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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2020-CV-21-01817

Appellate Case No. 2023-001713

Barbara Sarb..Respondent/Appellant,

v.

Julie W. Phillips and Joseph M. Phillips...Appellants/Respondents.

APPELLANTS/RESPONDENTS' FINAL BRIEF AS APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN DENYING APPELLANT/RESPONDENT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT?

II. DID THE TRIAL COURT ERR IN AWARDING PREVAILING PARTY ATTORNEY'S FEES AND COSTS TO RESPONDENT/APPELLANT?

STATEMENT OF THE CASE

On August 6, 2020, Respondent/Appellant Barbara Sarb (hereinafter "Buyer") filed a Summons and Complaint in the Florence County Court of Common Pleas against Appellants/Respondents Joseph and Julie Phillips (hereinafter "Sellers"). (*See generally* R. pp. 15-31.) Sellers answered and filed counterclaims against Buyer. (*See generally* R. pp. 32-47.) Buyer then amended her Complaint, over the objection of Sellers, which was filed September 9, 2021. (*See generally* R. pp. 73-89.) This matter was tried before a jury on September 11, 2023 through September 14, 2023. On September 14, 2023, after considering Buyer's seven causes of action, the jury returned a verdict awarding Buyer damages in the amount of $70,000.00 on her first cause of action for the Sellers' alleged violation of the *South Carolina Uniform Residential Disclosures Act*. (*See* R. pp. 1-3.) The jury also considered a counterclaim alleged by Sellers for breach of contract and awarded damages to Seller in the amount of $1,000. (*Id*.)

Sellers and Buyer each filed post-trial motions concerning the verdict. (*See generally* R. pp. 127-130 and pp. 131-135.) The trial court denied all post-trial motions in an Order dated October 2, 2023. (*See* R. pp. 12-15.) The parties timely filed cross-appeals regarding same.

Subsequently, the parties filed motions for attorney fees and costs. Sellers sought attorney fees in the amount of $55,393.00 and costs in the amount of $2,310.11. (*See* R. pp. 314-365.) Buyer sought attorney fees in the amount of $183,347.40 and costs in the amount of $6,395.84. (*See* R. pp. 135-313.) An Order was issued by the trial court on November 21, 2023 awarding

Sellers attorney fees in the amount of $55,393.00 and costs in the amount of $2,310.11. (*See* R. pp. 7-11.) The trial court also awarded Buyer attorney fees in the amount of $55,393.00 and costs in the amount of $6,395.84. (*Id.*) The parties timely filed cross-appeals regarding same and that appeal has been consolidated herewith by consent for purposes of judicial economy.

FACTS

Sellers were the owners of a certain piece of real property located at 550 Wisteria Drive, Florence, S.C. 29501 (the "Property"). (*See* R. p. 15 at ¶ 9.) On June 13, 2019, the Sellers listed the Property for sale. (*See* R. p. 637, lines 9-13.) On June 13, 2019, the Sellers signed the disclosures (the "Disclosures") required under the *South Carolina Residential Property Condition Disclosures Act*, S.C. Code Ann. § 27-50-10 *et seq*, (the "Act"). (*See* R. p. 1065.) On June 14, 2019, the Buyer made an offer to purchase the Property which was accepted on June 15, 2019 by the Sellers thus entering into a contract for the purchase of the Property ("Contract"). (*See* R. p. 406, line 22; R. p. 647 line 15 – p. 648 line 3; *see also* R. pp. 1053-1060.) Buyer did not review and sign those disclosures until June 25, 2019. (*See* R. p. 1065.)

The Buyer again entered the Property the day after signing the Contract; where she observed the basement. (R. p. 648, line 16 – p. 649, line 2.) On June 17, 2019, Buyer texted her realtor indicating she wanted to have a moisture reading conducted on the floor joists. (R. p. 650, lines 19-21.) Buyer was aware from her visits that the Property included a sump pump and she knew the purpose of a sump pump. (R. p. 640, lines 10-16.)

