorrect in any way, S.C. Code § 40-57-350(G)(2) states Respondent cannot be responsible for any error in it. (Resp. Br., p. 9-10; Order, R. 10).

The next factual fallacy invented by Respondents is the assertion that the only facts the Appellants relied upon were in Lanes' second report, the July CL-100. In other words, after Appellants obtained the second report from Lanes, the July CL-100, Respondent's knowledge that the Appellants initially had been given false, misleading, or incomplete information was irrelevant. Appellants' brief presents clear and convincing evidence the Respondent knew of a material defect through a litany of facts, each properly supported by citations to the record. As just one example, Kopchynski personally called, Andy Ward. (Aff. of Ward, R. 433, ¶ 4) Mr. Ward testified that he told Respondent that the property had significant problems, including excessive moisture, wood decay fungi, and existing visible damage. (*Id.* ¶ 7). For purposes of Summary Judgment, these facts confirm Respondent's knowledge of material defects.

The final factual fallacy created and relied upon by Respondents and the lower court Order is the erroneous assertion that Respondent could not have known the July CL-100 was incorrect, misleading, or incomplete. (Br. of Resp., pp. 16-17). Respondent's own testimony confirms she knew Lanes' June CL-100 found excessive moisture, and her text messages the very next day confirm Respondent had the repair contractor postpone his scheduled visit to

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[1] Appellants' Realtor, Ed Kimbrough, testified that he did not want the June CL-100 because Kopchynski represented to him that the contents of the report "was good." (Br. of App., pp. 12-13); Kimbrough testified that he would definitely would have wanted to know of any and all negative reports: "And perhaps [if] she would have reported that it was bad, I would have probably said, yeah, let us see it. But the fact is she reported it was good." (Dep. of Kimbrough, R. 590).

conceal ongoing remediation as well as the failure of prior "verified repairs." (Dep. of Kopchynski, R. 487-492, Br. of App., p. 13-15). Kopchynski's own testimony proves she worked with the homeowners to steer Appellants toward using Lanes (and away from Andy Ward). (Dep. of Kopchynski, R. 487-492). Respondent's own testimony proves she knew Appellants did not know the Lanes' June CL-100 was not good, that the Lanes' inspector documented excessive moisture and had extensive discussions with the homeowners[2] where he suggested temporary repairs. (R. 342, 497-501). Most importantly -- Respondent knew that none of this information was included in the July CL-100.

For purposes of Summary Judgment, these facts confirm Respondent knew the July CL-100 was misleading and incomplete.

Respondent's assertion that Appellants' failed to sufficiently address S.C. Code § 40-57-350(G)(2) is wrong because Respondent's assertion that Appellants exclusively relied upon Lanes' July CL-100 is wrong. The licensing statutes do not permit or excuse any knowing lies, half-truths, or misleading omissions. Laura Kopchynski knew of and helped to conceal the material defects. The very existence of the July CL-100 by Lanes is a product of her conspiring and fraud. In sum, and therefore, other subsections of S.C. Code § 40-57-350 apply.

B. S.C. CODE § 40-57-350(G)(1), (G)(2), AND (G)(3) MANDATE HONESTY, PROHIBIT THE GIVING OF MISLEADING OR INCOMPLETE INFORMATION, REQUIRE "TRUTHFUL DISCLOSURE," AND MUST ALL BE READ TOGETHER.

Respondent's entire argument seeks to avoid a thorough review of the facts so they may conveniently disregard those sections of S.C. Code § 40-57-350(G)(1)-(3), which mandate

---

[2] The homeowners purchased the June CL-100 despite having no obligation to do so and had extensive discussions with the Lanes' technician. (*See* Dep. of Lanes, R. 562-63)

honesty, prohibit the giving of misleading or incomplete information, and require "truthful disclosure":

> (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**.

As discussed in detail within the totality of the factual chronology in Appellants' brief, the Isaacs' claim is based upon more than the two documents Respondent didn't disclose (the Stark Report and the June CL-100), and the Isaacs relied upon more than the July CL-100.

Appellants' claims are based in part upon Respondent's breaches of her statutory obligations requiring honesty, requiring truthful disclosures, and prohibiting the conveyance of false, misleading, or incomplete information.

C. UNDER THE DISCLOSURE ACT, S.C. CODE § 27-50-70, THE LEGISLATURE PURPOSEFULLY ESTABLISHED LIABILITY WITH A BROAD STANDARD, BECAUSE KOPCHYNSKI HAD REASONABLE CAUSE TO SUSPECT INFORMATION WAS FALSE, INCOMPLETE, OR MISLEADING

Appellants forwarded a claim against Respondent as the listing agent based upon a violation of the South Carolina Residential Property Condition Disclosure Act, found at

S.C. Code § 27-50-10, *et seq.* (the "Disclosure Act"), asserting that Kopchynski knew of several false, incomplete, and misleading representations in each of the Property Condition Disclosure Statements ("Disclosure Statements"). (*See* Br. of App., p. 18).

