



Goudelock & Courie, LLC for Mountain Air Heating and Cooling, Defendant. Defendant South Market submitted supporting Memorandum of Law on March 12, 2019, and Plaintiff submitted a Memorandum in Opposition October 16, 2019.

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rules Civ. Proc., Rule 56(c). *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246 (S.C.,2012). After consideration of the submitted memoranda, arguments by counsel, pleadings, and applicable case law, I make the following findings of fact and conclusions of law:

1. Plaintiff engaged Defendant Caldera as a real estate agent in April 2015. At the time Plaintiff engaged Defendant Caldera, she was presented with a one (1) page document that contained a Disclaimer and Release of Liability as applied to Defendant South Market and its “licensees” including Demetra Caldera.
2. To paraphrase, the Disclaimer and Release of Liability placed Plaintiff on notice that Defendant South Market and its licensees did not provide any warranty as to the reliability or accuracy of any inspector hired to perform an inspection, consultation, or verify information pertaining to property purchased by the Plaintiff. The Disclaimer and Release of Liability also provided that plaintiff agreed to release, indemnify, and hold harmless South Market and its licensees for any actions or omissions by any inspectors, contractors, and service providers.
3. Plaintiff signed this one (1) page document on or about April 3, 2015. None of the above facts are disputed.
4. Pursuant to *Stanley Smith Sons v. D.M.R. Inc.*, 307 S.C. 413,417 (Ctr. App. 1992), a contracting party has a duty to read a contract prior to signing, and a signature serves as an

indication that the party read the contract. Failure to read is only excused “if the party is ignorant and unwary.” *Id.* At hearing, the Plaintiff provided no evidence that she was ignorant or unwary, or that she failed to read the Disclaimer and Release of Liability.

5. Further, at all times material to the sale, Defendant Caldera was an independent contractor or Defendant South Market’s “licensee.” As such, the Disclaimer also covered Defendant Caldera- meaning that Defendant Caldera was disclaimed and release from liability as to any representations, actions, or omissions of any inspectors, contractors, and service providers as well.
6. Plaintiff further argued that releases are generally not prospective in nature. To support this argument, Plaintiff relied on *Gardener v. City of Columbia Police Dept.*, 216 S.C. 219, 223 (1950). However, the case states, “The scope and effect of a release must be gathered from its terms, which may be interpreted in the light of the surrounding facts and circumstances.” *Id.* As applied to the case at bar, the terms of both the disclaimer and release of liability are clear. Defendant South Market and its licensee makes no warranties as to the reliability of any of the inspectors, contractors, or service providers. Further, Plaintiff by signing the document agreed to “release, indemnify, and hold harmless” Defendant South Market and its licensee from any claims or omissions by the inspector, contractors, or service providers.
7. Plaintiff’s claims against South Market Real Estate and Demetra Caldera stem from what she alleges was a negligent inspection performed by Defendant Mountain Heating and Air on the HVAC system of the home Plaintiff purchased.
8. Plaintiff’s claims in this case against Defendants South Market Real Estate and Demetra Caldera fall squarely within the purview of the Disclaimer and Release of Liability signed

by Plaintiff on or about April 3, 2015.

9. For the above reasons, the Court hereby grants both Defendant Caldera's and Defendant South Market's Motion for Summary Judgment.
10. Both South Market Real Estate and Demetra Caldera counterclaimed against the Plaintiff for indemnification based on the indemnity clause in the Disclaimer and Release of Liability.
11. As such, Plaintiff is to indemnify both Defendant Caldera and Defendant South Market for their defense of this action, including attorney's fees and costs, and Defendants South Market Real State and Demetra Caldera shall provide the amount of their indemnification claims to Plaintiff within fifteen (15) days of the signing of this Order. If the indemnification claims are accepted by Plaintiff, the parties are to effectuate a Consent Order of the amount of judgment against Plaintiff within forty-five (45) days from the date of this Order. If any dispute arises as to the amount of the indemnification, then the matter will be set for a damages hearing upon the filing of the appropriate Motion.

**AND IT IS SO ORDERED**

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The Honorable Thomas A. Russo



Richland Common Pleas

**Case Caption:** Noel Owens vs Mountain Air Heating & Cooling , defendant, et al  
**Case Number:** 2018CP4001561  
**Type:** Order/Summary Judgment

So Ordered

s/Thomas A. Russo #2141