She again entered the Property on June 21, 2019, when Dodson Pest Control performed an inspection of the property. (R. p. 651, lines 19-25.) An Official South Carolina Wood Infestation Report ("CL-100") was generated as a result of the inspection. (*Id.*; *see also* R. pp. 1067-1069.) Among other things, the CL-100 indicated, and Buyer knew, there was decay to the sub-fascia and

decay and damage to window trim in the basement. (R. p. 653, lines 12-16; R. p. 653, line 24-p. 654, line 5; *see also* R. p. 1069.) Buyer was present for the inspection, followed the inspector around the Property, read the report prior to purchasing the Property and reviewed the report with her realtor. (*Id.*; *see also* R. p. 420, line1; R. p. 420, lines 16-17; R. p. 658, line 5.)

On June 25, 2019, Housemaster performed an inspection of the Property. (R. p. 654, lines 11-15; *see also* R. pp. 1071-1103.) The inspection report prepared by Housemaster revealed, among other things, rotten or decayed wood around/near chimney, rotten or decayed wood in the soffit, rotten or decayed wood in the fascia, rotten or decayed wood in the front entry door, rotten or decayed wood in the basement windows, rotten or decayed wood in the basement doors, dampness in the basement, evidence of prior water intrusion into the basement, evidence of prior water intrusion into the crawl space, loose threshold not preventing water intrusion, (R. p. 656, lines 10-13; *see also* R. p. 1100-1103.) Buyer was present for this inspection as well; she followed the inspector around the Property (to include the basement and even the crawlspace), read the report prior to purchasing the Property, and reviewed the report with her realtor. (R. p. 654, lines 11-15; R. p. 654, line 19 - p. 655, line 3; R. p. 658, line 5.)

On June 27, 2019, Buyer signed and sent to Sellers a Repair Addendum to the Contract asking the Sellers to make all repairs recommended pursuant to the CL-100 and the HouseMaster Report. (R. p. 663, lines 16-20; *see also* R. pp. 1104-1105.) On July 1, 2019, at the request of Sellers, Pee Dee Renovating completed an estimate to make those same repairs requested by the Buyer. (R. p. 663, line 21- p. 664, line 2; *see also* R. pp. 1106-1108.) On July 19, 2019, at the request of Buyer, contractor John Sims prepared his own estimate to make the repairs requested by the Buyer in the Repair Addendum to the Contract. (R. p. 664, lines 3-5; R. p. 666, lines 16-18; *see also* R. pp. 1109-1112.) The repair cost as estimated by John Sims was $5,669. (R. pp. 1109-

1112.) The repair estimates of both Pee Dee Renovating and John Sims included, among other items, repair decay at the basement level window and the left rear window; repair decay at basement entry door; basement window: correct evidence of water intrusion; and repair or replace decay visible at the wood or replace window. (R. pp. 1106-1108; R. pp. 1109-1112.)

On July 26, 2019, the closing occurred for the Property. (R. pp. 1113-1115.) On that date, Buyer signed an ALTA Settlement Statement indicating that Sellers were crediting Buyer in the amount of $5,669 for repairs to be made in accordance with the Repair Addendum to the Contract as estimated by John Sims at Buyer's request. (R. p. 1115; R. p. 666, lines 19-23.)

On August 5, 2019, John Sims replaced the decayed basement window which sat at ground level. (R. p. 674, line 24 – p. 675, line 4.) This required removal of the old window, removal of old brick, replacing the removed brick in addition to new brick layers to move the window up off of ground level. (R. p. 839, lines 5-12; R. p. 1195.) On August 14-17, 2019, the Property experienced approximately two and one-half inches of rain. (R. p. 1126.) According to Buyer, she first noticed pooling water in the basement of the house on August 18, 2019. (R. p. 674, lines 13-14.)

On December 5, 2019, Buyer's plumber, Daniel Williams, installed a sewer line from the street all the way under the house and through the basement and crawl space. (R. pp. 1162-1166; R. p. 848, line 6 – p. 850, line 20.) On December 17, 2024, Mr. Williams installed a new sump pump, installed a bigger drain line and tied the new sump pump back into the sewer line he previously ran from the street. (R. p. 1130.) Buyer testified that beginning in December 2019 and until November 2020, every time it rained, the basement of the Property flooded with some three to four inches of water accumulating. (R. p. 511, lines 8-16; R. p. 632, lines 8-16.)