Respondent and the lower court Order ignore the Disclosure Act by suggesting the Disclosure Act has been subsumed by S.C. Code § 40-57-350 and their arguments thereunder:

> Finally, S.C. Code §§27-50-50(C), 27-50-70(B) and 27-50-80, discusses the responsibility and liability of a real estate licensee under the South Carolina Residential Property Disclosure Act. These sections reference and reaffirm the obligations of real estate licensees under the statute governing real estate licensees, S.C. Code §40-57-350. More particularly, these statutes provide that an agent cannot be liable for the statement of an owner, even allegedly false statements, if the licensee does not have **actual or constructive knowledge of the alleged falsity of the statements.**

(Resp. Br., p. 10; Order, R. 9, *Emphasis added*)). Even worse, Respondent's brief and the lower court both continually recite the statutory standard incorrectly. (*Id.*)

As to the statutory standard, S.C. Code § 27-50-70, entitled as Listing Agent Liability for Inaccuracy of Disclosure Statement, provides in pertinent part:

> (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.

While the Disclosure Act does state a listing agent may be liable where they actually know a statement on the owners' disclosure statement is false, the language used by the legislature creates a statutory standard which is far more broad. First, liability for a listing agent can exist where the agent only has a reasonable suspicion, which is dramatically less than actual or constructive knowledge. Second liability doesn't hinge on a determination of whether a

statement was objectively false, because the statute states liability may exist when information provided is only incomplete or misleading.

S.C. Code § 27-50-40 provides that the Disclosure Statement must contain the language and be in the form promulgated by the South Carolina Real Estate Commission. Every Disclosure Statement in South Carolina clearly says the listing agent "must disclose material adverse facts about the property if actually known by the licensee, regardless of owner responses on this disclosure. (*See e.g.*, Br. of App., p. 18). If Kopchynski suspected any information on the Disclosure Statement was false, incomplete, or misleading, she had a statutory duty to disclose.

Contrary to Respondent's assertion, the Supreme Court has never held that the Disclosure Act has been subsumed by S.C. Code Ann. § 40-57-350. In *Gladden v. Boykin*, the Supreme Court noted that the "General Assembly has already provided specific protection for the consumer risks associated with undisclosed defects, and we must defer to its judgment." *Gladden v. Boykin*, 402 S.C. 140, 144, 739 S.E.2d 882, 884 (2013).

D. DISTINGUISHING *CHASTAIN V. HILTABIDLE*, WHERE THE SELLERS HAD MARKED YES TO PROVIDE NOTICE OF PRIOR FLOODING

Respondent asserts the only applicable statute is S.C. Code § 40-57-350(G)(2), because Appellants relied on the July CL-100 report from Lane's. (Resp. Br., pp. 9-10). In support, Respondent cites to *Chastain v. Hiltabidle,* 381 S.C. 508, 519, 673 S.E.2d 826, 832 (Ct. App. 2009) for the proposition that "a real estate licensee does not have a duty to inspect or investigate the physical condition of a piece of property for the purpose of confirming or denying statements made by a seller in a disclosure statement." (Resp. Br., p. 16).

While the Chastain Court dismissed claims against a listing agent at the summary judgment stage, Chastain is easily distinguished and supports the Appellants in this case in

several important ways. (*Id.* p. 512, 828) First, the lower court in Chastain actually reviewed the statements made on a Disclosure Statement and applied the correct statutory standard from the Disclosure Act to those facts. (*Id.* pp. 520-21, 832-33) Second, and most importantly, the selling homeowners **had responded "yes" and offered substantive explanation** to inquiries on the Disclosure Statement concerning prior flooding and moisture intrusion. (*Id.* p. 512, 828) Following Buyers' purchase of the Property, two days of rain resulted in flooding. The Chastains sued on the ground that the realtor should have known the seller's substantive explanations were inaccurate understatements. (*Id.* p. 513, 828) The Court held that the Seller had put the Buyers on notice of past flooding, and even if the agent did know of past flooding, there was no evidence the realtor knew the substantive explanations of the extent of the flooding were false or inaccurate. (*Id.* pp. 520-21, 832-33).