Buyer filed a Complaint in the Florence County Court of Common Pleas on August 6, 2020. (*See generally* R. pp. 15-31.) Buyer alleged seven separate causes of action: (1) violation of the

Act; (2) fraud; (3) constructive fraud; (4) negligent misrepresentation; (5) negligence, gross negligence and negligence per se; (6) breach of contract/breach of implied covenant of good faith and fair dealing; and (7) breach of contract/breach of implied covenant of good faith and fair dealing accompanied by a fraudulent act. (*Id*.)

Generally speaking, Buyer alleged in her Complaint that, on the Disclosures, Sellers failed to disclose that they had "actual knowledge" of various "problems" with the Property which, by the time of trial, were whittled down to: water penetration/infiltration in the basement; sewage backup; and a severe cockroach infestation. (*See Id*.)

Buyer further alleged that she materially relied on the Disclosures in signing the Contract to purchase the Property. (R. p. 19 at ¶ 26, R. p. 22 at ¶ 36, R. p. 23 at ¶ 44, R. p. 25 at ¶ 54.)

Sellers filed their Answer denying the existence of and actual knowledge of any problem concerning the "problems" identified by Buyer in her Complaint. (*See generally* R. pp. 32-47.) Additionally, Sellers asserted Counterclaims against Buyer for breach of contract and pursuant to the *South Carolina Frivolous Proceedings Act*. (*See Id*.)

Buyer, in realizing the mistake throughout her Complaint that she indeed did not rely on the Disclosures in entering the Contract (because she had not yet reviewed them by the time she signed the Contract), amended her Complaint, over objection by Sellers, to then allege that Buyer relied on the Disclosures in "purchasing the Property." (*See* R. pp. 73-89.)

STANDARD OF REVIEW

The grant or denial of a new trial motion rests within the trial court's discretion, and its decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by error of law. Vinson v. Hartley, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

A trial court's decision to award or deny attorneys' fees is subject to the abuse of discretion standard. Heath v. County of Aiken, 302 S.C. 178, 182, 394 S.E.2d 709, 711 (1990). However, the issue of "prevailing party" status is a legal question which is subject to *de novo* review. *See* Hueble v. S.C. Dep't of Natural Res., 416 S.C. 220, 231, 785 S.E.2d 461, 467 (2016). The specific amount of attorney's fees awarded "will not be disturbed absent an abuse of discretion." Layman v. State, 376 S.C. 434, 443, 658 S.E.2d 320, 325 (2008).

ARGUMENT

I. BUYER FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SELLERS VIOLATED THE SOUTH CAROLINA RESIDENTIAL DISCLOSURES ACT AND THEREFORE THE TRIAL COURT ERRED IN DENYING SELLERS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

To succeed on a claim pursuant to the Act, a party must first prove that a seller of residential real estate had actual knowledge that a disclosure is false, incomplete or misleading. *See* S.C. Code Ann. § 27-50-40; *see also* Winters v. Fiddie, 394 S.C. 629, 651-652, 716 S.E.2d 316, 328 (Ct. App. 2011) (Few, J., *concurring in part, dissenting in part*). The party must also show that the disclosure was of "material information" or, in other words, that the party relied on the disclosure. *Id.*; *see also* McLaughlin v. Williams, 379 S.C. 451, 458, 665 S.E.2d 667, 671 (Ct. App. 2008).

A. Buyer failed to prove by a preponderance of the evidence that Sellers had actual knowledge of a problem and therefore made a false, incomplete or misleading disclosure under the Act.

The Disclosures provide a series of general questions and/or statements from which sellers of real estate must glean the meaning and respond. (*See* R. pp. 1061-1066.) Focusing on the three issues Buyer raised at trial (sewage backup, severe cockroach infestation, and flooding in the basement), among those questions, the form provides in part "Apply this question below … As owner, do you have any actual knowledge of any problems* concerning? (*Problem includes

defects, malfunctions, damages, conditions or characteristics.)" *Id.* The form continues with items such as "sanitary sewage disposal system for any waste water" … "plumbing system." *Id.* Sellers checked "no." The form then asks about problems with termites, termite bonds, termite infestations to which the Sellers replied "none." *Id.* Lastly, the form provides "Apply this question … As owner, do you have any actual knowledge or notice concerning the following" … "problems caused by fire, smoke or water to the property during your ownership" to which Sellers checked "no." *Id.*

Sellers owned the Property for a period of ten years. (*See* R. p. 895, line 20.) During those ten years, the Sellers had three toilet backups due to toys and/or feminine products being flushed down the commode. (*See* R. p. 817, line 12 – p. 818, line 7 and R. p. 896, lines 12-17.) Otherwise, the only evidence presented at trial was that Sellers had no problem with sewage backup during their ownership. (*See* testimony of: Buyer (R. p. 640, lines 17-19; R. p. 649, lines 20-23; R. p. 653, lines 1-2; R. p. 655, lines 16-18; R. p. 672, lines 6-10), John Ethridge (Buyer's real estate agent) (R. p. 747, lines 23-24), Adam Crosson (Sellers' real estate agent)(R. p. 885, lines 10-12); Paul Dodd (R. p. 911, lines 21-23), David Wimberly (former agent for Sellers)(R. p. 875, lines 1-3); Leigh Dodd (R. p. 432, line 25 – p. 433, line 8); Tara Blair (employee of Buyer)(R. p. 762, lines 4-6); John Sims of Sims Construction (Buyer's preferred home repair company). (R. p. 840, lines 1-4).)

Sellers performed their own pest treatment at the Property. (R. p. 818, line 23 – p. 819, line 3; R. p. 904, lines 14-16.) There was no evidence presented at trial that there was a problem with cockroach infestation during Sellers' ownership of the Property. (*See* testimony of Buyer (R. p. 640, lines 23-24; R. p. 649, lines 24-25; R. p. 653, lines 3-4; R. p. 655, lines 18-19; R. p. 666, lines 10-11; R. p. 668, lines 17-19; R. p. 669, lines 19-21; R. p. 671, lines 15-20; R. p. 672, lines 3-10; R. p. 681, lines 14-19); John Ethridge (Buyer's real estate agent) (R. p. 740, line 24 – p. 741, line

9; R. p. 746, line 14; R. p. 747, line 17; R. p. 749, line 16) , Adam Crosson (Sellers' real estate agent)(R. p. 885, lines 6-9; R. p. 893, lines 8-24); Paul Dodd (R. p. 911, lines 18-20), David Wimberly (former agent for Sellers)(R. p. 874, lines 22-25; R. p. 875, lines 17-23; R. p. 880, lines 5-8); Leigh Dodd (R. p. 908, lines 9-22; R. p. 909, lines 14-17); Robin Hatchell (longtime neighbor)(R. p. 787, lines 17-20), Tara Blair (employee of Buyer)(R. p. 762, lines 1-3).)

Sellers admitted that their basement flooded twice; first during the "1000 year flood" and second, during either Hurricane Matthew or Hurricane Florence (each time because power was lost and the sum pump was rendered inoperable). (R. p. 816, lines 3-11.) Sellers did not deem those two separate occurrences to be sufficient to warrant disclosure as a "problem" on the Disclosures. (R. p. 817, lines 1-7.) Otherwise, witnesses who were regularly in the basement during the Sellers' ownership of Property testified that they did not ever notice flooding or even a sign of wet concrete floor in the fully-furnished basement. (*See* testimony of Buyer (R. p. 639, lines 15-18; R. p. 640, lines 3-5; R. p. 648, line 24 – p. 649, line 14; R. p. 652, lines 3-9; R. p. 654, line 11 – p. 655, line 15; R. p. 656, line 1; R. p. 666, lines 2-5; R. p. 669, lines 2-21; R. p. 670, line 2- R. p. 672, line 19); John Ethridge (Buyer's real estate agent) (R. p. 748, line 2 – R. p. 749, line 5) , Adam Crosson (Sellers' real estate agent)(R. p. 885, lines 16-18; R. p. 893, lines 18-24); Paul Dodd (R. p. 910, line 23 – p. 911, line 15), David Wimberly (former agent for Sellers)(R. p. 875, lines 8-9; R. p. 875, lines 17-23); Leigh Dodd (R. p. 907, lines 8-24), Tara Blair (employee of Buyer)(R. p. 761, line 19 – p. 762, line 13), Heath McCullom (R. p. 778, lines 2-6).)