The key distinguishing facts in the case at bar are that the Onions unequivocally lied on both of the Disclosure Statements that Respondent tendered to Appellants,[3] and Respondent has uncovered a litany of facts which clearly and convincing show that Respondent knew statements in the Disclosure Statements were false, and that she conspired to conceal the truth.[4]

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[3] *See* Dep. of T. Onions, R. pp. 525-528 (Defendant Thomas Onions admitted numerous incidents of flooding and that mechanical pumps were installed to remove floodwaters; yet his Disclosure Statements denied flooding, and did not mention drainage issues or that pumps had been installed).

[4] *See, e.g.*, Aff. of Andy Ward, R. pp. 433-434, ¶¶ 6-10. (Mr. Ward told Kopchynski & Mrs. Onions that the property had material defects).

2. RESPONDENT'S KNOWLEDGE SHOULD BE ESTABLISHED BY THE TOTALITY OF THE CIRCUMSTANCES

A. MISCHARACTERIZATION OF ONE FACT: KOPCHYNSKI'S CONNECTION TO THE PARTIES AND THE NEIGHBORHOOD.

Respondent's brief makes a few cursory attempts to avoid a substantive review of relevant facts by mischaracterizing Appellants' arguments and labeling them generic, unsupported, unreasonable, and conclusory. For example, Respondent isolate one fact: "since Sellers' Agent lived in the same community as the Property, they are entitled to an inference Sellers' Agent was aware of flooding at the Property." (Br. Resp., p. 13) First, this is not an accurate recitation of Appellants' argument or the statutory standard. Appellants argue a jury should be allowed to consider whether:

> Due to her extremely close personal and professional relationship to both the Onions and their neighborhood, coupled with a significant financial incentive ... : (1) that if the Property flooded or had severe drainage problems, she would know about or have reasonable cause to suspect them; (2) that Mr. Onions, Kopchynski, and their handyman Emery Custer knew each other well; and (3) that Kopchynski had viable personal and financial motives to help or allow the Onions conceal adverse information when she listed the property. (Br. of App., pp. 5-6).

Respondent erroneously argues these arguments were not raised to the lower court, and they are therefore without merit. (Br. Resp., p. 13) Respondent is wrong because this argument was before the lower court, and it was based upon and supported by references to Kopchynski's own testimony. (*See* Mem. in Opp. and Mem. in Sup. of M. to Am.(*See e.g.,* Dep. of Kopchynski R. pp. 461-463, 468-469, 470, 471-472, 485-486, 494); Aff. of Cromartie R. pp. 414-417 (Picture of flooding across road at Onions' residence at entrance of subdivision)).

B. APPELLANTS RELIED UPON KOPCHYNSKI'S STATUTORY DUTIES: TO TRUTHFULLY DISCLOSE WHAT SHE KNEW, AND THE PROHIBITION FROM PROVIDING INFORMATION WHICH IS FALSE, MISLEADING, OR INCOMPLETE.

Respondent also repeats the key mischaracterization that Appellants' entire case is based upon two written reports, one of which is Andy Ward's May 16, 2019 Report ("Inspection Graph")(R. 437). Respondent's mischaracterizations are stated as follows: Appellants argue "Seller's Agent had actual knowledge of misrepresentations since the inspection graph provided by Andy Ward identified elevated moisture levels" and "Appellants contention that the physical inspection graph created by Ward was an adverse material fact that mandated production of the inspection graph to the Buyers is without merit." (Br. Resp., pp. 13-15) Aside from any legal obligation, Kopchynski could have and should have disclosed the document for a number of practical reasons - perhaps to protect herself from any claim of wrongdoing, to avoid the appearance of impropriety, or just to be an honest person.

Appellants' position as to this issue are accurately stated as follows: (1) a jury could find that the Andy Ward Report ("Inspection Graph") did impart the knowledge or suspicion of a material adverse condition; and, (2) there is no question there is cogent evidence that Laura Kopchynski had or obtained knowledge (*certainly a suspicion*) that a material adverse condition existed which rendered the Disclosure Statements inaccurate because **THERE IS AN AFFIDAVIT FROM A DISINTERESTED WITNESS THAT SAYS THAT IS EXACTLY WHAT HE TOLD HER**. (Aff. of Ward, R. 433-436 ¶¶ 7-10). Respondent forwards no argument as to why the sworn testimony of Andy Ward is patently without merit as a matter of law.

C. RESPONDENT'S BRIEF INTENTIONALLY IGNORES THE CLEAR AND CONVINCING EVIDENCE OF FRAUD, MISREPRESENTATIONS, VIOLATIONS OF THE DISCLOSURE ACT, AND A CIVIL CONSPIRACY.

The totality of the factual circumstances provides highly probative evidence that Kopchynski had knowledge of (or suspicion of) adverse material facts and information which was incomplete and misleading and took actions to help her clients conceal both. Respondent's decision to discuss the two facts above omits at least fifty (50) other facts as set forth in the initial sections of Appellants' Brief. (*See* App. Br., pp. 4-17).

3. CIVIL CONSPIRACY

Respondent's Brief wrongfully states Appellants failed to address the lower court Order dismissing the civil conspiracy cause of action on the grounds that there was no evidence to suggest Kopchynski concealed any conditions related to the property. (Resp. Br., p. 19). This assertion is patently false, as set forth above in this Reply, Appellants have repeatedly addressed Kopchynski's overt conspiratorial acts, including the fact that the second report by Lanes, that is, the July 2019 CL-100 was a product of her fraudulent and conspiring actions, in which everyone except for the Appellants knew the report was both misleading and incomplete. (*See also* App. Br., pp. 4, 14-15, 21-22 (Discussing conspiracy)).

4. RESPONDENTS VIOLATION OF PROCEDURAL RULES RELATED TO FILING OF MOTIONS PREJUDICED APPELLANTS IN THE DEFENSE OF SUMMARY JUDGMENT.

The lower court should have stricken Respondent's Memorandum in Support of Summary Judgment because it was filed just before the Court was scheduled to hear two Motions for Summary Judgment. Neither of the Motions set forth grounds for Summary Judgment, and therefore Appellant was forced to guess as to the grounds for each Defendants' Motion and attempt to establish and defend every element of every claim at one hearing.

Respondent's Motion did not even cite to S.C. Code § 40-57-350(2), which ended up serving as the sole basis for the lower court's Order, which narrowly found that every fact outside of Lanes' July CL-100 was irrelevant. This argument could not be easily defended due to Defendants' introduction of one portion of deposition testimony from Appellants' real estate agent Kimbrough at the hearing for the first time. Since the testimony was not timely identified prior to the hearing and taken completely out of context, Appellants were only able to address the testimony after an Order Granting Summary Judgment was entered.

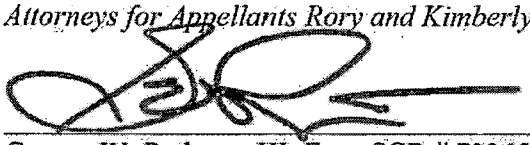
The rules related to the filing of motions promulgated by the Supreme Court should be enforced, requiring the parties to identify the issues so that Motions can be properly briefed and argued in the lower courts.

CONCLUSION

Appellants pray this Honorable Court will properly construe all of the evidence presented in this Action in their favor as the non-moving party. Appellants pray this Honorable Court will apply the proper statutory standards which acknowledge the liability of a listing agent when she knows or has reasonable cause to suspect information conveyed is false, misleading, or incomplete. Appellants pray this Honorable Court will reverse the decision of the lower court and deny Respondent's Motion for Summary Judgment.

Respectfully Submitted,

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Appellants Rory and Kimberly Isaac



George W. Redman, III, Esq., SCB # 72365

June 30, 2020.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.,

Of Whom Laura Kopchynski is the Respondent.

Appellate Case No. 2019-001822

Appeal from Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2023-UP-263
Heard November 15, 2022 – Filed July 12, 2023

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

George W. Redman, III, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., of Myrtle Beach, for Appellant.

Steven Raymond Kropski, of Earhart Overstreet, LLC, of Charleston, for Respondent.

PER CURIAM: Appellants Rory Isaac and Kimberly Isaac (the Isaacs) contend the circuit court erred in granting summary judgment to Respondent Laura Kopchynski (Kopchynski). We affirm in part, reverse in part, and remand.

When attempting to sell their home in Pawleys Island in 2018, Thomas (Thomas) and Jackie (Jackie) Onions (collectively, the Onionses) turned to their friend Kopchynski to handle the sale. A "Residential Property Condition Disclosure Statement" was signed by the Onionses on April 23, 2018. Kopchynski said she played a minimal role in completing the form because she is "not allowed to advise, instruct, consult, [or] explain a disclosure form."

The disclosure asks homeowners to "[d]escribe any known present wood problems caused by termites, insects, wood destroying organisms, dry rot[,] or fungus." The Onionses answered: "NONE." Another space provided for those filling out the form to note why they might have replied "yes" to any question or to "further describe notice/known issues." This space includes the handwritten notation: "SEE REPAIR VERIFICATION," followed by the Onionses' initials and a date of "6/20/2018." The Isaacs signed the form on June 20.[1]

The disclosure was first filled out by the owners in anticipation of the sale of the home to Randy and Suzanne Cole, who signed a contract in early May to purchase the home. An inspection report by Cornerstone Home Inspection of SC, LLC, conducted for the Coles and dated May 10, made note of moisture issues in the crawlspace.