Buyer failed to prove by a preponderance of the evidence that, during their ownership, the Sellers had actual knowledge of a "problem" with their sewage system, with severe cockroach infestations, or with flooding to the point that the Sellers would deem those to be a "problem" (as defined by the disclosures). Therefore, the trial court erred in not granting Sellers' Motion for

Judgment Notwithstanding the Verdict as to the Buyer's cause of action under the Act.

B. Even if this Court finds that Sellers made a false, incomplete or misleading disclosure under the Act, Buyer failed to prove by a preponderance of the evidence that such disclosure was "material information" meaning Buyer had a right to rely on same.

Buyers of residential real estate have the right to inspect that real estate prior to purchase and, when they do, have little-to-no right to rely on initial disclosures of the seller. *See* McLaughlin, 379 S.C. at 459; *see also* Isaac v. Onions, No. 2023-UP-263, 2023 S.C. App. Unpub. LEXIS 313, *16-17 (Ct. App. July 12, 2023) (*citing* Buchanan v. Improved Properties, LLC, 2014 Ohio 263, 7 N.E.3d 634, 642 (Ohio Ct. App. 2014)). If the evidence shows the allegedly aggrieved party has knowledge of the truth of the matter, she cannot and is not entitled to reasonably rely on the disclosures. McLaughlin, 379 S.C. at 458; Linares-Acevedo v. Acevedo, 38 F. Supp. 3d 222, 229 (D.P.R. 2014); Gruber v. Santee Frozen Foods, Inc., 309 S.C. 13, 20, 419 S.E.2d 795, 800 (Ct. App. 1992); Adrian v. Mesirow Fin. Structured Settlements, LLC, 736 F. Supp. 2d 404, 423-424 (D.P.R. 2010); Buchanan, 7 N.E.3d at 642.

In McLaughlin, seller provided the buyer with disclosures indicating seller was not aware of water intrusion at the property. McLaughlin, 379 S.C. at 458. Six weeks after the closing, buyer experienced water intrusion with the home. *Id.* At the outset of the opinion, the court held "because McLaughlin's claims focused on the Disclosure Statement as a misrepresentation, we must determine whether McLaughlin was entitled to rely on the Disclosure Statement itself." *Id.* at 457. The court further held "there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter." *Id.* (*citing* Gruber, 309 S.C. at 20). The court specifically referenced the inspection report and the CL-100 which showed the existence of moisture and water damage to the property. *Id.* The court further referenced buyer's own testimony regarding the availability of and familiarity with those reports. *Id.* In affirming the circuit court, the Court of Appeals found

that, in light of this information and evidence, buyer had no right to rely on the disclosure statement. *Id.* at 458. Additionally, taking it one step further, the Circuit Court held, buyer's own knowledge of the conditions found in the inspections further precluded his right to rely on the disclosure statement. *Id.* at 459; *see also* Chandler v. Bradford, No. 2009-UP-162, 2009 S.C. App. Unpub. LEXIS 157, *2-3 (Ct. App. Apr. 6, 2009) (holding buyer failed to establish the necessary element of reliance where buyer had information about moisture damage prior to the sale).

Here, the CL-100 indicated, and Buyer knew, there was decay to the sub-fascia and decay and damage to window trim in the basement. (R. p. 653, lines 12-16; R. p. 653, line 24 – p. 654, line 5; *see also* R. p. 1069.) Additionally, the inspection report revealed, among other things, rotten or decayed wood around/near chimney, rotten or decayed wood in the soffit, rotten or decayed wood in the fascia, rotten or decayed wood in the front entry door, rotten or decayed wood in the basement windows, rotten or decayed wood in the basement doors, dampness in the basement, evidence of prior water intrusion into the basement, evidence of prior water intrusion into the crawl space, loose threshold not preventing water intrusion, (R. p. 656, lines 10-13; *see also* R. p. 1100-1103.) Lastly, the repair estimates of both Pee Dee Renovating and John Sims included, among other items, repair decay at the basement level window and the left rear window; repair decay at basement entry door; basement window: correct evidence of water intrusion; and repair or replace decay visible at the wood or replace window. (R. pp. 1106-1112.)