According to Jackie, after receiving the Cornerstone report, she spoke to Kopchynski, who contacted Andy Ward with Stark Exterminators. On May 16, Stark Exterminators visited the property to speak to the Onionses about a "Crawl Space Moisture Management System." Kopchynski was at the Onionses' home that day. Jackie and Ward dispute whether he told her the house would receive a clean CL-100, or South Carolina Wood Infestation Report, as long as one was done soon.

The Onionses decided to get repairs done by Emery Custer, a neighborhood handyman. Kopchynski testified that she did not know what work Custer performed. A repair verification form, dated May 25, 2018, was prepared to document Custer's work. It was signed by the Onionses. Kopchynski later testified that she did not

[1] The Disclosure specifically indicates that it "does not limit the obligation of the purchaser to inspect the property," and separately notes that it "is not a warranty by the real estate licensees" and "is not a warranty by the owner."

know before the litigation that the repair verification was typed by Thomas Onions. Thomas testified that he typed up the verification based on Custer's handwritten version, though he conceded he "probably paraphrased it." Custer said he first saw the typed verification at his deposition.

On June 18, the Coles and the Onionses signed a release from their contract. The next day, Kopchynski emailed Ed Kimbrough, the real estate agent for the Isaacs, to inform him that the house was back on the market. She notified Kimbrough of some of the documentation available and wrote: "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."[2] The CL-100 in question, conducted on June 18 by an employee of Lane's Professional Pest Elimination, Inc., actually found evidence of "[n]on-active wood-destroying fungi" because the moisture level was between twenty and twenty-five percent. Kimbrough testified that he did not want that CL-100 because the Isaacs intended to have their own prepared. However, Kimbrough suggested he might have asked to review it if Kopchynski had represented it differently. Additionally, Kopchynski sent two versions of the "verification" of Custer's work to Kimbrough on the afternoon of June 20, 2018, the first lacking a header and the Onionses' signatures.

The Isaacs signed a contract to buy the home on June 20. The Isaacs were aware of the Cornerstone report, but Rory Isaac said he "depended upon . . . [the] truthfulness and accuracy" of a positive CL-100.

In a June 21 text conversation, Jackie texted Kopchynski to say: "reality of life but now I need to get ahold of Emery and ask him to come[,] what do you think after 11:00[?] He is going to move the fan and make the mesh door for the vent and I do not want him here working while they are walking through[.]" Kopchynski responded: "Maybe you can tell him after 11:30 just to be on the safe side and that you can call him if they leave earlier if he's in the neighborhood [and] wants to come earlier? I agree he should not be there[.]"

A new CL-100, prepared on behalf of Joseph Sheheen of Lane's on July 11, 2018, indicated that there were no signs of fungi and listed a moisture content

[2] Kopchynski herself seems to be unclear on when precisely she read the earlier CL-100. At the very least, she conceded that she did not read the CL-100 "that closely" before saying it was good. (" . . . I was told before reading this that it was good.").

between eight and eighteen percent.[3] Sheheen said the Onionses were the only ones there when he looked at the crawlspace for the CL-100.

Two days after closing,[4] according to the Isaacs' complaint, "[w]hile [the Isaacs] were out of state on July 25, 2018, their landscape contractor called to inform them that rainfall had resulted in standing water around the house which appeared to be flowing into the crawl space of the residence on the Property."

Another CL-100, completed August 7, 2018, and filled out by Brantley C. Russell of Arrow Exterminators,[5] found evidence of both kinds of wood-destroying fungi. The moisture level was clocked at twenty-seven to thirty-two percent.

On November 16, 2018, the Isaacs filed a complaint against Kopchynski, the Onionses, and Lane's. Relevant to this appeal, they included claims against Kopchynski for (1) fraud, fraud in the inducement, and/or misrepresentation; (2) negligent misrepresentation; (3) civil conspiracy; and (4) violation of the Residential Property Disclosure Act. Kopchynski answered on December 19, 2018, denying the substantive allegations and asserting 18 affirmative defenses. On July 8, 2019, she filed a motion for summary judgment.

The circuit court held a hearing on July 26, 2019. The court said it would grant Kopchynski's motion because "as I read the statute, she did what she was supposed to do." In its August 9, 2019 written order, the circuit court found that "it is undisputed that Kopchynski disclosed the June 18, 2018 CL-100 report to the Isaacs' realtor[] and offered to obtain the report for the Isaacs." It also noted Kimbrough's testimony that he and the Isaacs were determined to do their own CL-100. The court stated: "Accordingly, the Isaacs cannot satisfy the elements of Fraud or Negligent Misrepresentation as they relied upon their own CL-100." The court also found that the Isaacs could not make a claim based on information in the July 11 CL-100 because of S.C. Code Ann. § 40-57-350(G) (Supp. 2022), which shields real estate licensees from liability related to certain reports. As to the conspiracy claim, the court relied on "deposition testimony from [a Lane's] inspector stating that he does not know Kopchynski and has not talked to her." The court continued: "In response, Plaintiffs do not identify any evidence showing collaboration between the Defendants to conceal an alleged adverse property condition."

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[3] Given those moisture readings, Sheheen testified, the CL-100 should have stated that there were no fungi present under "state standards."

[4] According to the circuit court, closing was July 23, 2018.

[5] Arrow and Stark appear to be the same company.

The Isaacs submitted at least three filings that could be placed under the umbrella term of Rule 59(e) motions. The circuit court denied the Isaacs' Rule 59(e) motion filed August 12, 2019, with a Form 4 order on September 25, 2019. This appeal followed.

All courts view summary judgment the same: "the appellate court applies the same standard of review as the trial court . . . ." *Cowburn v. Leventis*, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005). This means that "summary judgment may be affirmed if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id.* Our task is not to attempt to divine the truth on a motion for summary judgment. *See Chastain v. Hiltabidle*, 381 S.C. 508, 514, 673 S.E.2d 826, 829 (Ct. App. 2009) ("A court considering summary judgment makes neither factual determinations nor considers the merits of competing testimony."). To the contrary, "all inferences from the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion." *Manning v. Quinn*, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988).

Appellants suggest that the governing standard for overcoming a motion for summary judgment in this case is the existence of a "mere scintilla" of evidence. However, in a trial on the facts, fraud must be found by clear and convincing evidence. *See McLaughlin v. Williams*, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008). This, in turn, increases the quantum of evidence required to defeat a motion for summary judgment to "more than a mere scintilla of evidence." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009) ("[I]n cases requiring a heightened burden of proof or in cases applying federal law, we hold that the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment."); *see also Dunes W. Golf Club, LLC v. Town of Mt. Pleasant*, 401 S.C. 280, 298, 737 S.E.2d 601, 610 (2013) (applying "more than a mere scintilla" standard for denying summary judgment in a case requiring a showing of clear and convincing evidence to the trier of fact).

The Isaacs contend that the circuit court erred by granting Kopchynski's motion for summary judgment. We agree in part, but affirm the circuit court as to the fraud and conspiracy claims.

The "essential elements to establish liability for negligent 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). "Proof that the statement was made in the course of the defendant's business, profession, or employment is sufficient to show he has a pecuniary interest in making it, although he receives no consideration for it." *Id.* at 223, 420 S.E.2d at 874. In such cases, the defendant is obligated "to exercise that care a reasonable man would take in the circumstances." *Id.* Additionally, "[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." *Id.* Defendants also cannot be held liable for "[a] mere statement of opinion, commendation of goods or services, or expression of confidence that a bargain will be satisfactory." *Id.* at 222, 420 S.E.2d at 874.

Fraud, in addition to its heightened burden of proof, requires the following elements:

> (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin, 379 S.C. at 456, 665 S.E.2d at 670 (quoting *Hendricks v. Hicks*, 374 S.C. 616, 620, 649 S.E.2d 151, 152–53 (Ct. App. 2007)). "The key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement." *Id.* at 457, 665 S.E.2d at 670 (quoting *Armstrong v. Collins*, 366 S.C. 204, 219–20, 621 S.E.2d 368, 375–76 (Ct. App. 2005)).

For the purposes of this case, "[t]he elements of a civil conspiracy are (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3)

and which causes the plaintiff special damage." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 600, 358 S.E.2d 150, 152 (Ct. App. 1987).[6]

Additionally, the Residential Property Condition Disclosure Act (the Act) specifies what information must be disclosed to potential buyers by the owner of a home. *See* S.C. Code Ann. § 27-50-10 to -110 (2007 & Supp. 2022). Under the Act, a buyer is entitled to information concerning "present infestation of wood-destroying insects or organisms or past infestation, the damage from which has not been repaired[.]" S.C. Code Ann. § 27-50-40(A)(4) (2007 & Supp. 2022). However, a real estate 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." S.C. Code Ann. § 27-50-70(B) (2007). Finally, legislation regulating licensed real estate brokers addresses a broker's disclosure of information concerning real property. For example, section 40-57-350(G) provides:

> (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*

[6] In *Paradis v. Charleston County School District*, our supreme court overruled a line of cases including *Island Car Wash* to the extent they imposed a requirement of pleading and proving special damages. *See* 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). However, the court held that its clarified formulation would not affect any other cases then currently on appeal, such as the present case. *See id.* at 577, 861 S.E.2d at 781.