Buyer was present for the CL-100 and home inspections, followed the inspectors around the Property (to include the basement and even the crawlspace), read the reports prior to purchasing the Property, and reviewed the reports with her realtor. (*Id.*; *see also* R. p. 420, line 1, R. p. 420, lines 16-17; R. p. 654, lines 11-15, R. p. 654, line 19 – p. 655, line 3, and R. p. 658, line 5.) Buyer

had even texted her realtor indicating she wanted to have a moisture reading conducted on the floor joists. (R. p. 650, lines 19-21.) Buyer was also aware the Property included a sump pump and she knew the purpose of a sump pump. (R. p. 640, lines 10-16.) Lastly, Buyer also admitted that she did not rely on the Disclosures. (R. p. 647, lines 5-9; *see also* R. p. 112-115.)

Like McLaughlin, Buyer was in possession of the home inspection report and the CL-100, and therefore, could not rely upon the Disclosures. *See* McLaughlin, 379 S.C. at 461.

II. THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES AND COSTS TO BUYER.

As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *See, e.g.,* Hegler v. Gulf Ins. Co., 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978). "'A statute allowing attorney fees is in derogation of the common law and must be strictly construed.'" Dowaliby v. Chambless, 344 S.C. 558, 562, 544 S.E.2d 646, 648 (Ct. App. 2001) (*quoting* Belton v. State, 339 S.C. 71, 74, 529 S.E.2d 4, 5 (2000)) (*and cases cited therein*).

The fee statute at issue, S.C. Code Ann. § 27-50-65, provides:

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

"A court determines the prevailing party by evaluating the degree of success obtained." Heath, 302 S.C. at 183 (*citing* Commissioner v. Jean, 496 U.S. 154 (1990)).

A. Attorney's Fees

Here, the Act must be strictly construed. In the opening, the statute provides for an award of court costs for knowing violations of the Act. In the second, it allows for a discretionary award of fees to a prevailing party: "court *may* award" S.C. Code Ann. § 27-50-65 (*emphasis added*). The drafters of this statute chose not to combine those sentences and simply say "if you violate the

act, you must pay court costs and reasonable fees." The discretionary award of fees is not a sanction under the Act; but rather, is reserved for those actions where a plaintiff is also the "prevailing party." Considering all circumstances, Buyer was not the prevailing party nor did Buyer receive a "beneficial result." Buyer alleged seven causes of action that were considered by the jury. (R. pp. 73-89.) Buyer claimed damages in the amount of $114,357.15 with costs/fees in the amount of $189,743.24. (R. p. 1167; R. pp. 135-313.) Sellers prevailed on six of Buyer's claims. (R. pp. 1-4.) Additionally, Sellers prevailed on their only counterclaim considered by the jury. (*Id.*) If "keeping score" determines who is a prevailing party, then Sellers prevailed 7-1 defending against a potential total award of $304,100.39. Buyer was not the prevailing party and therefore should not have been awarded attorney fees.

B. <u>Court Costs</u>

Additionally, the trial court awarded Buyer costs which were improperly taxed against Sellers. (*See* Order on Fees; *see also* Affidavit of Grote.) Those costs include: transcripts for depositions ($1,825.05); detailed attorney jury list ($25.00); fees charged by third parties for records subpoena responses and FOIA responses during pendency of suit ($403.25); affidavit cost of Glenn Stewart ($275); and invoice for trial preparation of Glenn Stewart ($1,921.60). (*See* R. p. 162.) These items are not within the category of taxable costs allowed by law. *See* Rule 54(e), SCRCP; *see also* S.C. Code Ann. § 15-37-10 *et seq*.

CONCLUSION

The trial court erred in denying Sellers' Motion for Judgment Notwithstanding the Verdict. Buyer failed to prove at trial that the Sellers had actual knowledge of a "problem" sufficient to state and prove a cause of action under the Act. But even if the Sellers made a false or misleading disclosure, Buyer was not entitled to rely on the disclosure as she had information as to the truth

of the statement. Regardless of whether the two basement flooding events in a period of ten years should have been considered a "problem" warranting disclosure under the Act; like McLaughlin, Buyer had information sufficient to let her know water had infiltrated that space and therefore she could not rely on the Disclosures. Lastly, Buyer should not have ben awarded fees as she was not the prevailing party. This Court must reverse the decision of the trial court and find that Sellers did not violate the Act and, therefore, Buyer is not entitled to an award of damages nor of fees and costs.

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