> *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.*

S.C. Code Ann. § 40-57-350(G) (emphases added).

We do not read the Isaacs' complaint as an attempt to hold Kopchynski responsible for the information in the July 11 CL-100, but for her alleged *mischaracterization* of the findings of the June 18 CL-100.

State law does limit the liability of a licensee for misstatements on a disclosure form, but only 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)(2). There are reasons to believe Kopchynski *might* be *eligible* for this immunity. There are also reasons to believe that she *might* be *ineligible*. On a motion for summary judgment, we are not supposed to weigh that evidence and are instead required to consider it in the light most favorable to the Isaacs. *See Chastain*, 381 S.C. at 514, 673 S.E.2d at 829 ("In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party."); *see also Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 47, 656 S.E.2d 20, 25 (2008) ("[E]ven if there is no dispute regarding the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."), *modified on other grounds by Hancock*, 381 S.C. at 330–31, 673 S.E.2d at 802–03, *as recognized in Bean v. S.C. Cent. R. Co.*, 392 S.C. 532, 545 n.7, 709 S.E.2d 99, 106 n.7 (Ct. App. 2011).

Based on the record before us, the Isaacs presented enough evidence for two of their claims to survive summary judgment.

The Isaacs have presented the following evidence: (1) Kopchynski's position with the community newsletter, which increased the likelihood that she was aware of flooding issues in the neighborhood; (2) Kopchynski's knowledge of the earlier conditions in the Onionses' crawlspace and the Onionses' 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; and (5) the text conversation between herself and Jackie. Given this evidence, a jury could rationally infer Kopchynski had reasonable cause to suspect the Onionses were not being truthful, and should have shared that with the Isaacs. *See Chastain*, 381 S.C. at 514, 673 S.E.2d at 829 ("In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party."); *see also Montgomery*, 376 S.C. at 47, 656 S.E.2d at 25 ("[E]ven if there is no dispute regarding the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.").

We need not find the evidence presented so far is determinative; simply that it is either a scintilla or more than a scintilla. *See Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("[A] scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows.").

As to negligent misrepresentation, the evidence before the court could reasonably be interpreted by a jury to show that (1) Kopchynski made a false representation to the Isaacs about the condition of the house; (2) she had a pecuniary interest in making that statement, as she was seeking as part of her job to sell the home; (3) she owed a duty of care to communicate truthful information under section 40-57-350(G)(1); (4) she breached that duty by implying that the June 18 CL-100 was "good" without either reviewing it or more closely reviewing it; (5) the Isaacs, through their agent, relied on that representation in declining to ask to review the June 18 CL-100; and (6) that led to the Isaacs' loss, and foreseeably so. *See AMA Mgmt. Corp.*, 309 S.C. at 222, 420 S.E.2d at 874 (listing elements).

Likewise, considering the claims related to the Onionses' disclosure, we find there is at least a scintilla of evidence supporting a theory that Kopchynski "[knew] or [had] reasonable cause to suspect the information was false, incomplete, or misleading," S.C. Code Ann. § 27-50-70, based on her ability to read for herself the June 18 CL-100 that contradicted her suggestions that its results were good.

However, for the Isaacs' fraud claim to survive, we must find that there is *more* than a scintilla of evidence supporting the Isaacs' case. Because of the higher burden and the stricter elements of fraud, this claim falls short. We struggle to find a "verifiable spark" that Kopchynski knew the statements she made regarding the June 18 CL-100 were false or that she *recklessly* disregarded their falsity. *See*

McLaughlin, 379 S.C. at 456, 665 S.E.2d at 670 ("To survive a motion for summary judgment, [the non-moving party] must offer some evidence that a genuine issue of material fact existed as to each element of fraud and negligent misrepresentation."); *id.* (listing elements).

The Isaacs' conspiracy claim also fails. We find no evidence in this record that would allow us to conclude that there is a genuine issue of material fact on whether there was the necessary "combination of two or more persons." *Island Car Wash, Inc.*, 292 S.C. at 600, 358 S.E.2d at 152; *see also* 15A C.J.S. *Conspiracy* § 30 (May 2023 update) ("To satisfy the requirement that a conspiracy to commit a fraud be pleaded with particularity, the plaintiff must allege with *sufficient factual detail* an explicit or tacit agreement by pleading *specific facts that support such an inference of an agreement.*") (emphases added) (footnote omitted); *Island Car Wash, Inc.*, 292 S.C. at 601–02, 358 S.E.2d at 153 ("[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. Proof showing *concert of action* in the commission of the unlawful acts, from which the natural or reasonable inferences arise that the acts were in furtherance of the common design of the alleged conspirators, is sufficient; at least to establish a *prima facie* case of conspiracy." (citing an earlier version of 15A C.J.S. Conspiracy § 30)).

Our jurisprudence has at times suggested it is difficult for the purchaser to prove a right to rely on misstatements by real estate agents and owners because of the right to have a home inspection performed. *See McLaughlin*, 379 S.C. at 459, 665 S.E.2d at 671 (finding that where a purchaser "had knowledge that directly contradicted the representations found in the Disclosure Statement . . . as a matter of law, he failed to establish the necessary element of reliance for his claims of fraud and negligent misrepresentation"); *accord Buchanan v. Improved Properties, LLC*, 7 N.E.3d 634, 642 (Ohio Ct. App. 2014) ("A buyer cannot justifiably rely upon any representations of the seller when the purchase is contingent upon an inspection.").

The Isaacs did not forego the right to inspect; the Isaacs possessed a home inspection conducted for a previous potential buyer, as well as assurances that the issues uncovered in that home inspection had been fixed. Additionally, the July 11 CL-100, obtained on their behalf prior to closing, indicated there were no issues with fungi.

Based on the foregoing, we reverse the circuit court's summary judgment order as to the Isaacs' claims for negligent misrepresentation and violation of the

Residential Property Disclosure Act, but we affirm the order as to the Isaacs' claims for fraud and conspiracy.

As to the Isaacs' other grounds for appeal, we need not address them with regard to claims we have already found should not have been subject to summary judgment. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating that the "appellate court need not address remaining issues when disposition of prior issue is dispositive" (citing *Whiteside v. Cherokee Cnty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993))).

To the extent the additional grounds for appeal apply to the claims that we have not already reversed, we find that they were either unpreserved or abandoned on appeal.

With regard to the claims concerning the lateness of a memorandum supporting Kopchynski's motions for summary judgment, the Isaacs cite only a supreme court order regarding such filings. They also raise what appears to be an unrelated argument under Rule 54(b), SCRCP. They offer no authority interpreting the supreme court order. Further, it appears that the Isaacs did not raise the Rule 54(b) argument until they filed one of their Rule 59(e) motions. "A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial." *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

As to the discovery issue, the Isaacs offer two paragraphs and one citation. Even if this issue is preserved in the strictest sense, the Isaacs have not offered enough specificity on what they hope to discover. *See Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a "fishing expedition." ' " (quoting *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991))).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

GEATHERS and MCDONALD, JJ., and HILL, A.J., concur.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2018-CP-22-00956

Appellate Case No. 2019-001822

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

v.

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

RESPONDENT'S PETITION FOR REHEARING

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

Counsel for Respondent

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

SUMMARY

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

ARGUMENT

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

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

> (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.

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

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

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

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

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

A. Kopchynski' s work on the community newsletter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Two versions of the repair verification form

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

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

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

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

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

E. Text conversations between Kopchynski and Jackie Onions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

Counsel for Respondent

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Jul 27 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2018-CP-22-00956

Appellate Case No. 2019-001822

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

v.

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

PROOF OF SERVICE

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

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

This 27th day of July, 2023.

Tavia Stockdale

Earhart Overstreet
ATTORNEYS AT LAW

Main: 843.972.9400
www.earhartoverstreet.com
PO Box 22528, Charleston, SC 29413

Steve@earhartoverstreet.com
Direct: 843.972.9404

July 27, 2023

VIA EMAIL ONLY
Jenny Abbott Kitchings
Clerk of Court
1220 Senate St.
Columbia, SC 29201
ctappfilings@sccourts.org

RECEIVED
Jul 27 2023
SC Court of Appeals

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

Dear Ms. Kitchings:

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

With best regards, I am

Sincerely,

STEVE R. KROPSKI

SRK/tss

The South Carolina Court of Appeals

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

v.

Thomas C. Onions, Jacqueline Onions, Laura Kopchynski, and Lane's Professional Pest Elimination, Inc.,

Of Whom Laura Kopchynski is the Respondent.

Appellate Case No. 2019-001822

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ A.J.

Columbia, South Carolina

cc:

FILED
Aug 16 2023

Steven Raymond Kropski, Esquire
George W. Redman, III, Esquire
The Honorable Benjamin H. Culbertson